

FAS: Financial Advisory Services

NZICA Professional and Ethical Standards

WARNING

A new financial advisors regulatory regime applies in New Zealand from 15 March 2021. This new regime is set out in the Financial Markets Conduct Act 2013 (FMCA) (as amended by the Financial Services Legislation Amendment Act 2019 (FSLAA)). Under this new regime, all members who provide retail clients with regulated financial advice (as defined by the FMCA) will be required to obtain a licence (or operate under another person's licence) to provide that advice unless their activities fit within the narrow exemptions provided.

The exemption that applies to Qualified Statutory Accountants (QSA) (i.e. members who hold a certificate of public practice) has been amended and narrowed by the FSLAA. Therefore, members who intend to rely on the exemption should carefully review the revised wording of the exemption to ensure that their activities still qualify for the exemption. If the situation is unclear, members should obtain legal advice.

Members whose activities do not qualify for the exemption and who provide regulated financial advice to retail clients will be required to (amongst other things) attain competency equivalent to the learning outcomes of level 5 Certificate of Financial Services and operate under a financial advice provider market services licence.

FSLAA also introduces a new client money or property services regime from 15 March 2021. It contains the same narrow exemption for QSAs. Members should also review whether this new regime applies to their activities. If the situation is unclear, members should obtain legal advice.

Members should refer to the FMCA (as amended by the FSLAA) and/or the FMA website for further information.



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Table of Contents

1. Scope and Application	4
2. Fundamental obligations	5
3. Relationship between the member and the firm	8
4. Members in Public Practice	8
5. Professional Independence	15
6. Engagement performance	16
7. Documentation and quality control management	24
Glossary	26
<i>Conformity with International Pronouncements</i>	30
Appendix 1: Examples of laws and regulations that may be applicable to the provision of financial advisory services	31
Appendix 2: “financial advisory services” – further guidance	32
Appendix 3: ‘soft-dollar’ benefits – further guidance.....	33
Appendix 4: ‘Financial advisory services’ – Q & A	34

Application Date: Engagements entered into on or after 1 August 2021 (early adoption permitted)

1. Scope and Application

Authority and effective date

- 1.1 New Zealand Regulatory Board (NZRB) of the New Zealand Institute of Chartered Accountants (NZICA) has issued FAS: *Financial advisory services* which is effective for *engagements* entered into on or after 1 August 2021. Early adoption is permitted. This standard replaces the extant standard FAES: Financial Advisory Engagements (issued 11/09).

Member Obligations

- R1.2 ***Members in public practice¹ shall comply with this standard when they provide financial advisory services to the extent that they are not prevented from doing so by specific requirements of laws and regulations².***
- R1.3 ***Members in public practice shall take reasonable steps to ensure that all persons associated with the member, either working under their supervision or acting as their agent, comply with this standard when they assist the member to provide financial advisory services.***

Overview

- 1.4 This standard sets the professional and ethical standards for *members in public practice* involved in the provision of *financial advisory services*.
- 1.5 The requirements of this standard, designated with the letter “R” and denoted in **bold-type**, impose obligations. These requirements are preceded or followed by application material designated with the letter “A” and in normal type, that provides context, explanations, and other guidance relating to matters relevant to the provision of *financial advisory services*.
- 1.6 Terms that have been defined for the purposes of this standard are defined in the Glossary to this standard and denoted in the body of this standard in *italics*.
- 1.7 This standard should be read in conjunction with the *code* and other NZICA professional standards and any laws and regulations that may apply to the provision of *financial advisory services*. All references to the *code* and NZICA professional standards and laws and regulations are references to the *code* and those NZICA professional standards and laws and regulations as amended from time to time.

Important Note: Complying with laws and regulations

- 1.8 This standard is confined to the professional and ethical aspects of the provision of *financial advisory services* as distinct from any responsibilities that may be imposed on *members in public practice* by laws and regulations.

Appendix 1 provides a list of laws and regulations that may affect the provision of *financial advisory services by members*.

¹ ***Members in public practice* in this standard and the *code* include all members who provide *financial advisory services to the public* irrespective of whether the *member* holds a certificate of public practice. Terms denoted in *italics* are defined in the Glossary to this standard. *Members* should ensure that they familiarise themselves with the defined terms to ensure appropriate interpretation of this standard.**

² Note: Laws and regulations include Chartered Accountants Australia and New Zealand (CA ANZ) Constitution, By-laws and Regulations and the NZICA Act 1996, NZICA Rules and Professional Standards.

Members in public practice are responsible for determining how laws and regulations apply to the *financial advisory services* they provide and then comply with them, including, but not limited to:

- Obtaining and maintaining any operating licences required to provide specific *financial advisory services* to *clients* including any education and continuing professional development required for that licence and any conditions imposed in relation to that licence;
- Providing any mandated disclosures to *clients* including any public disclosure information required;
- Complying with any mandated duties to the *client* and/or any mandated code of conduct;

Members should also ensure they comply with any prohibitions regarding “holding out” imposed by laws and regulations (i.e. implying that you hold a particular operating licence or providing financial services (as defined by laws and regulations) that can only be legally provided by a holder of a particular operating licence).

R1.9 *Members in public practice shall comply with all applicable laws and regulations in providing financial advisory services.*

R1.10 *In the event of any conflict between a member in public practice’s obligations under laws and regulations and the requirements of this standard or the code then, to the extent the member is unable to reasonably avoid or otherwise mitigate that conflict, the member shall give priority to compliance with laws and regulations.*

Important Note: [Complying with the Code](#)

1.11 The *code* sets out the standards of behaviour and approach to *professional activities* expected by *members* in meeting their responsibility to act in the *public interest*.

R1.12 *Members in public practice shall comply with the code in providing financial advisory services.*

R1.13 *In complying with this standard, members in public practice shall be guided not merely by the words but also by the spirit of this standard and the code.*

Other

1.14 In this standard, unless otherwise specified, words in the singular include the plural and vice versa, words of one gender include another gender, and words referring to persons include companies or organisations, whether incorporated or not.

2. Fundamental obligations

Complying with the Code

2.1 *Members* have a responsibility to act in the *public interest*.

Part 1 of the *code* establishes the five fundamental principles to be complied with by *members*. It also includes a conceptual framework that sets out the approach to be taken to identify, evaluate and address threats to compliance with the fundamental principles.

The five fundamental principles are:

- Integrity;
- Objectivity;
- Professional competence and due care³;
- Confidentiality; and
- Professional behaviour.

This part of the standard provides **additional** requirements and guidance material applicable to, the *members' public interest obligations*, the fundamental principles and *financial advisory services*.

Public Interest

R2.2 A member in public practice shall decline to provide *financial advisory services* where they are unable to reconcile their *public interest* obligations with their duty to act in the best interests of the *client* in accordance with R2.4.

