

Ref: 622-020 / #125256

1 September 2010

Hon Simon Power  
Minister of Commerce  
Parliament Buildings  
WELLINGTON

Dear Minister,

### **FINANCIAL ADVISERS ACT 2008 – CODE OF PROFESSIONAL CONDUCT**

I am pleased to provide for your approval a draft Code of Professional Conduct (the “draft Code”) under the Financial Advisers Act 2008 (the “Act”).

#### **Background**

The Act requires that a Code Committee be established to produce a draft Code. This must provide for certain minimum standards of professional conduct to be demonstrated by authorised financial advisers (“AFAs”). The draft Code produced by the Committee must be approved by both the Commissioner for Financial Advisers and by the Minister of Commerce. The Code of Professional Conduct is then brought into force by notice in the *Gazette* given by the Commissioner for Financial Advisers.

A Code Committee was established for this purpose by the previous Commissioner for Financial Advisers, Ms Annabel Cotton, in July 2009.

#### **Draft Code**

The Code Committee produced a draft Code of Professional Conduct (“Code”) on 31 July 2010 (the “first draft Code”) and forwarded this to me for approval.

I undertook a review of the first draft Code as required by section 88 of the Act.

Following my review of the first draft Code I was not satisfied that it was consistent with the Act in three respects, two of which affected operative provisions of the Code. Accordingly on 17 August 2010, under section 89 of the Act, I directed the Code Committee to revise their draft Code.

The Code Committee met on 19 August 2010 to consider my direction. Changes to the first draft Code were agreed by the Committee at that meeting and the draft Code was produced for my approval on 19 August 2010.

I have now reviewed the draft Code and am satisfied that it should be approved.

### **Considerations**

I am required under the Act to approve the draft Code if I am satisfied that-

- the draft Code has been approved by a majority of the Code Committee; and
- the Code Committee has complied with the consultation obligations set out in section 87(2) of the Act; and
- the draft Code is consistent with the Act.

#### *Majority approval*

The draft Code was approved by the Code Committee at its meeting on 19 August 2010, at which 7 of the 8 Code Committee members were present. I have been advised that the draft Code was unanimously approved by those in attendance.

#### *Consultation*

The Code Committee must, in preparing the draft Code:

- (a) consult with any persons it reasonably considers to be representative of the financial adviser industry; and
- (b) consult with interest groups within the financial adviser industry; and
- (c) allow an opportunity for any person affected by the code to make submissions.

The Code Committee provided me with a report on the consultation process it has undertaken, and with 2 issues reports, which respond to matters raised in the course of consultation. The Committee's process has included the publication of consultation papers and 2 consultation drafts of the Code. Consultation materials have been made available on the Code Committee's website and were sent to individuals and organisations on an extensive mailing list. The Code Committee held consultation meetings with interest groups and also public meetings in 15 locations around New Zealand.

The Code Committee published its second consultation draft following changes made to the Act in July this year. This was followed by further consultation meetings in Auckland, Christchurch, Wellington, and Rotorua.

I am satisfied that the Code Committee has complied with its obligations to consult and consider submissions under section 87(2) of the Act.

#### *Consistency with the Act*

Both the Commissioner for Financial Advisers and the Minister of Commerce are required to consider whether the draft Code is consistent with the Act.

I have approached the question of consistency with the Act by considering the requirements for the content of the Code set out in section 86 of the Act, the purpose of the legislation set out in section 3, and the obligations imposed on financial advisers in Part 2 of the Act.

Under section 86 of the Act the Code must provide for minimum standards of professional conduct that must be demonstrated by authorised financial advisers, including minimum standards-

- (a) of competence; and
- (b) of knowledge and skills; and
- (c) of ethical behaviour; and
- (d) of client care.

Additionally, under section 86 the Code must provide for continuing professional training for authorised financial advisers, including specification of minimum requirements that an authorised financial adviser must meet for the purpose of continuing professional training.

The draft Code contains 18 Code Standards, arranged in 4 sections, which address minimum standards for:

- (a) ethical behaviour;
- (b) client care;
- (c) competence, knowledge and skills; and
- (d) continuing professional training.

