

# Financial Services News Alert

17 August 2010

## Draft Code of Professional Conduct for AFAs Rejected

The Commissioner for Financial Advisers David Mayhew (**Commissioner**) has today released a letter ([here](#)) rejecting the draft Code of Professional Conduct submitted to him by the Code Committee on 30 July 2010 ([here](#)).

### What is the draft Code?

Under the Financial Advisers Act 2008 (**Act**), the Code Committee must produce a draft Code for approval by the Commissioner. The Code specifies the minimum standards of professionalism that investors can expect of authorised financial advisers (**AFAs**) including competence, knowledge and skills, client care, ethical behaviour and continuing professional training.

### Why did he reject the draft Code?

The Commissioner considered that the draft Code was inconsistent with the Act in three respects. These are set out below.

- **Background to the Code**

The Commissioner considered the initial section of the Code requires updating for consistency with the most recent changes to the Act.

- **Code Standard 5**

Code Standard 5 provides that an AFA must not provide financial advice to a retail client in relation to a financial product that is not offered to the public if the AFA is a related person of the product provider.

The Commissioner's view is that the standard as it currently reads may leave AFAs and consumers with the impression that the Code is endorsing the provision of advice on wholesale products to retail clients where the product provider is not a related party of the AFA. In most cases, this would still be inconsistent with the requirement under section 38 of the Act that an AFA must not recommend an illegal offer.

Even where the product being offered to a client is not in breach of section 38 (e.g. where the client has opted out of being a wholesale client) great

care will need to be taken to ensure that any recommendations made are consistent with the general obligation to exercise, diligence and skill imposed by section 33 of the Act.

- **Code Standard 8**

Code Standard 8 establishes the general obligation of AFAs to take reasonable steps to ensure that any personalised advice they provide is suitable for a client. A client may, however, decline to provide information to permit the AFA to determine suitability or instruct the AFA not to determine the suitability of the service provided.

In this case, the Commissioner notes that the advice may become a class service rather than a personalised service meaning Code Standards 9 and 10 of the draft Code will apply instead of Code Standard 8. The exclusion of any reference to this makes the Code Standard potentially confusing for consumers, who may not be clear which rules apply.

### Going forward

The Commissioner's letter recommends that the Code Committee, which is set to meet later this week to consider minor changes to the draft Code, consider his comments and provide him with a revised draft Code as soon as practicable.

### How we can help

We have been advising clients in New Zealand, and offshore, on the implications of the Act and Code. We can talk to you about how the Act and Code may affect your business and what steps you should be taking now to ensure you are ready for the new regime.

## Further information



**Lloyd Kavanagh**

T +64 9 353 9976

M +64 21 786 172

E [lloyd.kavanagh@minterellison.co.nz](mailto:lloyd.kavanagh@minterellison.co.nz)



**Chris O'Brien**

T +64 4 498 5133

M +64 21 888 739

E [chris.obrien@minterellison.co.nz](mailto:chris.obrien@minterellison.co.nz)



**Jeremy Muir**

T +64 9 353 9819

M +64 21 625 319

E [jeremy.muir@minterellison.co.nz](mailto:jeremy.muir@minterellison.co.nz)



**Karen Mace**

T +64 4 498 5106

M +64 21 221 7513

E [karen.mace@minterellison.co.nz](mailto:karen.mace@minterellison.co.nz)

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