

4 May 2018

Code Working Group
c/o Code Secretariat (Poppy Haynes and Max Lin)
Ministry of Business, Innovation & Employment
PO Box 1473
Wellington 6140
New Zealand

Via email - code.secretariat.mbie.govt.nz

Dear Code Secretariat

Code of Professional Conduct for Financial Advice Services

Chartered Accountants Australia and New Zealand welcomes the opportunity to provide a submission on the key concepts and high level approach proposed by the Financial Advice Code Working Group (CWG) for the Code of Professional Conduct for Financial Advice Services (the Code).

We strongly support the objective of the the new regulatory regime for financial advice in New Zealand, to ensure consumers can access the financial advice they need; improve the quality of financial advice; avoid any undue compliance costs, complexity or barriers to innovation; and ensure access to redress.

We also acknowledge the importance of the work being undertaken by the Code Working Group to set minimum standards of competence, knowledge and skills; ethical behaviour, conduct and client care; and continuing training for persons involved in giving financial advice.

Our submission makes the following key points:

- Chartered Accountants Australia and New Zealand has long advocated for more effective and sustainable frameworks for financial advice, including appropriate industry reform to ensure that more consumers are able to obtain ethical and professional financial advice. We believe it is vital to improve access to affordable, good quality financial advice for all consumers.
- Chartered Accountants operate within a highly qualified and professional framework. As a professional body, our members are held accountable to the principles set out in professional codes of conduct and professional standards. We have the authority to investigate and discipline members who breach our Code of Ethics and other standards.
- We believe that the codes of conduct and standards our members currently comply with are robust and sufficient. To the extent that some members will be covered by exemptions in the legislation, we consider that our existing codes of conduct and professional standards to be adequate.
- For members who may be subject to the requirements of the new Code as well as our existing Code of Ethics and standards, we discourage the introduction of any additional, new standards which would duplicate or conflict with our existing requirements.

- We encourage the Code Working Group to streamline and harmonise the requirements of the new Code with existing laws, regulatory obligations and standards, including those of our members.
- We believe that appropriate recognition should be given to the substantial existing qualifications, skills, experience and standards of our members in determining their obligations under the Code.

Appendix A provides our detailed comments in response to the consultation questions most relevant to us. Appendix B provides more information about Chartered Accountants Australia and New Zealand.

Should you have any questions or require clarification on any of the points made in this submission, please contact Sarah Davidson (Leader, Government Affairs and Financial Advisory Services) at

S 9 (2) (a) or on **S 9 (2) (a)**

We look forward to providing feedback to the CWG on the wording of the draft Code in mid-2018.

Yours sincerely

S 9 (2) (a)

Liz Stamford
Head of Policy
Chartered Accountants Australia and New Zealand

1. Information about us

i. Please provide your name and (if relevant) the organisation you represent

Sarah Davidson
 Leader, Government Affairs and Financial Advisory Services
 Chartered Accountants Australia and New Zealand

ii. Please provide your contact details

s 9 (a)

iii. Please provide any other information about you or your organisation that will help us understand your perspective (e.g. the financial advice situations you have experience with)

Chartered Accountants Australia and New Zealand's financial advisory advocacy priorities focus on reducing complexity and supporting more effective and sustainable frameworks for financial advice:

1. Appropriate industry reform to ensure that more consumers are able to obtain good quality, ethical and professional financial advice; and
2. Reducing complexity and regulatory burden in the financial advice industry through greater digitalisation, improving data usage and streamlining the regulatory approach.

Our members work in a wide range of roles in the financial services industry, as individual advisers as well as in small businesses, small and medium-sized accounting practices, the corporate sector, major financial institutions and financial product manufacturers.

As members of a professional body, Chartered Accountants work within a highly qualified, professional and ethical framework. Members are held accountable to the principles set out in professional codes of conduct and professional standards, including codes of ethics established by globally recognised standard setting bodies in Australia and New Zealand. Our members are recognised for their professional integrity.

In accordance with the *Financial Advisers Act 2008*, there are occupational and ancillary services exemptions which members may be entitled to rely on. In particular, members providing financial advice services which are an incidental part of another business may be able to rely on the exemption. The new Code will however apply to our members who provide regulated financial advice in New Zealand but are not covered by the exemption, such as financial planners who are not in public practice as accountants.

All members who provide financial advice in New Zealand, including those who rely on the exemption, must comply with our:

1. [New Zealand Institute of Chartered Accountants \(NZICA\) Act 1996](#);
2. [NZICA Rules 2017](#);
3. [NZICA Code of Ethics 2017](#);
4. [NZICA Engagement Standard 2009 – Financial Advisory Engagements](#); and
5. [NZICA Professional Standard No. 2, 2008 - Client Monies](#).

An important perspective we bring to this submission is our experience in contributing to development of the Australian government's *Professional Standards of Financial Advisers Act 2017*. We support the overall objective of the new standards, to professionalise the financial advice industry in Australia and increase consumer trust, confidence and engagement in the sector.

Chartered Accountants Australia and New Zealand has been working cooperatively with Australia's Financial Adviser Standards and Ethics Authority (FASEA), established on 11 April 2017 to set the education, training and ethical standards of licensed financial advisers. We are presently consulting with FASEA, our members and other key stakeholders on [FASEA's proposed education standards and draft Code of Ethics](#) released for consultation on 20 March 2018.

We have over 15,000 members in public practice in Australia who either provide or assist in providing financial advice. Around half of these members hold or operate under an Australian Financial Services Licence. FASEA's proposed reforms will impact on all of these members and will also be relevant to our financial adviser members and member firms in New Zealand with trans-Tasman operations. We will make submissions to FASEA on behalf of members in June this year.

We have considered and referred to the NZICA Rules, Code of Ethics and Standards as well as FASEA's draft Code of Ethics where relevant in our responses to the consultation questions.

Further information about Chartered Accountants Australia and New Zealand is in **Appendix B**.

- iv. Please indicate whether your submission contains any information that is confidential or whether you do not wish your name or any other personal information to be included in a summary of submissions.**

There is no confidential information contained in our submission. We consent to publication of our submission on MBIE's website.

2. Principles for drafting the Code

- A. What comments do you have regarding the overarching theme of "good advice outcomes" and the underlying principles?**

We support the Code's focus on retail clients. However, we do not support the Code's proposed theme of "good advice outcomes." Achieving good advice outcomes for retail clients is an appropriate aspiration for the Code. If achieved, it will help increase consumer confidence and participation in the advice industry. Nevertheless, good advice outcomes can be variable and difficult to measure. There is also a risk that consumers will interpret this to mean that the product being advised on will perform well.

Rather than focusing on good advice outcomes, we believe that the Code should focus on the provision of quality financial advice services by individuals and entities to their clients. Specifically, that the client has been given advice that meets their reasonable needs having regard to the nature and scope of the financial advice provided. The focus should be on whether the advice or job was carried out with reasonable skill and care i.e. due care and diligence.

We therefore propose as an overarching theme for the Code the concept of "providing good advice". Consideration could also be given to expanding this theme to "providing good advice that places the interests of the client first". This is consistent with the legislation and the purpose of the new regulatory regime to improve the quality of financial advice in New Zealand.

We recommend that Principles 1 and 4 be re-worded as follows:

- **Principle 1:** The Code will focus on providing good advice to retail clients that places the interests of the client first. It will help ensure the availability and quality of financial advice. The client receiving the advice is at the heart of the Code.
- **Principle 4:** The Code will be drafted to promote providing good advice to retail clients irrespective of how the advice is delivered. It will avoid barriers to innovation and allow for varying degrees of reliance on business process.

Please refer to our view of what constitutes “providing good advice” in [NZICA Engagement Standard 2009 – Financial Advisory Engagements](#) paragraph 12 on the objectives of a member or firm when providing financial advice, paragraphs 58 to 60 which cover engagement performance and Appendix (A)39 and A40. A39 distinguishes “providing good advice” from achieving “good advice outcomes”, and notes the potential difficulties in measuring such outcomes given the potential for variability.

We support the principles-based approach proposed by the CWG, as expressed in **Principle 3**. A principles-based model will help facilitate alignment with existing regulatory obligations and adoption by advisers, like our members, who will also continue operate under their own Code of Ethics.

Nevertheless, we believe that Principle 3 and its explanatory notes could be amended to more clearly express an intention to support the practical application and effectiveness of the principles for the range of retail clients who seek financial advice, for those that provide advice (entities and individuals) and for regulators (e.g. the FMA in respect of licensing). Considerations could include adviser and licensee practice, adviser education, compliance requirements and consumer experience.

B. Are there any further principles that should be included, or existing principles that should be removed?

See comments in section 2A above in regard to our proposed amendments to the principles.

The CWG could also consider developing further principles to reflect that:

- The Code will be drafted to reduce complexity and compliance costs by streamlining and harmonising the Code’s requirements with existing industry and professional standards; and
- The Code will help enable access to redress for consumers.

3. Ethical behaviour

As discussed in section 1 above, Chartered Accountants are members of a professional body and already operate within a robust professional and ethical framework. Members are required to comply with our Act, Rules and Code of Ethics as well as relevant Standards. Both our New Zealand Code of Ethics and our Australian Code of Ethics are modelled on the globally recognised International Federation of Accountants (IFAC) Code.

The [NZICA Code of Ethics 2017](#) requires that members comply with the fundamental principles of *Integrity, Objectivity, Professional Competence and Due Care, Confidentiality and Professional Behaviour*. These principles are also reflected in [NZICA Engagement Standard 2009 – Financial Advisory Engagements](#) which establishes the mandatory requirements relevant to the provision of financial advice by our members and members’ firms.

Chartered Accountants Australia and New Zealand believes that the codes of conduct and standards our members currently comply with are robust and sufficient. To the extent that some members will be covered by exemptions in the legislation, we consider that our existing codes of conduct and professional standards adequately cover their behaviour.

For members who may be subject to the requirements of the new Code as well as our existing Code and standards, we would discourage the introduction of any additional, new standards which would duplicate or conflict with our existing requirements. We encourage the Code Working Group to streamline and harmonise the requirements of the new Code with existing laws, regulatory obligations and standards. To this end we have referenced our own professional and ethical standards for members in New Zealand where relevant in our responses below.

Act with honesty, fairness and integrity

C. Do you agree with a requirement to act with honesty, fairness and integrity? If not, please set out your reasoning.

Yes. A requirement that financial advisers act with honesty, fairness and integrity is important to include in the Code in response to consumers' lack of trust in the advice industry and to support and enable the provision of quality financial advice.

The [NZICA Code of Ethics 2017](#) paragraph 100.5 provides that members must comply with the fundamental principle of **Integrity** – to be straightforward and honest in all professional and business relationships. Paragraph 110.1 provides that Integrity also implies fair dealing and truthfulness.

[FASEA's draft Code of Ethics 2018](#) proposes that a relevant provider¹ must act in accordance with principles and values of trust, competence, **honesty, fairness** and diligence which are reflected in twelve standards. Three of the standards relate to ethical behavior. Standard 3 requires that a must act with **personal integrity** and as an independently minded professional, for the benefit of each client.

Keep the commitments you make to your client

D. Should minimum standards for ethical behaviour for the provision of financial advice extend beyond strict legal obligations, to include meeting less formal understandings, impressions or expectations that do not necessarily amount to strictly legal obligations? If no, please give reasoning. If yes, please propose how a standard for such commitments might be framed.

Yes. We support ethical obligations that extend beyond strict legal requirements and are designed to encourage higher standards of behaviour and professionalism in the financial advice industry. Examples of how a standard for such commitments might be framed are below:

[NZICA Engagement Standard 2009 – Financial Advisory Engagements:](#)

- **Paragraph 5** - Members and firms must comply with the requirements of this standard in all cases where they are relevant in the circumstances of a financial advisory engagement.
- **Paragraph 6** - A member or firm must not accept a financial advisory engagement where it would result in breaching their ethical or professional obligations, or their fiduciary duties to the client.
- **Paragraph 7** - Members and members' firms undertaking financial advisory engagements must also comply with all applicable laws, rules and regulations. In the event of any conflict between the member or firm's legal obligations and the requirements of this Standard then, to the extent the member or firm is unable to reasonably avoid or otherwise mitigate that conflict, the member or firm must give priority to compliance with their legal obligations.

[NZICA Code of Ethics 2017:](#)

- **NZ1.3** - The Code is not intended to detract from responsibilities which may be imposed by law or regulation.
- **NZ1.6** - In applying the requirements outlined in the Code, members shall be guided, not merely by the words, but also by the spirit of the Code. The fact that particular behaviour or conduct does not receive a mention within the Code, does not prevent it from amounting to a breach of the Code.

¹ The term 'relevant provider' is defined in the *Professional Standards of Financial Advisers Act 2017* as an individual adviser authorised to provide personal advice to retail clients....in relation to relevant financial products.

[FASEA's draft Code of Ethics 2018:](#)

- **Standard 1** - Relevant providers must act in accordance with the spirit, and not only the letter, of all relevant laws and regulations.

E. If there was a minimum standard requiring Financial Advice Providers – or Financial Advice Providers in some situations – to have their own code of ethics in addition to the Code, how would you frame the requirement for it to deal with keeping commitments?

See our comments in section 3D above.

Manage and fully disclose conflicts of interest

F. Should the Code include a minimum standard on conflicts of interest in addition to the legislation?

Yes. However we suggest the principle is broadened to encompass the principle of “objectivity” as there can be occasions where conduct is not directly a conflict of interest but something that involves bias or a relationship or interest that undermines objectivity

The [NZICA Code of Ethics 2017](#) paragraph 100.5 requires that members must comply with the fundamental principle of **Objectivity** – to not allow bias, conflict or undue influence of others to override professional or business judgements. Conflicts of interest are covered in further detail in section 220 and 280 for members in public practice and section 310 for members in business, including examples of where such conflicts might arise and actions that should be taken.

Conflicts of interest relating to financial advisory engagements are also addressed in paragraphs 19 to 23 of [NZICA Engagement Standard 2009 – Financial Advisory Engagements](#).

[FASEA's draft Code of Ethics 2018](#) deals with conflicts of interest in the following standards which require that a relevant provider must:

- **Standard 1** - Act in accordance with the spirit - and not only the letter - of all relevant laws and regulations (including FASEA’s Code);
- **Standard 2** – Must neither advise, refer, nor act in any other manner, where inappropriate personal advantage is derived by the relevant provider;
- **Standard 4** – Act only on the basis of the free, prior and informed consent of a client; and
- **Standard 5** – Ensure that all advice and products are in the best interest of each client.

Do no harm to the client or the profession

G. Do you agree that a person who gives financial advice must not do anything or make an omission that would or would be likely to bring the financial advice profession into disrepute? If not, please set out your reasoning.

Yes, although we suggest the concept of professional behavior can be drafted in a way to encompass both avoiding conduct that brings discredit to the profession as well as the requirement to act professionally towards clients. The actions of financial advisers must contribute to professionalising the financial advice industry, and must not bring the profession into disrepute. [NZICA Code of Ethics 2017](#) paragraph 100.5 requires that members must comply with the fundamental principle of **Professional Behaviour** - to comply with relevant laws and regulations and avoid any conduct that discredits the member’s profession.

Paragraph 150.1 of the NZICA Code explains that this includes conduct that a reasonable and informed third party would be likely to conclude adversely affects the good reputation of the member's profession. Paragraph 150.2 extends the obligation on members to not bring their profession into disrepute in the way that they market and promote themselves and their work.

H. Is an additional minimum standard on doing no harm to the client necessary? If so, what standard do you propose?

No, we do not believe this is appropriate or necessary. The purpose of the new regulatory regime is to increase consumer confidence and engagement and ensure the quality of financial advice. Therefore we believe it would be more appropriate to express this standard positively as "provide good advice that places the interests of the client first" rather than negatively as 'do no harm to the client'. Please also refer to our proposal in section 2A above to reflect this in the overarching theme for the new Code.

Keep your client's data confidential

I. In which situations, if any, should the retention, use or sharing of anonymised bulk customer data be subject to Code standards?

No comment.

J. Do you agree that the Code should cover the various aspects of maintaining client confidentiality discussed in this paper?

Yes, subject to the wider legal obligations relating to confidentiality of client information. For example, privacy law as well as other laws that would require disclosure of confidential information, such as under the Anti-Money Laundering and Countering Financing Terrorism Act 2009.

K. Are there other aspects of maintaining client confidentiality to consider?

Confidentiality is one of the fundamental principles that a professional accountant must comply with. [NZICA Code of Ethics 2017](#) paragraph 100.5 requires that members respect the confidentiality of information acquired as a result of professional and business relationships. Information should not be disclosed to third parties without proper and specific authority, unless there is a legal or professional right or duty to disclose. Section 140 of the NZICA Code explains in further detail the circumstances in which the principle of confidentiality applies.

Confidentiality is also addressed in [NZICA Engagement Standard 2009 – Financial Advisory Engagements](#) paragraph 30 and A19 to 21.

Auditors and professional accountants are also subject to the international ethics standard [Responding to Non-Compliance with Laws and Regulations](#), which came into effect from 15 July 2017. The NOCLAR standard sets out a framework to guide all professional accountants in what action to take in the public interest when they become aware of a potential illegal act in the course of undertaking professional activities for their client or employer.

NOCLAR clarifies that the public interest is higher or more important than confidentiality to a client or employer. Professional accountants must consider the public interest and assess whether there is potential harm to investors, stakeholders and the public if they do not set aside confidentiality and take appropriate action.

Ethical processes in Financial Advice Provider entities

L. – O.

We agree that the new Code should require “ethical processes” to be documented and maintained for both individual advisers and entities. [NZICA Engagement Standard 2009 – Financial Advisory Engagements](#) paragraphs 83 to 94 and A51 to A53 address ethical obligations relating to documentation, communication of advice and implementation of advice.

In regard to the CWG’s question of whether Financial Advice Providers should be subject to additional standards in respect of leadership and culture, please refer to “[Managing Culture: A good practice guide](#)”. Chartered Accountants Australia and New Zealand developed this guide jointly in 2017 with the Australian Securities and Investments Commission, The Institute of Internal Auditors Australia, The Ethics Centre and Governance Institute of Australia. It explains the important link between improving corporate culture and conduct outcomes for consumers and investors. It covers the regulatory context, defining culture, developing and embedding culture, as well as gaining assurance over risk culture.

[FASEA's draft Code of Ethics 2018](#) proposed standards in relation to leadership of relevant providers of financial advice:

- **Standard 3** – Act with personal integrity and as an independently minded professional for the benefit of each client.
- **Standard 12** – Individually and in cooperation with peers uphold and promote the ethical standards of the profession, and hold each other accountable for the protection of the public interest.

Ethics training

P. Do you agree that Financial Advice Providers should be required to meet standards relating to ethics training? If not, please state your reasoning.

Yes.

Q. Should ethics training requirements apply to all officers and employees of a Financial Advice Provider, as appropriate to their role and contribution to the process of financial advice provision? If not, please state your reasoning.

Yes.

R. Should there be a requirement for ongoing refresher training on ethics?

Yes. Chartered Accountants Australia and New Zealand’s members in New Zealand are required to do mandatory ethics training of four hours every five years. The five years is on a fixed term cycle, with the next term ending in 2020. The requirements are set out in [Chartered Accountants Australia and New Zealand’s Regulations](#) in Schedule 2 to CR7 – CPD requirements for members resident in New Zealand.

Resolving ethical dilemmas

S. Do you agree that Financial Advice Providers should be required to have in place, and use, a framework for resolving ethical dilemmas that may arise in giving financial advice? If not, please set out your reasoning.

Yes. However, we recommend a process or guidelines rather than a detailed or prescriptive framework. It would also be valuable to include case studies and practical training on resolving ethical dilemmas in the education and ongoing CPD requirements, as we do for our members in New Zealand.

Compliance functions

T. Should there be a requirement for explicit sign-off on the soundness of financial advice provided directly by a Financial Advice Provider?

We support the requirement for financial advice providers to document how the firm meets and accepts its responsibility for ethical behaviour in the business. However, we do not believe that the Code should mandate explicit, additional sign off on the “soundness” of advice provided directly by the entity.

Additional guidance could be provided in the Code to assist advisers to exercise their own professional judgment in circumstances. For example, in regard to situations where it would be prudent for a financial adviser to notify the client in writing in relation to advice which may present a special risk or concern, such as where a client provides the adviser with instructions to implement advice or recommendations which the adviser does not believe are in the client’s interests.

Please refer to [NZICA Engagement Standard 2009 – Financial Advisory Engagements](#) paragraphs 83 to 94 and A51 to A53 which cover documentation, communication of advice and implementation of advice.

U. Do you agree that Financial Advice Providers should be required to have in place a compliance function aimed at following up on concerns raised by employees and other stakeholders? If not, please set out your reasoning.

Yes

V. Should this extend further into an internal audit obligation, having in place processes to systematically test for and detect violations of ethical behaviour?

This would depend on the circumstances, such as the size of the firm. Audit obligations would not be appropriate for one or two partner firms.

W. Are there any potential compliance costs for small and/or large Financial Advice Providers that need to be considered?

The CWG must ensure the right balance between compliance obligations and consumer protection. Undue compliance burdens related to ethical behaviour requirements such as additional disclosure obligations and other administrative matters will reduce productivity, competition, independence and the delivery of quality, affordable financial advice to consumers.

Compliance costs will have a particularly adverse and unfair impact on independent financial advisers as well as small and medium sized businesses and those in regional and remote areas, which is disproportionate to the scale of their operations. Further comments on compliance costs are provided in Section 5 in the context of education requirements.

Responsibility for the whole advice process

X. Do you agree that Financial Advice Providers should be required to be able to demonstrate that they meet the standards of ethical behaviour as if the Financial Advice Provider carried out the whole advice process directly itself? If not, please set out your reasoning.

Yes.

Reinforcing good ethical behaviour

Y. What principle or mechanism do you propose the Code could include to reinforce good ethical behaviour on a day-to-day basis?

Chartered Accountants Australia and New Zealand's 2013 research on *Why business ethics matter to your bottom line* found that to improve ethical behaviour and increase organisational and institutional integrity, business leaders must move beyond compliance, to better measurement and management of organisational culture and governance (including shared practices, behaviour standards and reward structures), and encouraging greater self-regulation and individual accountability.

Our 2016 **future[inc]** report, [A Question of Ethics – Navigating Ethical Failure in the Banking and Financial Services Industry](#), which surveyed over 700 banking and financial services industry practitioners in six countries, proposes a range of interventions to help improve ethical behaviour, reduce ethical failures, re-shape organisational culture, and regain public trust in the banking and financial services industry:

- Harnessing data analytics to measure ethical performance indicators;
- Realigning remuneration and incentives to reward ethical behavior;
- Engaging in conscious, principled reasoning;
- Reducing the risk of insularity and groupthink by increasing diversity; and
- Making ethics part of the everyday conversation.

4. Conduct and client care

Chartered Accountants Australia and New Zealand agrees that the Code should include both advice-giving standards and organisational standards. We support the CWG's view that advice-giving conduct and client care standards should apply to all advice-giving interactions between a financial advice provider (including its financial advisers and nominated representatives) and the client.

We also agree that a financial advice provider purely providing automated advice-giving (robo-advice) must be able to meet and demonstrate compliance with the same standard of conduct and client care obligations as a financial advice provider using individuals to provide advice. These standards should apply across all scenarios including services provided via an intermediary or through vertically integrated organisations.

[FASEA's draft Code of Ethics](#) proposes Standards 4 to 6 on Client care and Standards 10 to 12 on Professional commitment.

[NZICA Engagement Standard 2009 – Financial Advisory Engagements](#) (NZICA Financial Advisory Engagement Standard) contains the essential client care standards already included in the [Code of Professional Conduct for Authorised Financial Advisers 2016](#) (AFA Code), as outlined in the following table:

Standards of client care	
AFA Code	NZICA Financial Advisory Engagement Standard (NZICA Code references are in brackets)
<ul style="list-style-type: none"> CS-6: Behaving professionally, including communication and timeliness. 	Paragraphs 31–35: Members must comply with the fundamental principle of professional behaviour. Paragraphs 85–90 and A51-52: communication of advice. (Professional behaviour is also addressed in paragraph 100.5 and section 150 of the NZICA code).
<ul style="list-style-type: none"> CS-7: Ensuring a client can make an informed decision about using the adviser (which focuses on information about the adviser themselves, rather the advice). 	Paragraphs 45-48: Disclosure to clients and prospective clients which covers the obligation to disclose to the client information about the person or entity providing the advice, the nature of the advice to be provided, remuneration arrangements, conflicts of interest and any other relevant factors.
<ul style="list-style-type: none"> CS-8: Agreeing the nature and scope of the service. 	Paragraphs 58-82: Engagement performance, especially paragraph 80 on the scope of advice.
<ul style="list-style-type: none"> CS-9: Suitability of the advice. 	Paragraphs 58-82: Engagement performance, especially paragraphs 58-61 on general principles, 61-67 procedures for developing appropriate advice, and 78 to 80 on the basis for the advice.
<ul style="list-style-type: none"> CS-10: Ensuring clients can make an informed decision about the advice. 	Paragraphs 58-82: Engagement performance and Paragraphs 85-90 and A51-52: Communication of advice.
<ul style="list-style-type: none"> CS-11: Complaints processes. 	(Refer to the NZICA Code of Ethics paragraph NZ1.2. Compliance with the Code is mandatory for all members of Chartered Accountants Australia and New Zealand. Non-compliance with the Code may expose a member to disciplinary action.)
<ul style="list-style-type: none"> CS-12: Keeping information about the advice. 	Paragraphs 83-84: Documentation
<ul style="list-style-type: none"> CS-13: Record retention. 	Paragraphs 83-84: Documentation and A51 on record retention.

5. General competence, knowledge and skills

The CWG proposes that “competence, knowledge and skill” be met through the combined expertise of the Financial Advice Provider and any Financial Adviser or Nominated Representative involved in giving the financial advice. If this approach is to be taken there need to be processes, controls and limitations in place to ensure that the Financial Advice Provider is responsible and accountable for the advice provided. The Financial Advice Provider must also ensure that their Financial Advisers and Nominated Representatives obtain and maintain the appropriate competence, knowledge and skills necessary for the level of service provided.

In regard to the proposed meaning of “competence, knowledge and skill”, as stated in section 2 above, we recommend that references to the words “good advice outcome/s” be replaced with the words “good advice” or “good advice that places the interests of the client first.”

We also recommend that Financial Advice Providers and any Financial Adviser or Nominated Representative involved in giving the financial advice have an up to date and clear understanding of all current regulatory obligations, in addition to legal and Code requirements.

We believe that the CWG’s proposal for individual Financial Advisers or Nominated Representatives to obtain a standard of general competence, knowledge and skill at the current Level 5 Unit Standard 26360 would be the minimum level of acceptable qualification for providing financial advice. Without any additional qualifications (such as a related degree in an area such as financial planning, accounting or finance) Level 5 by itself may not be adequate to enable the provision of good quality financial advice.

The competence, knowledge and skills requirements of our members in New Zealand are addressed in [NZICA Code of Ethics 2017](#) paragraph 100.5 and section 130 on **Professional Competence and Due Care**. The aspects relating to professional competence require members to maintain professional knowledge and skill at the level required to ensure that a client receives competent professional services based on current developments in practice, legislation and techniques. Section 330 of the NZICA Code also provides further specific requirements for our members in business on acting with sufficient expertise.

From an enforcement perspective, most cases would come under the failure to act with reasonable care, not for a lack of competence. A person could generally have the necessary competence but in a particular instance may not have carried out the engagement with due care. We therefore propose that both the general and particular standards of “competence, knowledge and skill” be expanded to include due **care and diligence**.

[NZICA Engagement Standard 2009 – Financial Advisory Engagements](#) addresses professional competence in paragraphs 28 and 29, particularly 28(a) which requires obtaining or maintaining the professional knowledge, skills and experience relevant to the provision of quality financial advice to clients. This includes undertaking continuing professional development relevant to financial advisory engagements. Paragraphs 73, A18 and A48 includes an obligation for advisers to seek the services of a suitably qualified expert to provide the particular competencies, skills, expertise and related resources required to perform any aspect of a financial advisory engagement where this is not available through the adviser themselves.

6. Particular competence, knowledge and skills

The CWG proposes to identify two types of financial advice for the purpose of minimum standards of particular competence, knowledge and skill – “product advice” and “financial planning”. Care must be taken to clearly define the line between sales and advice in order to help minimise the risk that financial products are inappropriately sold to consumers. There is a risk that “product advice”, which is actually “product sales”, may be mistakenly understood by the consumer to mean that the product is suitable for them, taking into account their financial objectives, circumstances and needs.

In regard to the proposal that the minimum standard of competence, knowledge and skills required of an individual for “**product advice**” be at the New Zealand Certificate in Financial Services (Level 5), please refer to our comments in section 5 above.

We consider acceptable the proposal that the minimum standard of competence, knowledge and skills required of an individual for “**financial planning**” be at (i) a Bachelor’s degree (at NZ Level 7 or higher), majoring in financial planning, accountancy, business, commerce, economics, financial or management and (ii) a qualification in financial planning and advice process.

Chartered Accountants operate within a highly qualified and professional framework. Our members already hold one or more degrees that have a major or specialisation in a discipline within a field of study related to financial planning/advice/services such as accounting, finance, tax, law and economics. Members have also completed a post-graduate equivalent qualification via the CA Professional Year or CA program, do ongoing CPD and are obliged to abide by our strict Code of Ethics.

The majority of Chartered Accountants who provide financial advice to retail clients have also completed an approved financial planning course, further CPD in the areas of financial advice in which they practice, have significant years of relevant experience, and have never had any regulatory action taken against them.