R2.3 A member in public practice shall not provide *financial advice* other than as part of an *engagement*.

Best interests of the client

R2.4 A member in public practice providing a *financial advisory service* shall act in the best interests of the *client*, and in the event of a conflict of interest, prioritise the interests of the *client*.

2.4A1 In general, where a *member in public practice* provides *financial advisory services* to a *client*, the relationship between the *member* and the *client* arises from the terms of *engagement* reached between the *member* and the *client* concerning the nature and scope of the *financial advice* and services to be provided to the *client*. This relationship is characterised by a need for trust and confidence created by the *member's* commitment to act on behalf of the *client*. The respective positions of strength and vulnerability within this relationship place fiduciary duties upon the *member*. These duties include a duty 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. Without limiting those duties in any way, where the interests of the *client* conflict with the interests of the *member in public practice*, the *member* must prioritise the interests of the *client* by taking all reasonable steps to ensure the *member's* advice is not materially influenced by the *member's* conflicting interests.

2.4A2 *Members in public practice* are required to comply with the *code* when identifying, evaluating and addressing threats to objectivity arising from a conflict of interest. Paragraphs R4.2 – R4.4 provide additional requirements for conflicts of interest and *financial advisory services*. In particular, paragraphs R4.3 and R4.4 require disclosure and consent, in writing, where the threat to objectivity is at an *acceptable level* or *safeguards* can be put in place to reduce the threat to objectivity to an *acceptable level*.

³ At a minimum, *members in public practice* should be able to demonstrate compliance with Part 2 of the Code of Professional Conduct for Financial Advice Services (or equivalent, where the financial advice is not regulated financial advice) and have prior practical experience in providing that financial advisory service at a senior level.

Integrity

- 2.5A For additional requirements and guidance material regarding addressing information that is or might be misleading – see R6.5 – R6.8

Objectivity

- R2.6 **Members in public practice shall, as far as is reasonably practicable, avoid situations where *financial advice* provided to a *client*, and any recommendations provided as part of the *financial advice*, is in any way constrained or likely to be biased in favour of particular financial products or product providers.**
- 2.7A For additional requirements and guidance material regarding conflicts of interest, including *financial interests* with the *client* and where the scope of the *financial advisory service* is constrained due to the *member in public practice's* practically unavoidable association with a third party – see R4.2 – R4.5.

Independence

- 2.8A For additional requirements and guidance material regarding *independence* – see Part 5

Professional competence and due care

- R2.9 **A member in public practice providing a *financial advisory service* to a *client* shall take all reasonable steps to provide *financial advice* that is:**
- a) **suitable for the purpose for which the *financial advice* is given; and**
 - b) **appropriate to the *client's* financial needs, objectives and priorities as disclosed to the *member*.**
- 2.9A The obligation to take all reasonable steps in paragraph R2.9 cannot be avoided by any notice or disclaimer provided to the *client*
- R2.10 **A member in public practice shall ensure that the *client's* instructions in relation to the provision of *financial advisory services* are carried out to the fullest possible extent, subject to the *member's* obligation to comply with *technical and professional standards* and *laws and regulations*.**
- 2.11A For additional requirements and guidance material regarding *engagement* performance – see Part 6.

Professional behaviour

Marketing Activities

- R2.12 **Members in public practice shall 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 *financial advice* only by way of product placement fees or *commissions* paid by third parties.**
- 2.12A The general prohibition on marketing of 'free financial advice' in paragraph R2.12 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 in public practice's* usual fee schedule; or
- b) when the *member* holds a preliminary explanatory meeting prior to *engagement* by a *client* for which the *member* 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 *financial advice* is disclosed at the time of initial *engagement*.

R2.13 ***Members in public practice shall not include specific recommendations about financial advice products in any advertising activities.***

3. Relationship between the member and the firm

Complying with the Code

3.1 Part 2 of the *code* applies the *fundamental principles* and the *conceptual framework* to a range of facts and circumstances that members may encounter when performing *professional activities* pursuant to the *member in public practice's* relationship with their *employing organisation*, including:

- Conflicts of interest;
- Preparation and presentation of information;
- Acting with sufficient expertise
- *Financial interests*, compensation and incentives linked to financial reporting and decision making
- *Inducements*, including gifts and hospitality
- Responding to non-compliance with laws and regulations
- Pressure to breach the fundamental principles

The *code* requires *members in public practice* to apply Part 2, to the extent applicable, to their facts and circumstances when providing *financial advisory services*.

4. Members in Public Practice⁴

Complying with the Code

4.1 Part 3 of the *code* applies the *fundamental principles* and the *conceptual framework* to a range of facts and circumstances that *members in public practice* may encounter when performing *professional services*, including:

- Conflicts of interest;
- Professional appointments;
- Second opinions;

⁴ ***Members in public practice in this standard and the code includes all members who provide financial advisory services to the public irrespective of whether the member holds a certificate of public practice.***

- Fees and other types of remuneration;
- *Inducements*, including gifts and hospitality;
- Custody of client assets;
- Responding to non-compliance with laws and regulations;

This part of the standard provides **additional** requirements and guidance material applicable to the topics addressed in Part 3 of the *code* and *financial advisory services*.

Conflicts of interest (including financial interests)

Member shall not lend or borrow money

- R4.2 ***A member in public practice undertaking a financial advisory services engagement shall not lend money to or borrow money from a client in the course of that engagement unless the client is immediate family of the member, or of a partner (or equivalent) of the member's firm.***

Disclosure and consent – financial interests - separate transactions

- R4.3 ***If a member in public practice enters into transactions with a client separate from the member's financial advisory services engagement with the client, or co-invests with the client in an investment scheme or business project and the threat to objectivity is at an acceptable level or safeguards can be put in place to reduce threat to objectivity to an acceptable level, the member shall:***

- (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:***
 - a. ***the risks of the transaction;***
 - b. ***conflicts of interest of the member;***
 - c. ***safeguards to be put in place (if required); and***
 - d. ***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) ***obtain consent from the client to continue with both the provision of financial advisory services and the separate transaction.***

Disclosure and consent – all other situations

- R4.4 ***Where the threat to objectivity is at an acceptable level or safeguards can be put in place to reduce the threat to objectivity to an acceptable level, the member in public practice shall:***

- (a) ***disclose to the client in writing, in clear, concise and effective form:***
 - a. ***the risks of the situation;***
 - b. ***conflicts of interest of the member;***

- c. *safeguards* to be put in place (where required) and their expected effects (i.e. why the member considers the *safeguard* will be effective); and
 - d. any other relevant information necessary to ensure that the *client* has a full appreciation of the conflict and can make informed decisions about how the conflict may affect the service being provided to them; and
- (b) offer the *client* the opportunity to take independent advice and advise the *client* of the benefits of seeking independent advice; and
 - (c) obtain consent in writing from the *client* to commence or continue the *engagement*.

