

New Zealand Institute of Chartered Accountants

ENGAGEMENT STANDARD

**FINANCIAL ADVISORY ENGAGEMENTS**

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

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

## Introduction

### Scope

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

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

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

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

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

### **Fiduciary Relationship with the Client**

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

### **Effective Date**

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

### **Objective**

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

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

## Definitions

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

disclosed to the client by the adviser at the time of provision of advice. (Ref: Para. A7–A8)

## Requirements

### Ethical Requirements

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

### **Fundamental Principle: Objectivity and Independence**

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

#### Associations with Third Parties

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

#### Financial Involvement with Clients

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

#### Conflicts of Interest

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

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

#### Independence—Conditions for Independent Financial Advice

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

#### Independence—Individual Engagements

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

*Fundamental Principle: Professional Competence and Due Care*

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

*Fundamental Principle: Confidentiality*

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

*Fundamental Principle: Professional Behaviour*

## Professional Fees and Commissions

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

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

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

**Quality Control**

- 36 A financial adviser must implement appropriate and effective quality control policies and procedures, both at the level of the adviser’s firm and for each individual financial advisory engagement, in accordance with Professional Standard 1.<sup>5</sup>

**Client Information, Client Monies and Other Client Property**

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

**Acceptance and Continuance of Client Relationships and Specific Engagements**

**Establishing and Defining the Client Relationship**

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

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<sup>4</sup>Professional Standard 2 *Client Monies* (PS-2).

<sup>5</sup>Professional Standard 1 *Quality Control* (PS-1).



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

#### Disclosure to Clients and Prospective Clients

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

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

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

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

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

#### Agreeing the Scope and Basis of the Engagement

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

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

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

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

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

*Other Services*

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

**Engagement Performance**

*General Principles*

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

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

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

*Procedures for Developing Appropriate Advice*

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

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

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

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

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

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

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

#### Consideration and Investigation of the Subject Matter of the Advice

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

#### Use of Assumptions to Develop Advice

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

#### *Incomplete or Incorrect Information*

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

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

*False or Misleading Information*

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

*Use of Experts*

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

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

### *Estimates and Projections*

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

### *Finalising the Advice*

#### Basis for the Advice

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

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

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

### **Documentation**

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

### **Communication of Advice**

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



### Disclosure of Commission Earned or Received for Providing Advice to Clients

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

### Ongoing Advice

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

### Implementation of Advice

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

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## Application and Other Explanatory Material

### Scope (Ref: Para. 1–7)

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

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

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

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

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

- A2 Examples of legislation (and associated regulations) that will ordinarily be applicable to members and firms undertaking financial advisory engagements, depending on the nature and scope of particular engagements, are listed in Appendix 2.
- A3 In particular, members and firms who, in the course of business (that is, providing professional services) provide financial advice, receive funds for purposes of deposit or investment on behalf of clients, or who otherwise invest money of their clients and/or manage client funds, are required to comply with:
- (a) the Financial Transactions Reporting Act 1996 which, among other things, imposes statutory obligations with regard to:
- verifying the identity of clients;
  - reporting suspicious transactions;
  - retaining records; and
  - reporting transactions that involve cash amounts of \$10,000 or more.
- (b) the Financial Service Providers (Registration and Dispute Resolution) Act 2008 which, among other things, imposes the statutory obligation to become a *registered* financial service provider in order to provide a financial service (as defined in section 5 of the Act).<sup>7</sup>

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

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

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

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

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

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

(c) the Financial Advisers Act which, among other things, restricts provision of financial advice in relation to certain products and provision of a financial planning service to *authorised* financial advisers.<sup>8</sup>

A4 In addition, members and firms may be required to comply with regulatory provisions of other bodies, for example the NZX Market Participant Rules applicable to NZX Advisers, NZX Associate Advisers, designated Market Participants and Client Advising Participants.

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

A5 In general, the relationship between a financial adviser and the client arises from the agreement reached between the adviser and the client concerning the nature and scope of the advice and services to be provided to the client. This relationship is characterised by a need for trust and confidence created by the adviser’s commitment to act on behalf of the client. The respective positions of strength and vulnerability within this relationship place fiduciary duties upon the adviser.

A6 The scope of the fiduciary duty to the client is influenced by:

- (a) the nature and extent of the financial advice for which the adviser assumes responsibility under the engagement; and
- (b) the extent of the reliance or trust placed in the adviser by the client; and
- (c) the degree of discretion and influence that the adviser has in the performance of the role or services for the client under the engagement; and
- (d) any circumstances where the client has given their informed consent to the adviser to enable the adviser to undertake certain actions or conduct in the course of undertaking the financial advisory engagement that may otherwise not be permissible under the fiduciary duty owed to the client.

**Definitions** (Ref: Para. 13(n))

A7 Some examples of ‘soft-dollar’ benefits are:

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

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<sup>8</sup> An individual who is an authorised financial adviser may:

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

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

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

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

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

## **Ethical Requirements**

### *Objectivity*

Associations with Third Parties (Ref: Para. 16)

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

Conflicts of Interest (Ref: Para 19–23)

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

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

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

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

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

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

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

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

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

*Independence – Individual Engagements (Ref: Para. 27)*

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

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

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

*Fundamental Principle: Confidentiality (Ref: Para. 30)*

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

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

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

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

*Fundamental Principle: Professional Behaviour*

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

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

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

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

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

**Acceptance and Continuance of Client Relationships and Specific Engagements**

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

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

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

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

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

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

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

#### *Other Services* (Ref: Para. 57)

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

### **Engagement Performance**

#### *General Principles* (Ref: Para. 58–60)

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

*Procedures for Developing Appropriate Advice*

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

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

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

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

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

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

*Use of Experts* (Ref: Para. 73–75)

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



- risk profiling;
- risk management (including protection against identified risks through insurance);
- valuations;
- taxation advice;
- preparation of financial information, including preparation of forecasts and projections.

A49 The risk that an expert's objectivity will be impaired increases when the expert is associated with the adviser in a way that evidences the existence of shared or mutual financial interests with the adviser or client, including any financial involvement with the adviser linked to the provision of financial advice to the adviser's clients.

A50 The expert will determine the assumptions, criteria and methods to be used for their work, and their application.

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

A51 The adviser should retain a record of the advice given to the client, for example, a copy of the written advice provided to the client, a file note recording any verbal advice or an audio recording of phone conversations.

A52 An adviser must fully and accurately disclose in writing to the client at the time the advice is given or the recommendation is made, all interests, financial and non-financial, received or receivable by themselves or any related parties relating to the provision of advice. This includes payments and benefits to or from related parties that influence or may reasonably be capable of influencing the advice, and any referral payments.

#### **Implementation of Advice** (Ref: Para. 92)

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

## Appendix 1

(Ref: Para. A1)

### Examples to Illustrate the Application of the Standard

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

#### A Situations to which the Standard will apply

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **B Situations to which the Standard will not apply**

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

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

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

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

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

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

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

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

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

## **C Situations to which the Standard may apply**

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

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

*Note to 1. and 2. above*

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

## **Appendix 2**

(Ref: Para. A2)

### **Examples of Legislation that may Affect Financial Advisers**

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

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

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