We therefore believe that appropriate recognition should be given to our members' existing qualifications, skills, experience and standards in determining their obligations under the new Code. This includes recognition of prior learning (RPL) for our member who are Registered Financial Advisers (RFAs).

In determining appropriate RPL, consideration should be given to the number of years of practical experience obtained in providing financial advice to retail clients, as well as the number of years in which CPD has been maintained.

Chartered Accountants have already made a significant investment in their qualifications and skills. On that basis we believe they will be well positioned to meet any additional competence, knowledge and skills requirements determined necessary for all financial advisers in New Zealand in order to ensure the quality and availability of financial advice under the new regulatory regime.

Whilst acknowledging the necessity to raise the standards of the financial advice industry, we encourage the CWG to give careful consideration to reducing complexity and compliance burdens in terms of the time and costs associated with undertaking additional education requirements.

There will also be further compliance costs for financial advisers once the licensing regime commences in New Zealand. We believe this will likely result in many advisers leaving the industry. It is particularly a risk for independent advisers, small and medium-sized practices, those in rural and regional areas, advisers with young families and those who may be close to retirement age. This would work against the objective of the legislation to increase the availability of financial advice to consumers.

FASEA's proposed education standards and draft Code of Ethics for licensed financial advisers in Australia, may be a useful reference point. **Standard 10** in FASEA's [draft Code of Ethics](#) requires that relevant providers develop and maintain a high level of relevant knowledge and skills. Our current position on FASEA's [proposed education reforms](#) and feedback received from members to date is in the following articles on our website:

23/4/18 - *New education standards for financial advisers in Australia*
<https://www.acuitymag.com/business/new-education-standards-for-financial-advisers-in-australia>

20/3/18 - *Financial Adviser Standards and Ethics Authority releases proposed education pathways and draft Code of Ethics for consultation*
<https://www.charteredaccountantsanz.com/news-and-analysis/news/new-guidance-on-proposed-fasea-education-standards-member-update>

Appendix B

About Chartered Accountants Australia and New Zealand

Chartered Accountants Australia and New Zealand is a professional body comprised of over 117,000 diverse, talented and financially astute members who utilise their skills every day to make a difference for businesses the world over.

Members are known for their professional integrity, principled judgment, financial discipline and a forward-looking approach to business which contributes to the prosperity of our nations.

We focus on the education and lifelong learning of our members, and engage in advocacy and thought leadership in areas of public interest that impact the economy and domestic and international markets.

We are a member of the International Federation of Accountants, and are connected globally through the 800,000-strong Global Accounting Alliance and Chartered Accountants Worldwide which brings together leading Institutes in Australia, England and Wales, Ireland, New Zealand, Scotland and South Africa to support and promote over 320,000 Chartered Accountants in more than 180 countries.

We also have a strategic alliance with the Association of Chartered Certified Accountants. The alliance represents 788,000 current and next generation professional accountants across 181 countries and is one of the largest accounting alliances in the world providing the full range of accounting qualifications to students and business.

New Zealand Institute of Chartered Accountants

ENGAGEMENT STANDARD

FINANCIAL ADVISORY ENGAGEMENTS

Issued by the Board of the New Zealand Institute of Chartered Accountants

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Compliance with this Standard is mandatory in terms of paragraph 130.1(b) of the Code of Ethics. This Financial Advisory Engagement Standard is to be read in the context of the Explanatory Foreword to Engagement Standards issued by the New Zealand Institute of Chartered Accountants and in conjunction with Professional Standard 1 *Quality Control* and Professional Standard 2 *Client Monies*.

Introduction

Scope

- 1 This Standard establishes mandatory requirements and provides explanatory guidance for members and members' firms undertaking *financial advisory engagements*. It applies whether or not members hold a Certificate of Public Practice.
- 2 A *financial advisory engagement* is any agreement between a member or firm and a client relating to provision of *financial advice* to the client by the member or firm. Consultations with a prospective client prior to such agreement are not part of an engagement.
- 3 *Financial advice* is advice provided to clients to manage their financial affairs specifically related to wealth management and planning, investment and personal risk management. Financial advice includes allied services related to the advice provided to a client. Advice on taxation matters¹ provided along with any financial advice is an allied service. (Ref: Para. A1)
- 4 For the purpose of this Standard, financial advice excludes:
 - brokerage services;
 - advice relating to the acquisition or disposition of resources carried out by a trustee or member of a Board or Committee when carried out as part of the governance activities of the trust, Board or Committee;
 - execution of transactions (without any advice or recommendations on the suitability or otherwise of those transactions);
 - referral to a financial adviser;²
 - provision of information only (with appropriate notice that no recommendations should be inferred);
 - services related to a business restructuring or reorganisation;
 - services related to a private or public debt or equity fundraising;
 - services related solely to refinancing an entity's operations or activities;
 - services related to a takeover, merger, acquisition or divestment of a business;
 - valuation of an entity, or any interests held in an entity.
- 5 Members and firms must comply with the requirements in this Standard in all cases where they are relevant in the circumstances of a financial advisory engagement. The application and other explanatory material is an integral part of this Standard as it provides further explanation of, and guidance for carrying out, the requirements of this Standard, along with background information on the matters addressed in this Standard.
- 6 A member or firm must not accept a financial advisory engagement, where it would result in the member or firm breaching their ethical or professional obligations, or their fiduciary duties to the client.
- 7 This Standard is confined to the professional aspects of a financial advisory engagement as distinct from any responsibilities which may be imposed by law. Members and firms need to also comply with all applicable laws, rules and regulations. In the event of any conflict

¹ When a member merely provides tax advice to the client and is not providing any other financial advice, the member is not providing financial advice for the purposes of this Standard.

² But note that there are ethical and other considerations involved with referrals, particularly if a member receives a fee or commission relating to the referral. There is further discussion of these considerations in Appendix 1.

between a member or firm's legal obligations and the requirements of this Standard then, to the extent the member or firm is unable to reasonably avoid or otherwise mitigate that conflict, the member or firm must give priority to compliance with their legal obligations. (Ref: Para. A2–A4)

- 8 Members are also encouraged to apply the requirements and guidance contained in this Standard to the provision of financial advice which is undertaken in a capacity other than as a financial advisory engagement.

Fiduciary Relationship with the Client

- 9 A fiduciary relationship will usually exist between the financial adviser and the client in a financial advisory engagement. Such a relationship arises because the adviser has the following professional obligations to the client as part of undertaking such engagements:
- (a) to act at all times in the best interests of the client, and not out of self-interest or in the interests of a third party; and
 - (b) to provide full and fair disclosure to the client of all material facts and information relevant to the relationship with the client and to the engagement, including disclosure of any conflict or potential conflict of interest the adviser may have relating to the relationship or the engagement; and
 - (c) to take appropriate steps to either:
 - (i) manage and control identified actual or potential conflicts of interest; or
 - (ii) avoid conflicts of interest where they are of such significance in terms of their impact on the relationship with the client or the quality of the advice and/or services to be provided that the only way to adequately manage those conflicts is to decline the engagement; and
 - (d) to ensure that all information available to the adviser which relates to the client's affairs is made available to the client, subject only to binding obligations as to confidentiality owed to other clients or third parties; and
 - (e) to ensure that information obtained in confidence from the client is only used for the benefit of the client, and not for the benefit or advantage of the member or firm, or that of any other party. (Ref: Para. A5)
- 10 The full extent of an adviser's obligations deriving from their fiduciary relationship with a client will depend on the particular circumstances of the engagement, the specific facts of their relationship with each client, and the nature of the advice and related services provided under the agreed engagement terms. Members must be aware that further care and obligations may be required in some engagements. (Ref: Para. A6)

Effective Date

- 11 This Standard is effective for engagements to provide financial advice and related services existing or commencing on or after 1 July, 2010.

Objective

- 12 The objectives of a member or firm when performing a financial advisory engagement is to provide financial advice that is:
- (a) suitable for the purpose for which the advice is given, and
 - (b) appropriate to the client's financial needs, objectives and priorities as disclosed to the member or firm.

The obligation to take all reasonable steps to ensure that financial advice is appropriate cannot be avoided by any notice or disclaimer provided to the client.

Definitions

- 13 For the purpose of this Standard, the following terms have the meanings specified:
- (a) Commission – all monetary amounts received from a third party in respect of placement or retention of client funds or business, and/or purchases or sales of financial and/or risk products, and also any ‘soft-dollar’ benefits (see also paragraph 13(n)).
 - (b) Client – an individual, firm, entity or organisation to which financial advice is provided.
 - (c) Conflict of interest – any circumstance, relationship or other facts relevant to the member or firm’s own financial, business, property and or personal interests which will or reasonably may impair the member’s rendering of objective advice, recommendations or services, in either reality or perception.
 - (d) Fees-for-service – remuneration paid by the client in the form of fixed, hourly, percentage or performance-based fees (also termed ‘fee-only’ advice).
 - (e) Fiduciary – the member or firm’s role when providing financial advice to clients, which includes acting in utmost good faith, in a manner that the member or firm reasonably believes to be in the client’s best interest.
 - (f) Fiduciary relationship – the relationship of trust and confidence created by the existence of fiduciary duties which may be imposed on the member or firm as part of their professional obligations to act on behalf of the client and to always put their client’s best interests first.
 - (g) Financial advice – see paragraph 3 of this Standard.
 - (h) Financial adviser/adviser – a member or firm who provides financial advice to clients.
 - (i) Financial advisory engagement – see paragraph 2 of this Standard.
 - (j) Firm – a sole practitioner, partnership, corporate practice or other form of entity through which a member may undertake financial advisory engagements.
 - (k) Immediate family – a spouse (or equivalent) or dependent.
 - (l) Member – a member of the New Zealand Institute of Chartered Accountants.
 - (m) Related party – an individual or entity from whom any direct or indirect economic benefit is received, or may be received, by the financial adviser as a result of providing or implementing financial advice to a client, or as a result of a recommendation made by the adviser when providing financial advice.
 - (n) ‘Soft-dollar’ benefits – all monetary and, other than insignificant, non-monetary benefits received by a financial adviser from parties other than the client pursuant to performance of financial advisory engagements. They do not include:
 - (i) fees derived directly from their client in respect of such engagements; and
 - (ii) referral fees received in the course of referring clients to other service/product providers,
 disclosed to the client by the adviser at the time of provision of advice. (Ref: Para. A7–A8)

Requirements

Ethical Requirements

- 14 The financial adviser must comply with the requirements of the *Code of Ethics* (the Code) to the extent relevant to the circumstances of the financial advisory engagement.

Fundamental Principle: Objectivity and Independence

- 15 Advisers must, as far as is reasonably practicable, avoid situations where advice provided to a client, and any recommendations provided as part of the advice, is in any way constrained or likely to be biased in favour of particular financial products or product providers. This is in order to avoid breaching the fiduciary duties of advisers.

Associations with Third Parties

- 16 Where advisers provide advice that is restricted in scope in any way, including where the advice or expertise is restricted to particular areas, products or providers, the adviser must disclose the extent of those restrictions and the resulting effect on the adviser's independence to clients both:
- (a) prior to undertaking the engagement, wherever possible; and
 - (b) at the time the advice is provided to the client. (Ref: Para. A9)

Financial Involvement with Clients

- 17 An adviser or their firm must not lend money to, or borrow money from a client unless the client is an immediate family member of the adviser, or of a member of the firm.
- 18 If an adviser enters into transactions with a client separate from the member or firm's financial advisory engagement with the client, or co-invests with the client in an investment scheme or business project, the adviser must:
- (a) ensure that such transactions are on terms that are fair and reasonable to the client; and;
 - (b) disclose the following to the client in writing:
 - (i) the risks of the transaction;
 - (ii) conflicts of interest of the adviser; and
 - (iii) any other relevant information necessary to make the transaction fair to the client; and
 - (c) offer the client the opportunity to take independent advice and advise the client of the benefits of seeking independent advice; and
 - (d) comply with the conflict of interest requirements in this Standard. If the transaction or co-investment gives rise to a conflict of interest which cannot be managed through disclosure and the application of appropriate safeguards, the adviser must not enter into that transaction or co-investment or decline to accept or continue the financial advisory engagement.

Conflicts of Interest

- 19 Advisers and their firms must ensure they have adequate internal policies and procedures to identify and manage real and potential conflicts of interest, including documentation of conflicts of interest that occur and the way in which those conflicts are managed and resolved. (Ref: Para. A10)
- 20 In accordance with paragraph 9(b), where any conflict of interest exists or may exist in an adviser's relationship with a client, the adviser must take reasonable steps to ensure the client is in a position to make informed decisions about whether to continue the financial advisory engagement, and whether to implement any financial advice already provided or to be provided if the client wishes to continue the engagement.
- 21 If an adviser has, or is likely to have a conflict of interest, real or perceived, the adviser must explain the nature and effects, or likely effects, of the conflict or potential conflict to the client. The explanation must be in terms that the client can understand to ensure the client has a proper appreciation of the conflict and its implications. (Ref: Para. A11)

- 22 Where a conflict of interest arises, the adviser, having made full disclosure to the client of any conflict of interest, must take appropriate action(s) to manage or control the conflict of interest so as to mitigate its effects. If the conflict of interest may have such a serious impact that it cannot be adequately managed through disclosure and the application of appropriate safeguards, the adviser must decline to accept or continue the financial advisory engagement, unless the conflict can be avoided. (Ref: Para. A12)
- 23 If the member or firm intends to apply appropriate safeguards that are expected to mitigate effectively the threat posed to the adviser's objectivity by the conflict, the member or firm must:
- (a) explain those safeguards and their expected effects to the client; and
 - (b) obtain the client's informed consent to enable the adviser to provide the requested advice, or to continue the engagement where the adviser is already engaged. (Ref: Para. A13)

Independence—Conditions for Independent Financial Advice

- 24 Financial advisers who hold themselves out as providing financial advice on an independent basis must ensure that:
- (a) the adviser's ability to provide financial advice that involves recommending financial products or services is not constrained in any way, including by any relationships, interests, agreements or associations that the member or firm has with any third party or third parties, including product providers; and
 - (b) the advice provided to clients is based on the ability to consider financial products from the market for financial products as a whole, or the whole of the sector of the market for a particular class of financial and/or risk product; and
 - (c) all remuneration received by the adviser for advice provided to clients is based solely on fees paid by clients, as agreed between the adviser and their clients for individual engagements. Any commissions received from third parties, other than soft-dollar benefits, that are not avoidable must be:
 - (i) disclosed to the client in full; and
 - (ii) rebated to clients by the member or firm in full when received; and
 - (d) any soft-dollar benefits, must be declined. (Ref: Para. A14–A16)
- 25 The threat to an adviser's independence, both of mind and in appearance, from receiving or agreeing to receive commissions paid to the adviser by third parties, linked in any way to the adviser's provision of financial advice to clients, is considered significant. Where an adviser receives such commissions, other than where the adviser complies with paragraph 24(c), the adviser must refrain from holding themselves out as being independent in relation to provision of financial advice.

Independence—Individual Engagements

- 26 An adviser must consider, for each financial advisory engagement, whether or not the adviser is able to undertake the engagement on an independent basis. This is regardless of whether or not the adviser holds themselves out as providing financial advice and related services on an independent basis.
- 27 Where the adviser concludes that the engagement will not or can not be undertaken on an independent basis, the adviser must disclose the relevant circumstances to the client prior to, and at the time of providing the advice, and also obtain the client's informed consent to be able to provide advice. (Ref: Para. A17)

Fundamental Principle: Professional Competence and Due Care

- 28 Financial advisers must ensure that appropriate standards of professional competence and due care are maintained by:
- (a) obtaining or maintaining the professional knowledge, skills and experience relevant to provision of high quality financial advice to clients. This includes undertaking ongoing continuing professional development relevant to undertaking financial advisory engagements; and
 - (b) ensuring that financial advisory engagements are performed to a high quality by following a systematic process that properly addresses all stages of the engagement; and
 - (c) where an adviser lacks the necessary knowledge or expertise to undertake particular aspects of an engagement in accordance with reasonably expected levels of technical competence, the adviser must seek to obtain the services of suitably qualified experts to undertake those aspects of the engagement. (Ref: Para. A18)
- 29 The adviser must ensure that a client's instructions relating to a financial advisory engagement are carried out to the fullest extent possible, subject to the requirements and guidance contained in this Standard, and other Standards applicable to the adviser, and to the particular engagement.

Fundamental Principle: Confidentiality

- 30 If an adviser needs to provide information concerning the client to other parties for any purpose associated with the financial advisory engagement, the adviser must obtain the client's prior, express written consent to disclose the necessary information to those other parties. (Ref: Para. A19–A21)

Fundamental Principle: Professional Behaviour

Professional Fees and Commissions

- 31 When agreeing the nature and terms of remuneration with a client, advisers must ensure that they proactively identify and address any threats to their ability to maintain their objectivity and independence.
- 32 In accordance with the Code, an adviser must ensure that the total amount of fees paid by their client, is a fair reflection of the value of the services performed for the client.³ (Ref: Para. A22–A24)
- 33 Advisers must not advertise provision of financial advice on the basis of providing 'free financial advice' or similar, where the intention is to derive fees from provision of advice only by way of product placement fees or commissions paid by third parties. (Ref: Para. A25)
- 34 Advisers who receive any commissions, 'including soft-dollar benefits', from third parties in the course of, or subsequent to providing financial advice for their clients, including where received by a related party of the adviser or the adviser's firm, must:
- (a) disclose those commissions or other benefits to clients and prospective clients, both prior to commencing the engagement and at the time advice is provided, having regard to:
 - (i) applicable requirements of relevant laws and regulations;

³ See the paragraph 240.1 of the *Code of Ethics* for additional guidance on determining fees. In particular, nothing in this Standard should be interpreted as preventing members from performing services on a voluntary or honorary basis for token, or no remuneration.

- (ii) the adviser's fiduciary relationship with the client as described in paragraph 9; and
 - (iii) the Fundamental Principles of the Code, and the requirements and guidance contained in this Standard; and
- (b) prior to providing advice to a client, obtain the client's informed consent to provide the advice on the basis that the adviser, or any related party of the adviser or firm, will or may receive commissions or other benefits from third parties. Receipt of such benefits without informed consent will usually be contrary to any fiduciary duties that apply when providing financial advice. (See also paragraph 10).
- (c) not hold out to clients or prospective clients, or any other parties the adviser engages with in relation to provision of financial advisory engagements, that the services are provided on an independent basis. (Ref: Para. A26–A29)
- 35 If the adviser receives payment of any fees by way of debits, deductions or similar charges made against the client's accounts or investments, the adviser must:
- (a) obtain the client's prior written authority in accordance with the requirements of Professional Standard 2;⁴ and
 - (b) ensure the client's authority is recorded as part of the agreed terms of the engagement.

Quality Control

- 36 A financial adviser must implement appropriate and effective quality control policies and procedures, both at the level of the adviser's firm and for each individual financial advisory engagement, in accordance with Professional Standard 1.⁵

Client Information, Client Monies and Other Client Property

- 37 Where an adviser receives or holds monies on behalf of clients, or operates any client bank accounts for clients, the adviser must comply with PS-2.
- 38 The adviser must take prudent steps to protect the security of client information and client property that is within the member or firm's control to ensure that such information is protected from unauthorised disclosure and is not misused or lost. This includes ensuring the security of stored information, whether stored physically or electronically.
- 39 The adviser must return a client's property, including personal records, to the client upon request and as soon as reasonably practicable, or in accordance with the agreed terms of the engagement.

Acceptance and Continuance of Client Relationships and Specific Engagements

Establishing and Defining the Client Relationship

- 40 Before agreeing to undertake a financial advisory engagement for a new client, or when considering acceptance of a new engagement with an existing client, the financial adviser must obtain preliminary information about the prospective client's needs and objectives, and other key issues of relevance to the prospective engagement, with the prospective client. (Ref: Para. A30–A31)
- 41 The adviser must use the preliminary information obtained under paragraph 40 in order to:
- (a) assess whether an engagement or client relationship with the prospective client is warranted by the client's needs and objectives as described;
 - (b) define the objective(s) of the engagement in response to the client's needs and objectives as described; and

⁴ Professional Standard 2 *Client Monies* (PS-2).

⁵ Professional Standard 1 *Quality Control* (PS-1).

- (c) determine the likely nature and scope of services appropriate to meet the client's needs and objectives as described.
- 42 The adviser must discuss with the client:
- (a) the need for the client to provide access to, or make available all relevant client information necessary for performance of the engagement in accordance with the adviser's legal and professional responsibilities;
 - (b) the remuneration arrangements applicable to the services to be provided, including any arrangements that involve receipt of commissions by the adviser or related parties from provision of services to the client; and
 - (c) circumstances where the adviser would expect or intend to use the services of other parties or experts, to meet any of the adviser's obligations for the engagement. (Ref: Para. A32)
- 43 When considering acceptance or continuance of client relationships and specific engagements, the adviser must include in that consideration:
- (a) assessment of the integrity of the client;
 - (b) evaluation of whether the adviser is able to comply with relevant ethical requirements, in particular whether:
 - (i) the adviser is able to provide the services on an objective and independent basis; and
 - (ii) the adviser is competent to provide the advice and services requested by the client; and
 - (iii) the adviser has sufficient time and appropriate resources available to perform the services to the applicable standards, including standards on quality control, and in compliance with this Standard; and
 - (c) if the adviser holds themselves out as providing financial advice on an independent basis, whether the adviser will be able to maintain their independence of mind and in appearance when providing advice to the client.
- 44 If any issues are identified as to the appropriateness of the adviser's acceptance or continuance of a client relationship or a specific engagement, and the adviser decides to accept or continue the relationship or engagement, the adviser must document how they resolved those issues on a satisfactory basis to enable them to accept or continue the relationship or engagement.

Disclosure to Clients and Prospective Clients

- 45 Before (or, if not practicable before, as soon as practicable after) performing a financial advisory engagement, a financial adviser must fully and completely disclose all information as required by applicable law and regulation. This includes disclosure of information to the client as required to meet the adviser's fiduciary duties described in paragraph 9(b). (Ref: Para. A33–A34)
- 46 In addition to complying with the disclosure requirements of law and regulation as relevant to the type of advice provided, an adviser must ensure clients and prospective clients are clearly informed in writing, in a clear, concise and effective manner, about the following matters in relation to the adviser:
- (a) the identity of the person or entity responsible for providing the advice;
 - (b) the nature of the advice and services provided or offered;
 - (c) significant factors that affect or could affect the adviser's ability to provide financial advice to the client on an objective and independent basis;

- (d) a description of the remuneration arrangements associated with provision of the advice, including:
 - (i) the method of remuneration; and
 - (ii) the nature of compensation and other arrangements the adviser has with any third parties that are, or may be relevant to the provision of advice to the client including:
 - the existence of an arrangement from which a commission may be paid;
 - the identity of the third party or parties; and
 - the method of calculating any fee or commission the adviser will obtain from such third parties, either directly or indirectly;
- (e) information about any actual, potential or perceived conflicts of interest that may affect the adviser’s fiduciary relationship with the client for the purpose of providing advice to the client;
- (f) where the adviser has adopted safeguards to manage or control any identified conflicts of interest, information about the nature of those safeguards and an explanation of the reasons why the adviser considers those safeguards to be effective for their purpose; and
- (g) information about the nature and extent of any interests, associations or relationships, including family, contractual or agency relationships, whether of a financial nature or otherwise, that have the potential to affect the adviser’s relationship with the client, or the advice provided to the client.

47 The adviser must advise clients and prospective clients on a timely basis of any changes in circumstances and material information that arise and may have an impact on the adviser’s relationship with the client, including fiduciary aspects of that relationship, or on the advice to be rendered. The matters to be notified to clients include, but are not limited to:

- (a) changes in circumstances that involve conflicts of interest, or potential conflicts of interest;
- (b) changes in the adviser’s business affiliation(s) relevant to the provision of advice;
- (c) changes in remuneration or compensation structures affecting the advice to be rendered; and
- (d) new or changed agency relationships.

48 The adviser must ensure all information disclosed for the purpose of providing financial advice to the client or prospective client(s) is made fairly and honestly, and that it is not false, incorrect or misleading in any material respect, or open to misconstruction, whether by reason of any misstatement, omission or suppression of a material fact.

Agreeing the Scope and Basis of the Engagement

49 When agreeing to undertake a financial advisory engagement for a client the financial adviser must:

- (a) agree with the client the objective(s), nature and scope of the financial advice and any related services to be provided (including any limitation on the scope of the advice); and
- (b) ensure there is a clear understanding with the client regarding the terms of the engagement. (Ref: Para. A35)

50 The agreed services and terms of engagement must be communicated to the client in writing prior to commencement of the engagement. (Ref: Para. A36)

- 51 The adviser's written communication with the client must set out the key aspects of the agreement between the adviser and the client including, but not limited to:
- (a) the objective, nature and scope of the advice to be provided to the client;
 - (b) any limitations on the nature or scope of the engagement, and any information relevant to those;
 - (c) the timing of provision of the advice;
 - (d) the adviser's responsibilities relevant to provision of the advice under the agreement, and the responsibilities of the client;
 - (e) the adviser's professional obligation to comply with this Standard when undertaking the engagement;
 - (f) the form of advice and any related services to be provided, including any reports to be provided in respect of the advice or the services performed;
 - (g) the expected frequency of contact between the member and the client;
 - (h) fees or remuneration applicable to the engagement, and the billing arrangements in respect of those;
 - (i) all material facts and information relevant to the relationship with the client and to the engagement, including disclosure of any conflict or potential conflict of interest the adviser may have relating to the relationship or the engagement;
 - (j) details of commissions from third parties that the adviser or any related party of the adviser or the adviser's firm will or may receive;
 - (k) the confidentiality provisions applicable to the engagement; and
 - (l) the duration of the engagement (if known).
- 52 In addition, the written communication provided to the client must advise the client:
- (a) that the adviser must make all reasonable enquiries in relation to the client's personal circumstances as required under applicable laws and regulations prior to provision of the financial advice, but that ultimate responsibility for the accuracy and completeness of particulars and information supplied by the client to the adviser rests with the client;
 - (b) that financial advice provided to the client is based on the adviser's knowledge of the particular circumstances; and
 - (c) of the limitations of the engagement, and that the client should not regard recommendations contained in any advice provided as assertions of fact.
- 53 The adviser must request the client's written acknowledgment evidencing their understanding of, and agreement to the written terms of engagement.
- 54 The adviser must evaluate the continued appropriateness of the agreed engagement objective(s) and/or nature and scope of financial advice or services against any new information concerning the client or significant changes in the client's circumstances that come to light as the engagement proceeds, to ensure the financial advice remains relevant and appropriate to serving the client's best interests. Where this leads to subsequent agreement with the client to change the agreed objective(s), nature or scope of the advice or services to be provided to the client, or any other key terms of the engagement, those changes must be made in writing.
- 55 The adviser must ensure they are able to remain in contact with the client during the course of the engagement to be able to communicate with the client on key matters concerning the engagement, or the advice or services being provided. (Ref: Para. A37)
- 56 On recurring engagements the adviser must consider:

- (a) whether there is a need to remind the client of the existing terms of the engagement; and
- (b) whether the terms of engagement may need to be revised, for example to take account of changes in circumstances of either the client or the adviser.

Other Services

57 Any services other than, or additional to the financial advisory engagement, must be agreed with the client and recorded under separate terms of engagement. (Ref: Para. A38)

Engagement Performance

General Principles

58 A financial adviser must perform a financial advisory engagement based on their knowledge and understanding of their client's financial needs, objectives and priorities, and relevant personal circumstances as disclosed to the adviser.

59 The adviser must perform procedures that are adequate to establish a reasonable basis for the advice to be provided. (Ref: Para. A39)

60 A member must exercise reasonable professional judgement when performing financial advisory engagements. (Ref: Para. A40)

Procedures for Developing Appropriate Advice

Enquiries and Information about the Client's Financial Needs, Objectives and Priorities, and Relevant Personal Circumstances

61 The adviser must make reasonable enquiries about the client's relevant personal circumstances; and endeavour to obtain from the client all the information needed to meet the adviser's obligations for the engagement. (Ref: Para. A41–A43)

62 The adviser must take account of all circumstances and information relevant to the engagement and information provided by the client for the purpose of the engagement, including but not limited to the following factors:

- (a) the client's financial needs, objectives, priorities and relevant personal circumstances;
- (b) an objective assessment of the client's risk profile;
- (c) the complexity of the advice;
- (d) the financial literacy/sophistication of the client;
- (e) whether the advice, if acted on by the client, would be reasonably likely to satisfy critical aspects of the client's relevant personal circumstances;
- (f) the potential impact of inappropriate financial advice on the client in the event the client acts on the advice provided; and
- (g) consideration of any other matter(s) that would reasonably be considered to be relevant to the advice, including any matter that the client indicates as being relevant or important. (Ref: Para. A44)

63 If the advice being provided includes advice concerning financial products with an investment component, the adviser must obtain knowledge and understanding of the relevant personal circumstances of the client, relevant to providing such advice. This includes information about the following factors as relevant to the client:

- (a) the need for regular income;
- (b) the need for capital growth;
- (c) the need for diversification;
- (d) the need to be able to readily liquidate the investment;

- (e) the client's level of tolerance of the following risks:
 - (i) risk of capital loss, especially where this is a significant possibility if the advice is followed; and
 - (ii) the risk that the advice (if followed) will not produce the expected benefits, including the risk of volatility in the investment markets and the likelihood of rises and falls associated with the value of the investments provided or recommended that might affect the investment returns the client receives from those investments;
- (f) the existing investment portfolio;
- (g) the capacity to service any loan provided for the financial product;
- (h) the client's tax position, entitlement to social and welfare benefits, family commitments, employment security, current age and condition of health, and expected retirement age; and
- (i) the desire to minimise fees and costs.