Restrictions in scope by practically unavoidable association with a third party

- R4.5 Where *members in public practice* provide *financial advice* that is restricted in scope in any way by association with a third party, including where the *financial advice* or expertise is restricted to particular areas, products or providers, the *member* shall disclose the extent of those restrictions and the resulting effect on the *member's* objectivity to *clients* both:
- (a) prior to undertaking the *engagement*, wherever possible; and
 - (b) at the time the *financial advice* is provided to the *client*.

Professional appointments

Considerations particular to financial advisory services

- R4.6 A *member in public practice* who is approached by a potential *client* to undertake a *financial advisory service* or determines that an existing *client* requires or requests a *financial advisory service* shall:
- a) determine the identity of the *client*;
 - b) obtain preliminary information about the *client's* needs and objectives and other relevant matters; and
 - c) consider the suitability of the *client*, including the *members'* ability to assist,

in accordance with:

- a) the section 320 Professional Appointments of the *code*;
- b) the acceptance and continuance of *client* relationships and specific *engagements* requirements of PS-1 Quality Control Management; and
- c) relevant laws and regulations including anti-money laundering legislation.

Establishing and defining the client relationship

- R4.7 A *member in public practice* who intends to enter into an *engagement* to provide *financial advisory service* shall discuss with and/or disclose to, as appropriate, the *client* or prospective *client* all matters relevant to the proposed *engagement*, including, but not limited to:

- a) **the proposed objective, nature and scope of the *financial advisory service* to be provided to the *client*;**
- b) **All matters required to be discussed and/or disclosed to the *client* by applicable laws and regulation; and**
- c) **All other matters required to be discussed and/or disclosed and agreed in the terms of engagement, as set-out in paragraphs R4.10 and R4.11.**

4.7A1 The purpose of these discussions with the *client* or prospective *client* is to assist the *client's* understanding of the proposed *engagement* and provide the *client* with the opportunity to seek further information and appropriate changes to the terms of engagement prior to it being concluded. The *member in public practice* should carefully explain the information in a manner that is understandable to the *client* bearing in mind the likely imbalance of knowledge between the *member* and the *client*.

4.7A2 The discussion with the *client* might also include establishing a contractual limitation of the *member's* professional liability relating to the provision of *financial advisory services*.

4.7A3 The nature, scope and form of disclosure required may be regulated under applicable laws and regulation.

Terms of Engagement

R4.8 ***A member in public practice shall document, communicate to and agree with the client, in writing, the terms of the engagement prior to the provision of financial advisory services.***

4.8A1 The purpose of providing a terms of engagement, in writing, to the *client* is to provide a clear record of the agreement reached between the parties in order to minimise possible occurrence of misunderstandings between the *member in public practice* and the *client* at a later stage

4.8A2 The terms of engagement may take the form of an engagement letter, a client services agreement, or other suitable form that meets the requirements set out in paragraphs R4.10 and R4.11 may include a 'Disclosure Statement', 'disclosure document', or other similar form of written disclosure as required by applicable laws and regulations.

R4.9 **The terms of engagement for the provision of *financial advisory services* shall be separate from any other terms of engagement that the *member in public practice* documents, communicates to, and agrees with the *client* for the provision of any other services⁵.**

R4.10 **The terms of engagement shall set out, in writing, in clear, concise and effective form, the key aspects of the agreement between the *member in public practice* and the *client* including, but not limited to:**

- a) **the identity of the person or *entity* responsible for providing the *financial advisory service* and their qualifications / licensing status;**

⁵ *Members* who do not have a licence to provide financial advice because they have concluded that they qualify for the QSA exemption, should take care to ensure that the engagement letter makes a clear linkage with the principle activity the QSA is otherwise providing to the client of accounting services (that are non-financial advice services (as defined by the FMCA)). If this linkage cannot be established, the *member* might not qualify for the QSA exemption. If the situation is unclear, the *member* should seek legal advice. See Appendix 4 for further information.

- b) the objective, nature and scope of the *financial advisory service* to be provided to the *client*;
- c) any limitations on the nature or scope of the *engagement*, and any information relevant to those limitations;
- d) any disclosures required regarding the *member's* ability to provide the *financial advisory service* to the *client* on an independent basis;
- e) the timing of provision of the *financial advisory service*;
- f) the *member's* responsibilities relevant to provision of the *financial advisory service* under the terms of engagement;
- g) the *client's* responsibilities relevant to provision of the *financial advisory service* under the terms of engagement including the need for the *client* to provide access to, or make available all relevant *client* information necessary for performance of the proposed *engagement*;
- h) the *member's* professional obligation to comply with this standard when undertaking the *engagement*;
- i) the relevant laws and regulations that the *member* must comply with when undertaking the *engagement* and any information that must be disclosed under those law and regulations⁶;
- j) the form of *financial advice* to be provided, including any reports to be provided in respect of the *financial advice* performed;
- k) circumstances where the *member* would expect or intend to use the services of other parties or experts, to meet any of the *member's* obligations for the proposed *engagement*.
- l) the expected frequency of contact between the *member* and the *client*;
- m) the details of the *professional fees*, including the basis on which the fees applicable to the *engagement* will be calculated, and the billing arrangements in respect of those *professional fees*;
- n) details of *commissions*, including *soft-dollar benefits*, from third parties that the *member* or any *related party* of the *member* will or may receive including details prescribed in paragraph R4.19;
- o) all other material facts and information relevant to the relationship with the *client* and to the *engagement* including disclosure of any conflict of interest, whether actual, potential or perceived, the *member* may have relating to the relationship or the *engagement* including the details prescribed in paragraphs R4.3 and R4.4;
- p) details of the *members'* complaints handling and dispute resolution processes;
- q) the confidentiality provisions applicable to the *engagement* including exceptions to subsection 114 Confidentiality of the *code* such as compliance

⁶ For example, where the FMCA applies, “reliability events” as defined by clause 3 of schedule 21A of the Financial Markets Conduct Regulations 2014.

with anti-money laundering legislation and section 360 Responding to Non-Compliance with Law and Regulations of the code; and

r) the duration of the *engagement* (if known).

R4.11 In addition, the terms of engagement shall advise the *client*:

- a) that the *member in public practice* will 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 *member* rests with the *client*;
- b) that *financial advice* provided to the *client* is based on the *member'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 *financial advice* provided as assertions of fact.

R4.12 The *member in public practice* shall take reasonable steps to ensure that the *client* understands the written terms of the engagement and request and obtain the *client's* written acknowledgment evidencing their understanding of, and agreement to the written terms of engagement.