I have kept in mind that the legislation gives the Code Committee the principal responsibility for the content of the standards, and for setting the minimum standards that will apply in the areas set out in the Act. However, I have also been mindful of the need for the Code to be consistent with the purpose set out in section 3 of the Act. This means that the standards set in the Code, and enforcement of those standards by the Disciplinary Committee, should be likely to promote the sound and efficient delivery of financial adviser services and encourage public confidence in the professionalism and integrity of financial advisers.

I have also considered whether the standards set in the draft Code are sufficiently clear and certain so that financial advisers understand their obligations and the Disciplinary Committee is able to enforce the Code. The Code Committee has deliberately taken a principles-based approach to its drafting, in particular as this relates to the minimum standards of ethical behaviour. I believe this is appropriate in a code of professional conduct. The Code Committee has included additional provisions within most standards which contain further detail about the application of the standard.

A core purpose of the Code is to set minimum standards of competence, knowledge, and skills for authorised financial advisers. This is addressed in section E of the draft Code. The Code Committee's approach has been to include an overarching competence requirement, Code Standard 14, which applies in addition to the specific competence standards set out in the Code. This requires authorised financial advisers to ensure that they have appropriate competence, knowledge, and skills for any financial adviser service they provide. Its effect is that AFAs who wish to provide specialist services, such as advice on derivative products, may need to ensure they have undertaken further training appropriate to these services.

The general standard for competence for AFAs has been set as the National Certificate in Financial Services (Financial Advice) (Level 5). This Certificate has been registered on the national qualifications framework administered by the New Zealand Qualifications Authority. The Certificate has been developed by ETITO, which is recognised under the Industry Training Act 1992 as the industry training organisation in respect of the financial services industry. Following review of the existing unit standards for the Level 5 Certificate by the Code Committee, two unit standards relating to investment advice were reviewed, and a further capstone unit was added to the Certificate, relating to knowledge of the Code and consumer protection laws. Use of the national qualifications framework will promote consistency in the competence standards required for authorised financial advisers, and in the assessment of those standards.

The National Certificate is made up of 5 unit standard sets, as follows:

Standard Set A:	Knowledge of the industry, financial markets, the advice process, and products
Standard Set B:	Knowledge of the Code and consumer protection laws
Standard Set C:	Professional practice advice process and complying with legislation
Standard Set D:	Investment Unit Standards
Standard Set E:	Insurance Unit Standards or Residential Property Lending Unit Standards

An AFA who attains unit standards A, B, C, and D of the National Certificate may provide unrestricted services (subject to the general competence requirement). Persons wishing to provide more restricted services, such as only class advice, can become authorised for this purpose without attaining all unit standard sets. Unit Standard Set E has been included in the National Certificate and the Code to accommodate the possibility that regulations may be made under section 154 of the Act providing for authorisation of financial advisers in relation to category 2 products. Although no regulations have been made for this purpose, I do not consider it presents any difficulty that the Code provides for this possibility.

The draft Code also contains a Competence Alternatives Schedule, which sets out qualifications and designations that can serve as alternatives to certain of the Unit Standard sets. I am satisfied that the Code Committee has undertaken an appropriate process to compare these qualifications and designations to the requirements of the relevant unit standards. The schedule may not be an exhaustive list of satisfactory alternative qualifications and designations for the competence standards in the Code. This can be addressed where necessary through the Commission's exemption power under section 148(3) of the Act.

Finally, I would note that Level 5 was chosen by the Code Committee as the appropriate minimum standard in August 2009. There is obviously room to debate what is the appropriate level, either generally or in relation to specific investment products or classes of product. I respect the judgement of the Code Committee in this regard; but note that changes may be proposed to the Code in the future should that prove necessary to ensure adequate standards of consumer protection are being delivered through compliance with the Code.

**Approval**

On my review of the draft Code dated 19 August 2010, I am satisfied of the matters set out in section 88(2) of the Act, and accordingly I approve the draft Code under section 88(1). I forward the draft Code to you for your approval under section 92 of the Act.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'David Mayhew', with a stylized flourish at the end.

David Mayhew  
Commissioner for Financial Advisers

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