Consideration and Investigation of the Subject Matter of the Advice

- 64 Consistent with the nature and scope of the engagement, the adviser must carry out a reasonable investigation to support advice or services provided to the client, including advice containing any recommendations concerning financial products. This may be undertaken by the adviser, or by others, provided that the adviser acts reasonably in relying upon such investigation. (Ref: Para. A45)
- 65 The adviser must have access to adequate and reasonable research on relevant markets, suppliers and products when formulating financial strategies for clients and recommending investment or risk products to clients.

Use of Assumptions to Develop Advice

- 66 The adviser must develop the advice, and any recommendations contained in the advice, applying assumptions relating to:
 - (a) matters personal to the client based on information provided by the client (such as retirement age, life expectancy and income needs); and
 - (b) relevant economic factors (such as inflation rates, tax rates, investment returns),
 that the member or firm reasonably believes are appropriate for the purpose of the advice. (Ref: Para. A46–A47)
- 67 The adviser must agree with the client all the significant assumptions that can reasonably be expected to influence the advice, and document the assumptions used to develop the advice provided to the client.

Incomplete or Incorrect Information

- 68 If an adviser knows, or has reason to believe or suspect, that any financial advice the adviser is engaged to provide is, or is likely to be, based on incomplete or inaccurate information, the adviser must undertake further enquiries as are reasonable in the circumstances, to ascertain whether the information provided by the client is in fact accurate and complete, so that the financial advice can be prepared on a factual basis.
- 69 If the adviser concludes, having made the further enquiries about the client's relevant personal circumstances and background information, that the client has not responded fully to those enquiries, or has not provided the full information requested, the adviser must:
 - (a) inform the client of any and all material deficiencies regarding the information the client has provided for the engagement; and

- (b) endeavour to persuade the client to provide necessary information for the financial advice to be provided on a factual basis; and
 - (c) restrict the advice provided to those matters for which the adviser considers there is sufficient and relevant information available to provide an appropriate basis for advice; and
 - (d) ensure that any advice or services provided to the client is accompanied by an appropriate warning to the client in accordance with paragraph 87; and
 - (e) continue to comply with paragraphs 61 to 67 when performing the engagement.
- 70 If the client does not rectify any inaccuracy or omission to the adviser's satisfaction, the adviser must provide a warning to the client, in writing and in clear terms, that:
- (a) draws the client's attention to the limitations of the advice, giving a general summary of the aspects in which the adviser believes the information concerning the client's relevant circumstances is or may be, inaccurate or incomplete; and
 - (b) informs the client that these limitations could affect the advice provided, and that the client will need to consider the appropriateness of the advice before acting on it.

False or Misleading Information

- 71 If the adviser considers that a client has deliberately provided false or misleading information, or that the advice to be provided will be based on information that is, or is likely to be, false or misleading the adviser must:
- (a) not provide advice or services to the client; and
 - (b) withdraw from the engagement.
- 72 If an adviser engaged to provide financial advice to a client becomes aware, after provision of the financial advice, that the advice is based on false or misleading information, or is likely to have been based on false or misleading information, the adviser must take all necessary steps to withdraw the financial advice from use by the client or any third parties to whom the client may forward the advice. The adviser must forward a written notification to the client, and to any other parties they know have received the advice, informing them that the advice has been withdrawn.

Use of Experts

- 73 If the adviser requires particular competencies, skills, expertise and related resources to perform a particular aspect of a financial advisory engagement, which are not available through the adviser themselves, the adviser must seek to obtain the services of a suitably qualified expert to provide those competencies, skills, expertise and related resources. (Ref: Para. A48)
- 74 When planning use of experts, the adviser must:
- (a) define the objective(s) of any work or services assigned to the expert(s) and how the work or services to be provided by the expert(s) relates to the objective of the engagement; and
 - (b) assess the professional competence, including experience, and objectivity of the expert(s) used. (Ref: Para. A49)
- 75 The adviser must consider the work undertaken by experts to be satisfied that the work or services provided are appropriate and adequate for the specific engagement(s) for which the expert's work is used. In particular, the adviser must:
- (a) obtain an understanding of the assumptions, criteria and methods used by the expert, and their application in the context of the specific engagement;

- (b) consider whether the assumptions, criteria and methods are appropriate and reasonable based on the adviser's knowledge of the client and other relevant engagement circumstances; and
- (c) assess the appropriateness and reasonableness of the expert's work and findings in relation to the engagement circumstances and the adviser's conclusions in relation to the advice or services provided to the client. (Ref: Para. A50)

Estimates and Projections

- 76 If an adviser compiles or uses estimates, forecasts or projections as part of financial advice prepared or developed for a client, the adviser must ensure that those estimates, forecasts and projections are presented and communicated in the advice in such a way that avoids the prospect of attachment of greater certainty to those estimates, forecasts or projections than may in fact exist, either by the client or by any other person who may acquire or use the advice provided by the adviser.
- 77 When preparing or compiling estimates, forecasts and projections the adviser must comply with applicable standards relating to compilation of financial information as relevant and applicable in the circumstances of the engagement.⁶

Finalising the Advice

Basis for the Advice

- 78 The adviser must establish the basis for any advice to be provided to the client with reference to:
- (a) information provided by the client and obtained from enquiries of the client; and
 - (b) evaluation of the results of the research of alternative strategies and courses of action that can reasonably be expected to meet the client's needs, objectives and priorities, including the relative effectiveness of the alternative strategies and courses of action.
- 79 Having developed the basis for the advice, the adviser must carry out an overall assessment of whether the advice to be provided to the client is likely to meet the overall objectives of being suitable in the context for which the advice is given and being appropriate to the client's financial needs, objectives and priorities as disclosed to the adviser. This should involve consideration of whether the advice, if acted on by the client, would be reasonably likely to satisfy critical aspects of the client's relevant personal circumstances, for example the client's need for regular income.
- 80 The advice to the client, and recommendations provided as part of the advice, must be clearly linked to:
- (a) the defined scope of the engagement;
 - (b) the client's needs, objectives and priorities;
 - (c) the information provided by the client;
 - (d) significant assumptions used to develop the advice and recommendations; and
 - (e) the analysis and evaluation of the client's situation at the time of providing the advice.

⁶ Service Engagement Standard 2 (SES-2) *Compilation of Financial Information* applies to compilation of financial information in the context of presentation of financial information in a specified form in accordance with a specified basis of accounting (without undertaking to express any assurance on the compiled information). Members are encouraged to apply SES-2 to compilation of financial information undertaken other than as a compilation engagement as described in SES-2. Depending on the engagement circumstances, the requirements and guidance contained in SES-2 may be applied in preparation/compilation of prospective financial information in the form of projections or forecasts that form part of a financial advisory engagement.

- 81 An adviser must not cause a client to move from one investment to another investment, or to switch from one financial product provider to another, without having an explicit client mandate to do so. Any advice of this nature must be appropriate for the client, and the adviser must be in a position to evidence that conclusion.
- 82 An adviser must revise advice provided to a client as needed in the course of an ongoing relationship with the client to accommodate relevant new circumstances and/or information that comes to the adviser's attention, including by notification or request made by the client.

Documentation

- 83 The adviser must document sufficient information to establish an adequate written record of:
- (a) all relevant factual information concerning the adviser's professional relationship with the client, including:
 - (i) information relevant to the fiduciary relationship with the client; and
 - (ii) information about how the adviser has disclosed and addressed any conflicts of interest arising in the course of the client relationship or the engagement; and
 - (b) the performance of each individual financial advisory engagement in accordance with this Standard, the *Code of Ethics*, PS-1 and PS-2.
- 84 The form and extent of documentation of the performance of an engagement needs to be adequate to demonstrate that:
- (a) the work undertaken provides a reasonable basis for the advice provided to the client, including any recommendations accompanying the advice; and
 - (b) the advice, including any recommendations, is appropriate for the client.

Communication of Advice

- 85 The adviser must:
- (a) convey advice given, and any recommendations made to the client, in a clear, concise and effective manner; and
 - (b) take reasonable steps to place the client in a position to comprehend advice given and recommendations provided, and the basis for the advice and recommendations, to ensure the client can make informed decisions about whether to act on the advice given and recommendations provided. (Ref: Para. A51)
- 86 The communication of advice to the client must summarise:
- (a) the advice;
 - (b) the basis of the advice, including all significant assumptions on which the advice is based;
 - (c) the reasons why the advice is considered appropriate for the client;
 - (d) any conflicts of interest for the adviser in the provision of advice to the client.
- 87 As noted in paragraph 69(d) in the event the adviser is aware, or has reasonable grounds to believe, that the advice provided to the client is based on incomplete or inaccurate information, the adviser must include a clear warning in the communication of the advice, informing the client that:
- (a) the advice is based on information about the client's personal circumstances that the adviser knows or believes is incomplete or inaccurate; and
 - (b) for that reason the client should, before acting on the advice, consider the appropriateness of the advice having regard to the client's relevant personal circumstances.

Disclosure of Commission Earned or Received for Providing Advice to Clients

- 88 Where the advice, if acted upon, will result in the adviser earning commission, including remuneration or benefits from a third party, the adviser must inform the client of the commissions in writing, at the time the advice is provided to the client. (Ref: Para. A52)
- 89 The advice must set out, in a clear, concise and transparent manner that can be easily understood by the client, the circumstances in which the remuneration and/or benefits are expected to be received, and also:
- (a) the person(s) who would pay those benefits;
 - (b) the person(s) expected to receive those benefits; and
 - (c) the source of such benefits.

Ongoing Advice

- 90 If an engagement involves provision of advice or recommendations to a client on an ongoing basis, the adviser must apply professional judgement to assess how to properly achieve compliance with the requirements set out in paragraphs 85 – 89 when providing advice or recommendations to the client for the client’s decision-making.

Implementation of Advice

- 91 The adviser must only implement advice and any recommendations, in accordance with the terms of engagement agreed with the client.
- 92 Where a client gives specific instructions to the adviser to implement a course of action that the adviser believes is not suitable for the client, the adviser must comply with the client’s instructions but advise the client, in writing, of their belief that the course of action is not in their best interest. (Ref: Para. A53)
- 93 An adviser must implement any recommendations or advice agreed by the client in an accurate, efficient and timely manner.
- 94 Where a subsequent instruction given by a client significantly alters the financial or investment strategy the adviser has implemented for the client, the adviser must confirm this in writing with the client.

Application and Other Explanatory Material

Scope (Ref: Para. 1–7)

- A1 A member may be involved in financial advisory engagements relating to investment, wealth management or wealth protection in various ways. For example, the adviser may act:
- (a) in an advisory role, responsible for advising the client on investment decisions (such as pertaining to savings and retirement or risk management). For example an adviser may make a recommendation or give an opinion in relation to acquiring or disposing of (including refraining from acquiring or disposing of) a financial product or an adviser may analyse an individual’s current financial situation, identify their financial goals and develop financial options for realising those goals. Advice provided to the client is intended to affect or influence decisions that are ultimately made by the client.
 - (b) as an investment manager, making investment decisions and selecting individual assets and investments to implement a specific investment mandate agreed with the client.
 - (c) in the context of a stewardship role. For example, an adviser who is a member of the investment committee of an entity, organisation or fund, or a professional trustee of a trust may be requested to provide financial advice to the committee or trustees. If

advice is given in this circumstance, this is deemed to be a separate engagement from the appointment to the committee or trust.

- (d) in an investment monitoring role, for example, monitoring the client's investment portfolio's achievement of desired or targeted outcomes and providing advice on the continued appropriateness of the investments in the portfolio. Merely reporting to a client the current status/value of the portfolio is not a financial advisory engagement for the purpose of this Standard.

These engagements may arise out of other engagements that the member is performing for a client.

Appendix 1 gives examples of situations to illustrate the application of this Standard.

A2 Examples of legislation (and associated regulations) that will ordinarily be applicable to members and firms undertaking financial advisory engagements, depending on the nature and scope of particular engagements, are listed in Appendix 2.

A3 In particular, members and firms who, in the course of business (that is, providing professional services) provide financial advice, receive funds for purposes of deposit or investment on behalf of clients, or who otherwise invest money of their clients and/or manage client funds, are required to comply with:

- (a) the Financial Transactions Reporting Act 1996 which, among other things, imposes statutory obligations with regard to:
- verifying the identity of clients;
 - reporting suspicious transactions;
 - retaining records; and
 - reporting transactions that involve cash amounts of \$10,000 or more.
- (b) the Financial Service Providers (Registration and Dispute Resolution) Act 2008 which, among other things, imposes the statutory obligation to become a *registered* financial service provider in order to provide a financial service (as defined in section 5 of the Act).⁷

⁷ The meaning of the term 'financial service' in the Financial Service Providers (Registration and Dispute Resolution) Act 2008 is defined in section 5 of the Act, as including among other things:

- a *financial adviser service* (as defined in the Financial Advisers Act 2008) (section 5(a));
- keeping, investing, administering, or managing money, securities or investment portfolios on behalf of other persons (section 5(d)); and
- providing any other financial service that is prescribed for the purposes of New Zealand complying with the FATF Recommendations, other recommendations by FATF, or other similar international obligations that are consistent with the purpose of the Act (section 5(n)).

Section 10 of the Financial Advisers Act 2008 states that a person (A) performs a *financial adviser service* if, in the course of business, A:

- (a) gives financial advice; or
- (b) makes an investment transaction; or
- (c) provides a financial planning service.

Section 11 of the Financial Advisers Act 2008 states that a person (A) gives *financial advice* (and so performs a financial adviser service) if A makes a recommendation or gives an opinion or guidance in relation to acquiring or disposing of (including refraining from acquiring or disposing of) a financial product.

A *financial planning service* means a service that analyses an individual's current financial situation, identifies his or her financial goals, and develops financial options for realising those goals.

- (c) the Financial Advisers Act which, among other things, restricts provision of financial advice in relation to certain products and provision of a financial planning service to *authorised* financial advisers.⁸
- A4 In addition, members and firms may be required to comply with regulatory provisions of other bodies, for example the NZX Market Participant Rules applicable to NZX Advisers, NZX Associate Advisers, designated Market Participants and Client Advising Participants.

Fiduciary Relationship with the Client (Ref: Para. 9–10)

- A5 In general, the relationship between a financial adviser and the client arises from the agreement reached between the adviser and the client concerning the nature and scope of the advice and services to be provided to the client. This relationship is characterised by a need for trust and confidence created by the adviser's commitment to act on behalf of the client. The respective positions of strength and vulnerability within this relationship place fiduciary duties upon the adviser.
- A6 The scope of the fiduciary duty to the client is influenced by:
- (a) the nature and extent of the financial advice for which the adviser assumes responsibility under the engagement; and
 - (b) the extent of the reliance or trust placed in the adviser by the client; and
 - (c) the degree of discretion and influence that the adviser has in the performance of the role or services for the client under the engagement; and
 - (d) any circumstances where the client has given their informed consent to the adviser to enable the adviser to undertake certain actions or conduct in the course of undertaking the financial advisory engagement that may otherwise not be permissible under the fiduciary duty owed to the client.

Definitions (Ref: Para. 13(n))

- A7 Some examples of 'soft-dollar' benefits are:
- additional commissions or benefits based on sales volumes achieved.
 - material contributions to business expenses that would ordinarily have to be paid by the adviser, such as:
 - contributions to salary or wage expenses, or
 - free or subsidised benefits such as rent for office or equipment, computer hardware or software that would otherwise be purchased.
 - free travel and accommodation to conferences, or coverage of expenses for travel or conferences where there is an element of private/personal use that is more than incidental.
 - marketing support payments.
 - shares or options in the product provider.
 - cash payments and/or goods not directly attributable to a direct client transaction.

⁸ An individual who is an authorised financial adviser may:

- (a) give financial advice in relation to a category 1 product; or
- (b) make an investment transaction in relation to a category 1 product; or
- (c) provides a financial planning service. (Section 15)

A category 1 product means a security, any estate or interest in land, a futures contract or any other product specified by the regulations. (Section 5)

- subscriptions to magazines, journals, etc.
- other gifts or payments which may influence, or be seen to influence the advice provide by the adviser.

A8 Some types of other benefits that an adviser may derive from third parties with whom they have an association or relationship may be beneficial to the overall quality of the financial advice advisers provide to their clients. Examples of benefits that are not considered to be ‘soft-dollar’ benefits for the purposes of this Standard are:

- educational materials.
- research materials or data.
- product brochures and fact sheets.
- incidental meals or entertainment.

Ethical Requirements

Objectivity

Associations with Third Parties (Ref: Para. 16)

A9 Adviser should not, as far as is reasonably practicable, be restricted in any way by agreements or undertakings between themselves and third parties, whether express or implied, as to the range of financial product providers or the range of financial products the adviser uses in the course of undertaking a financial advisory engagement for a client.

Conflicts of Interest (Ref: Para 19–23)

A10 A financial adviser needs to design internal policies and procedures that are adequate to enable the adviser to:

- (a) identify conflicts of interest as they arise in the context of engagements;
- (b) assess and evaluate those conflicts, including their significance in terms of the likely effect(s) on the quality of advice or services provided, or to be provided; and
- (c) decide upon, and implement, an appropriate response to those conflicts.

A11 Disclosure provided to clients about actual or potential conflicts of interest should include enough detail in a clear, concise and effective form, to allow the particular client affected by the conflict of interest to make informed decisions about how the conflict may affect the service being provided to them.

A12 While timely and effective disclosure to clients is an integral part of managing conflicts of interest, disclosure alone is not a sufficient response to the management and resolution of a conflict of interest situation. The adviser needs to take appropriate action to ensure that any conflict of interest will not adversely affect the quality of advice and/or services provided to clients affected, or likely to be affected by the conflict.

A13 Where a conflict has been identified the adviser needs to ensure, in obtaining the client’s informed consent to act, or to continue acting for the client, where the existence of a conflict of interest has been disclosed to the client, that the client provides such consent on a fully informed basis, and preferably as express written consent. The adviser should recognise that the fact of obtaining their client’s consent to proceed with the advice does not in any way diminish the other duties owed to the client under the engagement.

Independence – Conditions for Independent Financial Advice (Ref: Para 24)

A14 It is important that the adviser be aware of, and proactively manage the expectations their clients and prospective clients may have about whether the adviser will undertake to provide advice on an independent basis. Independence may sometimes be assumed by users of the services provided by members.

A15 If an adviser holds themselves out as providing financial advice on an independent basis, the adviser needs to avoid conduct that is, or is likely to be, contrary to the principle of maintaining integrity and honesty in their professional relationship with the client.

A16 The requirements of paragraph 24 apply similarly when an adviser wishes to hold themselves out as providing financial advice and related services on an 'impartial' or 'unbiased' basis.

Independence – Individual Engagements (Ref: Para. 27)

A17 Disclosure to clients of all relevant information about the conditions under which the adviser undertakes to provide advice is key to a client's awareness and understanding of whether the adviser is providing the advice on an independent basis. All relevant circumstances that may have an effect on the adviser's independence, either of mind or in appearance, must be considered in the context of the engagement.

Fundamental Principle: Professional Competence and Due Care (Ref: Para. 28)

A18 Financial advisers may engage suitable experts that have the required knowledge and expertise to enable the adviser to deliver the financial advice required by the client. For example, an adviser may delegate investment decisions to specialist investment managers, or require the client to contract the services of an investment manager directly.

Fundamental Principle: Confidentiality (Ref: Para. 30)

A19 Examples of situations where the adviser must obtain the client's written consent to disclose information under paragraph 30:

- (a) the client's prior specific authority will need to be obtained to provide the client's information to other parties in order to establish a brokerage account to effect transactions for the client, or to act as otherwise authorised by the client for the purpose of carrying out the engagement.
- (b) there may be a legal duty to disclose information to other parties under applicable legislation, such as in relation to the proceeds of crime, or activities or transactions that are the subject of anti-money laundering or counter terrorist financing laws.

A20 If an adviser discovers evidence of fraudulent or dishonest conduct involving significant wrongdoing by the client, and there is no legal or professional right or duty to disclose information to affected parties or a relevant authority, the adviser should consider seeking legal advice as to the appropriate response. In such circumstances the adviser should consider withdrawing from the engagement and declining to continue acting for the client.

A21 The professional obligation of confidentiality continues even after a client relationship has ended.

Fundamental Principle: Professional Behaviour

Professional Fees and Commissions (Ref: Para. 31–35)

A22 Financial advisers may receive fees for undertaking financial advisory engagements in various ways. For example, the client may either be billed directly for payment of fees for services or those fees may be received through payments charged to the product or platform the client invests in. An adviser may receive an agreed fee-for-services that is converted to a percentage amount for the purpose of debiting the amount against a financial product, a platform, custodial or administration services.

A23 Professional fees charged or received for performing financial advisory engagements should be a fair reflection of the value of the services provided to the client, taking into account:

- (a) the particular factors of relevance for each engagement, as described in the Code; and
- (b) the costs of performing the service in compliance with applicable legal and regulatory requirements, and this Standard.

- A24 Adoption of fee arrangements that reflect the value of the service provided to a client by the adviser applies to both initial remuneration and any ongoing remuneration for advice provided.
- A25 The general prohibition on provision of ‘free financial advice’ in paragraph 33 does not apply in the following circumstances:
- (a) discounted or ‘pro bono’ work where there are no further subsequent charges, or the subsequent charging level is consistent with the member’s usual fee schedule; or
 - (b) when the adviser holds a preliminary explanatory meeting prior to engagement by a client for which the adviser indicates no fee will be charged; or
 - (c) discounts provided on initial advice where expressly agreed with the client, and where the full cost of all initial and ongoing advice is disclosed at the time of initial engagement.
- A26 Financial advisers are not prohibited from entering into arrangements with third parties under which commissions are, or may be, paid to the adviser in relation to financial advice provided to their clients. However, receipt of remuneration for providing financial advice to clients in the form of commissions from third parties, has significant potential to undermine the quality of advice provided to clients. Receipt of commission, or the expectation that it will be received, poses a significant threat to an adviser’s compliance with the Fundamental Principles in the Code, and for achievement of the key objective of always putting the client’s interests first.
- A27 Receipt of any commissions and other benefits from third parties in respect of financial advisory engagements undertaken for clients is contrary to Independence. An adviser needs to be proactive in ensuring, if receiving such payments and benefits, that the adviser does not breach the member or firm’s fiduciary duties to the client.
- A28 Advisers need to take care, in situations where advice is provided to clients that, if acted upon, would result in receipt of a commission, or receipt of other benefits, to:
- (a) avoid any conduct that could possibly mislead their clients as to any material aspect of the basis for the advice; and
 - (b) ensure and be able to demonstrate to the client that they meet the overall objective.
- A29 If the nature or magnitude of other benefits received means those benefits are effectively a form of alternative remuneration provided to the adviser by a third party who may be interested in the outcome of the provision of advice to clients, there is a significant risk to the adviser’s ability to maintain their professional objectivity and independence of mind or in appearance.

Acceptance and Continuance of Client Relationships and Specific Engagements

Establishing and Defining the Client Relationship (Ref: Para. 40–42)

- A30 Financial advisory engagements will vary. For example, the financial advice provided may require preparation of a comprehensive financial plan, with or without implementation of that plan by agreement with the client; or the provision of advice may be limited to particular areas defined by agreement with the client; or the client, in addition to receiving financial advice may instruct the adviser to undertake transactions on behalf of the client, without the provision of advice.
- A31 The purpose for obtaining initial information about the client’s needs and objectives on a preliminary basis is to assist the prospective client’s understanding of the respective obligations and responsibilities of the adviser and those of the client, and of other important aspects of the engagement prior to entering into an engagement with the client.
- A32 The discussion with the client should include informing the client about the scope and basis of the services offered by the adviser, with relevant disclosures. Other aspects that may be

discussed with the client may include establishing a contractual limitation of the adviser's professional liability relating to the provision of financial advice.

Disclosure to Clients and Prospective Clients (Ref: Para. 45)

- A33 The nature, scope and form of disclosure required may be regulated under applicable law and regulation. For example, the Securities Markets Act 1998 regulates disclosures required of investment advisors and brokers in relation to investments in securities, and the Financial Advisers Act 2008 establishes disclosure obligations for financial advisers (as defined in that Act).
- A34 The form in which the adviser provides the required disclosures to clients and prospective clients may take the form of a 'Disclosure Statement', 'disclosure document', or other similar form of written disclosure.

Agreeing the Scope and Basis of the Engagement (Ref: Para. 49–56)

- A35 The purpose of providing this written communication to the client is:
- (a) to provide a clear record of agreement reached regarding the services to be provided and the responsibilities of both the adviser and the client; and
 - (b) to establish understanding between the adviser and the client concerning the agreed terms of the engagement to minimise possible occurrence of misunderstandings between the adviser and the client at a later stage.
- A36 The written communication with the client may take the form of an engagement letter, a client services agreement, or other suitable form that meets the requirements set out in paragraphs 51 and 52.
- A37 The adviser needs to be able to contact the client during the course of the engagement to, among other things:
- make follow-up enquiries;
 - assist the client in responding to the adviser's questions or enquiries put to the client, or requests for information relevant to the provision of services or advice;
 - confirm aspects of the client's responses or information provided to the adviser, such as accuracy, relevance and completeness.

Other Services (Ref: Para. 57)

- A38 An adviser may perform other professional services for the client, either before, after or contemporaneously with a financial advisory engagement. For example, the adviser may assist the client with taxation services not related to the provision of financial advice.

Engagement Performance

General Principles (Ref: Para. 58–60)

- A39 The advice provided to a client by an adviser is not required to be ideal, perfect or best. However, the adviser must ensure the objective set out in paragraph 12 is met in order to achieve the overall purpose of establishing a reasonable basis for advice provided to clients.
- A40 The adviser applies professional judgement when developing and providing financial advice to clients. Advice and recommendations developed by an adviser may differ from those of other advisers providing similar advice, or other expert professional advisers while still reasonably meeting the client's needs, objectives and priorities. Similarly recommendations provided as part of the advice given to a client may differ because there may be a range of different alternative courses of action available that can reasonably meet the client's needs, objectives and goals. What is important is that the adviser always meets the objective and requirements of this Standard when undertaking financial advisory engagements for clients.

Procedures for Developing Appropriate Advice

Enquiries and Information about the Client's Financial Needs, Objectives and Priorities, and Relevant Personal Circumstances (Ref: Para. 61–63)

- A41 The nature and extent of the procedures the adviser undertakes varies from client to client. The adviser may need to make client enquiries additional to those that they normally make in any particular case.
- A42 In general terms more extensive enquiries, and consideration and investigation of the subject matter of the advice, are needed when:
- the advice involves complex financial products, classes of financial product or strategies (including tax-related strategies), in contrast with advice that involves relatively simple financial products; and
 - the potential negative impact on the client is likely to be relatively serious if the advice is inappropriate, and the client acts on the advice.
- A43 Where advice is provided to an existing client, the requirement to make client enquiries will generally be satisfied if the adviser makes reasonable enquiries about whether the information already held about the client's relevant personal circumstances is up-to-date and complete.
- A44 The adviser needs to consider the factors set out in paragraph 62 to ensure the advice provided will be appropriate. These factors take account of circumstances where relatively unsophisticated investors, notwithstanding the level of risk disclosure provided for various types of financial and investment products, may not be able to adequately analyse their investment needs or develop strategies to achieve their investment goals without relying on professional advice.

Consideration and Investigation of the Subject Matter of the Advice (Ref: Para. 64)

- A45 Depending on the circumstances, it may be reasonable for the adviser to rely on information provided by other parties, including external research firms and providers, and product providers. When relying on information provided by other parties the adviser should take reasonable steps to assess the integrity and validity of the information for the purpose of the adviser's use or reliance, and whether the information or research is accurate, complete, reliable and up-to-date.

Use of Assumptions to Develop Advice (Ref: Para. 66)

- A46. In the course of developing advice for a client, the adviser needs to identify all the significant assumptions that will be applied for the purpose of giving the advice. Ordinarily assumptions will need to be made concerning all the significant factors that are likely to influence application or implementation of the advice by the client, or that are otherwise expected to affect the results or outcomes achieved under the advice.
- A47 For example, the adviser may need to apply assumptions concerning:
- tax matters as relevant to the advice being provided;
 - expected rates of return for investments;
 - the life expectancy of the client;
 - actions and/or circumstances of the client in the future, such as the timing of the client's retirement from business or employment.

Use of Experts (Ref: Para. 73–75)

- A48 Expert knowledge and skills may be required for particular aspects of financial advisory engagements. Examples of some areas where expert assistance might be needed include (but are not limited to):

- risk profiling;
 - risk management (including protection against identified risks through insurance);
 - valuations;
 - taxation advice;
 - preparation of financial information, including preparation of forecasts and projections.
- A49 The risk that an expert's objectivity will be impaired increases when the expert is associated with the adviser in a way that evidences the existence of shared or mutual financial interests with the adviser or client, including any financial involvement with the adviser linked to the provision of financial advice to the adviser's clients.
- A50 The expert will determine the assumptions, criteria and methods to be used for their work, and their application.

Communication of Advice (Ref: Para. 85–89)

- A51 The adviser should retain a record of the advice given to the client, for example, a copy of the written advice provided to the client, a file note recording any verbal advice or an audio recording of phone conversations.
- A52 An adviser must fully and accurately disclose in writing to the client at the time the advice is given or the recommendation is made, all interests, financial and non-financial, received or receivable by themselves or any related parties relating to the provision of advice. This includes payments and benefits to or from related parties that influence or may reasonably be capable of influencing the advice, and any referral payments.

Implementation of Advice (Ref: Para. 92)

- A53 Where a client requests their adviser to implement a course of action that the adviser believes is inappropriate, the adviser should explain to the client why they do not consider the action to be suitable for the client. Where the client, despite advice to the contrary, gives the adviser specific instructions to implement that action, the adviser needs to comply with the client's wishes. Paragraph 92 requires that the adviser advise the client, in writing, of their belief that the course of action is not in the best interest of the client. The adviser should also consider obtaining acknowledgement from the client that they wish to go ahead with the course of action, despite advice to the contrary.