R4.13 A *client* shall choose to enter into an *engagement* with the *member in public practice* to receive *financial advisory services* on a voluntary basis without coercion or inappropriate pressure by the *member*.

On-going evaluation of the engagement

R4.14 The *member in public practice* shall evaluate the continued appropriateness of the *engagement*. A *member* shall consider, amongst other things:

- a) whether the objective(s) and/or nature and scope of *financial advice* remain appropriate given any new information concerning the *client* or significant changes in the *client's* circumstances that come to light as the *engagement* proceeds;
- b) whether additional information is required to be disclosed to the *client* including any on-going or periodic disclosure requirements imposed by laws and regulations⁷;
- c) whether there are any changes in circumstances that involve conflicts of interest, whether actual, potential or perceived;
- d) whether there is a need to remind the *client* of the existing terms of the engagement;
- e) whether the terms of engagement might otherwise need to be revised, for example to take account of changes in circumstances of either the *client* or the *member*; and

⁷ For example, periodic disclosure of *commissions* earned or, where the FMCA applies, information that must be given to a client if a complaint is received.

- f) whether the *member* should continue the *engagement*, for example, where the *member* encounters integrity issues with the *client* or where the *member* is not 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 *financial advice* being provided.

Changes to engagement

- R4.15 **The *member in public practice* shall document, communicate to and agree with the *client*, in writing, any subsequent changes to the terms of engagement.**
- R4.16 **If the *member in public practice* determines that disengagement from the *client* is required, that fact should be documented and communicated to the *client*, including any outstanding matters that the *client* and/or their new *financial advisor* need to action.**

Professional fees and commissions

- 4.17A Nothing in section 330 of the *code* should be interpreted as preventing *members in public practice* from performing services on a voluntary or honorary basis provided threats to the fundamental principles of the *code* have been appropriately addressed.

Fair reflection of value

- R4.18 **The level of fees charged by the *member in public practice* shall be a fair reflection of the value of the *financial advisory services* provided to the *client*.**
- 4.18A In setting fees, *members* might consider:
- *client* instructions;
 - statutory duties;
 - *independence*;
 - levels of expertise and responsibility required, and the degree of complexity entailed;
 - amount of time taken and effectively applied by the *member* and staff; and
 - *commissions*, including *soft-dollar benefits*, to be received as a result of the *engagement* from third parties

Disclosure of commissions

- R4.19 ***Members in public practice* who receive any *commissions*, ‘including *soft-dollar benefits*’, from third parties in the course of, or subsequent to providing *financial advisory services* for their *clients*, including where received by a *related party* of the *member*, shall comply with the disclosure provisions of both this standard (including in respect to the *members’ independence* or the lack thereof) and paragraph NZ R330.5.1 of the *code*.**

Deductions from client accounts or investments

- R4.20 **If the *member in public practice* receives payment of any fees by way of debits, deductions or similar charges made against the *client’s* accounts or investments, the *member* shall:**

- a) obtain the *client's* prior written authority in accordance with the requirements of **PS-2 Client Monies**; and
- b) ensure the *client's* authority is recorded as part of the agreed terms of the engagement.

Inducements

- R4.21 ***Soft-dollar benefits* shall be considered an *inducement* for the purposes of complying with section 340 of the code.**

Client monies, client information and other client property

Comply with PS-2 Client Monies

- R4.22 **Where a *member in public practice* receives or holds monies on behalf of *clients*, or operates any *client* bank accounts for *clients*, the *member* shall comply PS-2 Client Monies, as modified or supplemented by this section.**

Security of client information

- R4.23 **The *member in public practice* shall take prudent steps to protect the security of *client* information and *client* property that is within the *member's* control to ensure that such information is protected from unauthorised disclosure and is not misused or lost.**

- 4.23A Paragraph R4.23 includes ensuring the security of stored information, whether stored physically or electronically.

Return of client property

- R4.24 **The *member in public practice* shall 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.**

5. Professional Independence

General requirements

- R5.1 **A *member in public practice* holding themselves out as an independent *financial advisor* shall maintain *independence* as defined by this standard and any relevant laws and regulations.**
- R5.2 **A *member* who is not an independent *financial advisor* shall inform the *client* in writing of the fact and comply with the requirements in this standard regarding objectivity and related disclosures.**

Applying the conceptual framework

- R5.3 **Prior to accepting an *engagement* as an independent *financial advisor*, a *member in public practice* shall apply the *conceptual framework* to identify, evaluate and address threats to the *independence* of the *member*. Where a *member* is unable to eliminate the threats or use *safeguards* to reduce the treats to an *acceptable level*, the *member* shall not accept the *engagement* as an independent *financial advisor*.**

Interests and relationships

- R5.4 **In evaluating the *member in public practice's independence*, the *member* shall take into consideration relationships between the *client*, including their *immediate and close family* and other *related parties*, and the *member*, their *immediate and close family, firm, network firm* and other *related parties*.**
- R5.5 **A *member in public practice* holding themselves out as an independent *financial advisor* shall ensure that:**
- a) **the *member'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* has with any third party or third parties, including product providers; and**
 - b) **the *financial 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 *member* for *financial advice* provided to *clients* is based solely on fees paid by *clients*, as agreed between the *member* and their *clients* for individual *engagements*.**
- R5.6 ***Members in public practice* do not fail to comply with R5.5(c) if they receive *commissions*, other than *soft dollar benefits*, that are unavoidable. Where the *member* receives an unavoidable *commission*, the *commission* shall be:**
- a) **Disclosed to the *client* in full; and**
 - b) **Rebated to the *client* by the *member* in full when received.**

Any *soft-dollar benefits* shall be declined.

Identification of threat after commencement of appointment

- R5.7 **If, after commencing an *engagement* as an independent *financial advisor*, the *member in public practice* subsequently concludes that the *engagement* will not or cannot be undertaken on an independent basis, the *member* shall immediately disclose, in writing, the relevant circumstances to the *client* and, if the *client* wants the *member* to continue to provide *financial advice*, obtain the *client's* consent, in writing, to the *member* to continuing to provide *financial advice*. If the *client* does not provide their consent, the *member* shall withdraw from the *engagement*.**

6. Engagement performance

Planning and performance

- R6.1 **A *member in public practice* shall plan and perform the *financial advisory service* with an appropriately inquiring mind.**
- R6.2 **A *member in public practice* shall perform an *engagement* for *financial advisory services* based on their knowledge and understanding of their *client's* financial**

needs, objectives and priorities, and relevant personal circumstances as disclosed to the member.