Appendix 1

(Ref: Para. A1)

Examples to Illustrate the Application of the Standard

This Appendix is included for illustrative purposes only and does not form part of the requirements in this Standard. The illustrations provided should not be relied upon as providing a comprehensive guide to the practical application of the Standard. Furthermore, it is important to be aware that in undertaking financial advisory engagements broader legal obligations may apply to such engagements. Compliance with the Standard when undertaking such engagements will not necessarily amount to compliance with your legal obligations. Members should seek specialist legal advice as to the extent of their legal obligations when required.

A Situations to which the Standard will apply

Note: This list is not exhaustive of the types of situation in which this Standard will apply, but is provided to assist members' understanding of how this Standard is intended to be applied in practice.

- 1 A member offers specialist investment management services to the public, including management of investments in an investment portfolio operated by the member's firm.
- 2 A member specialises in providing financial advice and related services to high wealth individuals, many of whom are sophisticated investors.
- 3 A member has a business which only offers investment advisory services. No other services are offered or provided to clients of the business. If clients need to obtain tax or accounting advice they are referred to a local practitioner. The business is not branded as that of a chartered accountant. None of the co-principals in the business are members of the Institute.

Members of NZICA must adhere to all NZICA's ethical and professional standards that are relevant to the business activities undertaken through their business.

- 4 A member is an NZX Adviser designated as a Market Participant and therefore has legally binding obligations toward the NZX pursuant to the NZX Participant Rules.

As a member, he must also adhere to NZICA's ethical and professional standards that apply to the services provided. When engaged to provide financial advice, the member must comply with this Standard insofar as the Requirements do not conflict with the NZX Rules.

- 5 A member offers services to the public as a financial adviser. She holds a number of professional qualifications and designations including that of 'Certified Financial Planner'. As such, she is required to comply with ethics and practice standards promulgated by other bodies of which she is a member, for example those of the Institute of Financial Advisers.

The member must also adhere to all NZICA's ethical and professional standards that apply to the services provided.

- 6 An existing client engages the practitioner to provide personal financial planning and investment advisory services, along with a range of other professional services pertaining to the client's business interests.

- 7 An elderly client has appointed a specialist financial planner (not the member) to manage his portfolio of financial investments, and asks the member to review the portfolio including the advice given by the appointed financial planner.

- 8 An existing client (tax compliance and compilation services) sells the family farm and approaches the member as his 'trusted advisor' for advice about how to invest the proceeds of the sale of the asset. The member agrees to provide the advice himself rather than refer the client to a specialist adviser.

The advice to be given here would meet the definition of financial advice under the Standard. Once the member agrees to provide the advice, a new engagement begins – a financial

advisory engagement. The member needs to comply with all relevant requirements in the Standard, and make all the necessary disclosures.

- 9 A member, not in public practice, enters into an agreement to assist a not-for-profit entity to manage its investments. The nature of the assistance meets the definition of providing financial advice. The member will not charge for this service

The Standard applies to all members and applies irrespective of whether a fee is charged. Any entity who engages a member is entitled to the same level of service the Institute expects of practising members.

B Situations to which the Standard will not apply

Note: This list is not an exhaustive list of situations involving financial advice and provision of information regarding financial products that will fall outside of the application of this Standard. In addition, in any of these examples the Standard could apply if the member's activities extend to accepting an engagement to provide financial advisory services.

- 1 A member who is a public practitioner frequently gives financial advice on personal wealth planning responding to questions asked by family and friends on social occasions.

The Standard does not apply in this case because the member has not been 'engaged' by a client to provide financial advice. However there may be disclosures requirements under Securities Law and associated regulations.

- 2 An existing client of a public practitioner member sells a significant asset and approaches the member for advice about how to invest the proceeds of the sale. The member refers the client to a financial adviser service for which the member will be paid a percentage of any revenue derived by the adviser as a result of business placed by the referred client.

The Standard does not apply as the member is not providing the financial advice. However, there are ethical and other issues involved with this. For example, the Code of Ethics, paragraph 75 notes that members must adhere to the requirements of the Secret Commissions Act 1910. The member is required to make adequate disclosure in writing of the existence of the arrangement, the identity of the third party or parties and the method of calculating the commission that the member will receive. There may also be a reputational or other risk to the member if the advice given by the third party turns out to be sub-standard.

- 3 A member provides information to clients about KiwiSaver, but no advice is given about which provider to use.

Provided no advice is given, the Standard will not apply.

- 4 A member provides information to staff about KiwiSaver and advises them of the firm's preferred provider.

It is unlikely that the employees have 'engaged' the member to provide this advice, therefore the Standard will not apply.

C Situations to which the Standard may apply

- 1 A member accepts appointment as the independent professional trustee of a family trust. The trust owns various investments, including shares, property and artworks from which the trust derives a substantial income.

- 2 A member stands and is elected to a Board of a charitable organisation that has substantial investments, the income from which fund the activities of the organisation.

Note to 1. and 2. above

The Standard will apply at the point where the member is asked for and gives financial advice. At that point it would be appropriate to issue an engagement letter, including the relevant disclosures, relating to the provision of advice if this hasn't already been done at the time of appointment to the trust or Board. Accepting such positions does not automatically invoke the Standard.

Appendix 2

(Ref: Para. A2)

Examples of Legislation that may Affect Financial Advisers

The information in this Appendix is for information only, and does not form part of the Engagement Standard.

The following statutes, as amended from time to time, and as supplemented by accompanying regulations, are among those laws often relevant to performance of financial advisory engagements.

- Consumer Guarantees Act 1993.
- Crimes Act 1961.
- Fair Trading Act 1986.
- Financial Advisers Act 2008.
- Financial Service Providers (Registration and Dispute Resolution) Act 2008.
- Financial Transactions Reporting Act 1996.
- Kiwisaver Act 2006.
- Mutual Assistance in Criminal Matters Act 1992.
- Privacy Act 1993.
- Proceeds of Crime Act 1991.
- Secret Commissions Act 1910.
- Securities Act 1978.
- Securities Markets Act 1988.
- Superannuation Schemes Act 1989.
- Terrorism Suppression Act 2002.
- Trustee Act 1956.

Code of Ethics

New Zealand Institute of Chartered Accountants

Application 07/2017

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Code of Ethics

Notice of Legal Status of the Code of Ethics

The *Code of Ethics* of the New Zealand Institute of Chartered Accountants is made pursuant to section 7 of the *New Zealand Institute of Chartered Accountants Act 1996*. The Act states, in section 8, that the *Code of Ethics* is a disallowable instrument for the purposes of the *Legislation Act 2012*.

The New Zealand Institute of Chartered Accountants has prescribed the following *Code of Ethics* to be binding on all members of the Institute.

This *Code of Ethics* replaces all previous Codes of Ethics issued by the Council of the Institute.

This *Code of Ethics* is effective from 15 July 2017

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New Zealand Preface

The *Code of Ethics* ("the Code"), amended by the New Zealand Institute of Chartered Accountants in – May 2017, is based on the *Code of Ethics for Professional Accountants* from the *Handbook of the Code of Ethics for Professional Accountants* of the International Ethics Standards Board for Accountants, published by the International Federation of Accountants (IFAC) in May 2013 and is used with permission of IFAC.¹

The Code has been amended to include the Final Pronouncement *Responding to Non Compliance to Laws and Regulations* of the International Ethics Standards Board for Accountants published by IFAC in July 2016 and is used with permission of IFAC.²

New Zealand additions and definitions are prefixed with NZ in this Code.

The Code is based on a number of fundamental principles that express the basic tenets of professional and ethical behaviour and conduct. Members must abide by these fundamental principles in their professional activities and when providing professional services.

The requirements set out in this Code apply to all members. If the fundamental principles are threatened and no safeguards can be effectively implemented, the member or firm shall terminate or decline the engagement.

Interaction between NZAuASB's Code of Ethics for Assurance Practitioners and the Code

The New Zealand Auditing and Assurance Standards Board (NZAuASB) is New Zealand's independent standard setting body for audit and assurance standards, including the professional and ethical standards applying to assurance practitioners.

In September 2011, a pronouncement was approved by the New Zealand Institute of Chartered Accountants Council that made it a requirement for all members providing assurance services to adhere to the standards issued by the NZAuASB. Therefore assurance practitioners must comply with both PES 1 (Revised) *Code of Ethics for Assurance Practitioners* issued by the NZAuASB; and the New Zealand Institute of Chartered Accountants Code.

In PES 1 (Revised) the independence requirements relating to assurance engagements are incorporated within two sections:

- Section 290, dealing with audit and review engagements; and
- Section 291, dealing with other assurance engagements.

These two sections are not replicated in the Code, instead members are referred to Sections 290 and 291 of PES 1 (Revised) issued by NZAuASB.

In PES 1 (Revised) the requirements relating to responding to non-compliance with laws and regulations for assurance engagements are in Paragraphs 225.12–225.38.

These paragraphs have not been replicated in the Code instead members are referred to Paragraphs 225.12–225.38 of PES 1 (Revised) issued by NZAuASB.

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NEW ZEALAND SCOPE AND APPLICATION

NZ1.1 The amended Code is effective from 15 July 2017 and has been revised to incorporate the IESBA standard on *Responding to Non-Compliance with the Laws and Regulations*. This supersedes the Code (effective 1 January 2014).

NZ1.2 Compliance with the Code is mandatory for all members; the requirements are equally applicable to all members, whether they are in public practice, industry, commerce, the public sector or education and also when undertaking professional activities or providing professional services in an honorary capacity. The Code is designed to provide members with authoritative guidance on minimum acceptable standards of professional conduct. Non-compliance with the Code may expose a member to disciplinary action.

The Code focuses on essential matters of principle and is not to be taken as a definitive statement on all matters. Members must be able to demonstrate at all times that their actions, behaviour, and conduct comply with the Code.

NZ1.3 The Code is not intended to detract from responsibilities which may be imposed by law or regulation.

- NZ1.4 All members practicing outside of New Zealand shall comply with the Code to the extent to which they are not prevented from so doing by specific requirements of local laws and/or regulations.
- NZ1.5 All references to professional standards and legislation are references to those provisions as amended from time to time.
- NZ1.6 In applying the requirements outlined in the Code, members shall be guided, not merely by the words, but also by the spirit of the Code. The fact that particular behaviour or conduct does not receive a mention within the Code, does not prevent it from amounting to a breach of the Code.
- NZ1.7 For the purpose of NZ 140.9, at the time of issue, the New Zealand Country Head is the most senior executive of the New Zealand Institute of Chartered Accountants.

Part A: Fundamental principles

Section 100 Introduction and Fundamental Principles

- 100.1 A distinguishing mark of the accountancy profession is its acceptance of the responsibility to act in the public interest. Therefore, a member's responsibility is not exclusively to satisfy the needs of an individual client. In acting in the public interest, a member shall observe and comply with this Code. If a member is prohibited from complying with certain parts of this Code by law or regulation, the member shall comply with all other parts of this Code.
- 100.2 This Code contains three parts. Part A establishes the fundamental principles of ethics for members and provides a conceptual framework that members shall apply to:
- (a) Identify threats to compliance with the fundamental principles;
 - (b) Evaluate the significance of the threats identified; and
 - (c) Apply safeguards, when necessary, to eliminate the threats or reduce them to an acceptable level. safeguards are necessary when the member determines that the threats are not at a level at which a reasonable and informed third party would be likely to conclude, weighing all the specific facts and circumstances available to the member at that time, that compliance with the fundamental principles is not compromised.
 - (d) A member shall use professional judgement in applying this conceptual framework.
- 100.3 Parts B and C describe how the conceptual framework applies in certain situations. It provides examples of safeguards that may be appropriate to address threats to compliance with the fundamental principles. It also describes situations where safeguards are not available to address the threats, and consequently, the circumstance or relationship creating the threats shall be avoided.

- 100.4 The use of the word "shall" in this Code imposes a requirement on the member or firm to comply with the specific provision in which "shall" has been used. Compliance is required unless an exception is permitted by this Code.

Fundamental Principles

- 100.5 A member shall comply with the following fundamental principles:
- (a) *Integrity* – to be straightforward and honest in all professional and business relationships.
 - (b) *Objectivity* – to not allow bias, conflict of interest or undue influence of others to override professional or business judgements.
 - (c) *Professional Competence and Due Care* – to maintain professional knowledge and skill at the level required to ensure that a client receives competent professional services based on current developments in practice, legislation and techniques and act diligently and in accordance with the standards issued by the New Zealand Institute of Chartered Accountants, the External Reporting Board, the New Zealand Auditing and Assurance Standards Board, the New Zealand Accounting Standards Board and other statutory requirements or authoritative guidance applicable to the task or engagement.
 - (d) *Confidentiality* – to respect the confidentiality of information acquired as a result of professional and business relationships and, therefore, not disclose any such information to third parties without proper and specific authority, unless there is a legal or professional right or duty to disclose, nor use the information for the personal advantage of the member or third parties.
 - (e) *Professional Behaviour* – to comply with relevant laws and regulations and avoid any conduct that discredits the member's profession.

Each of these fundamental principles is discussed in more detail in Sections 110–150.

Non-Member Partners or Directors

- NZ100.5.1 Non-members who are permitted to practise in partnership or as directors in a corporate practice with members shall comply with this Code. Members who practise in partnership with non-members or have non-members as fellow directors in a corporate practice shall ensure that their non-member partners or directors comply with this Code.
- NZ100.5.2 When there is a reference in this Code to "member" it shall also be deemed to include a reference to a non-member partner or director, in so far as it is not inconsistent with the Rules and this Code.

Members' Responsibility for the Conduct of Others

- NZ100.5.3 A member shall not permit others to carry out on the member's behalf acts which if carried out by the member, would place the member in breach of the Rules or this Code [NZ100.5.4](#) Members may be held responsible for the compliance with the Code of all persons associated with the member, who are either under the member's supervision or are the member's partners or fellow directors in a corporate practice.

NZ100.5.4 Members may be held responsible for the compliance with the Code of all persons associated with the member, who are either under the member's supervision or are the member's partners or fellow directors in a corporate practice.

Conceptual Framework Approach

- 100.6 The circumstances in which members operate may create specific threats to compliance with the fundamental principles. It is impossible to define every situation that creates threats to compliance with the fundamental principles and specify the appropriate action. In addition, the nature of engagements may differ and, consequently, different threats may be created, requiring the application of different safeguards. Therefore, this Code establishes a conceptual framework that requires a member to identify, evaluate, and address threats to compliance with the fundamental principles. The conceptual framework approach assists members in complying with the ethical requirements of this Code and meeting their responsibility to act in the public interest. It accommodates many variations in circumstances that create threats to compliance with the fundamental principles and can deter a member from concluding that a situation is permitted if it is not specifically prohibited.
- 100.7 When a member identifies threats to compliance with the fundamental principles and, based on an evaluation of those threats, determines that they are not at an acceptable level, the member shall determine whether appropriate safeguards are available and can be applied to eliminate the threats or reduce them to an acceptable level. In making that determination, the member shall exercise professional judgement and take into account whether a reasonable and informed third party, weighing all the specific facts and circumstances available to the member at the time, would be likely to conclude that the threats would be eliminated or reduced to an acceptable level by the application of the safeguards, such that compliance with the fundamental principles is not compromised.
- 100.8 A member shall evaluate any threats to compliance with the fundamental principles when the member knows, or could reasonably be expected to know, of circumstances or relationships that may compromise compliance with the fundamental principles.
- 100.9 A member shall take qualitative as well as quantitative factors into account when evaluating the significance of a threat. When applying the conceptual framework, an member may encounter situations in which threats cannot be eliminated or reduced to an acceptable level, either because the threat is too significant or because appropriate safeguards are not available or cannot be applied. In such situations, the member shall decline or discontinue the specific professional service involved or, when necessary, resign from the engagement.
- 100.10 Sections 290 and 291 (refer to PES 1 issued by the NZAuASB) contain provisions with which a member shall comply if the member identifies a breach of an independence provision of the Code. If a member identifies a breach of any other provision of this Code, the member shall evaluate the significance of the breach and its impact on the member's ability to comply with the fundamental principles. The member shall take whatever actions that may be available, as soon as possible, to satisfactorily address the consequences of the breach. The member shall determine whether to report the breach, for example, to those who may have been affected by the breach, a professional body, relevant regulator or oversight authority.

- 100.11 When a member encounters unusual circumstances in which the application of a specific requirement of the Code would result in a disproportionate outcome or an outcome that may not be in the public interest, it is recommended that the member consult with a professional body or the relevant regulator.

Threats and Safeguards

- 100.12 Threats may be created by a broad range of relationships and circumstances. When a relationship or circumstance creates a threat, such a threat could compromise, or could be perceived to compromise, a member's compliance with the fundamental principles. A circumstance or relationship may create more than one threat, and a threat may affect compliance with more than one fundamental principle. Threats fall into one or more of the following categories:
- (a) Self-interest threat – the threat that a financial or other interest will inappropriately influence the member's judgement or behaviour;
 - (b) Self-review threat – the threat that a member will not appropriately evaluate the results of a previous judgement made or service performed by the member, or by another individual within the member's firm, on which the member will rely when forming a judgement as part of providing a current service;
 - (c) Advocacy threat – the threat that a member will promote a client's position to the point that the member's objectivity is compromised;
 - (d) Familiarity threat – the threat that due to a long or close relationship with a client, a member will be too sympathetic to their interests or too accepting of their work; and
 - (e) Intimidation threat – the threat that a member will be deterred from acting objectively because of actual or perceived pressures, including attempts to exercise undue influence over the member.

Parts B and C of this Code explain how these categories of threats may be created for members in public practice, and members in business, respectively. Members in public practice may also find Part C relevant to their particular circumstances.

- 100.13 Safeguards are actions or other measures that may eliminate threats or reduce them to an acceptable level. They fall into two broad categories:
- (a) Safeguards created by the member's profession, legislation or regulation; and
 - (b) Safeguards within the firm's own systems and procedures.

- 100.14 Safeguards created by the member's profession, legislation or regulation include:
- Educational, training and experience requirements for entry into the member's profession.
 - Continuing professional development requirements.
 - Corporate governance regulations.
 - Professional standards.
 - Professional or regulatory monitoring and disciplinary procedures.
 - External review by a legally empowered third party of the reports, communications or information produced by a member.

100.15 Part B and C of this Code discuss safeguards in the work environment for members in public practice and members in business, respectively.

100.16 Certain safeguards may increase the likelihood of identifying or deterring unethical behaviour. Such safeguards, which may be created by the member's profession, legislation, regulation, or within the firm's own systems and procedures include:

- Effective, well-publicised complaint systems operated by the firm, the member's profession or a regulator, which enable colleagues and members of the public to draw attention to unprofessional or unethical behaviour.
- An explicitly stated duty to report breaches of ethical requirements.

Conflicts of Interest

100.17 A member may be faced with a conflict of interest when undertaking a professional activity. A conflict of interest creates a threat to objectivity and may create threats to the other fundamental principles. Such threats may be created when:

- The member undertakes a professional activity related to a particular matter for two or more parties whose interests with respect to that matter are in conflict; or
- The interests of the member with respect to a particular matter, and the interests of a party for whom the member undertakes a professional activity related to that matter are in conflict.

100.18 Parts B and C of this Code discuss conflicts of interest for members in public practice and members in business, respectively.

Ethical Conflict Resolution

100.19 A member may be required to resolve a conflict in complying with the fundamental principles.

100.20 When initiating either a formal or informal conflict resolution process, the following factors, either individually or together with other factors, may be relevant to the resolution process:

- (a) Relevant facts;
- (b) Ethical issues involved;
- (c) Fundamental principles related to the matter in question;
- (d) Established internal procedures; and
- (e) Alternative courses of action.

Having considered the relevant factors, a member shall determine the appropriate course of action, weighing the consequences of each possible course of action. If the matter remains unresolved, the member may wish to consult with other appropriate persons within the firm for help in obtaining resolution.

100.21 Where a matter involves a conflict with, or within, an organisation, a member shall determine whether to consult with those charged with governance of the organisation, such as the board of directors or the audit committee.

100.22 It may be in the best interests of the member to document the substance of the issue, the details of any discussions held, and the decisions made concerning that issue.

100.23 If a significant conflict cannot be resolved, a member may consider obtaining professional advice from the relevant professional body or from legal advisors.

The member generally can obtain guidance on ethical issues without breaching the fundamental principle of confidentiality if the matter is discussed with the relevant professional body on an anonymous basis or with a legal advisor under the protection of legal privilege.

100.24 If, after exhausting all relevant possibilities, the ethical conflict remains unresolved, a member shall, unless prohibited by law, refuse to remain associated with the matter creating the conflict. The member shall determine whether, in the circumstances, it is appropriate to withdraw from the engagement team or specific assignment, or to resign altogether from the engagement, or the firm.

Communicating with Those Charged with Governance

100.25 When communicating with those charged with governance in accordance with the provisions of this Code, the member or firm shall determine, having regard to the nature and importance of the particular circumstances and matter to be communicated, the appropriate person(s) within the entity's governance structure with whom to communicate. If the member or firm communicates with a subgroup of those charged with governance, for example, an audit committee or an individual, the member or firm shall determine whether communication with all of those charged with governance is also necessary so that they are adequately informed.

100.26 In some cases, all of those charged with governance are involved in managing the entity, for example, a small business where a single owner manages the entity and no one else has a governance role. In these cases, if matters are communicated with person(s) with management responsibilities, and those person(s) also have governance responsibilities, the matters need not be communicated again with those same person(s) in their governance role. The member or firm shall nonetheless be satisfied that communication with person(s) with management responsibilities adequately informs all of those with whom the member or firm would otherwise communicate in their governance capacity.

Section 110 Integrity

110.1 The principle of integrity imposes an obligation on all members to be straightforward and honest in all professional and business relationships. Integrity also implies fair dealing and truthfulness.

110.2 A member shall not knowingly be associated with reports, returns, communications or other information where the member believes that the information:

- (a) Contains a materially false or misleading statement;
- (b) Contains statements or information furnished recklessly; or
- (c) Omits or obscures information required to be included where such omission or obscurity would be misleading.

When a member becomes aware that the member has been associated with such information, the member shall take steps to be disassociated from that information.

110.3 A member will be deemed not to be in breach of paragraph 110.2 if the member provides a modified report in respect of a matter contained in paragraph 110.2.

Section 120 Objectivity

120.1 The principle of objectivity imposes an obligation on all members not to compromise their professional or business judgement because of bias, conflict of interest or the undue influence of others.

120.2 A member may be exposed to situations that may impair objectivity. It is impracticable to define and prescribe all such situations. A member shall not perform a professional service if a circumstance or relationship biases or unduly influences the member's professional judgement with respect to that service.

Section 130 Professional Competence and Due Care

130.1 The principle of professional competence and due care imposes the following obligations on all members:

- (a) To maintain professional knowledge and skill at the level required to ensure that clients receive competent professional service; and
- (b) To act diligently in accordance with the standards issued by the New Zealand Institute of Chartered Accountants, the External Reporting Board, the New Zealand Auditing and Assurance Standards Board, the New Zealand Accounting Standards Board, and other statutory requirements or authoritative guidance applicable to the task or engagement when providing professional services.

130.2 Competent professional service requires the exercise of sound judgement in applying professional knowledge and skill in the performance of such service. Professional competence may be divided into two separate phases:

- (a) Attainment of professional competence; and
- (b) Maintenance of professional competence.

- 130.3 The maintenance of professional competence requires a continuing awareness and an understanding of relevant technical, professional and business developments. Continuing professional development enables a member to develop and maintain the capabilities to perform competently within the professional environment.
- 130.4 Diligence encompasses the responsibility to act in accordance with the requirements of an assignment, carefully, thoroughly and on a timely basis. Timeliness also extends to a member's obligation to respond in a timely manner to the New Zealand Institute of Chartered Accountants.
- 130.5 A member shall take reasonable steps to ensure that those working under the member's authority in a professional capacity have appropriate training and supervision.
- 130.6 Where appropriate, a member shall make clients or other users of the member's professional services aware of the limitations inherent in the services.

Section 140 Confidentiality

- 140.1 The principle of confidentiality imposes an obligation on all members to refrain from:
- (a) Disclosing outside the firm confidential information acquired as a result of professional and business relationships without proper and specific authority or unless there is a legal or professional right or duty to disclose; and
 - (b) Using confidential information acquired as a result of professional and business relationships to their personal advantage or the advantage of third parties.
- 140.2 A member shall maintain confidentiality, including in a social environment, being alert to the possibility of inadvertent disclosure, particularly to a close business associate or a close or immediate family member.
- 140.3 A member shall maintain confidentiality of information disclosed by a prospective client.
- 140.4 A member shall maintain confidentiality of information within the firm.
- 140.5 A member shall take reasonable steps to ensure that staff under the member's control and persons from whom advice and assistance is obtained respect the member's duty of confidentiality.

140.6 The need to comply with the principle of confidentiality continues even after the end of relationships between a member and a client. When a member acquires a new client, the member is entitled to use prior experience. The member shall not, however, use or disclose any confidential information either acquired or received as a result of a professional or business relationship.

140.7 As a fundamental principle, confidentiality serves the public interest because it facilitates the free flow of information from the member's client or employing organisation to the member. Nevertheless, the following are circumstances where members are or may be required to disclose confidential information or when such disclosure may be appropriate:

- (a) Disclosure is permitted by law and is authorised by the client;
- (b) Disclosure is required by law, for example:
 - (i) Production of documents or other provision of evidence in the course of legal proceedings; or
 - (ii) Disclosure to the appropriate public authorities of infringements of the law that come to light; and
- (c) There is a professional duty or right to disclose, when not prohibited by law:
 - (i) To comply with the quality review of a professional body;
 - (ii) To respond to an enquiry or investigation by a professional body or regulatory body;
 - (iii) To protect the professional interests of a member in legal proceedings; or
 - (iv) To comply with technical and professional standards, including ethical requirements.

NZ140.7.1 The circumstances in paragraph 140.7 do not take into account New Zealand legal and regulatory requirements. A member considering disclosing confidential information about a client without their consent is advised to first obtain legal advice.

140.8 In deciding whether to disclose confidential information, relevant factors to consider include:

- Whether the interests of all parties, including third parties whose interests may be affected, could be harmed if the client consents to the disclosure of information by the member;
- Whether all the relevant information is known and substantiated, to the extent it is practicable; when the situation involves unsubstantiated facts, incomplete information or unsubstantiated conclusions, professional judgement shall be used in determining the type of disclosure to be made, if any;
- The type of communication that is expected and to whom it is addressed; and
- Whether the parties to whom the communication is addressed are appropriate recipients.

Duty to Disclose Unethical Behaviour

NZ140.9 Members have a professional duty to report unethical behaviour of other members to the New Zealand Institute of Chartered Accountants. Any member who encounters or becomes aware of a matter which provides reasonable grounds for suspecting defalcation, fraud, dishonesty or other unethical behaviour by any other member shall make a report immediately to the most senior executive of the New Zealand Institute of Chartered Accountants.

NZ140.10 In circumstances where a member has made a report to the New Zealand Institute of Chartered Accountants, the member should be aware that:

- (a) The information disclosed may form the basis of a complaint by the New Zealand Institute of Chartered Accountants, and in certain circumstances the member who made the report may be requested and/or required to participate in any disciplinary proceedings;
- (b) The information disclosed, including the name and other information which might enable identification of the member who has made the report, may be made available to the member about whom the report relates pursuant to the Privacy Act 1993;
- (c) In all situations where the member considers disclosing confidential information, the member must consider:
 - (i) The interests of all parties who may be affected; and
 - (ii) The need to obtain legal advice and consult the New Zealand Institute of Chartered Accountants.

NZ140.11 The duty to report also extends to the member's own conduct. In the event of disciplinary proceedings the fact that a member has made such a report may count in the member's favour.

Section 150 Professional Behaviour

150.1 The principle of professional behaviour imposes an obligation on all members to comply with relevant laws and regulations and avoid any conduct that the member knows or should know may discredit the member's profession. This includes conduct that a reasonable and informed third party, weighing all the specific facts and circumstances available to the member at that time, would be likely to conclude adversely affects the good reputation of the member's profession.

150.2 In marketing and promoting themselves and their work, members shall not bring the member's profession into disrepute. Members shall be honest and truthful and not:

- (a) Make exaggerated claims for the services they are able to offer, the qualifications they possess, or experience they have gained; or
- (b) Make disparaging references or unsubstantiated comparisons to the work of others.

NZ150.3 A member shall act with courtesy and consideration.

Part B: Members in public practice contents

Section 200 Introduction

200.1 This Part of the Code describes how the conceptual framework contained in Part A applies in certain situations to members in public practice. This Part does not describe all of the circumstances and relationships that could be encountered by a member in public practice that create or may create threats to compliance with the fundamental principles. Therefore, the member in public practice is encouraged to be alert for such circumstances and relationships.

200.2 A member in public practice shall not knowingly engage in any professional activity that impairs or might impair integrity, objectivity or the good reputation of the profession and as a result would be incompatible with the fundamental principles.

Threats and Safeguards

200.3 Compliance with the fundamental principles may potentially be threatened by a broad range of circumstances and relationships. The nature and significance of the threats may differ depending on whether they arise in relation to the provision of services to an audit or review client and whether the audit or review client is a public interest entity, to an assurance client that is not an audit or review client, or to a non-assurance client.

Threats fall into one or more of the following categories:

- (a) Self-interest;
- (b) Self-review;
- (c) Advocacy;
- (d) Familiarity; and
- (e) Intimidation.