- R6.3 **The member in public practice shall perform procedures that are adequate to establish a reasonable basis for the financial advice to be provided.**
- 6.3A The *financial advice* provided to a *client* by a *member in public practice* is not required to be ideal, perfect or best practice. However, the *member* must ensure the requirement set out in paragraph R2.9 is met in order to achieve the overall purpose of establishing a reasonable basis for *financial advice* provided to *clients*.
- R6.4 **A member in public practice shall exercise professional judgement when performing an engagement for financial advisory services.**
- 6.4A The *member in public practice* applies professional judgement when developing and providing *financial advice* to *clients*. Advice and recommendations developed by a *member* may differ from those of other *financial advisers* while still reasonably meeting the *client's* needs, objectives and priorities. Similarly, recommendations provided as part of the *financial 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 *member* always meets the requirement set out in paragraph R2.9 and the other requirements of this standard when undertaking financial advisory *engagements* for *clients*.

Addressing Information that is or might be misleading

- R6.5 **If a member in public practice knows, or has reason to believe or suspect, that any financial advice the member is engaged to provide is, or is likely to be, based on incomplete or inaccurate information, the member shall 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.**
- R6.6 **If the member in public practice 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 member shall:**
- 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 any financial advice provided, in the meantime, to those matters for which the member considers there is sufficient and relevant information available to provide an appropriate basis for financial advice.**
- R6.7 **If the client does not rectify any inaccuracy or omission to the member in public practice's satisfaction or the member, otherwise, considers that a client has deliberately provided false or misleading information, or that the financial advice to be provided will be based on information that is, or is likely to be, false or misleading, the member shall:**

- a) not provide any further *financial advice* to the *client*; and
- b) withdraw from the *engagement*.

R6.8 If a *member in public practice* becomes aware, after provision of any *financial advice*, that the *financial advice* is based on false or misleading information, or is likely to have been based on false or misleading information, the *member* shall 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 *financial advice* including forwarding a written notification to the *client*, and to any other parties they know have received the *financial advice*, informing them that the *financial advice* has been withdrawn. The *member* shall also consider whether it is appropriate to issue revised advice.

Use of discretion

R6.9 If the *member in public practice* compiles or uses estimates, forecasts or projections as part of *financial advice* prepared or developed for a *client*, the *member* shall ensure that those estimates, forecasts and projections:

- a) Comply with relevant *technical and professional standards*⁸;
- b) Are presented and communicated in the *financial 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 *financial advice* provided by the *member*.

Use of experts

R6.10 Where a *financial advisory service* requires the consideration of matters that are outside the professional expertise of a *member in public practice*, the *member* shall obtain expert assistance or advice from a suitably qualified third party or decline the *financial advisory service*. Where the *member* relies on the advice of a third party, the *member* shall disclose in relevant reports or communications the areas in which third party advice has been obtained and that the *member* has relied on that advice.

6.10A *Members in public practice* may engage suitable experts that have the required knowledge and expertise to enable the *member* to deliver the *financial advice* required by the *client*. For example, a *member* may delegate investment decisions to specialist investment managers or require the *client* to contract the services of an investment manager directly. Other examples of some areas where expert assistance might be needed include (but are not limited to):

- a) risk profiling;
- b) risk management (including protection against identified risks through insurance);
- c) valuations;

⁸ In situations where no mandatory standards apply to the *member's* facts and circumstances, *members* are expected to identify other authoritative guidance to support their work. This authoritative guidance may be an NZICA standard that provides the *member* with appropriate guidance, although the facts and circumstances of the *engagement* are not strictly within its' scope, or it may be the pronouncement of another professional body or regulatory authority.

- d) taxation advice;
- e) preparation of financial information, including preparation of forecasts and projections.

R6.11 **When planning to use the work of a suitably qualified third party, a member in public practice shall assess the professional competence and objectivity of that third party, and whether the work performed, and the fees charged are appropriate and reasonable.**

6.11A1 The suitably qualified third party will determine the assumptions, criteria and methods to be used for their work, and their application. The *member in public practice* must assess whether these determinations are appropriate and reasonable for the *engagement*.

6.11A2 The risk that a suitably qualified third party's objectivity will be impaired increases when the third party is associated with the *member in public practice* in a way that evidences the existence of shared or mutual *financial interests* with the *member*, including any financial involvement with the *member* linked to the provision of *financial advice* to the *member's clients*.

Outsourcing

6.12A If work in an *engagement* is outsourced, the *member in public practice's* obligations under this standard remain the same as if the *member* or the *member's* staff had performed the work.

Procedures for developing appropriate advice

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

R6.13 **The member in public practice shall make reasonable enquiries about the client's relevant personal circumstances and endeavour to obtain from the client all the information needed to meet the member's obligations for the engagement.**

6.13A1 The nature and extent of the procedures the *member in public practice* undertakes varies from *client to client*. The *member* may need to make *client* enquiries additional to those that they normally make in any particular case.

6.13A2 In general terms more extensive enquiries, and consideration and investigation of the subject matter of the *financial advice*, are needed when:

- a) the *financial advice* involves complex financial products, classes of financial product or strategies (including tax-related strategies), in contrast with *financial advice* that involves relatively simple financial products; and
- b) the potential negative impact on the *client* is likely to be relatively serious if the *financial advice* is inappropriate, and the *client* acts on the *financial advice*.

6.13A3 Where *financial advice* is provided to an existing *client*, the requirement to make *client* enquiries will generally be satisfied if the *member in public practice* makes reasonable enquiries about whether the information already held about the *client's* relevant personal circumstances is up-to-date and complete.

R6.14 **The member in public practice shall 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 *financial advice*;
- d) the financial literacy/sophistication of the *client*;
- e) whether the *financial 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 *financial advice* provided; and
- g) consideration of any other matter(s) that would reasonably be considered to be relevant to the *financial advice*, including any matter that the *client* indicates as being relevant or important.

R6.15 If the *financial advice* being provided includes *financial advice* concerning financial products with an investment component, the *member in public practice* shall obtain knowledge and understanding of the relevant personal circumstances of the *client*, relevant to providing such *financial 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:
 - a. risk of capital loss, especially where this is a significant possibility if the *financial advice* is followed; and
 - b. the risk that the *financial 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

- R6.16 **Consistent with the nature and scope of the *engagement*, the *member in public practice* shall carry out a reasonable investigation to support *financial advice* provided to the *client*, including *financial advice* containing any recommendations concerning financial products.**
- 6.16A1 This investigation may be undertaken by the *member in public practice*, or by others, provided that the *member* acts reasonably in relying upon such investigation.
- 6.16A2 Depending on the circumstances, it may be reasonable for the *member in public practice* 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 *member* should take reasonable steps to assess the integrity and validity of the information for the purpose of the *member's* use or reliance, and whether the information or research is accurate, complete, reliable and up-to-date.
- R6.17 **The *member in public practice* shall 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