These threats are discussed further in Part A of this Code.

200.4 Examples of circumstances that create self-interest threats for a member in public practice include:

- A member of the engagement team having a direct financial interest in a client.
- A firm having undue dependence on total fees from a client.
- A firm having material amounts of fees remaining unpaid by a client.
- A member of the engagement team having a significant close business relationship with a client.
- A firm being concerned about the possibility of losing a significant client.
- A member of the engagement team entering into employment negotiations with a client.
- A firm entering into a contingent fee arrangement.
- A member discovering a significant error when evaluating the results of a previous professional service performed by a member of the member's firm.

200.5 Examples of circumstances that create self-review threats for a member in public practice include:

- A firm issuing an assurance report on the effectiveness of the operation of financial systems after designing or implementing the systems.
- A firm having prepared the original data used to generate records that are the subject matter of the assurance engagement.
- A member of the assurance team being, or having recently been, a director or officer of the client.
- A member of the assurance team being, or having recently been, employed by the client in a position to exert significant influence over the subject matter of the engagement.
- The firm performing a service for an assurance client that directly affects the subject matter information of the assurance engagement.

200.6 Examples of circumstances that create advocacy threats for a member in public practice include:

- The firm promoting shares in an audit client.

- A member acting as an advocate on behalf of an audit client in litigation or disputes with third parties.

200.7 Examples of circumstances that create familiarity threats for a member in public practice include:

- A member of the engagement team having a close or immediate family member who is a director or officer of the client.
- A member of the engagement team having a close or immediate family member who is an employee of the client who is in a position to exert significant influence over the subject matter of the engagement.
- A director or officer of the client or an employee in a position to exert significant influence over the subject matter of the engagement having recently served as the engagement partner.
- A member accepting gifts or preferential treatment from a client, unless the value is trivial or inconsequential.
- Senior personnel having a long association with the assurance client.

200.8 Examples of circumstances that create intimidation threats for a member in public practice include:

- A firm being threatened with dismissal from a client engagement.
- An audit client indicating that it will not award a planned non-assurance contract to the firm if the firm continues to disagree with the client's accounting treatment for a particular transaction.
- A firm being threatened with litigation by the client.
- A firm being pressured to reduce inappropriately the extent of work performed in order to reduce fees.
- A member feeling pressured to agree with the judgement of a client employee because the employee has more expertise on the matter in question.
- A member of the engagement team being informed by a partner of the firm that a planned promotion will not occur unless the engagement team member agrees with an audit client's inappropriate accounting treatment.

200.9 Safeguards that may eliminate or reduce threats to an acceptable level fall into two broad categories:

- (a) Safeguards created by the profession, legislation or regulation; and
- (b) Safeguards within the firm's own systems and procedures.

Examples of safeguards created by the profession, legislation or regulation are described in paragraph [100.14](#) of Part A of this Code.

200.10 A member in public practice shall exercise judgement to determine how best to deal with threats that are not at an acceptable level, whether by applying safeguards to eliminate the threat or reduce it to an acceptable level, or by terminating or declining the relevant engagement. In exercising this judgement, a member in public practice shall consider whether a reasonable and informed third party, weighing all the specific facts and circumstances available to the member at that time, would be likely to conclude that the threats would be eliminated or reduced to an acceptable level by the application of safeguards, such that compliance with the fundamental principles is not compromised. This consideration will be affected by matters such as the significance of the threat, the nature of the engagement, and the structure of the firm.

200.11 Within the firm's own systems and procedures, the relevant safeguards will vary depending on the circumstances. These safeguards comprise firm-wide safeguards and engagement-specific safeguards.

200.12 Examples of firm-wide safeguards include:

- Leadership of the firm that stresses the importance of compliance with the fundamental principles.
- Leadership of the firm that establishes the expectation that members of an assurance team will act in the public interest.
- Policies and procedures to implement and monitor quality control of engagements.
- Documented policies regarding the need to identify threats to compliance with the fundamental principles, evaluate the significance of those threats, and apply safeguards to eliminate or reduce the threats to an acceptable level or, when appropriate safeguards are not available or cannot be applied, terminate or decline the relevant engagement.
- Documented internal policies and procedures requiring compliance with the fundamental principles.
- Policies and procedures that will enable the identification of interests or relationships between the firm or members of engagement teams and clients.
- Policies and procedures to monitor and, if necessary, manage the reliance on revenue received from a single client.
- Using different partners and engagement teams with separate reporting lines for the provision of non-assurance services to an assurance client.
- Policies and procedures to prohibit individuals who are not members of an engagement team from inappropriately influencing the outcome of the engagement.
- Timely communication of a firm's policies and procedures, including any changes to them, to all partners and professional staff, and appropriate training and education on such policies and procedures.
- Designating a member of senior management to be responsible for overseeing the adequate functioning of the firm's quality control system.
- Advising partners and professional staff of assurance clients and related entities from which independence is required.
- A disciplinary mechanism to promote compliance with policies and procedures.
- Published policies and procedures to encourage and empower staff to communicate to senior levels within the firm any issue relating to compliance with the fundamental principles that concerns them.

200.13 Examples of engagement-specific safeguards include:

- Having a member who was not involved with the non-assurance service review the non-assurance work performed or otherwise advise as necessary.
- Having a member who was not a member of the assurance team review the assurance work performed or otherwise advise as necessary.
- Consulting an independent third party, such as a committee of independent directors, a professional or regulatory body, or another member.
- Discussing ethical issues with those charged with governance of the client.
- Disclosing to those charged with governance of the client the nature of services provided and extent of fees charged.
- Involving another firm to perform or re-perform part of the engagement.
- Rotating senior assurance team personnel.

200.14 Depending on the nature of the engagement, a member in public practice may also be able to rely on safeguards that the client has implemented. However it is not possible to rely solely on such safeguards to reduce threats to an acceptable level.

200.15 Examples of safeguards within the client's systems and procedures include:

- The client requires persons other than management to ratify or approve the appointment of a firm to perform an engagement.
- The client has competent employees with experience and seniority to make managerial decisions.
- The client has implemented internal procedures that ensure objective choices in commissioning non-assurance engagements.
- The client has a corporate governance structure that provides appropriate oversight and communications regarding the firm's services.

Section 210 Professional Appointment

Client Acceptance and Continuance

210.1 Before accepting a new client relationship, a member in public practice shall determine whether acceptance would create any threats to compliance with the fundamental principles. Potential threats to integrity or professional behaviour may be created from, for example, issues associated with the client (its owners, management or activities) that, if known, could threaten compliance with the fundamental principles. These include, for example, client involvement in illegal activities (such as money laundering), dishonesty, questionable financial reporting practices or other unethical behaviour.

210.2 A member in public practice shall evaluate the significance of any threats and apply safeguards when necessary to eliminate them or reduce them to an acceptable level.

Examples of such safeguards include:

- Obtaining knowledge and understanding of the client, its owners, managers and those responsible for its governance and business activities; or
- Securing the client's commitment to address the questionable issues, for example, through improving corporate governance practices or internal controls.

210.3 Where it is not possible to reduce the threats to an acceptable level, the member in public practice shall decline to enter into the client relationship.

210.4 Potential threats to compliance with the fundamental principles may have been created after acceptance that would have caused the member to decline the engagement had that information been available earlier. A member in public practice shall, therefore, periodically review whether to continue with a recurring client engagement. For example, a

threat to compliance with the fundamental principles may be created by a client's unethical behaviour such as improper earnings management or balance sheet valuations. If a member in public practice identifies a threat to compliance with the fundamental principles, the member shall evaluate the significance of the threats and apply safeguards when necessary to eliminate the threat or reduce it to an acceptable level. Where it is not possible to reduce the threat to an acceptable level, the member in public practice shall consider terminating the client relationship where termination is not prohibited by law or regulation.

Engagement Acceptance

210.5 The fundamental principle of professional competence and due care imposes an obligation on a member in public practice to provide only those services that the member in public practice is competent to perform. Before accepting a specific client engagement, a member in public practice shall determine whether acceptance would create any threats to compliance with the fundamental principles. For example, a self-interest threat to professional competence and due care is created if the engagement team does not possess, or cannot acquire, the competencies necessary to properly carry out the engagement.

210.6 A member in public practice shall evaluate the significance of threats and apply safeguards, when necessary, to eliminate them or reduce them to an acceptable level. Examples of such safeguards include:

- Acquiring an appropriate understanding of the nature of the client's business, the complexity of its operations, the specific requirements of the engagement, and the purpose, nature and scope of the work to be performed.
- Acquiring knowledge of relevant industries or subject matters.
- Possessing or obtaining experience with relevant regulatory or reporting requirements.
- Assigning sufficient staff with the necessary competencies.
- Using experts where necessary.
- Agreeing on a realistic time frame for the performance of the engagement.
- Complying with quality control policies and procedures designed to provide reasonable assurance that specific engagements are accepted only when they can be performed competently.

210.7 When a member in public practice intends to rely on the advice or work of an expert, the member shall determine whether such reliance is warranted. Factors to consider include: reputation, expertise, resources available, and applicable standards issued by the New Zealand Institute of Chartered Accountants, the External Reporting Board, the New Zealand Auditing and Assurance Standards Board, the New Zealand Accounting Standards Board and other statutory requirements or authoritative guidance applicable to the task or engagement. Such information may be gained from prior association with the expert or from consulting others

Changes in a Professional Appointment

210.8 A member in public practice who is asked to replace another accountant, or who is considering tendering for an engagement currently held by another accountant, shall determine whether there are any reasons, professional or otherwise, for not accepting the engagement, such as circumstances that create threats to compliance with the fundamental principles that cannot be eliminated or reduced to an acceptable level by the application of safeguards.

For example, there may be a threat to professional competence and due care if a member in public practice accepts the engagement before knowing all the pertinent facts.

210.9 A member in public practice shall evaluate the significance of any threats.

Safeguards shall be applied when necessary to eliminate any threats or reduce them to an acceptable level. Examples of such safeguards include:

- When replying to requests to submit tenders, stating in the tender that, before accepting the engagement, contact with the existing or predecessor accountant will be requested so that enquiries may be made as to whether there are any professional or other reasons why the appointment should not be accepted;
- Asking the predecessor accountant to provide known information on any facts or circumstances that, in the predecessor accountant's opinion, the proposed successor accountant needs to be aware of before deciding whether to accept the engagement. For example, the apparent reasons for the change in appointment may not fully reflect the facts and may indicate disagreements with the predecessor accountant that may influence the decision to accept the appointment; or
- Obtaining necessary information from other sources.

210.10 When the threats cannot be eliminated or reduced to an acceptable level through the application of safeguards, a member in public practice shall, unless there is satisfaction as to necessary facts by other means, decline the engagement.

210.11 A member in public practice may be asked to undertake work that is complementary or additional to the work of the existing accountant. Such circumstances may create threats to professional competence and due care resulting from, for example, a lack of or incomplete information. The significance of any threats shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level. An example of such a safeguard is notifying the existing accountant of the proposed work, which would give the existing accountant the opportunity to provide any relevant information needed for the proper conduct of the work.

210.12 An existing or predecessor accountant is bound by confidentiality. Whether that member is permitted or required to discuss the affairs of a client with a proposed accountant will depend on the nature of the engagement and on:

- (a) Whether the client's permission to do so has been obtained; or
- (b) The legal or ethical requirements relating to such communications and disclosure, which may vary by jurisdiction.

Circumstances where the member is or may be required to disclose confidential information or where such disclosure may otherwise be appropriate are set out in Section 140 of Part A of this Code.

210.13 A member in public practice will generally need to obtain the client's permission, preferably in writing, to initiate discussion with an existing or predecessor accountant. Once that permission is obtained, the existing or predecessor accountant shall comply with relevant laws and other regulations governing such requests. Where the existing or predecessor accountant provides information, it shall be provided honestly and unambiguously. If the proposed accountant is unable to communicate with the existing or predecessor accountant, the proposed accountant shall take reasonable steps to

obtain information about any possible threats by other means, such as through enquiries of third parties or background investigations of senior management or those charged with governance of the client.

NZ210.13.1 The existing accountant, on receipt of the communication referred to in paragraph 210.13 shall promptly reply, preferably in writing, advising whether there are professional reasons why the proposed accountant should not accept the appointment.

NZ210.13.2 The existing accountant shall promptly transfer the documents belonging to the client whenever or however obtained, to the client or, where the client so instructs, to the proposed accountant, and should advise the client accordingly, unless the existing accountant has a legal right to withhold them, for example, when a valid lien for unpaid fees exists.

210.14 [Amended. Refer to NZ210.14].

NZ210.14 In the case of an assurance engagement, a member in public practice shall request the predecessor accountant to provide known information regarding any facts or other information that, in the predecessor accountant's opinion, the proposed successor accountant needs to be aware of before deciding whether to accept the engagement. Except for the circumstances involving identified or suspected non-compliance with laws and regulations set out in paragraph 225.31:

- (a) If the client consents to the predecessor accountant disclosing any such facts or other information, the predecessor accountant shall provide the information honestly and unambiguously; and
- (b) If the client fails or refuses to grant the predecessor accountant permission to discuss the client's affairs with the proposed successor accountant, the predecessor accountant shall disclose this fact to the proposed successor accountant, who shall carefully consider such failure or refusal when determining whether or not to accept the appointment.

Section 220 Conflicts of Interest

220.1 A member in public practice may be faced with a conflict of interest on the engagement when performing a professional service. A conflict of interest creates a threat to objectivity and may create threats to the other fundamental principles. Such threats may be created when:

- The member provides a professional service related to a particular matter for two or more clients whose interests with respect to that matter are in conflict; or
- The interests of the member with respect to a particular matter and the interests of the client for whom the member provides a professional service related to that matter are in conflict.

A member shall not allow a conflict of interest to compromise professional or business judgement.

When the professional service is an assurance service, compliance with the fundamental principle of objectivity also requires being independent of assurance clients in accordance with Sections 290 or 291 (refer to PES 1 issued by the NZAuASB) as appropriate.

- 220.2 Examples of situations in which conflicts of interests may arise include:
- Providing a transaction advisory service to a client seeking to acquire an audit client of the firm, where the firm has obtained confidential information during the course of the audit that may be relevant to the transaction;
 - Advising two clients at the same time who are competing to acquire the same company where the advice might be relevant to the parties' competitive positions;
 - Providing services to both a vendor and a purchaser in relation to the same transaction;
 - Preparing valuations of assets for two parties in an adversarial position with respect to the assets;
 - Representing two clients regarding the same matter who are in a legal dispute with each other, such as during divorce proceedings or the dissolution of a partnership;
 - Providing an assurance report for a licensor on royalties due under a license agreement when at the same time advising the licensee of the correctness of the amounts payable;
 - Advising a client to invest in a business in which, for example, the spouse of the member in public practice has a financial interest;
 - Providing strategic advice to a client on its competitive position while having a joint venture or similar interest with a major competitor of the client;
 - Advising a client on the acquisition of a business which the firm is also interested in acquiring; and
 - Advising a client on the purchase of a product or service while having a royalty or commission agreement with one of the potential vendors of that product or service.
- 220.3 When identifying and evaluating the interests and relationships that might create a conflict of interest and implementing safeguards, when necessary, to eliminate or reduce any threat to compliance with the fundamental principles to an acceptable level, a member in public practice shall exercise professional judgement and take into account whether a reasonable and informed third party, weighing all the specific facts and circumstances available to the member at that time, would be likely to conclude that compliance with the fundamental principles is not compromised.
- 220.4 When addressing conflicts of interest, including making disclosures or sharing information within the firm or network and seeking guidance of third parties, the member in public practice shall remain alert to the fundamental principle of confidentiality.
- 220.5 If the threat created by a conflict of interest is not at an acceptable level, the member in public practice shall apply safeguards to eliminate the threat or reduce it to an acceptable level. If safeguards cannot reduce the threat to an acceptable level, the member shall decline to perform or shall discontinue professional services that would result in the conflict of interest, or shall terminate relevant relationships or dispose of relevant interests to eliminate the threat or reduce it to an acceptable level.
- 220.6 Before accepting a new client relationship, engagement, or business relationship, a member in public practice shall take reasonable steps to identify circumstances that might create a conflict of interest including identification of:
- The nature of the relevant interests and relationships between the parties involved; and
 - The nature of the service and its implication for relevant parties.

The nature of the services and the relevant interests and relationships may change during the course of the engagement. This is particularly true when a member in public practice is asked to conduct an engagement in a situation that may become adversarial, even though the parties who engage the member may not initially be involved in a dispute. The member shall remain alert to such changes for the purposes of identifying circumstances that might create a conflict of interest.

220.7 For the purposes of identifying interests and relationships that might create a conflict of interest, having an effective conflict identification process assists a member in public practice to identify actual or potential conflicts of interest prior to determining whether to accept an engagement and throughout an engagement. This includes matters identified by external parties, for example clients or potential clients. The earlier an actual or potential conflict of interest is identified, the greater the likelihood of the member in public practice being able to apply safeguards, when necessary, to eliminate the threat to objectivity and any threat to compliance with other fundamental principles or reduce it to an acceptable level. The process to identify actual or potential conflicts of interest depends on such factors as:

- The nature of the professional services provided;
- The size of the firm;
- The size and nature of the client base; and
- The structure of the firm, for example the number and geographic location of offices.

220.8 If the firm is a member of a network, conflict identification shall include any conflicts of interest that the member knows or has reason to believe may exist or might arise due to interests and relationships of a network firm. Reasonable steps to identify such interests and relationships involving a network firm will depend on factors such as the nature of the professional services provided, the clients served by the network, and the geographic locations of all relevant parties.

220.9 If a conflict of interest is identified, the member in public practice shall evaluate:

- The significance of relevant interests or relationships; and
- The significance of the threats created by performing the professional service or services.

In general, the more direct the connection between the professional service and the matter on which the parties' interest are in conflict, the more significant the threat to objectivity and compliance with the other fundamental principles will be.

220.10 The member in public practice shall apply safeguards, when necessary, to eliminate the threats to compliance with the fundamental principles created by the conflict of interest or reduce them to an acceptable level. Examples of safeguards include:

- Implementing mechanisms to prevent unauthorised disclosure of confidential information when performing professional services related to the matter for two or more clients whose interests with respect to that matter are in conflict. This could include:
 - using separate engagement teams who are provided with clear policies and procedures on maintaining confidentiality;
 - creating separate areas of practice for specialty functions within the firm, which may act as a barrier to the passing of confidential client information from one practice area to another within a firm;

- establishing policies and procedures to limit access to client files, the use of confidentiality agreements signed by employees and partners of the firm and/or the physical and electronic separation of confidential information;
- Regular review of the application of safeguards by a senior individual not involved with the client engagement or engagements;
- Having a member who is not involved in providing the service, or otherwise affected by the conflict, review the work performed to assess whether the key judgements and conclusions are appropriate; and
- Consulting with third parties, such as a professional body, legal counsel or another member.

NZ220.10.1 Where a member in public practice has a conflict of interest but can apply safeguards to eliminate the threat or reduce it to an acceptable level, the member in public practice shall disclose the nature of the conflict of interest and the related safeguards, if any, to all clients or potential clients affected by the conflict. When safeguards are required to reduce the threat to an acceptable level, the member in public practice shall obtain the client's consent to the member in public practice performing the professional services.

220.11 [Amended. Refer to [NZ220.10.1](#)].

NZ220.11 Disclosure and consent may take different forms, for example:

- General disclosure to clients of circumstances where the member in public practice, in keeping with common commercial practice, does not provide services exclusively for any one client (for example, in a particular service in a particular market sector) in order for the client to provide general consent accordingly. Such disclosure might, for example, be made in the member's standard terms and conditions for the engagement.
- Specific disclosure to affected clients of the circumstances of the particular conflict, including a detailed presentation of the situation and a comprehensive explanation of any planned safeguards and the risks involved, sufficient to enable the client to make an informed decision with respect to the matter and to provide explicit consent accordingly.
- In certain circumstances consent may be implied by the client's conduct where the member in public practice has sufficient evidence to conclude that clients know the circumstances at the outset and have accepted the conflict of interest if they do not raise an objection to the existence of the conflict.
- The member in public practice shall determine whether the nature and significance of the conflict of interest is such that specific disclosure and explicit consent is necessary. For this purpose the member in public practice shall exercise professional judgement in weighing the outcome of the evaluation of the circumstances that create a conflict of interest, including the parties that might be affected, the nature of the issues that might arise, and the potential for the particular matter to develop in an unexpected manner.

220.12 Where a member in public practice has requested explicit consent from a client and that consent has been refused by the client, the member in public practice shall decline to perform or shall discontinue professional services that would result in a conflict of interest, or shall terminate relevant relationships or dispose of relevant interest to eliminate the threat or reduce it to an acceptable level, such that consent can be obtained, after applying any additional safeguards if necessary.

- 220.13 When disclosure is verbal, or consent is verbal or implied, the member in public practice is encouraged to document the nature of the circumstances giving rise to the conflict of interest, the safeguards applied to reduce the threats to an acceptable level and the consent obtained.
- 220.14 [Deleted. Refer to [NZ220.14](#)].
- NZ220.14 In those circumstances where adequate disclosure is not possible by reason of constraints of confidentiality, the member in public practice shall withdraw or resign from the relevant engagement.

Section 225 Responding to Non-Compliance with Laws and Regulations Purpose

- 225.1 A member in public practice may encounter or be made aware of non-compliance or suspected non-compliance with laws and regulations in the course of providing a professional service to a client. The purpose of this section is to set out the member in public practice's responsibilities when encountering such non-compliance or suspected non-compliance, and guide the member in public practice in assessing the implications of the matter and the possible courses of action when responding to it. This section applies regardless of the nature of the client, including whether or not it is a public interest entity.
- 225.2 Non-compliance with laws and regulations ("non-compliance") comprises acts of omission or commission, intentional or unintentional, committed by a client, or by those charged with governance, by management or by other individuals working for or under the direction of a client which are contrary to the prevailing laws or regulations.
- 225.3 In some cases, there are legal or regulatory provisions governing how members in public practice should address non-compliance or suspected non-compliance which may differ from or go beyond this section. When encountering such non-compliance or suspected non-compliance, the member in public practice has a responsibility to obtain an understanding of those provisions and comply with them, including any requirement to report the matter to an appropriate authority and any prohibition on alerting the client prior to making any disclosure, for example, pursuant to anti-money laundering legislation.
- 225.4 A distinguishing mark of the accountancy profession is its acceptance of the responsibility to act in the public interest. When responding to non-compliance or suspected non-compliance, the objectives of the member are:
- (a) To comply with the fundamental principles of integrity and professional behaviour;
 - (b) By alerting management or, where appropriate, those charged with governance of the client, to seek to:
 - (i) Enable them to rectify, remediate or mitigate the consequences of the identified or suspected non-compliance; or
 - (ii) Deter the commission of the non-compliance where it has not yet occurred; and
 - (c) To take such further action as appropriate in the public interest.

Scope

- 225.5 This section sets out the approach to be taken by a member in public practice who encounters or is made aware of non-compliance or suspected non-compliance with:
- (a) Laws and regulations generally recognised to have a direct effect on the determination of material amounts and disclosures in the client's financial statements; and
 - (b) Other laws and regulations that do not have a direct effect on the determination of the amounts and disclosures in the client's financial statements but compliance with which may be fundamental to the operating aspects of the client's business, to its ability to continue its business, or to avoid material penalties.

225.6 Examples of laws and regulations which this section addresses include those that deal with:

- Fraud, corruption and bribery.
- Money laundering, terrorist financing and proceeds of crime.
- Securities markets and trading.
- Banking and other financial products and services.
- Data protection.
- Tax and pension liabilities and payments.
- Environmental protection.
- Public health and safety.

225.7 Non-compliance may result in fines, litigation or other consequences for the client that may have a material effect on its financial statements. Importantly, such non-compliance may have wider public interest implications in terms of potentially substantial harm to investors, creditors, employees or the general public. For the purposes of this section, an act that causes substantial harm is one that results in serious adverse consequences to any of these parties in financial or non-financial terms. Examples include the perpetration of a fraud resulting in significant financial losses to investors, and breaches of environmental laws and regulations endangering the health or safety of employees or the public.

225.8 A member in public practice who encounters or is made aware of matters that are clearly inconsequential, judged by their nature and their impact, financial or otherwise, on the client, its stakeholders and the general public, is not required to comply with this section with respect to such matters.

225.9 This section does not address:

- (a) Personal misconduct unrelated to the business activities of the client; and
- (b) Non-compliance other than by the client or those charged with governance, management or other individuals working for or under the direction of the client. This includes, for example, circumstances where a member in public practice has been engaged by a client to perform a due diligence assignment on a third party entity and the identified or suspected non-compliance has been committed by that third party.

The member in public practice may nevertheless find the guidance in this section helpful in considering how to respond in these situations.

Responsibilities of the Client's Management and Those Charged with Governance

- 225.10 It is the responsibility of the client's management, with the oversight of those charged with governance, to ensure that the client's business activities are conducted in accordance with laws and regulations. It is also the responsibility of management and those charged with governance to identify and address any non-compliance by the client, by an individual charged with governance of the entity, by a member of management, or by other individuals working for or under the direction of the client.

Responsibilities of Members in Public Practice

- 225.11 Where a member in public practice becomes aware of a matter to which this section applies, the steps that the member in public practice takes to comply with this section shall be taken on a timely basis, having regard to the member in public practice's understanding of the nature of the matter and the potential harm to the interests of the entity, investors, creditors, employees or the general public.

Assurance Engagements

Refer to paragraphs 225.12–225.38 of the NZAuASB's Professional and Ethical Standard 1 (Revised) Code of Ethics for Assurance Practitioners (PES 1).

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Professional Services Other than Assurance Engagements

Obtaining an Understanding of the Matter and Addressing It with Management and Those Charged with Governance

- 225.39 If a member in public practice engaged to provide a professional service other than an assurance engagement becomes aware of information concerning an instance of non-compliance or suspected non-compliance, the member in public practice shall seek to obtain an understanding of the matter, including the nature of the act and the circumstances in which it has occurred or may be about to occur.
- 225.40 The member in public practice is expected to apply knowledge, professional judgement and expertise, but is not expected to have a level of understanding of laws and regulations beyond that which is required for the professional service for which the member in public practice was engaged. Whether an act constitutes actual non-compliance is ultimately a matter to be determined by a court or other appropriate adjudicative body. Depending on the nature and significance of the matter, the member in public practice may consult on a confidential basis with others within the firm, a network firm or a professional body, or with legal counsel.
- 225.41 If the member in public practice identifies or suspects that non-compliance has occurred or may occur, the member in public practice shall discuss the matter with the appropriate level of management and, if the member in public practice has access to them and where appropriate, those charged with governance.

- 225.42 Such discussion serves to clarify the member in public practice's understanding of the facts and circumstances relevant to the matter and its potential consequences. The discussion also may prompt management or those charged with governance to investigate the matter.
- 225.43 The appropriate level of management with whom to discuss the matter is a question of professional judgement. Relevant factors to consider include:
- The nature and circumstances of the matter.
 - The individuals actually or potentially involved.
 - The likelihood of collusion.
 - The potential consequences of the matter.
 - Whether that level of management is able to investigate the matter and take appropriate action.

Communicating the Matter to the Entity's External Auditor

- 225.44 If the member in public practice is performing a non-audit service for an audit client of the firm, or a component of an audit client of the firm, the member in public practice shall communicate the non-compliance or suspected non-compliance within the firm, unless prohibited from doing so by law or regulation. The communication shall be made in accordance with the firm's protocols or procedures or, in the absence of such protocols and procedures, directly to the audit engagement partner.
- 225.45 If the member in public practice is performing a non-audit service for an audit client of a network firm, or a component of an audit client of a network firm, the member in public practice shall consider whether to communicate the non-compliance or suspected non-compliance to the network firm. Where the communication is made, it shall be made in accordance with the network's protocols or procedures or, in the absence of such protocols and procedures, directly to the audit engagement partner.
- 225.46 If the member in public practice is performing a non-audit service for a client that is not:
- (a) An audit client of the firm or a network firm; or
 - (b) A component of an audit client of the firm or a network firm;
- the member in public practice shall consider whether to communicate the non-compliance or suspected non-compliance to the firm that is the client's external auditor, if any.
- 225.47 Factors relevant to considering the communication in accordance with paragraphs [225.45](#) and [225.46](#) include:
- Whether doing so would be contrary to law or regulation.
 - Whether there are restrictions about disclosure imposed by a regulatory agency or prosecutor in an ongoing investigation into the non-compliance or suspected non-compliance.
 - Whether the purpose of the engagement is to investigate potential non-compliance within the entity to enable it to take appropriate action.
 - Whether management or those charged with governance have already informed the entity's external auditor about the matter.

- The likely materiality of the matter to the audit of the client's financial statements or, where the matter relates to a component of the group, its likely materiality to the audit of the group financial statements.

225.48 In all cases, the communication is to enable the audit engagement partner to be informed about the non-compliance or suspected non-compliance and to determine whether and, if so, how it should be addressed in accordance with the provisions of this section.

Considering Whether Further Action Is Needed

225.49 The member in public practice shall also consider whether further action is needed in the public interest.

225.50 Whether further action is needed, and the nature and extent of it, will depend on factors such as:

- The legal and regulatory framework.
- The appropriateness and timeliness of the response of management and, where applicable, those charged with governance.
- The urgency of the matter.
- The involvement of management or those charged with governance in the matter.
- The likelihood of substantial harm to the interests of the client, investors, creditors, employees or the general public.

225.51 Further action by the member in public practice may include:

- Disclosing the matter to an appropriate authority even when there is no legal or regulatory requirement to do so.
- Withdrawing from the engagement and the professional relationship where permitted by law or regulation.