- R6.18 **The *member in public practice* shall develop the *financial advice*, and any recommendations contained in the *financial 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* reasonably believes are appropriate for the purpose of the *financial advice*.**
- R6.19 **The *member in public practice* shall agree with the *client* all the significant assumptions that can reasonably be expected to influence the *financial advice*, and document the assumptions used to develop the *financial advice* provided to the *client*.**

Finalising the advice

Basis for Advice

- R6.20 **The *member in public practice* shall establish the basis for any *financial 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

- R6.21 **Having developed the basis for the *financial advice*, the *member in public practice* shall carry out an overall assessment of whether the *financial advice* to be provided to the *client* is likely to meet the overall objectives of being suitable in the context for which the *financial advice* is given and being appropriate to the *client's* financial needs, objectives and priorities as disclosed to the *member*.**
- 6.21A This overall assessment should involve consideration of whether the *financial 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.
- R6.22 **The *financial advice* to the *client*, and recommendations provided as part of the *financial advice*, shall 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 *financial advice*.**
- R6.23 **A *member in public practice* shall 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 *financial advice* of this nature must be appropriate for the *client*, and the *member* must be in a position to evidence that conclusion.**
- R6.24 **A *member in public practice* shall revise *financial 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 *member's* attention, including by notification or request made by the *client***

Communication of advice

- R6.25 **The *member in public practice* shall convey *financial advice*, including any recommendations made, to the *client* in clear, concise and effective form.**
- 6.25A The *member in public practice* should provide *financial advice*, in writing, whenever practicable. However, where verbal advice is unavoidable, a file note recording that verbal advice, or an audio recording of the phone conversations should be retained by the *member*.
- R6.26 **Subject to the terms of engagement and relevant laws and regulations, the *member* shall report in writing:**
- a) **The date of the report;**
 - b) **The name of the *client*;**
 - c) **The name and qualifications of the *member* providing the *financial advice*;**
 - d) **The purpose of the *financial advice*;**

- e) The scope of the *financial advice*, including limitations or restrictions;
- f) The basis of the *financial advice*, including all significant assumptions on which the *financial advice* is based;
- g) The specific information on which the *member* has relied and the extent to which it has been reviewed by the *member*;
- h) The *financial advice*;
- i) The reasons why the *financial advice* is considered to be in the best interests of the *client*;
- j) The *member's* professional obligation to comply with the *code* and this standard when undertaking the *engagement*;
- k) The details of any assistance provided to the *member* by a suitably qualified third party in providing the *financial advice*;
- l) The details of any fee, including referral fee received or receivable by the *member*, either from the *client* or third party for the *financial advice*;
- m) The details of *commissions*, including *soft-dollar benefits*, from third parties that the *member* or any *related party* of the *member* will or may receive as a result of the *financial advice*;
- n) The details of all other material facts and information relevant to the relationship with the *client* and to the *engagement* including any conflict of interest, whether actual, potential or perceived, that may impact on the *member's* ability to act in the best interests of the *client*;
- o) The details of the *members' complaints handling and dispute resolution processes*;
- p) Any other information or disclosures required by this standard or laws and regulations.⁹

6.26A Where disclosures required in paragraph R6.26 will be an exact repetition of information contained in the terms of engagement, the *member in public practice* might refer the *client* back to the relevant paragraph in the terms of engagement instead of repeating the information in the report.

R6.27 **The *member in public practice* shall take reasonable steps to ensure that the *client* comprehends the *financial advice* given and recommendations provided and the basis for the *financial advice* and recommendations, including all matters outlined in R6.26 above.**

6.27A A *client's* decision about whether to act on the advice given and recommendations provided should be made with full knowledge and understanding of the costs, benefits and risks involved including the potential consequences of the proposed course of action. This informed consent requires the *member in public practice* to carefully explain the information in a manner that is understandable to the *client* bearing in mind the likely imbalance of knowledge between the *member* and the *client*. The *client* should also be given sufficient time to form an opinion about the information and any proposed transaction.

⁹ For example, where the FMCA applies, reference to statutory duties that apply to the *member* giving the advice.

- R6.28 **If an *engagement* involves provision of *financial advice* to a *client* on an ongoing basis, the *member in public practice* shall apply professional judgement to assess how to properly achieve compliance with the requirements of this section when providing *financial advice* to the *client* for the *client's* decision-making.**

Implementation of advice

In accordance with terms of engagement

- R6.29 **The *member in public practice* shall only implement *financial advice* and any recommendations, in accordance with the terms of engagement agreed with the *client*.**

- R6.30 **A *client* shall choose to undertake any courses of action recommended by the *member in public practice* on a voluntary basis without coercion or inappropriate pressure by the *member*.**

Instructions to implement unsuitable course of action

- R6.31 **Subject to the *code* and relevant NZICA professional standards and laws and regulations, where a *client* gives specific instructions to the *member in public practice* to implement a course of action that the *member* considers is not suitable for the *client*, the *member* shall comply with the *client's* instructions only after advising the *client*, in writing, of their opinion, including their rationale, that they consider that the course of action is not in the best interests of the *client*.**

- 6.31A The *member* should also consider obtaining acknowledgement from the *client* that they wish to go ahead with the course of action, despite advice to the contrary.

7. Documentation and quality ~~control~~ management

- R7.1 **A *member in public practice* shall implement appropriate and effective quality ~~control~~ management policies and procedures in accordance with PS-1 Quality ~~Control~~ Management¹⁰.**

- R7.2 **A *member in public practice* shall prepare working papers on a timely basis in accordance with this standard that appropriately document the work performed, including aspects of the *financial advisory service* that have been provided in writing. The documentation prepared by the *member* shall:**

- a) **Provide appropriate record of the work performed for the *financial advisory service* that is sufficient to enable an experienced *member* who performs *financial advisory services* to understand the nature, timing and extent of the work performed including sufficient detail to show compliance with Part 6 of this standard and to support any *financial advice* and recommendations accompanying the *financial advisory services*;**

¹⁰ PS-1 requires the firm to establish policies and procedures for the retention of engagement documentation (including those described in paragraph 7.2) for a period sufficient to meet the needs of the firm or as required by law or regulation. For example, members who are financial advice provider licence holders are reminded that one of the standard licence conditions imposed by the Financial Market Authority requires records to be kept for a period of at least 7 years from the later of certain defined dates.

- b) Evidence all relevant information concerning the *member's* professional relationship with the *client* including sufficient information to evidence that the *member* has:
- a. Met their fiduciary duties to the *client* including acting in the best interests of the *client*;
 - b. Identified threats to *independence* and/or objectivity, as applicable, and to any other fundamental principles of the *code*, and how those threats have been evaluated and addressed; and
 - c. Demonstrate that the *financial advisory service* was carried out in accordance with relevant laws and regulations, this standard and other applicable *technical and professional standards* (including policies and procedures established in accordance with PS-1 Quality Control Management).