225.52 In considering whether to disclose to an appropriate authority, relevant factors to take into account include:

- Whether doing so would be contrary to law or regulation.
- Whether there are restrictions imposed by a regulatory agency or prosecutor in an ongoing investigation into the non-compliance or suspected non-compliance.
- Whether the purpose of the engagement is to investigate potential non-compliance within the entity to enable it to take appropriate action.

225.53 If the member in public practice determines that disclosure of the non-compliance or suspected non-compliance to an appropriate authority is an appropriate course of action in the circumstances, this will not be considered a breach of confidentiality under Section 140 of this Code. When making such disclosure, the member in public practice shall act in good faith and exercise caution when making statements and assertions. The member in public practice shall also

consider when it is appropriate to inform the client of the member in public practice's intentions before disclosing the matter.

225.54 In exceptional circumstances, the member in public practice may become aware of actual or intended conduct that the member in public practice had reason to believe would constitute an imminent breach of a law or regulation that would cause substantial harm to investors, creditor, employees or the general public. Having considered whether it would be appropriate to discuss the matter with management or those charged with governance of the entity, the member in public practice shall exercise professional judgement and may immediately disclose the matter to an appropriate authority in order to prevent or mitigate the consequences of such an imminent breach of law or regulation. Such disclosure will not be considered a breach of the duty of confidentiality under section 140 of this Code.

225.55 The member in public practice may consider consulting internally, obtaining legal advice to understanding the professional or legal implications of taking any particular course of action, or consulting on a confidential basis with a regulator or professional body.

Documentation

225.56 In relation to an identified or suspected act of non-compliance that falls within the scope of this section, the member in public practice shall document:

- The matter.
- The results of discussions with management and, where applicable, those charged with governance and other parties.
- How management and, where applicable, those charged with governance have responded to the matter.
- The course of action the member in public practice considered, the judgements made and the decision that were taken.
- How the member in public practice is satisfied that the member has fulfilled the responsibility set out in paragraph [225.49](#).

Section 230 Second Opinions

230.1 Situations where a member in public practice is asked to provide a second opinion on the application of accounting, auditing, reporting, or other standards or principles to specific circumstances or transactions by or on behalf of a company or an entity that is not an existing client may create threats to compliance with the fundamental principles. For example, there may be a threat to professional competence and due care in circumstances where the second opinion is not based on the same set of facts that were made available to the existing accountant or is based on inadequate evidence. The existence and significance of any threat will depend on the circumstances of the request and all the other available facts and assumptions relevant to the expression of a professional judgment.

230.2 When asked to provide such an opinion, a member in public practice shall evaluate the significance of any threats and apply safeguards when necessary to eliminate them or reduce them to an acceptable level. Examples of such safeguards

include seeking client permission to contact the existing accountant, describing the limitations surrounding any opinion in communications with the client and providing the existing accountant with a copy of the opinion.

- 230.3 If the company or entity seeking the opinion will not permit communication with the existing accountant, a member in public practice shall determine whether, taking all the circumstances into account, it is appropriate to provide the opinion sought.

Section 240 Fees and Other Types of Remuneration

- 240.1 When entering into negotiations regarding professional services, a member in public practice may quote whatever fee is deemed appropriate. The fact that one member in public practice may quote a fee lower than another is not in itself unethical. Nevertheless, there may be threats to compliance with the fundamental principles arising from the level of fees quoted. For example, a self-interest threat to professional competence and due care is created if the fee quoted is so low that it may be difficult to perform the engagement in accordance with the standards issued by the New Zealand Institute of Chartered Accountants, the External Reporting Board, the New Zealand Auditing and Assurance Standards Board, the New Zealand Accounting Standards Board and other statutory requirements or authoritative guidance applicable to the task or engagement for that price.

- 240.2 The existence and significance of any threats created will depend on factors such as the level of fee quoted and the services to which it applies. The significance of any threat shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level. Examples of such safeguards include:
- Making the client aware of the terms of the engagement and, in particular, the basis on which fees are charged and which services are covered by the quoted fee.
 - Assigning appropriate time and qualified staff to the task.

- 240.3 Contingent fees are widely used for certain types of non-assurance engagements.³ They may, however, create threats to compliance with the fundamental principles in certain circumstances. They may create a self-interest threat to objectivity. The existence and significance of such threats will depend on factors including:
- The nature of the engagement.
 - The range of possible fee amounts.
 - The basis for determining the fee.
 - Whether the outcome or result of the transaction is to be reviewed by an independent third party.

- 240.4 The significance of any such threats shall be evaluated and safeguards applied when necessary to eliminate or reduce them to an acceptable level. Examples of such safeguards include:
- An advance written agreement with the client as to the basis of remuneration.
 - Disclosure to intended users of the work performed by the member in public practice and the basis of remuneration.
 - Quality control policies and procedures.

- Review by an independent third party of the work performed by the member in public practice.

240.5 In certain circumstances, a member in public practice may receive a referral fee or commission relating to a client. For example, where the member in public practice does not provide the specific service required, a fee may be received for referring a continuing client to another accountant or other expert. A member in public practice may receive a commission from a third party (for example, a software vendor) in connection with the sale of goods or services to a client. Accepting such a referral fee or commission creates a self-interest threat to objectivity and professional competence and due care.

240.6 A member in public practice may also pay a referral fee to obtain a client, for example, where the client continues as a client of another accountant but requires specialist services not offered by the existing accountant. The payment of such a referral fee also creates a self-interest threat to objectivity, and professional competence and due care.

240.7 The significance of the threat shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level. Examples of such safeguards include:

- Disclosing to the client any arrangements to pay a referral fee to another accountant for the work referred;
- Disclosing to the client any arrangements to receive a referral fee for referring the client to another accountant; or
- Obtaining advance agreement from the client for commission arrangements in connection with the sale by a third party of goods or services to the client.

240.8 A member in public practice may purchase all or part of another firm on the basis that payments will be made to individuals formerly owning the firm or to their heirs or estates. Such payments are not regarded as commissions or referral fees for the purpose of paragraphs 240.5–240.7 above, and NZ240.9 below.

NZ240.9 The receipt or payment of referral fees, commissions or other similar benefits in connection with an assurance engagement creates a threat to independence that no safeguards could reduce to an acceptable level. Accordingly, a member in public practice shall not accept such a fee arrangement in respect of an assurance engagement.

Section 250 Marketing Professional Services

250.1 When a member in public practice solicits new work through advertising or other forms of marketing, there may be a threat to compliance with the fundamental principles. For example, a self-interest threat to compliance with the principle of professional behaviour is created if services, achievements, or products are marketed in a way that is inconsistent with that principle.

250.2 A member in public practice shall not bring the profession into disrepute when marketing professional services. The member in public practice shall be honest and truthful and not:

- (a) Make exaggerated claims for services offered, qualifications possessed, or experience gained; or

- (b) Make disparaging references or unsubstantiated comparisons to the work of another.

If the member in public practice is in doubt about whether a proposed form of advertising or marketing is appropriate, the member in public practice shall consider consulting with the relevant professional body.

Section 260 Gifts and Hospitality

- 260.1 A member in public practice, or an immediate or close family member, may be offered gifts and hospitality from a client. Such an offer may create threats to compliance with the fundamental principles. For example, a self-interest or familiarity threat to objectivity may be created if a gift from a client is accepted; an intimidation threat to objectivity may result from the possibility of such offers being made public.
- 260.2 The existence and significance of any threat will depend on the nature, value, and intent of the offer. Where gifts or hospitality are offered that a reasonable and informed third party, weighing all the specific facts and circumstances, would consider trivial and inconsequential, a member in public practice may conclude that the offer is made in the normal course of business without the specific intent to influence decision making or to obtain information. In such cases, the member in public practice may generally conclude that any threat to compliance with the fundamental principles is at an acceptable level.
- 260.3 A member in public practice shall evaluate the significance of any threats and apply safeguards when necessary to eliminate the threats or reduce them to an acceptable level. When the threats cannot be eliminated or reduced to an acceptable level through the application of safeguards, a member in public practice shall not accept such an offer.

Section 270 Custody of Client Assets

- 270.1 A member in public practice shall not assume custody of client monies or other assets unless permitted to do so by law and, if so, in compliance with any additional legal duties imposed on a member in public practice holding such assets.
- 270.2 The holding of client assets creates threats to compliance with the fundamental principles; for example, there is a self-interest threat to professional behaviour and may be a self-interest threat to objectivity arising from holding client assets. A member in public practice entrusted with money (or other assets) belonging to others shall therefore:
- (a) Keep such assets separately from personal or firm assets;
 - (b) Use such assets only for the purpose for which they are intended;
 - (c) At all times be ready to account for those assets and any income, dividends, or gains generated, to any persons entitled to such accounting; and
 - (d) Comply with all relevant laws and regulations relevant to the holding of, and accounting for, such assets.
- 270.3 As part of client and engagement acceptance procedures for services that may involve the holding of client assets, a member in public practice shall make appropriate enquiries about the source of such assets and consider legal and regulatory obligations. For example, if the assets were derived from illegal activities, such as money laundering, a threat

to compliance with the fundamental principles would be created. In such situations, the member in public practice shall comply with the provisions of section 225.

Section 280 Objectivity—All Services

- 280.1 A member in public practice shall determine when providing any professional service whether there are threats to compliance with the fundamental principle of objectivity resulting from having interests in, or relationships with, a client or its directors, officers or employees. For example, a familiarity threat to objectivity may be created from a family or close personal or business relationship.
- 280.2 A member in public practice who provides an assurance service shall be independent of the assurance client. Independence of mind and in appearance is necessary to enable the member in public practice to express a conclusion, and be seen to express a conclusion, without bias, conflict of interest, or undue influence of others. Sections 290 and 291 (refer to PES 1 issued by the NZAuASB) provide specific guidance on independence requirements for members in public practice when performing assurance engagements.
- NZ280.2.1 Independence is also important for some other professional services, including some insolvency engagements, independent business valuations, appraisal reports under New Zealand Stock Exchange Listing Rules, and expert witness engagements.
- NZ280.2.2 Where specific independence requirements have been established for engagements other than assurance engagements, they are set out in the appropriate Professional Engagement Standard.
- NZ280.2.3 Where there is no relevant Professional Engagement Standard, members must have regard to:
- (a) Any other authoritative independence requirements applicable to that engagement, such as the New Zealand Stock Exchange Market Surveillance Panel's *Policy on the Approval of Independent Reporters*; and
 - (b) Any requirements from legislation.
- 280.3 The existence of threats to objectivity when providing any professional service will depend upon the particular circumstances of the engagement and the nature of the work that the member in public practice is performing.
- 280.4 A member in public practice shall evaluate the significance of any threats and apply safeguards when necessary to eliminate them or reduce them to an acceptable level. Examples of such safeguards include:
- Withdrawing from the engagement team.
 - Supervisory procedures.
 - Terminating the financial or business relationship giving rise to the threat.
 - Discussing the issue with higher levels of management within the firm.

- Discussing the issue with those charged with governance of the client.

If safeguards cannot eliminate or reduce the threat to an acceptable level, the member shall decline or terminate the relevant engagement.

Section 290 Independence–Audit and Review Engagements

Refer to Section 290 of the NZAuASB's Professional and Ethical Standard 1 (Revised) *Code of Ethics for Assurance Practitioners* (PES 1).

Section 291 Independence–Other Assurance Engagements

Refer to Section 291 of the NZAuASB's Professional and Ethical Standard 1 (Revised) *Code of Ethics for Assurance Practitioners* (PES 1).

Interpretation 2005-01

Refer to Interpretation 2005-01 of the NZAuASB's Professional and Ethical Standard 1 (Revised) *Code of Ethics for Assurance Practitioners* (PES 1).

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Part C: Members in business

Section 300 Introduction

- 300.1 This Part of the Code describes how the conceptual framework contained in Part A applies in certain situations to members in business. This Part does not describe all of the circumstances and relationships that could be encountered by a member in business that create or may create threats to compliance with the fundamental principles. Therefore, the member in business is encouraged to be alert for such circumstances and relationships.
- 300.2 Investors, creditors, employers and other sectors of the business community, as well as governments and the public at large, all may rely on the work of members in business. Members in business may be solely or jointly responsible for the preparation and reporting of financial and other information, which both their employing organisations and third parties may rely on. They may also be responsible for providing effective financial management and competent advice on a variety of business-related matters.
- 300.3 A member in business may be a salaried employee, a partner, director (whether executive or non-executive), an owner manager, a volunteer, or another working for one or more employing organisation. The legal form of the relationship with the employing organisation, if any, has no bearing on the ethical responsibilities incumbent on the member in business.

300.4 A member in business has a responsibility to further the legitimate aims of the member's employing organisation. This Code does not seek to hinder a member in business from properly fulfilling that responsibility, but addresses circumstances in which compliance with the fundamental principles may be compromised.

300.5 A member in business may hold a senior position within an organisation. The more senior the position, the greater will be the ability and opportunity to influence events, practices and attitudes. A member in business is expected, therefore, to encourage an ethics-based culture in an employing organisation that emphasises the importance that senior management places on ethical behaviour. Established ethics policies and whistle-blowing procedures that have been communicated to all employees may be useful to achieve the objective of establishing and maintaining an ethics-based culture. Such procedures help to encourage ethical behaviour and increase the likelihood of senior management being alerted to a problem in time to prevent serious damage.

300.6 A member in business shall not knowingly engage in any business, occupation, or activity that:

- Would be incompatible with the member's responsibility to act in the public interest.
- A reasonable and informed third party would be likely to conclude, weighing all the specific facts and circumstances available to the member at the time, impairs or might impair integrity, objectivity or the good reputation of the profession.

Examples include improper earnings management or balance sheet valuations.

300.7 Compliance with the fundamental principles may potentially be threatened by a broad range of circumstances and relationships. Threats fall into one or more of the following categories:

- (a) Self-interest;
- (b) Self-review;
- (c) Advocacy;
- (d) Familiarity; and
- (e) Intimidation.

These threats are discussed further in Part A of this Code.

300.8 Examples of circumstances that may create self-interest threats for a member in business include:

- Holding a financial interest in, or receiving a loan or guarantee from, the employing organisation.
- Participating in incentive compensation arrangements offered by the employing organisation.
- Inappropriate personal use of corporate assets.
- Concern over employment security.
- Commercial pressure from outside the employing organisation.

300.9 An example of a circumstance that creates a self-review threat for a member in business is determining the appropriate accounting treatment for a business combination after performing the feasibility study that supported the acquisition decision.

300.10 When furthering the legitimate goals and objectives of their employing organisations, members in business may promote the organisation's position, provided any statements made are neither false nor misleading. Such actions generally would not create an advocacy threat.

300.11 Examples of circumstances that may create familiarity threats for a member in business include:

- Being responsible for the employing organisation's financial reporting when an immediate or close family member employed by the entity makes decisions that affect the entity's financial reporting.
- Long association with business contacts influencing business decisions.
- Accepting a gift or preferential treatment, unless the value is trivial and inconsequential.

300.12 Examples of circumstances that may create intimidation threats for a member in business include:

- Threat of dismissal or replacement of the member in business or a close or immediate family member over a disagreement about the application of an accounting principle or the way in which financial information is to be reported.
- A dominant personality attempting to influence the decision-making process, for example with regard to the awarding of contracts or the application of an accounting principle.

300.13 Safeguards that may eliminate or reduce threats to an acceptable level fall into two broad categories:

- (a) Safeguards created by the profession, legislation or regulation; and
- (b) Safeguards in the work environment.

Examples of safeguards created by the profession, legislation or regulation are detailed in paragraph 100.14 of Part A of this Code.

300.14 Safeguards in the work environment include:

- The employing organisation's systems of corporate oversight or other oversight structures.
- The employing organisation's ethics and conduct programs.
- Recruitment procedures in the employing organisation emphasising the importance of employing high calibre, competent staff.
- Strong internal controls.
- Appropriate disciplinary processes.
- Leadership that stresses the importance of ethical behaviour and the expectation that employees will act in an ethical manner.
- Policies and procedures to implement and monitor the quality of employee performance.

- Timely communication of the employing organisation's policies and procedures, including any changes to them, to all employees, and appropriate training and education on such policies and procedures.
- Policies and procedures to empower and encourage employees to communicate to senior levels within the employing organisation any ethical issues that concern them without fear of retribution.
- Consultation with another appropriate member.

300.15 If a member in business believes that unethical behaviour has occurred within the employing organisation, the member shall discuss the matter with the appropriate level of management. If the response to the matter is not appropriate, the member shall escalate the matter to higher levels of management to the extent possible. If the response is still not appropriate, the member shall discuss the matter with those charged with governance, or a sub-group thereof, if possible. If, in the member's judgement, the response to the matter is not appropriate, the member may consider consulting with a relevant professional body on an anonymous basis or obtaining legal advice, and may conclude that it is appropriate to resign from the employing organisation.

Section 310 Conflicts of Interest

310.1 A member in business may be faced with a conflict of interest when undertaking a professional activity. A conflict of interest creates a threat to objectivity and may create threats to the other fundamental principles. Such threats may be created when:

- The member undertakes a professional activity related to a particular matter for two or more parties whose interest with respect to that matter are in conflict; or
- The interests of the member with respect to a particular matter and the interests of a party for whom the member undertakes a professional activity related to that matter are in conflict.

A party may include an employing organisation, a vendor, a customer, a lender, a shareholder, or another party.

A member shall not allow a conflict of interest to compromise professional or business judgment.

310.2 Examples of situations in which conflicts of interest may arise include:

- Serving in a management or governance position for two employing organisations and acquiring confidential information from one employing organisation that could be used by the member to the advantage or disadvantage of the other employing organisation;
- Undertaking a professional activity for each of two parties in a partnership employing the member to assist them to dissolve their partnership;
- Preparing financial information for certain members of management of the entity employing the member who are seeking to undertake a management buy-out;
- Being responsible for selecting a vendor for the member's employing organisation when an immediate family member of the member could benefit financially from the transaction; and

- Serving in a governance capacity in an employing organisation that is approving certain investments for the company where one of those specific investments will increase the value of the personal investment portfolio of the member or an immediate family member.

- 310.3 When identifying and evaluating the interests and relationships that might create a conflict of interest and implementing safeguards, when necessary, to eliminate or reduce any threat to compliance with the fundamental principles to an acceptable level, a member in business shall exercise professional judgement and be alert to all interests and relationships that a reasonable and informed third party, weighing all the specific facts and circumstances available to the member at that time, would be likely to conclude might compromise compliance with the fundamental principles.
- 310.4 When addressing a conflict of interest, a member in business is encouraged to seek guidance from within the employing organisation or from others, such as a professional body, legal counsel or another member. When making disclosures or sharing information within the employing organisation and seeking guidance of third parties, the member shall remain alert to the fundamental principle of confidentiality.
- 310.5 If the threat created by a conflict of interest is not at an acceptable level, the member in business shall apply safeguards to eliminate the threat or reduce it to an acceptable level. If safeguards cannot reduce the threat to an acceptable level, the member shall decline to undertake or discontinue the professional activity that would result in the conflict of interest; or shall terminate the relevant relationships or dispose of relevant interests to eliminate the threat or reduce it to an acceptable level.
- 310.6 In identifying whether a conflict of interest exists or may be created, the member in business shall take all reasonable steps to determine:
- The nature of the relevant interests and relationships between the parties involved; and
 - The nature of the activity and its implications to relevant parties.

The nature of the activities and the relevant interests and relationships may change over time. The member shall remain alert to such changes for the purposes of identifying circumstances that might create a conflict of interest.

- 310.7 If a conflict of interest is identified, the member in business shall evaluate:
- The significance of relevant interests or relationships; and
 - The significance of the threats created by undertaking the professional activity or activities.

In general, the more direct the connection between the professional activity and the matter on which the parties' interests are in conflict, the more significant the threat to objectivity and compliance with the other fundamental principles will be.

- 310.8 The member in business shall apply safeguards, when necessary, to eliminate the threats to compliance with the fundamental principles created by the conflict of interest or reduce it to an acceptable level. Depending on the circumstances giving rise to the conflict of interest, application of one or more of the following safeguards may be appropriate:
- Restructuring or segregating certain responsibilities and duties;
 - Obtaining appropriate oversight, for example, acting under the supervision of an executive or non-executive director;
 - Withdrawing from the decision making process related to the matter giving rise to the conflict of interest; or
 - Consulting with third parties, such as a professional body, legal counsel or another professional accountant.
- 310.9 In addition, it is generally necessary to disclose the nature of the conflict to the relevant parties, including to the appropriate levels within the employing organisation and, when safeguards are required to reduce the threat to an acceptable level, to obtain their consent to the member in business undertaking the professional activity. In certain circumstances, consent may be implied by a party's conduct where the member has sufficient evidence to conclude that parties know the circumstances at the outset and have accepted the conflict of interest if they do not raise an objection to the existence of the conflict.
- 310.10 When disclosure is verbal, or consent is verbal or implied, the member in business is encouraged to document the nature of the circumstances giving rise to the conflict of interest, the safeguards applied to reduce the threats to an acceptable level and the consent obtained.
- 310.11 A member in business may encounter other threats to compliance with the fundamental principles. This may occur, for example, when preparing or reporting financial information as a result of undue pressure from others within the employing organisation or financial, business, or personal relationships that close or immediate family members of the member have with the employing organisation. Guidance on managing such threats is covered by Sections 320 and 340 of the Code.

Section 320 Preparation and Reporting of Information

- 320.1 Members in business are often involved in the preparation and reporting of information that may either be made public or used by others inside or outside the employing organisation. Such information may include financial or management information, for example, forecasts and budgets, financial statements, management's discussion and analysis, and the management letter of representation provided to the auditors during the audit of the entity's financial statements. A member in business shall prepare or present such information fairly, honestly and in accordance with relevant professional standards so that the information will be understood in its context.
- 320.2 A member in business who has responsibility for the preparation or approval of the general purpose financial statements of an employing organisation shall be satisfied that those financial statements are presented in accordance with the applicable financial reporting standards.

- NZ320.2.1 Where a member in business referred to in paragraph 320.2 is not satisfied that the financial statements of an employing organisation are presented in accordance with the applicable Financial Reporting Standards, the member in business shall:
- (a) Notify those charged with governance and document the communication; and
 - (b) Qualify any declarations given by the member in business in compliance with legislative and regulatory requirements or the organisation's reporting requirements.
- 320.3 A member in business shall take reasonable steps to maintain information for which the member in business is responsible in a manner that:
- (a) Describes clearly the true nature of business transactions, assets, or liabilities;
 - (b) Classifies and records information in a timely and proper manner; and
 - (c) Represents the facts accurately and completely in all material respects.
- 320.4 Threats to compliance with the fundamental principles, for example, self-interest or intimidation threats to integrity, objectivity or professional competence and due care, are created where a member in business is pressured (either externally or by the possibility of personal gain) to prepare or report information in a misleading way, or to become associated with misleading information through the actions of others.
- 320.5 The significance of such threats will depend on factors such as the source of the pressure and the culture within the employing organisation. The member in business shall be alert to the principle of integrity, which imposes an obligation on all members to be straightforward and honest in all professional and business relationships. Where the threats arise from compensation and incentive arrangements the guidance in section 340 is relevant.
- 320.6 The significance of any threat shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level. Such safeguards include consultation with superiors within the employing organisation, those charged with governance of the organisation, or a subgroup thereof, or with a relevant professional body.
- 320.7 Where it is not possible to reduce the threat to an acceptable level, a member in business shall refuse to be or remain associated with information the member determines is misleading. A member in business may have been unknowingly associated with misleading information. Upon becoming aware of this, the member in business shall take steps to be disassociated from that information. In determining whether there is a requirement to report the circumstances to a proper authority, the member in business may consider obtaining legal advice. In addition, the member may consider whether to resign.

Section 330 Acting with Sufficient Expertise

- 330.1 The fundamental principle of professional competence and due care requires that a member in business only undertake significant tasks for which the member in business has, or can obtain, sufficient specific training or experience. A member

in business shall not intentionally mislead an employer as to the level of expertise or experience possessed, nor shall a member in business fail to seek appropriate expert advice and assistance when required.

330.2 Circumstances that create a threat to a member in business performing duties with the appropriate degree of professional competence and due care includes having:

- Insufficient time for properly performing or completing the relevant duties.
- Incomplete, restricted or otherwise inadequate information for performing the duties properly.
- Insufficient experience, training and/or education.
- Inadequate resources for the proper performance of the duties.

330.3 The significance of the threat will depend on factors such as the extent to which the member in business is working with others, relative seniority in the business, and the level of supervision and review applied to the work. The significance of the threat shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level. Examples of such safeguards include:

- Obtaining additional advice or training;
- Ensuring that there is adequate time available for performing the relevant duties;
- Obtaining assistance from someone with the necessary expertise;
- Consulting, where appropriate, with:
 - superiors within the employing organisation;
 - independent experts; or
 - a relevant professional body.

330.4 When threats cannot be eliminated or reduced to an acceptable level, members in business shall determine whether to refuse to perform the duties in question. If the member in business determines that refusal is appropriate, the reasons for doing so shall be clearly communicated.

Section 340 Financial Interests, Compensation and Incentives Linked to Financial Reporting and Decision Making

340.1 Members in business may have financial interests, including those arising from compensation or incentive arrangements, or may have immediate or close family members with such interests, that, in certain circumstances, may create threats to compliance with the fundamental principles. For example, self-interest threats to objectivity or confidentiality may be created through the existence of the motive and opportunity to manipulate price sensitive information in order to gain financially. Examples of circumstances that may create self-interest threats include situations where the member in business or an immediate or close family member:

- Holds a direct or indirect financial interest in the employing organisation and the value of that financial interest could be directly affected by decisions made by the member in business;
- Is eligible for a profit related bonus and the value of that bonus could be directly affected by decisions made by the member in business;
- Holds, directly or indirectly, deferred bonus share entitlements or share options in the employing organisation, the value of which could be directly affected by decisions made by the member in business; and

- Otherwise participates in compensation arrangements which provide incentives to achieve performance targets or to support efforts to maximise the value of the employing organisations shares, for example through participation in long-term incentive plans which are linked to certain performance conditions being met.

340.2 Self-interest threats arising from compensation or incentive arrangements may be further compounded by pressure from superiors or peers in the employing organisation who participate in the same arrangements. Such arrangements often entitle participants to be awarded shares in the employing organisation at no cost to the employee, provided certain performance criteria are met. In some cases these may be awarded at multiples of base salary.

340.3 A member in business shall not manipulate information for personal gain or for the financial gain of others. The more senior the position that the member in business holds, the greater the ability and opportunity to influence financial reporting and decision-making, and the greater the pressure there might be from superiors and peers to manipulate information. In such situations, the member in business shall be particularly alert to the principle of integrity, which imposes an obligation on all members to be straightforward and honest in all professional and business relationships.

340.4 The significance of any threat arising from compensation or incentive arrangements shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level. In evaluating the significance of any threat, and, when necessary, determining the appropriate safeguards to be applied, a member in business shall evaluate the nature of the interest arising from compensation or incentive arrangements. This includes evaluating the significance of the interest. What constitutes an interest will depend on personal circumstances. Examples of such safeguards include:

- Policies and procedures for a committee independent of management to determine the level or form of remuneration of senior management.
- Disclosure of all relevant interests and of any plans to exercise entitlements or trade in relevant shares to those charged with the governance of the employing organisation, or a subgroup thereof, in accordance with any internal policies.
- Consultation, where appropriate, with superiors within the employing organisation.
- Consultation, where appropriate, with those charged with the governance of the employing organisation, or a subgroup thereof, or relevant professional bodies.
- Internal and external audit procedures.
- Up-to-date education on ethical issues and on the legal restrictions and other regulations around potential insider trading.

Section 350 Inducements

Receiving Offers

350.1 A member in business or an immediate or close family member may be offered an inducement. Inducements may take various forms, including gifts, hospitality, preferential treatment, and inappropriate appeals to friendship or loyalty.

- 350.2 Offers of inducements may create threats to compliance with the fundamental principles. When a member in business or an immediate or close family member is offered an inducement, the situation shall be evaluated. Self-interest threats to objectivity or confidentiality are created when an inducement is made in an attempt to unduly influence actions or decisions, encourage illegal or dishonest behaviour, or obtain confidential information. Intimidation threats to objectivity or confidentiality are created if such an inducement is accepted and it is followed by threats to make that offer public and damage the reputation of either the member in business or an immediate or close family member.
- 350.3 The existence and significance of any threats will depend on the nature, value and intent behind the offer. If a reasonable and informed third party, weighing all the specific facts and circumstances, would consider the inducement insignificant and not intended to encourage unethical behaviour, then a member in business may conclude that the offer is made in the normal course of business and may generally conclude that there is no significant threat to compliance with the fundamental principles.
- 350.4 The significance of any threats shall be evaluated and safeguards applied when necessary to eliminate them or reduce them to an acceptable level. When the threats cannot be eliminated or reduced to an acceptable level through the application of safeguards, a member in business shall not accept the inducement. As the real or apparent threats to compliance with the fundamental principles do not merely arise from acceptance of an inducement but, sometimes, merely from the fact of the offer having been made, additional safeguards shall be adopted. A member in business shall evaluate any threats created by such offers and determine whether to take one or more of the following actions:
- (a) Informing higher levels of management or those charged with governance of the employing organisation, or a subgroup thereof, immediately when such offers have been made;
 - (b) Informing third parties of the offer – for example, a professional body or the employer of the individual who made the offer; a member in business may however, consider seeking legal advice before taking such a step;
 - (c) Advising immediate or close family members of relevant threats and safeguards where they are potentially in positions that might result in offers of inducements, for example, as a result of their employment situation; and
 - (d) Informing higher levels of management or those charged with governance of the employing organisation, or a subgroup thereof, where immediate or close family members are employed by competitors or potential suppliers of that organisation.

Making Offers

- 350.5 A member in business may be in a situation where the member in business is expected, or is under other pressure, to offer inducements to influence the judgement or decision-making process of an individual or organisation, or obtain confidential information.
- 350.6 Such pressure may come from within the employing organisation, for example, from a colleague or superior. It may also come from an external individual or organisation suggesting actions or business decisions that would be advantageous to the employing organisation, possibly influencing the member in business improperly.

- 350.7 A member in business shall not offer an inducement to improperly influence professional judgment of a third party.
- 350.8 Where the pressure to offer an unethical inducement comes from within the employing organisation, the member shall follow the principles and guidance regarding ethical conflict resolution set out in Part A of this Code.

Section 360 Responding to Non-Compliance with Laws and Regulations

Purpose

- 360.1 A member in business may encounter or be made aware of non-compliance or suspected non-compliance with laws and regulations in the course of carrying out professional activities. The purpose of this section is to set out the member in business' responsibilities when encountering such non-compliance or suspected non-compliance, and guide the member in business in assessing the implications of the matter and the possible courses of action when responding to it. This section applies regardless of the nature of the employing organisation, including whether or not it is a public interest entity.
- 360.2 Non-compliance with laws and regulations ("non-compliance") comprises acts of omission or commission, intentional or unintentional, committed by the member in business' employing organisation or by those charged with governance, by management, or by other individuals working for or under the direction of the employing organisation which are contrary to the prevailing laws or regulations.
- 360.3 In some jurisdictions, there are legal or regulatory provisions governing how members in business should address non-compliance or suspected non-compliance which may differ from or go beyond this section. When encountering such non-compliance or suspected non-compliance, the member in business has a responsibility to obtain an understanding of those provisions and comply with them, including any requirement to report the matter to an appropriate authority and any prohibition on alerting the relevant party prior to making any disclosure, for example, pursuant to anti-money laundering legislation.
- 360.4 A distinguishing mark of the accountancy profession is its acceptance of the responsibility to act in the public interest. When responding to non-compliance or suspected non-compliance, the objectives of the member in business are:
- (a) To comply with the fundamental principles of integrity and professional behaviour;
 - (b) By alerting management or, where appropriate, those charged with governance or the employing organisation, to seek to:
 - (i) Enable them to rectify, remediate or mitigate the consequences of the identified or suspected non-compliance; or
 - (ii) Deter the commission of the non-compliance where it has not yet occurred; and
 - (c) To take such further action as appropriate in the public interest.

Scope

- 360.5 This section sets out the approach to be taken by a member in business who encounters or is made aware of non-compliance or suspected non-compliance with:
- (a) Laws and regulations generally recognised to have a direct effect on the determination of material amounts and disclosures in the employing organisation's financial statements; and
 - (b) Other laws and regulations that do not have a direct effect on the determination of the amounts and disclosures in the employing organisation's financial statements, but compliance with which may be fundamental to the operating aspects of the employing organisation's business, to its ability to continue its business, or to avoid material penalties.

360.6 Examples of laws and regulations which this section addresses include those that deal with:

- Fraud, corruption and bribery.
- Money laundering, terrorist financing and proceeds of crime.
- Securities markets and trading.
- Banking and other financial products and services.
- Data protection.
- Tax and pension liabilities and payments.
- Environmental protection.
- Public health and safety.

360.7 Non-compliance may result in fines, litigation or other consequences for the employing organisation that may have a material effect on its financial statements. Importantly, such non-compliance may have wider public interest implications in terms of potentially substantial harm to investors, creditors, employees or the general public. For the purposes of this section, an act that causes substantial harm is one that results in serious adverse consequences to any of these parties in financial or non-financial terms. Examples include the perpetration of a fraud resulting in significant financial losses to investors, and breaches of environments laws and regulations endangering the health or safety of employees or the public.

360.8 A member in business who encounters or is made aware of matters that are clearly inconsequential, judged by their nature and their impact, financial or otherwise, on the employing organisation, its stakeholders and the general public, is not required to comply with this section with respect to such matters.

360.9 This section does not address:

- (a) Personal misconduct unrelated to the business activities of the employing organisation; and
- (b) Non-compliance other than by the employing organisation or those charged with governance, management, or other individuals working for or under the direction of the employing organisation.

The member in business may nevertheless find the guidance in this section helpful in considering how to respond in these situations.

Responsibilities of the Employing Organisation's Management and Those Charged with Governance

- 360.10 It is the responsibility of the employing organisation's management, with the oversight of those charged with governance, to ensure that the employing organisation's business activities are conducted in accordance with laws and regulations. It is also the responsibility of management and those charged with governance to identify and address any non-compliance by the employing organisation or by an individual charged with governance of the entity, by a member of management, or by other individuals working for or under the direction of the employing organisation.

Responsibilities of Members in Business

- 360.11 Many employing organisations have established protocols and procedures (for example, an ethics policy or internal whistle-blowing mechanism) regarding how non-compliance or suspected non-compliance by the employing organisation should be raised internally. Such protocols and procedures may allow for matters to be reported anonymously through designated channels. If these protocols and procedures exist within the member in business' employing organisation, the member in business shall consider them in determining how to respond to such non-compliance.
- 360.12 Where a member in business becomes aware of a matter to which this section applies, the steps that the member in business takes to comply with this section shall be taken on a timely basis, having regard to the member in business' understanding of the nature of the matter and the potential harm to the interests of the employing organisation, investors, creditors, employees or the general public.

Responsibilities of Senior Members in Business

- 360.13 Senior members in business are directors, officers or senior employees able to exert significant influence over, and make decisions regarding, the acquisition, deployment and control of the employing organisation's human, financial, technological, physical and intangible resources. Because of their roles, positions and spheres of influence within the employing organisation, there is a greater expectation for them to take whatever action is appropriate in the public interest to respond to non-compliance or suspected non-compliance than other members in business within the employing organisation.

Obtaining an Understanding of the Matter

- 360.14 If, in the course of carrying out professional activities, a senior member in business becomes aware of information concerning an instance of non-compliance or suspected non-compliance, the senior member in business shall obtain an understanding of the matter, including:
- (a) The nature of the act and the circumstances in which it has occurred or may occur;
 - (b) The application of the relevant laws and regulations to the circumstances; and
 - (c) The potential consequences to the employing organisation, investors, creditor, employees or the wider public.
- 360.15 A senior member in business is expected to apply knowledge, professional judgement and expertise, but is not expected to have a level of understanding of laws and regulations beyond that which is required for the senior member in business' role within the employing organisation. Whether an act constitutes non-compliance is ultimately a matter to be determined

by the court or other appropriate adjudicative body. Depending on the nature and significance of the matter, the senior member in business may cause, or take appropriate steps to cause, the matter to be investigated internally. The senior member in business may also consult on a confidential basis with others within the employing organisation or a professional body, or with legal counsel.

Addressing the Matter

360.16 If the senior member in business identifies or suspects that non-compliance has occurred or may occur, the senior member in business shall, subject to paragraph 360.11, discuss the matter with the senior member in business' immediate superior, if any, to enable a determination to be made as to how the matter should be addressed. If the senior member in business' immediate superior appears to be involved in the matter, the senior member in business shall discuss the matter with the next higher level of authority within the employing organisation.

360.17 The senior member in business shall also take appropriate steps to:

- (a) Have the matter communicated to those charged with governance to obtain their concurrence regarding appropriate actions to take to respond to the matter and to enable them to fulfil their responsibilities;
- (b) Comply with applicable laws and regulations, including legal or regulatory provisions governing the reporting of non-compliance or suspected non-compliance to an appropriate authority;
- (c) Have the consequences of the non-compliance or suspected non-compliance rectified, remediated or mitigated;
- (d) Reduce the risk or re-occurrence; and
- (e) Seek to deter the commission of the non-compliance if it has not yet occurred.

360.18 In addition to responding to the matter in accordance with the provision of this section, the senior member in business shall determine whether disclosure of the matter to the employing organisation's external auditor, if any, is needed pursuant to the senior member in business' duty or legal obligation to provide all information necessary to enable the auditor to perform the audit.

Determining Whether Further Action Is Needed

360.19 The senior member in business shall assess the appropriateness of the response of the senior member in business' superiors, if any, and those charged with governance.

360.20 Relevant factors to consider in assessing the appropriateness of the response of the senior member in business' superiors, if any, and those charged with governance include whether:

- The response is timely.
- They have taken or authorised appropriate action to seek to rectify, remediate or mitigate the consequences of the non-compliance, or to avert the non-compliance if it has not yet occurred.

- The matter has been disclosed to an appropriate authority where appropriate and, if so, whether the disclosure appears adequate.

360.21 In light of the response of the senior member in business' superiors, if any, and those charged with governance, the senior member in business shall determine if further action is needed in the public interest.

360.22 The determination of whether further action is needed, and the nature and extent of it, will depend on various factors, including:

- The legal and regulatory framework.
- The urgency of the matter.
- The pervasiveness of the matter throughout the employing organisation.
- Whether the senior member in business continues to have confidence in the integrity of the senior member in business' superiors and those charged with governance.
- Whether the non-compliance or suspected non-compliance is likely to recur.
- Whether there is credible evidence of actual or potential substantial harm to the interests of the employing organisation, investors, creditors, employees or the general public.

360.23 Examples of circumstances that may cause the senior member in business no longer to have confidence in the integrity of the senior member in business' superiors and those charged with governance include situations where:

- The senior member in business suspects or has evidence of their involvement or intended involvement in any non-compliance.
- Contrary to legal or regulatory requirements, they have not reported the matter, or authorised the matter to be reported, to an appropriate authority within a reasonable period.

360.24 In determining the need for, and nature and extent of any further action needed, the senior member in business shall exercise professional judgement and take into account whether a reasonable and informed third party, weighing all the specific facts and circumstances available to the senior member in business at the time, would be likely to conclude that the senior member in business has acted appropriately in the public interest.

360.25 Further action by the senior member in business may include:

- Informing the management of the parent entity of the matter if the employing organisation is a member of a group.
- Disclosing the matter to an appropriate authority even when there is no legal or regulatory requirement to do so.

360.26 Where the senior member in business determines that resigning from the employing organisation would be appropriate, doing so would not be a substitute for taking other actions that may be needed to achieve the senior member in business'

objectives under this section. In some jurisdictions, however, there may be limitations as to the further actions available to the senior member in business and resignation may be the only course of action.

360.27 As consideration of the matter may involve complex analysis and judgements, the senior member in business may consider consulting internally, obtaining legal advice to understand the senior member in business' options and the professional or legal implications of taking any particular course of action, or consulting on a confidential basis with a regulator or professional body.

Determining Whether to Disclose the Matter to an Appropriate Authority

360.28 Disclosure of the matter to an appropriate authority would be precluded if doing so would be contrary to law or regulation. Otherwise, the purpose of making disclosure is to enable an appropriate authority to cause the matter to be investigated and action to be taken in the public interest.

360.29 The determination of whether to make such a disclosure depends in particular on the nature and extent of the actual or potential harm that is or may be caused by the matter to investors, creditors, employees or the general public. For example, the senior member in business may determine that disclosure of the matter to an appropriate authority is an appropriate course of action if:

- The employing organisation is engaged in bribery (for example, of local or foreign governance officials for the purposes of securing large contracts).
- The employing organisation is a regulated entity and the matter is of such significance as to threaten its license to operate.
- The employing organisation is listed on a securities exchange and the matter could result in adverse consequences to the fair and orderly market in the employing organisation's securities or pose a systemic risk to the financial markets.
- Products that are harmful to public health or safety would likely be sold by the employing organisation.
- The employing organisation is promoting a scheme to its clients to assist them in evading taxes.

The determination of whether to make such a disclosure will also depend on external factors such as:

- Whether there is an appropriate authority that is able to receive the information, and cause the matter to be investigated and action to be taken. The appropriate authority will depend upon the nature of the matter, for example, a securities regulator in the case of fraudulent financial reporting or an environmental protection agency in the case of a breach of environmental laws and regulations.
- Whether there exists robust and credible protection from civil, criminal or professional liability or retaliation afforded by legislation or regulation, such as under whistle-blowing legislation or regulation.
- Whether there are actual or potential threats to the physical safety of the senior member in business or other individuals.

360.30 If the senior member in business determines that disclosure of the matter to an appropriate authority is an appropriate course of action in the circumstances, this will not be considered a breach of the duty of confidentiality under section 140

of this Code. When making such disclosure, the senior member in business shall act in good faith and exercise caution when making statements and assertions.

360.31 In exceptional circumstances, the senior member in business may become aware of actual or intended conduct that the senior member in business has reason to believe would constitute an imminent breach of a law or regulation that would cause harm to investors, creditors, employees or the general public. Having considered whether it would be appropriate to discuss the matter with management or those charged with governance of the entity, the senior member in business shall exercise professional judgement and may immediately disclose the matter to an appropriate authority in order to prevent or mitigate the consequences of such imminent breach of law or regulation. Such disclosure will not be considered a breach of the duty of confidentiality under section 140 of this Code.

Documentation

360.32 In relation to an identified or suspected act of non-compliance that falls within the scope of this section, the senior member in business shall have the following matters documented:

- The matter.
- The results of discussions with the senior member in business' superiors, if any, and those charged with governance and other parties.
- How the senior member in business' superiors, if any, and those charged with governance have responded to the matter.
- The courses of action the senior member in business considered, the judgements made and the decisions that were taken.
- How the senior member in business is satisfied that the senior member in business has fulfilled the responsibility set out in paragraph [360.21](#).

Responsibilities of Members Other than Senior Members in Business

360.33 If, in the course of carrying out professional activities, a member in business becomes aware of information concerning an instance of non-compliance or suspected non-compliance, the member in business shall seek to obtain an understanding of the matter, including the nature of the act and the circumstances in which it has occurred or may occur.

360.34 The member in business is expected to apply knowledge, professional judgement and expertise, but is not expected to have a level of understanding of laws and regulations beyond that which is required for the member in business' role within the employing organisation. Whether an act constitutes non-compliance is ultimately a matter to be determined by a court or other appropriate adjudicative body. Depending on the nature and significance of the matter, the member in business may consult on a confidential basis with others within the employing organisation or a professional body, or with legal counsel.

360.35 If the member in business identifies or suspects that non-compliance has occurred or may occur, the member in business shall, subject to paragraph 360.11, inform an immediate superior to enable the superior to take appropriate action. If the

member in business' immediate superior appears to be involved in the matter, the member in business shall inform the next higher level of authority within the employing organisation.

360.36 In exceptional circumstances, the member in business may decide that disclosure of the matter to an appropriate authority is an appropriate course of action. If the member in business does so pursuant to paragraph 360.29, this will not be considered a breach of the duty of confidentiality under section 140 of this Code. When making such disclosure, the member in business shall act in good faith and exercise caution when making statements and assertions.

Documentation

360.37 In relation to an identified or suspected act of non-compliance that falls within the scope of this section, the member in business shall have the following matters documented:

- The matter.
- The results of discussions with the member in business' superior, management and, where applicable, those charged with governance and other parties.
- How the member in business' superior has responded to the matter.
- The courses of action the member in business considered, the judgements made and the decisions that were taken.

Definitions

In this Code the following expressions have the following meanings assigned to them:

Acceptable level A level at which a reasonable and informed third party would be likely to conclude, weighing all the specific facts and circumstances available to the member at that time, that compliance with the fundamental principles is not compromised.

Advertising The communication to the public of information as to the services or skills provided by members with a view to procuring business.

[NZ] Assurance client An entity in respect of which a firm conducts an assurance engagement.

Assurance engagement An engagement in which a member expresses a conclusion designed to enhance the degree of confidence of the intended users other than the responsible party about the outcome of the evaluation or measurement of a subject matter against criteria.

(For guidance on assurance engagements see Explanatory Guide Au1 *Overview of Auditing and Assurance Standards* which describes the elements and objectives of an assurance engagement and identifies engagements to which International Standards on Auditing (New Zealand) (ISAs (NZ)), International Standard on Review Engagements (New Zealand) (ISRE (NZ)), New Zealand Standard on Review Engagements (NZ SRE) and International Standards on Assurance Engagements (New Zealand) (ISAEs (NZ)) apply.)

[NZ] Assurance practitioner A person or an organisation, whether in public practice, industry, commerce or the public sector, appointed or engaged to undertake assurance engagements.

[NZ] Assurance services Comprise of any assurance engagements performed by an assurance practitioner.

[NZ] Assurance team

- (a) All members of the engagement team for the assurance engagement;
- (b) All others within a firm who can directly influence the outcome of the assurance engagement, including:
 - (i) those who recommend the compensation of, or who provide direct supervisory, management or other oversight of the assurance engagement partner in connection with the performance of the assurance engagement, including those at all successively senior levels above the engagement partner through to the individual who is the firm's Senior or Managing Partner (Chief Executive or equivalent);
 - (ii) those who provide consultation regarding technical or industry specific issues, transactions or events for the assurance engagement; and
 - (iii) those who provide quality control for the assurance engagement, including those who perform the engagement quality control review for the assurance engagement.

Audit client An entity in respect of which a firm conducts an audit engagement. When the client is a FMC reporting entity considered to have a higher level of public accountability, audit client will always include its related entities. When the audit client is not a FMC reporting entity considered to have a higher level of public accountability, audit client includes those related entities over which the client has direct or indirect control.

Audit engagement A reasonable assurance engagement in which a member expresses an opinion whether financial statements are prepared, in all material respects (or give a true and fair view, or are presented fairly, in all material respects), in accordance with an applicable financial reporting framework, such as an engagement conducted in accordance with International Standards on Auditing (New Zealand). This includes a Statutory Audit, which is an audit required by legislation or other regulation.

Audit team

- (a) All members of the engagement team for the audit engagement;
- (b) All others within a firm who can directly influence the outcome of the audit engagement, including:
 - (i) Those who recommend the compensation of, or who provide direct supervisory, management or other oversight of the engagement partner in connection with the performance of the audit engagement including those at all successively senior levels above the engagement partner through to the individual who is the firm's Senior or Managing Partner (Chief Executive or equivalent);
 - (ii) Those who provide consultation regarding technical or industry- specific issues, transactions or events for the engagement; and
 - (iii) Those who provide quality control for the engagement, including those who perform the engagement quality control review for the engagement; and
- (c) All those within a network firm who can directly influence the outcome of the audit engagement.

Close family A parent, non-dependent child or sibling.

Contingent fee A fee calculated on a predetermined basis relating to the outcome of a transaction or the result of the services performed by the firm. A fee that is established by a court or other public authority is not a contingent fee.

Direct financial interest A financial interest:

- (a) Owned directly by and under the control of an individual or entity (including those managed on a discretionary basis by others); or
- (b) Beneficially owned through a collective investment vehicle, estate, trust or other intermediary over which the individual or entity has control, or the ability to influence investment decisions.

Director or officer Those charged with the governance of an entity, or acting in an equivalent capacity, regardless of their title.

Engagement partner⁴ The partner or other person in the firm who is responsible for the engagement and its performance, and for the report that is issued on behalf of the firm, and who, where required, has the appropriate authority from a professional, legal or regulatory body.

Engagement quality control review A process designed to provide an objective evaluation, on or before the date the report is issued, of the significant judgements the engagement team made and the conclusions it reached in formulating the report.

Engagement team All partners and staff performing the engagement, and any individuals engaged by the firm or a network firm who perform procedures on the engagement. This excludes external experts engaged by the firm or by a network firm.

Existing accountant An accountant currently holding an audit appointment or carrying out accounting, taxation, consulting or similar non-assurance services for a client.

External expert An individual (who is not a partner or a member of the professional staff, including temporary staff, of the firm or a network firm) or organisation possessing skills, knowledge and experience in a field other than accounting or auditing, whose work in that field is used to assist the member in obtaining sufficient appropriate evidence.

Financial interest An interest in an equity or other security, debenture, loan or other debt instrument of an entity, including rights and obligations to acquire such an interest and derivatives directly related to such interest.

Financial statements A structured representation of historical financial information, including related notes, intended to communicate an entity's economic resources or obligations at a point in time or the changes therein for a period of time in accordance with a financial reporting framework. The related notes ordinarily comprise a summary of significant accounting policies and other explanatory information. The term can relate to a complete set of financial statements, but it can also refer to a single financial statement, for example, a statement of financial position, or a statement of comprehensive income, and related explanatory notes.

Financial statements on which the firm will express an opinion In the case of a single entity, the financial statements of that entity. In the case of consolidated financial statements, also referred to as group financial statements, the consolidated financial statements.

Firm

- (a) A sole practitioner, partnership or corporation undertaking professional services;
- (b) An entity that controls such parties, through ownership, management or other means; and
- (c) An entity controlled by such parties, through ownership, management or other means.

[NZ] FMC reporting entity considered to have a higher level of public accountability A FMC reporting entity, or class of FMC reporting entity that is considered to have a higher level of public accountability than other FMC reporting entities:

- under section 461K of the Financial Markets Conduct Act 2013; or
- by notice issued by the Financial Markets Authority (FMA) under section 461L(1)(1) of the Financial Markets Conduct Act 2013.

Historical financial information Information expressed in financial terms in relation to a particular entity, derived primarily from that entity's accounting system, about economic events occurring in past time periods or about economic conditions or circumstances at points in time in the past.

Immediate family A spouse (or equivalent) or dependent.

Independence Independence is:

- (a) Independence of mind – the state of mind that permits the expression of a conclusion without being affected by influences that compromise professional judgement, thereby allowing an individual to act with integrity, and exercise objectivity and professional scepticism; and
- (b) Independence in appearance – the avoidance of facts and circumstances that are so significant that a reasonable and informed third party would be likely to conclude, weighing all the specific facts and circumstances, that a firm's, or a member of the engagement team's, integrity, objectivity or professional scepticism has been compromised.

Indirect financial interest A financial interest beneficially owned through a collective investment vehicle, estate, trust or other intermediary over which the individual or entity has no control or ability to influence investment decisions.

Key audit partner The engagement partner, the individual responsible for the engagement quality control review, and other audit partners, if any, on the engagement team who make key decisions or judgements on significant matters with respect to the audit of the financial statements on which the firm will express an opinion. Depending upon the circumstances and the role of the individuals on the audit, "other audit partners" may include, for example, audit partners responsible for significant subsidiaries or divisions.

[NZ] Key assurance partner The engagement partner, the individual responsible for the engagement quality control review, and other assurance partners, if any, on the engagement team who make key decisions or judgements on significant matters with respect to the assurance engagement.

Listed entity [Deleted]

[NZ] Member An individual who is a member of the New Zealand Institute of Chartered Accountants and recorded on the Register of Members under Rule 4.1 of the New Zealand Institute of Chartered Accountants Rules.

[NZ] Member in business A member employed or engaged in an executive or non-executive capacity in such areas as commerce, industry, service, the public sector, education, the not-for-profit sector, regulatory bodies or professional bodies, or a member contracted by such entities.

[NZ] Member in public practice A member, irrespective of functional classification (for example, audit, tax or consulting) employed in a firm that provides professional services.

Network A larger structure:

- (a) That is aimed at co-operation; and
- (b) That is clearly aimed at profit or cost sharing or shares common ownership, control or management, common quality control policies and procedures, common business strategy, the use of a common brand- name, or a significant part of professional resources.

Network firm A firm or entity that belongs to a network.

[NZ] Offer document A document, such as a product disclosure statement or a disclosure document, required by legislation to be prepared by an entity when financial products are offered to the public.

Office A distinct sub-group, whether organised on geographical or practice lines.

Professional accountant [Deleted]

Professional accountant in public practice [Deleted]

Professional accountant in business [Deleted]

[NZ] Professional activity An activity requiring accountancy or related skills undertaken by a member, including accounting, auditing, taxation, management consulting, and financial management.

Professional services Professional activities performed for clients.

[NZ] Public benefit entity A reporting entity whose primary objective is to provide goods or services for community or social benefit and where any equity has been provided with a view to supporting that primary objective rather than for a financial return to equity holders.

[NZ] Public interest The collective well-being of the community and institutions the profession serves.

[NZ] Public interest entity Any entity that is required or opts to prepare financial statements to comply with Tier 1 For-profit Accounting Requirements or Tier 1 PBE Accounting Requirements in accordance with XRB A1⁵.

Related entity An entity that has any of the following relationships with the client:

- (a) An entity that has direct or indirect control over the client if the client is material to such entity;
- (b) An entity with a direct financial interest in the client if that entity has significant influence over the client and the interest in the client is material to such entity;
- (c) An entity over which the client has direct or indirect control;
- (d) An entity in which the client, or an entity related to the client under (c) above, has a direct financial interest that gives it significant influence over such entity and the interest is material to the client and its related entity in (c); and
- (e) An entity which is under common control with the client (a "sister entity") if the sister entity and the client are both material to the entity that controls both the client and sister entity.

Review client An entity in respect of which a firm conducts a review engagement.

Review engagement An assurance engagement⁶ in which an assurance practitioner expresses a conclusion on whether, on the basis of the procedures which do not provide all the evidence that would be required in an audit, anything has come to the assurance practitioner's attention that causes the assurance practitioner to believe that the financial statements are not prepared, in all material respects, in accordance with an applicable financial reporting framework.

Review team

- (a) Others within a firm who can directly influence All members of the engagement team for the review engagement; and
- (b) All the outcome of the review engagement, including:
 - (i) Those who recommend the compensation of, or who provide direct supervisory, management or other oversight of the engagement partner in connection with the performance of the review engagement including

- those at all successively senior levels above the engagement partner through to the individual who is the firm's Senior or Managing Partner (Chief Executive or equivalent);
- (ii) Those who provide consultation regarding technical or industry specific issues, transactions or events for the engagement; and
 - (iii) Those who provide quality control for the engagement, including those who perform the engagement quality control review for the engagement; and
- (c) All those within a network firm who can directly influence the outcome of the review engagement.

Special purpose financial statements Financial statements prepared in accordance with a financial reporting framework designed to meet the financial information needs of specified users.

Those charged with governance The person(s) or organisation(s) (for example, a corporate trustee) with responsibility for overseeing the strategic direction of the entity and obligations related to the accountability of the entity. This includes overseeing the financial reporting process. For some entities, those charged with governance may include management personnel, for example, executive members of a governance board of a private or public sector entity, or an owner-manager.

Effective date

The amended Code is effective on 15 July 2017.

Withdrawal of CODE OF ETHICS

This amended supersedes the *Code of Ethics* (effective 1 January 2014).

CONFORMITY WITH INTERNATIONAL PRONOUNCEMENTS

This conformity statement accompanies but is not part of this *Code of Ethics*; it is given for information purposes only.

Code of Ethics (Revised) incorporates the *Code of Ethics for Professional Accountants* (IESBA Code) issued by the International Ethics Standards Board for Accountants (IESBA) in July 2009.

The principles and requirements of this *Code of Ethics* and the IESBA Code are consistent except for the following:

- The addition of a Scope and Application section in this *Code of Ethics*;
- The addition of paragraphs and definitions prefixed as NZ in this *Code of Ethics*;
- The additional definitions are of assurance practitioner, assurance services, FMC reporting entity considered to have a higher level of public accountability, key assurance partner, professional activity, offer document, public benefit entity and public interest;
- This *Code of Ethics* generally refers to members whereas the IESBA Code refers to professional accountants;
- This *Code of Ethics* tailors the following IESBA defined terms to the New Zealand environment: assurance client, assurance team, professional services and public interest entity;
- Paragraphs [NZ100.5.1–NZ100.5.4](#) establish a responsibility for members over the conduct of non-member partners or directors, and others under the supervision of the member;
- The principle of timeliness in paragraph [130.4](#) is extended to members' obligation to respond to the New Zealand Institute of Chartered Accountants;
- Paragraphs [NZ140.9–NZ140.11](#) establish a duty for members to report unethical behaviour of other members or themselves to the most senior executive of the New Zealand Institute of Chartered Accountants;
- Paragraph [NZ150.3](#) requires a member to behave professionally at all times;

- Paragraphs [NZ210.13.1–NZ210.13.2](#) provide additional guidance for existing accountants;
- The requirement in Paragraph [NZ210.14](#) is extended from an audit of financial statements to all assurance engagements;
- Paragraph [NZ220.10.1](#) requires the member in public practice to disclose the nature of the conflict of interest in writing, the related safeguards applied to eliminate the threat or reduce it to an acceptable level and the opportunity to take independent advice, to all clients or potential clients affected by the conflict. It also requires the member in public practice to obtain the clients consent to perform the professional services when safeguards are applied. The IESBA Code states that disclosure is generally necessary;
- Paragraph [NZ220.14](#) requires a member in public practice to disengage from the relevant engagement if adequate disclosure to the client of a conflict of interest is restricted as a result of confidentiality requirements. The IESBA Code allows the engagement to proceed in limited circumstances;
- Paragraphs 225.12–225.38 are cross-referenced to PES 1 as issued by the NZAuASB. Refer to PES 1 to see how these paragraphs differ to the IESBA Code.
- Paragraphs [NZ280.2.1–NZ280.2.3](#) outline independence requirements for non-assurance engagements; and
- Sections 290 and 291 are cross-referenced to PES 1 as issued by the NZAuASB. Refer to PES 1 issued by the NZAuASB to see how sections 290 and 291 differ to the IESBA Code.

CONFORMITY WITH NATIONAL PRONOUNCEMENTS

This conformity statement accompanies but is not part of this Code of Ethics; it is given for information purposes only.

This is a comparison between PES 1 (Revised) *Code of Ethics for Assurance Practitioners* issued by the New Zealand Auditing and Assurance Standards Board (NZAuASB) and the *Code of Ethics* issued by the New Zealand Institute of Chartered Accountants. The New Zealand Institute of Chartered Accountants *Code of Ethics* has a broader scope but has the same requirements where the codes overlap.