Glossary

Defined terms are shown in the body of the standard in *italics*.

For the purpose of this standard:

Acceptable level means a level at which a *member* using the reasonable and informed third party test would likely conclude that the *member* complies with the fundamental principles of the *code*.

Client means an *entity* to which *financial advice* is provided pursuant to an *engagement* of either a demand or re-occurring nature.

Close Family means a parent, child or sibling who is not an *immediate family* member.

Code means *NZICA Code of Ethics* issued by the New Zealand Regulatory Board of the New Zealand Institute of Chartered Accountants.

Commission means 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*.

Engagement means an agreement, in writing, between a *member* and a *client* relating to the provision of *financial advisory services* by a *member*.

Entity means any legal, administrative or fiduciary arrangement, organisational structure or other party (including a person) having the capacity to deploy scarce resources in order to achieve objectives.

Financial advice means advice provided to *clients* to manage their financial affairs specifically related to wealth management and planning, investment and personal risk management.

Financial advice product means “financial advice product” as defined by section 6 of the Financial Markets Conduct Act 2013 (as amended by the Financial Services Legislation Amendment Act 2019)

Financial advisor means an *entity* (including a *member*) providing *financial advice*.

Financial advisory services means:

- (a) a service where a *member* provides *financial advice*; and
- (b) includes allied services related to that *financial advice*; and
- (c) excludes:
 - a. taxation services unless they are allied services related to that *financial advice*;
 - b. client money or property services (as defined in the Financial Markets Conduct Act 2013 (as amended by the Financial Services Legislation Amendment Act 2019));
 - c. 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;

- d. execution of transactions (without any advice or recommendations on the suitability or otherwise of those transactions);
- e. referral to a financial adviser;
- f. provision of information only (with appropriate notice that no recommendations should be inferred);
- g. services related to a business restructuring or reorganisation;
- h. services related to a private or public debt or equity fundraising;
- i. services related solely to refinancing an *entity's* operations or activities;
- j. services related to a takeover, merger, acquisition or divestment of a business;
- k. valuation of an *entity*, or any interests held in an *entity*.

Appendix 2 provides further guidance on the interpretation of this term

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

Firm means:

- 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.

Immediate Family means a spouse (or equivalent) or dependent.

Independence comprises:

- 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 skepticism.
- b) Independence of appearance – the avoidance of facts and circumstances that are so significant that a reasonable and informed third party would likely to conclude that a *member's* or a *firm's*, other *entity* through which the *member* provides *financial advisory services* or a *Partner's*, employees, agents, consultant's, or contractor's integrity, objectivity or professional skepticism, has been compromised.

Inducement means an object, situation or action that is used as a means to influence another individual's behavior, but not necessarily with intent to improperly influence that individual's behaviour.

Member means an individual who is a member of the New Zealand Institute of Chartered Accountants in accordance with the New Zealand Institute of Chartered Accountants Rules.

Member in public practice means a *member*, irrespective of functional classification (for example, audit, tax or consulting) in a *firm* that provides *professional services* or otherwise provides *professional services* to the public.

In this standard, the term also includes the individual members' *firm*.

Network means a larger structure:

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

Network Firm means a *firm* or *entity* that belongs to a *network*.

Partner means any individual with authority to bind the *firm* with respect to the performance of *professional services*.

Professional activity means an activity requiring accountancy or related skills undertaken by a *member*, including accounting, auditing, tax, management consulting, and financial management.

And, for the avoidance of doubt, includes *financial advisory services*.

Professional fees means the amounts billed, or to be billed, by a *member* on account of *professional services* performed, or to be performed, by the *member*.

Professional services means *professional activities* performed for *clients*.

Professional standards means professional and ethical standards issued by the New Zealand Regulatory Board of the New Zealand Institute of Chartered Accountants.

Public interest means the collective well-being of the community and institutions the profession serves.

Related party means an individual or *entity* from whom any direct or indirect economic benefit is received, or may be received, by the *member* as a result of providing or implementing *financial advice* to a *client*, or as a result of a recommendation made by the *member* when providing *financial advice*.

Safeguards means actions, individually or in combination, that the *member* takes that effectively reduces threats to compliance with the fundamental principles of the *code* to an *acceptable level*.

'Soft-dollar' benefits means all monetary and non-monetary benefits received by a *member* from parties other than the *client* pursuant to performance of *financial advisory services*. They do not include:

- (a) fees derived directly from their *client* in respect of such services; and
- (b) referral fees received in the course of referring *clients* to other service/product providers, disclosed to the *client* by the *member* at the time of provision of *financial advice*; and
- (c) benefits that may be beneficial to the overall quality of the *financial advice* provided to the *client*.

Appendix 3 provides further guidance on the interpretation of this term

Technical and professional standards means 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 any other standards or authoritative guidance applicable to the task or *engagement*

Conformity with International Pronouncements

None of the International Federation of Accountants (IFAC) international standards boards have issued a pronouncement equivalent to FAS.

The Australian Accounting Professional and Ethical Standards Board (APESB) has issued APES 230: Financial Planning Services which is similar to FAS but designed to interact with other APESB pronouncements and to ensure compliance with Australian laws and regulations. Differences between FAS and APES 230 include:

- FAS defines “financial advisory services” without reference to legislation but with specific exclusions whereas APES 230 defines “financial planning advice” to include legislative definitions. This difference results in slightly different scope to each standard;
- FAS refers to NZICA pronouncements and New Zealand laws and regulations and other matters applicable to the New Zealand environment whereas APES 230 refers to APESB pronouncements and Australian laws and regulations and other matters applicable to the Australian environment;
- FAS includes more specific requirements and guidance material regarding certain topics. This is consistent with material contained in the extant standard. APES 230 requirements and guidance material on these same topics remains more high level;
- FAS includes additional material regarding terms of engagement as there is no NZICA equivalent to APES 305: Terms of Engagement;
- FAS includes additional material regarding professional fees as there is no NZICA equivalent to CA ANZ N8;
- FAS provides prescriptive requirements regarding financial advice disclosures to be consistent with the Financial Markets Conduct Act 2013 (as amended by the Financial Services Legislation Amendment Act 2019). APES 230 does not include these specific requirements;
- APES 230 provides prescriptive requirements regarding the situation where professional fees are solely determined or based on a percentage of the client’s assets or fund under management to be consistent with Australian Corporations Act 2001. FAS does not include these requirements;
- APES 230 provides prescriptive requirements regarding disclosure of third party payments (which is a defined term) to be consistent with Australian Corporations Act 2001. FAS includes similar but slightly less prescriptive requirements regarding commissions, including soft-dollar benefits (both defined terms) to be consistent with the NZICA Code of Ethics;
- APES 230 provides specific requirements regarding the receipt of non-monetary soft-dollar benefits currently only allows non- monetary soft dollar benefits up to a cap of \$300 to be consistent with Australian Corporations Act 2001. FAS requires the member to consider whether it is appropriate to accept such a benefit in accordance with section 340 Inducements, including Gifts and Hospitality of the NZICA Code of Ethics.

Appendix 1

Examples of laws and regulations that may be applicable to the provision of financial advisory services

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

The following statutes, as amended from time to time, and as supplemented by accompanying regulations (for example, Financial Markets Conduct Regulations) and other instruments (for example, the Code of Conduct for Financial Advice Services), are among those laws often relevant to the provision of *financial advisory services*:

- Anti-Money Laundering and Countering Financing of Terrorism Act 2009
- Consumer Guarantees Act 1993
- Contract and Commercial Law Act 2017
- Crimes Act 1961
- Criminal Proceeds (Recovery) Act 2009
- Fair Trading Act 1986
- Financial Advisers Act 2008 (repealed as at 15 March 2021)
- Financial Markets Authority Act 2011
- Financial Markets Conduct Act 2013
- Financial Markets Supervisors Act 2013
- Financial Service Providers (Registration and Dispute Resolution) Act 2008.
- Kiwisaver Act 2006
- Mutual Assistance in Criminal Matters Act 1992
- Privacy Act 2020
- Secret Commissions Act 1910
- Terrorism Suppression Act 2002
- Trusts Act 2019

In addition, *members* may be required to comply with regulatory provisions of other bodies, for example the NZX Market Participant Rules applicable to NZX Advisers, NZDX Advisers, NZX Derivatives Advisers, Market Participants and Participants.

Appendix 2

“financial advisory services” – further guidance

This Appendix should be read in conjunction with Appendix 4.

A *member in public practice* may be involved in providing *financial advice* in various ways. For example, the *member* 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, a *member* 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 a *member* 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*.

This may include situations where an existing *client* (tax compliance and compilation services) sells a substantial asset (e.g. the family farm) and approaches the *member* as their “trusted advisor” for advice about how to invest proceeds of the sale of the asset and that *member* provides the *financial advice* themselves rather than refer the *client* to a specialist *financial advisor*.

- (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, a *member* 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.

Note, however, merely reporting to a *client* the current status/value of the portfolio is not a *financial advisory service* for the purpose of this Standard.

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

Appendix 3

‘soft-dollar’ benefits – further guidance

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

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 (unless paragraphs R250.5, R250.8, R340.5 or R340.8 of the *code* apply):

- educational materials.
- research materials or data.
- product brochures and fact sheets.
- incidental meals or entertainment;
- free or subsidised activities that constitute formal continuing professional development under Chartered Accountants Australia and New Zealand regulations.

Appendix 4

‘Financial advisory services’ – Q & A

This appendix is included for information purposes only and does not form part of the requirements of this standard. The information and illustrations provided should not be relied upon as providing a comprehensive guide to the practical application of this standard or laws and regulations (in particular, the FMCA (as amended by FSLAA). Members should seek specialist legal advice as to the extent of their professional and legal obligations.

1. If I comply with this standard, will I comply with all my legal obligations in respect of my financial advisory services engagements?

Compliance with this standard will not mean that you have complied with all your legal obligations.

It is important to be aware that in undertaking financial advisory services engagements (and any other engagement) that broader legal obligations may apply. Members are responsible for determining those legal obligations and complying with those legal obligations. Members should seek specialist legal advice as to the extent of their legal obligations when required.

In particular, when undertaking financial advisory services engagements, there is a specific regulatory regime (the financial advisors regime) that applies to financial advice (as defined in the FMCA – this definition differs from the definition of financial advice included in this standard). Where the financial advisors regime applies to your activities, it will place additional legal obligations on you that may include obtaining and maintaining a financial advice provider market services licence if regulated financial advice is given to retail clients and complying with prescribed regulatory obligations. These legal obligations are not included in this standard.

2. Is there any relief from the financial advisors regime for accountants?

The financial advisors regime does provide some relief from its obligations for qualified statutory accountants (QSAs). However, this relief is narrowly defined and is only available in relation to financial advice (as defined in the FMCA) given in the ordinary course of carrying on the occupation of a qualified statutory accountant, where the financial advice is only provided as an ancillary part of carrying on the principal activity of being a qualified statutory accountant, being an activity that is not the provision of financial services.

3. Am I a qualified statutory accountant?

A QSA is a member who is a chartered accountant and holds a certificate of public practice (CPP).

4. When is financial advice only provided as an ancillary part of carrying on the principal activity of being a qualified statutory accountant, being an activity that is not the provision of financial services?

Financial advice (as defined in the FMCA – this definition differs from the definition of financial advice included in this standard) will only be provided as an ancillary part of carrying on the principal activity of being a QSA where the advice can be rationalised as simply forming part of the accounting services (that are not financial services (as defined by the FMCA)) the QSA is otherwise providing to the client.

Therefore, if you identify in the course of providing accounting services that the client requires some ad-hoc financial advice as part of that particular service, you will be able provide that advice (subject to

complying with this standard) and claim the QSA exemption from complying with the financial adviser advisors regime.

However, if you offer or provide any financial advice services as a separately identifiable or standalone service (even if only to existing clients and/or only as a small or incidental part of your practice), you will not be able to claim the exemption and will be required to comply with the financial advisers regime.

5. Can you provide examples of when the QSA exemption might apply?

These examples are not exhaustive and are designed to assist members to identify when the QSA exemption might not apply.

Situations to which the standard will apply but the QSA exemption will not apply:

- A QSA offers investment advisory services as a standalone business line. No other services are offered or provided to clients of the business.
- A QSA offers specialist investment management services to the public, including management of investments in an investment portfolio operated by the QSA's firm.
- A QSA specialises in providing financial advice and related services to high wealth individuals.
- An existing client engages the QSA to provide personal financial planning and investment advisory services, along with a range of other professional services pertaining to the client's business interests.

Situations to which the standard will apply and the QSA exemption might apply:

- A QSA is assisting a family trust to complete its annual financial statements and it becomes apparent that its' financial position has suddenly deteriorated. The trust asks the QSA to advise which investments have caused the sudden drop so that it can stem the losses.
- A QSA is advising a client as to their tax affairs and assists them address a tax debt, by advising them as to which of their existing investments they should dispose of to meet their obligations
- A QSA is assisting a client with their budget for the current year and advises on the impact on the forecast of various scenarios for changing or retaining the client's current portfolio of investments being proposed by the client's financial advisor.

6. Can I provide financial advice on wealth planning in response to questions asked by family and friends on social occasions?

No. Paragraph R2.3 of this standard prohibits a member from providing financial advice except as part of an engagement.