An overview of the key differences between PES 1 (Revised) and this *Code of Ethics* are as follows:

- The term "assurance practitioner" has been amended to "member";
- References to "performing assurance engagements" have been amended to "providing professional services";
- Part C relating to members in business has been included;
- Refers to standards issued by the New Zealand Institute of Chartered Accountants and other statutory requirements or authoritative guidance applicable to the task or engagement in relation to of compliance with professional and technical standards;
- Paragraphs [NZ100.5.1–NZ100.5.4](#) establish a responsibility for members over the conduct of non- member partners or directors, and others under the supervision of the member;
- Paragraphs [NZ140.9–NZ140.11](#) establish a duty for members to report unethical behaviour of other members or themselves to the most senior executive of the New Zealand Institute of Chartered Accountants;
- Paragraphs [NZ210.13.1–NZ210.13.2](#) provide additional guidance for existing accountants;
- Paragraphs 225.44–225.48 covering communicating the matter to the entity's external auditor have been moved and amended by the NZAuASB in paragraphs [NZ225.17.1–NZ225.17.5](#).
- Section 230 *Second Opinions*, dealing with situations where a member in public practice provides a second opinion on the application of accounting principles has been included;
- Paragraphs [240.5–240.7](#) dealing with referral fees have been included; and
- Paragraphs [NZ280.2.1–NZ280.2.3](#) outline independence requirements for non-assurance engagements.

Footnotes

- ¹ *Handbook of the Code of Ethics for Professional Accountants* © May 2013 by the International Federation of Accountants.
- ² *Responding to Non Compliance of Laws and Regulations* © July 2016 by the International Federation of Accountants
- ³ Contingent fees for non-assurance services provided to audit or review clients and other assurance clients are discussed in Sections 290 and 291 (refer to PES 1 issued by the NZAuASB) of this part of the Code.

- 4 "Engagement partner": should be read as referring to their public sector equivalents where relevant.
- 5 XRB A1, Application of the Accounting Standards Framework.
- 6 Conducted in accordance with NZ SRE 2410, *Review of Financial Statements Performed by the Independent Auditor of the Entity* ; or ISRE (NZ) 2400, *Review of Historical Financial Statements Performed by an Assurance Practitioner Who is Not the Auditor of the Entity* .



Financial Adviser Standards and Ethics Authority

Code of Ethics for Financial Advisers

Exposure Draft of Proposed Standard

CONSULTATION OPEN

Exposure Draft issued March 2018

Consultation closes 1 June 2018

The *code of ethics for financial advisers* has been released as an exposure draft for consultation and is open until 1 June 2018. The Standards Authority is seeking feedback on the practical implications of key parts of the Code.

The Standards Authority invites you to provide written submissions and/or comments via a dedicated consultations email address (consultation@fasea.gov.au).

The Standards Authority intends hosting a series of events, potentially including webcasts and presentations at industry and consumer forums.

Further details on event dates and venues will be released via the website.

Background to Code development

The Standards Authority is required by section 921U(2)(b) of the *Corporations Amendment (Professional Standards of Financial Advisers) Act 2017* to make a Code of Ethics to ensure 'relevant providers' (or advisers) are compliant under section 921E of the Act.

The following legal considerations have informed the development of the Code:

1. Compliance with the Code of Ethics is a general requirement for all relevant providers from 1 January 2020. Licensees must have notified ASIC of their selected code monitoring body (or bodies) and committed to compliance by 15 November 2019; and existing providers have until 1 January 2020 to be covered by a compliance scheme.
2. The Code is to be monitored and enforced, by one or more monitoring bodies, under a compliance scheme approved and supervised by ASIC.
3. As the Act does not specify the scope or content of the proposed Code, FASEA could develop a Code that reiterates the legal obligations that apply to relevant providers. However, the Explanatory Memorandum to the Act states (3.58) that:

The same course of conduct may amount to a failure to comply with the Code and a breach of another substantive requirement in the Corporations Act or the criminal law. In these situations, the monitoring body may only make findings about the failure to comply with the ethical aspects in the Code and apply 'soft sanctions' . Monitoring bodies are not courts, nor vested with judicial power. They cannot determine whether there has been a breach of any of the requirements in the Corporations Act (apart from the obligation to comply with the Code), cancel or suspend licences, or impose any civil or criminal sanctions. If the monitoring body suspects that there may be a breach of any obligations other than the ethical aspects in the Code, the monitoring body should refer the matter, for investigation, to ASIC or the appropriate investigative authorities.

4. As such, the Code issued by FASEA is essentially a set of **principles** and **core values**. A principles based model provides a powerful framework to shape and reinforce ethical conduct and encourages a deeper engagement by the individual with their duties to their client as well as wider society. We anticipate strong disciplinary and enforcement practices will improve visibility of inappropriate practices and distinguish between the Code of Ethics and the application of legislative rules, as shared elements of consumer protection.

The following **professional considerations** have also informed the Code' s development:

1. In designing a Code of Ethics, a range of ethical issues should be considered, including historical consumer detriments that need to be addressed, the role of institutional culture and organisational systems impacting on ethical practice and the need and opportunity to professionalise financial advice.
2. *These ethical obligations go above the legal requirements in the law and are designed to encourage higher standards of behaviour and professionalism in the financial services industry* (Explanatory Memorandum 3.5).
3. A Code of Ethics on its own will not address the above issues, but rather a combination of strong educational infrastructure, conduct review processes and appropriate sanctions are also required.
4. Appropriate financial advice can significantly improve people' s financial well-being, so it is vital that consumers have trust and confidence in the advice they receive. This requires that financial advisers have the knowledge and skills, and honour the public commitments, required to earn that trust.
5. This Code lays the foundation for a true profession in financial advice to emerge.

A relevant provider must act, at all times and in all cases, in a manner that is demonstrably consistent with the following principles, in the discharge of their professional duties.

Standards of

Ethical behaviour

a relevant provider must:

Standard 1

Act in accordance with the spirit- and not only the letter - of all relevant laws and regulations (including this Code).

Standard 2

Must neither advise, refer, nor act in any other manner, where inappropriate personal advantage is derived by the relevant provider.

Standard 3

Act with personal integrity and as an independently minded professional, for the benefit of each client.

Standards of

Client care

a relevant provider must:

Standard 4

Act only on the basis of the free, prior and informed consent of a client.

Standard 5

Ensure that all advice and products are:
a) in the best interest of each client;
b) appropriate to the individual circumstances of each client,
c) presented in terms easily understood by the client.

Standard 6

Take into account the broad effects arising from a client acting on their advice.

Standards of

Quality process

a relevant provider must:

Standard 7

Obtain informed consent to and to receive agreed fees and payments for agreed services.

Standard 8

Obtain informed consent, and agree, to maintain records relevant to the advice provided, in accordance with relevant privacy, regulatory and confidentiality obligations.

Standard 9

Ensure that all advice and products are:
a) offered in good faith and with competence,
b) based on information that is neither misleading nor deceptive.

Standards of

Professional commitment

a relevant provider must:

Standard 10

Develop and maintain a high level of relevant knowledge and skills.

Standard 11

Accept that potential breaches of this Code will be subject to investigation and discipline from the responsible Code Monitoring Body, undertaken in accordance with ASIC's approval and oversight of that Body.

Standard 12

Individually and in cooperation with peers, uphold and promote the ethical standards of the profession, and hold each other accountable for the protection of the public interest.

Our values

A relevant provider must always act to realise and promote the values of:

- **Trust**
- **Competence**
- **Honesty**
- **Fairness**
- **Diligence**

MAKE YOUR SUBMISSION

Your feedback and submissions on this consultation paper will assist the Standards Authority to finalise the development of the Code of Ethics for financial advisers.

Submissions must be provided in writing to our dedicated consultation address (consultation@fasea.gov.au).

Due date for submission: 5pm 1 June, 2018

Consultation interests of FASEA

We encourage you to provide feedback on any aspect of the proposed Code of Ethics.

The Standards Authority is interested in your specific feedback on:

1. how the Code addresses the **consumer detriments** that have arisen in financial advice, particularly Standard 2, which is intended to ensure that the advice (or referral or other service) that a consumer gets from an Adviser does not produce inappropriate personal advantage to the Adviser.

Standard 2: [Relevant providers] Must neither advise, refer, nor act in any other manner, where inappropriate personal advantage is derived by the relevant provider.

Other issues to consider in relation to this Standard are:

- a) What types of personal advantage are appropriate vs inappropriate?
 - b) What might be the unintended consequences of the current draft?
 - c) How might the Standard be expressed to avoid unintended consequences?
2. How do the other Standards respond to this type of consideration?
 3. The **practical application** of the proposed Code in terms of:
 - a) Adviser practice
 - b) Licensee practice
 - c) Education and support
 - d) Compliance requirements
 - e) Consumer experience

The Standards Authority appreciates that specific questions may arise about the proposed Code. We invite you to provide your submission and feedback through this process and advise that, while we will not be able to respond to individual queries, feedback received will be collated for consultation and may assist FASEA in the development of FAQs that will be progressively updated on our website – www.fasea.gov.au

PLEASE **DOWNLOAD A COPY** OF THE PROPOSED CODE FROM THE FASEA WEBSITE
(www.fasea.gov.au) TO AID IN MAKING YOUR SUBMISSION

FASEA CODE OF ETHICS

PREAMBLE

While the *ethos* of ‘the market’ legitimises the pursuit of self-interest through the satisfaction of others’ wants, the *ethos* of ‘the professions’ aims to secure the public good through the subordination of self-interest in favour of serving the interests of others.

In return for renouncing the pursuit of self-interest, society often provides members of the professions with a range of formal and informal privileges (such as a ‘monopoly’ right to undertake certain types of work!).

Appropriate financial advice can significantly improve people’s financial well-being. In a time of increasing volatility, it is in the public interest that consumers can trust and have confidence in the advice they receive. In turn, this requires that financial advisers develop the knowledge and skills, and honour the public commitments, required to earn that trust.

The Code lays the foundations for a true profession to emerge. As such, those who formerly provided a commercial service, are now committed to offering a professional service – informed by a *Code of Ethics* that is intended to shape every aspect of their professional conduct.

This Code and the Standards within it are a matter of legal obligation and provide a foundation for conduct for all relevant providers, whatever their employment circumstance.

¹ For example, the *Corporations Amendment (Professional Standards of Financial Advisers) Act 2017* restricts the right to use the terms ‘financial planner’ and ‘financial adviser’ to those subject to the professional obligations established by the Code issued by FASEA. That is, personal advice may only be provided to retail clients about relevant products, by what the Act calls ‘relevant providers’.

THE CODE

A relevant provider² must act, at all times and in all cases, in a manner that is demonstrably consistent with the following principles, in the discharge of their professional duties.

VALUES:

A relevant provider must always act to realise and promote the values of:

- Trust
- Competence
- Honesty
- Fairness
- Diligence

STANDARDS:

STANDARDS OF ETHICAL BEHAVIOUR

A relevant provider must:

Standard 1: Act in accordance with the spirit – and not only the letter – of all relevant laws and regulations (including this Code).

Standard 2: Must neither advise, refer, nor act in any other manner, where inappropriate personal advantage is derived by the relevant provider.

Standard 3: Act with personal integrity and as an independently minded professional, for the benefit of each client.

² The term 'relevant provider' is defined in the *Corporations Amendment (Professional Standards of Financial Advisers) Act 2017*, as an individual authorised to provide personal advice to retail clients,, in relation to relevant financial products.

STANDARDS OF CLIENT CARE

A relevant provider must:

Standard 4: Act only on the basis of the free, prior and informed consent of a client.

Standard 5: Ensure that all advice and products are:

- a) in the best interest of each client,
- b) appropriate to the individual circumstances of each client,
- c) presented in terms easily understood by the client.

Standard 6: Take into account the broad effects arising from a client acting on their advice.

STANDARDS OF QUALITY PROCESS

A relevant provider must:

Standard 7: Obtain informed consent to act and to receive agreed fees and payments for agreed services.

Standard 8: Obtain informed consent, and agree, to maintain records relevant to the advice provided, in accordance with relevant privacy, regulatory and confidentiality obligations.

Standard 9: Ensure that all advice and products are:

- a) offered in good faith and with competence,
- b) based on information that is neither misleading nor deceptive.

STANDARDS OF PROFESSIONAL COMMITMENT

A relevant provider must:

Standard 10: Develop and maintain a high level of relevant knowledge and skills.

Standard 11: Accept that potential breaches of this Code will be subject to investigation and discipline from the responsible Code Monitoring Body, undertaken in accordance with ASIC's approval and oversight of that Body.

Standard 12: Individually and in cooperation with peers, uphold and promote the ethical standards of the profession, and hold each other accountable for the protection of the public interest.

A general mapping of how the Code Standards deal with issues of public and regulatory concern

ANALYSIS of PROPOSED CODE AGAINST CONDUCT ISSUES AND CASES	
Conduct to address	Draft Code response to key issues
Conflicts of interest (including conflicted remuneration, conflicts of duty and priority etc...)	<ul style="list-style-type: none"> ▪ Act in accordance with the spirit – and not only the letter – of all relevant laws and regulations (including this Code). ▪ Must neither advise, refer, nor act in any other manner, where inappropriate personal advantage is derived by the relevant provider. ▪ <i>(Note that the Standards Authority is seeking your feedback on what should constitute ‘inappropriate personal advantage’ and any unintended consequences of this aspect of the Code)</i> ▪ Act only on the basis of the free, prior and informed consent of a client. ▪ Ensure that all advice and products are in the best interest of each client
Independence (of mind, ownership, employment, payment source, product, research, etc..)	<ul style="list-style-type: none"> ▪ Act with personal integrity and as an independently minded professional, for the benefit of each client. ▪ Must neither advise, refer, nor act in any other manner, where inappropriate personal advantage is derived by the relevant provider. ▪ Take into account the broad effects arising from a client acting on their advice. ▪ Develop and maintain a high level of relevant knowledge and skills. ▪ Note that the Standards are a matter of legal obligation and provide a foundation for conduct for all relevant providers, whatever their employment circumstance.
Client care (including understanding specific needs of particular client and tailoring advice to suit etc..)	<ul style="list-style-type: none"> ▪ Fairness ▪ Ensure that all advice and products are: <ul style="list-style-type: none"> ○ in the best interest of each client, ○ appropriate to the individual circumstances of each client, ○ presented in terms easily understood by the client. ▪ Take into account the broad effects arising from a client acting on their advice. ▪ Act with personal integrity and as an independently minded professional, for the benefit of each client
Quality of process	<ul style="list-style-type: none"> ▪ Competence ▪ Diligence ▪ Act in accordance with the spirit – and not only the letter – of all relevant laws and regulations (including this Code). ▪ Ensure that all advice and products are: <ul style="list-style-type: none"> ○ offered in good faith and with sound competence, ▪ Develop and maintain a high level of relevant knowledge and skills.
Quality of documentation (disclosure documents and	<ul style="list-style-type: none"> ▪ Competence ▪ Diligence ▪ Act in accordance with the spirit – and not only the letter – of all relevant laws and regulations (including this Code).

ANALYSIS of PROPOSED CODE AGAINST CONDUCT ISSUES AND CASES

Conduct to address	Draft Code response to key issues
Statements of Advice etc..)	<ul style="list-style-type: none"> ▪ Must neither advise, refer, nor act in any other manner, where inappropriate personal advantage is derived by the relevant provider. ▪ Act only on the basis of the free, prior and informed consent of a client. ▪ Ensure that all advice and products are: <ul style="list-style-type: none"> ○ presented in terms easily understood by the client. ○ Based on information that is neither misleading or deceptive ▪ Take into account the broad effects arising from a client acting on their advice.
Quality of education and competence	<ul style="list-style-type: none"> ▪ Competence ▪ Develop and maintain a high level of relevant knowledge and skills.
Quality of output (cost of advice vs benefit to be gained for clients – scaled advice etc..	<ul style="list-style-type: none"> ▪ Honesty ▪ Fairness ▪ Ensure that all advice and products are: <ul style="list-style-type: none"> ○ offered in good faith and with sound competence, ○ in the best interest of each client, ○ appropriate to the individual circumstances of each client, ▪ Take into account the broad effects arising from a client acting on their advice.
Illegality	<ul style="list-style-type: none"> ▪ Accept that breaches of this Code will be subject to investigation and discipline from the responsible Code Monitoring Body, undertaken in accordance with ASIC' s approval and oversight of that Body. ▪ Reliance on ASIC and Code Monitoring Body provisions that the Code sits additional to the law. It cannot replace or conflict with the law (in particular on matters of criminality). Breaches of the Code will give rise to sanctions and potential civil liabilities.
A generalised lack of consumer trust	<ul style="list-style-type: none"> ▪ Trust ▪ Honesty ▪ Fairness ▪ Ensure that all advice and products are: <ul style="list-style-type: none"> ○ offered in good faith and with sound competence, ○ in the best interest of each client, ○ appropriate to the individual circumstances of each client, ○ based on information that is neither misleading nor deceptive, ▪ Individually and in cooperation with peers, uphold and promote the ethical standards of the profession, and hold each other accountable for the protection of the public interest.



Financial Adviser Standards and Ethics Authority

Proposed Guidance on Education pathways for Existing Advisers

CONSULTATION OPEN

FASEA is seeking feedback from all stakeholders (including the advice sector, consumers, educators and regulators) concerning this guidance document, which sets out proposed education and qualifications pathways, as well as degree equivalence for existing advisers.

The Standards Authority invites you to provide written submissions and/or comments via a dedicated consultations address (consultation@fasea.gov.au).

The Standards Authority intends hosting a series of events, potentially including webcasts, roadshows and presentations at industry and consumer forums.

Further details on event dates and venues will be released via the Standards Authority website.

PLEASE **DOWNLOAD A COPY** OF THE PROPOSED GUIDANCE TO
AID IN MAKING YOUR SUBMISSION

Introductory comments

The proposed guidance on education pathways for existing advisers has been released as a consultation which is open until 29 June 2018.

The Standards Authority recognises that the legislation requires all relevant providers to consider whether they have the right qualifications to ensure compliance or whether they need to undertake further study.

This requirement for education is in accordance with section 921B(2) of the Corporations Amendment (Professional Standards of Financial Advisers) Act 2017, which identifies the standards for a relevant provider as:

[T]he person has completed a bachelor or higher degree, or equivalent qualification, approved by the standards body under section 921U;

s 1546B (1) of the Act states that by 1 January 2024, existing advisers need to have either:

- (a) met the education and training standard in subsection 921B(2);*
- (b) completed one or more courses determined by the standards body to give the provider qualifications equivalent to that standard.*

As such, the Standards Authority will not be seeking submissions on whether education should be undertaken or whether a bachelor or higher degree, or equivalent qualification, is the correct level of qualification.

The Standards Authority acknowledges that there are many Advisers from a wide variety of professional backgrounds who may already hold qualifications. This proposed guidance is intended to provide a clear pathway of education for every Adviser.

The infographic on the next page may assist with your considerations.

The consultation will seek feedback on the **relevance and application** of the proposed guidance and how the Adviser community might be supported in adopting the requirements.

We are interested to receive input on the proposed pathways from educators, the community and community representatives, as well as the Adviser community.

Education pathways

I am	The study pathway I need to follow...	Rules and topics
<p>An Existing Adviser</p> <p>– I do not have a degree (AQF7) or above qualification</p>	<p>Graduate Diploma</p> <p>AQF 8</p> <p>OR</p> <p>Other Approved Qualifications (Degree or Masters - AQF7 and above)</p>	<p>made up of 8 courses, including courses in:</p> <ul style="list-style-type: none"> • Corporations Act (emphasis on Chapter 7 - Financial services and markets) • The FASEA Code of Ethics • Behavioural Finance: Client and consumer behaviour, engagement and decision making <ul style="list-style-type: none"> • Full content to be confirmed by end 2018 • RPL may be available for advisers who have completed educational programs and/or professional designations.
<p>An Existing Adviser</p> <p>– I have a degree (AQF 7 or above) but it is not in a RELATED field of study</p>	<p>Graduate Diploma</p> <p>AQF8</p>	<p>made up of 8 courses, including courses in:</p> <ul style="list-style-type: none"> • Corporations Act (emphasis on Chapter 7 - Financial services and markets) • The FASEA Code of Ethics • Behavioural Finance: Client and consumer behaviour, engagement and decision making • RPL may be available for advisers who have completed educational programs and/or professional designations. • FASEA would expect greater RPL credits to be available for Advisers with formal qualifications
<p>An Existing Adviser</p> <p>– I have a degree (AQF 7 or above) and it is in a RELATED field of study</p>	<p>Bridging Course</p> <p>AQF 8</p>	<p>made up of 3 courses, including courses in:</p> <ul style="list-style-type: none"> • Corporations Act (emphasis on Chapter 7 - Financial services and markets) • The FASEA Code of Ethics • Behavioural Finance: Client and consumer behaviour, engagement and decision making
<p>An Existing Adviser</p> <p>– I have a degree <u>and</u> a post graduate qualification in a RELATED field of study</p>	<p>Bridging Course</p> <p>(single subject)</p> <p>AQF 8</p>	<p>made up of 1 course, covering:</p> <ul style="list-style-type: none"> • The FASEA Code of Ethics

I am	The study pathway I need to follow...	Rules and topics
An Existing Adviser with an approved FPEC* qualification	Bridging Course (single subject) AQF 8	made up of 1 course, covering: <ul style="list-style-type: none"> • The FASEA Code of Ethics The requirement to undertake this single unit of study is an addition to the 14 December 2017 proposal, and reflects the importance of education in the FASEA Code of Ethics for all relevant providers.

* currently the only 'approved qualifications' are those approved by the Financial Planning Education Council at AQF 7 and AQF 9.

The amount and level of education required to be undertaken will be dependent on the qualifications that an adviser already holds.

The Standards Authority has determined that bridging courses are a legitimate education pathway for compliance with s 1546B (1)(b) for an adviser that already holds an AQF7 (or higher) qualification in a related discipline.

The courses identified for the Bridging Course options have been chosen because they represent fields of study that have not typically been undertaken in formal qualifications issued prior to 2018 and they bring the greatest opportunity for legal awareness, consumer outcomes and enhanced ethical practice.

Supporting Information

Level of course delivery

The Standards Authority expects that the 3 areas of study in the typical bridging course will be delivered and assessed at the level of AQF 8, so the approximate time allocation of study will be 120 hours per subject.

At this stage the Standards Authority has determined that only Higher Education Providers can offer Bridging Courses.

What is a related qualification?

The Standards Authority has determined that qualifications at AQF 7 or above that contain the following disciplines as a major/specialisation can be identified as related qualifications, regardless of when they were obtained.

- Financial Planning/Advice/Services
- Accounting
- Finance
- Tax
- Law
- Economics

FASEA reserves the right to issue further guidance about related qualifications and the way they are assessed by higher education providers.

Professional designations

Designations are not identified on the Australian Qualifications Framework and do not equate to a qualification on their own. The education undertaken as part of achieving a professional designation is a valuable component of professional expertise and background and a Higher Education provider is entitled to take that into account as part of potential RPL exemptions for qualifications.

How does this relate to AQF?



Qualification Hierarchy	AQF Level	Study time
Masters	9	<ul style="list-style-type: none"> Typically 16 units Approx 3 years of part-time study
Graduate Diploma	8	<ul style="list-style-type: none"> Typically 8 units Approx 2 years of part-time study
Graduate Certificate	8	<ul style="list-style-type: none"> Typically 4 units Approx 1 year of part-time study
Bridging course (3 units)	No AQF outcome	<ul style="list-style-type: none"> 3 units (360 hours) Less than 1 year of part-time study Will articulate into AQF qualifications
Bridging course (1 unit)	No AQF outcome	<ul style="list-style-type: none"> 1 unit (120 hours) Approx 2 months of part time study Will articulate into AQF qualifications
Degree	7	<ul style="list-style-type: none"> Typically 24 units Approx 6 years of part-time study
Advanced Diploma	6	<ul style="list-style-type: none"> Not an approved level of qualification. May provide credit and exemption – speak to Higher Education Provider
Diploma	5	<ul style="list-style-type: none"> Not an approved level of qualification. May provide credit and exemption – speak to Higher Education Provider

Education options

Higher Education Providers

The qualifications required under the FASEA Standards are at AQF 7 (or above) and so can only be issued by approved Higher Education Providers.

At this stage the Standards Authority has determined that the Bridging Course pathways can also only be offered by Higher Education Providers.

The Tertiary Education, Quality and Standards Agency (TEQSA) is the national regulator of Higher Education Providers and closely observes the qualifications that are issued.

FASEA will also develop its own program and provider accreditation standards to ensure that the quality of education available to the marketplace meets the expectations of FASEA, the industry and the wider community.

Education availability

According to TEQSA's December 2017 report, there are currently 40 Universities and 122 non-University Higher Education Providers in Australia. Not all Higher Education Providers will offer programs in this field, but the disciplines of Business and Finance are amongst the most common offerings in Australia.

It may take some time for new FASEA approved qualifications and bridging courses to come on the market. The Standards Authority anticipates that course options will become progressively available from the beginning of 2019, allowing five years to comply with this Standard.

What is Recognition of Prior Learning (RPL)?

Most Advisers have already gained a variety of qualifications through their varying years of practice and in some cases these will provide recognition of prior learning (RPL) options.

Advisers may be eligible for exemptions via RPL for certain approved qualifications. At this stage FASEA does not intend to allow RPL in the bridging course programs.

RPL is a matter of individual policy for the Higher Education provider. TEQSA reviews the RPL that a provider offers, which usually does not exceed 50%.

FASEA reserves the right to not be bound by RPL awarded outside of TEQSA guidelines.

FASEA also intends to monitor and review RPL practices and may issue further guidance for providers in the future.

How does this align to education regulations in related regimes?

The subject of Taxation Law is anticipated to be included in Graduate Diploma programs, so as to provide additional alignment to the Tax Practitioner obligations for all Tax (Financial) Advisers.

How does this relate to the Exam?

A national exam must be passed all relevant providers. Formal education through the range of education pathways will likely improve an adviser's capacity to meet the requirements of the national exam.

FASEA education pathways explained



<p>New entrant</p> <p>Education required Approved Degree (24 subjects at AQF7) by no later than January 1 2019</p> <p>Professional requirements</p> <ul style="list-style-type: none"> • PY • Exam • Annual CPD • Code of Ethics 	<p>Existing adviser with no degree</p> <p>Education required Approved Graduate Diploma (8 subjects at AQF8) OR Other approved qualifications (Degree or Masters – AQF7 and above) by no later than January 1 2024</p> <p>RPL options likely to be available. In these two categories Professional designation programs, education and experience may attract RPL. FASEA would expect greater RPL credits to be available for advisers with formal qualifications.</p>	<p>Existing adviser with unrelated degree</p> <p>Education required Approved Graduate Diploma (8 subjects at AQF8) by no later than Jan 1 2024</p> <p>Bridging Course subjects</p> <ul style="list-style-type: none"> • Corporations Act (emphasis on Chapter 7 – Financial Services and Markets) • The FASEA Code of Ethics • Behavioural Finance, Client and Consumer Behaviour, Engagement and Decision Making 	<p>Existing adviser with related degree</p> <p>Education required Bridging Course (3 subjects at AQF8) by no later than Jan 1 2024</p>	<p>Existing adviser with related degree + related post graduate qualification</p> <p>Education required Bridging Course (1 subject – FASEA Code of Ethics at AQF8) by no later than Jan 1 2024</p>	<p>Existing adviser with approved degree</p> <p>FASEA approved Bachelors or Masters Degree already meets the qualification requirements. Education required Bridging Course (1 subject – FASEA Code of Ethics at AQF8) by no later than Jan 1 2024</p>		
<p>Professional requirements for existing advisers</p>					<p>Pass an exam by 01/01/2021</p>	<p>Annual CPD from 01/01/2019</p>	<p>Code of Ethics 01/01/2020</p>

For further information about approved Degrees, Graduate Diplomas and Masters, please visit [fasea.gov.au/standards-and-guidance](https://www.fasea.gov.au/standards-and-guidance)

March 2018

MAKE YOUR SUBMISSION

Your submissions on this consultation paper will assist FASEA to finalise its Standard for education pathways.

Submissions must be provided in writing to our dedicated consultation address (consultation@fasea.gov.au).

Due date for submission: 5pm 29th June 2018

Consultation interests of FASEA

Feedback on the proposed guidance

We encourage you to provide feedback on any aspect of the proposed standard and its **practical application**.

Feedback on pathways

Different pathways exist for advisers with different qualifications.

Are the **proposed education pathways** appropriate for each type of Adviser?

- A) New Entrant?
- B) Existing Adviser with no qualifications at AQF 7 (or above)?
- C) Existing Adviser with qualifications in unrelated disciplines?
- D) Existing Adviser with qualifications in related disciplines at AQF 7 (or above)?
- E) Existing Adviser with qualifications and post graduate qualifications in related disciplines?
- F) Existing Adviser with approved FPEC qualification?

Feedback on public outcome

Do you think increased education standards will assist in providing higher quality advice?

Do you think these education pathways meet the expectations of consumers?

- If so, why?
- If not, why not?

Information about you

It will assist FASEA to understand the background and breadth of respondents to this consultation.

If possible please indicate your engagement with the sector. For instance, I am a financial adviser, or I am a consumer/client (or licensee, industry association, consumer group etc..) and your name, job title (if relevant) and role in making the submission.

You may also advise if you want your submission (or parts of it) to be treated as **confidential**.

The Standards Authority appreciates that you may have specific questions from the proposed guidance. We invite you to provide your submission and feedback through this process and advise that, while we will not be able to respond to individual queries, feedback received will be collated for consultation and may assist FASEA in the development of FAQs that will be progressively updated on our website – www.fasea.gov.au.