

Financial Advice Code Committee

Consultation on competence, knowledge, and skill

June 2024

Introduction

The Financial Markets Conduct Act 2013 (**FMC Act**) established the Financial Advice Code Committee (**Committee**) to produce, and from time to time review, the Code of Professional Conduct for Financial Advice Services (**Code**). For information about the Code and Committee, see financialadvicecode.govt.nz/about-the-code.

The Committee welcomes your feedback on this consultation on proposed amendments to the Code.

Submissions

Submissions should be emailed in MS Word format to secretariat@financialadvicecode.govt.nz by 5pm on Wednesday 14 August 2024.

Feedback received is subject to the Official Information Act 1982. The Committee may make submissions available on our website, compile a summary of submissions, or draw attention to individual submissions in internal or external reports. We do not normally release or publish personal information. If you want us to withhold any commercially sensitive or proprietary information in your submission, please clearly state this and note the specific section. We will consider your request in line with obligations under the Official Information Act.

About this consultation

REASONS FOR THIS CONSULTATION

This consultation is prompted by:

- The recent approval by the New Zealand Qualifications Authority of version 3 of the New Zealand Certificate in Financial Services (Level 5) (**Level 5 Certificate**); and
- The current interim status of Code Standard (**CS**) 7, and the Committee’s desire to provide certainty to the market about CS7.

AVAILABILITY AND QUALITY OF FINANCIAL ADVICE

The Committee must have regard to the purposes of the FMC Act, to New Zealand’s international obligations, and to consultation feedback.¹

The FMC Act’s financial advice provisions have an additional purpose of “regulating the giving of financial advice and provision of financial advice services with a view to ensuring—

- the availability of financial advice for persons seeking that advice; and
- the quality of financial advice and financial advice services.”

The availability and quality of financial advice therefore are cornerstones of the Code.

PROPOSALS

The Committee proposes amendments to the Code to:

1. Recognise version 3 of the Level 5 Certificate. Those who already meet existing requirements do **not** need to update their qualification.
2. Retain the Level 5 Certificate qualification outcomes as the minimum standard of particular competence, knowledge, and skill for designing an investment plan, and remove the interim status of CS7.
3. Clarify the requirements for continuing professional development in CS9, including the adoption of a more principles-based standard and supplementing the commentary.

Each of these proposals is discussed below.

¹ FMC Act Schedule 5 clause 33

PROPOSAL 1:

Recognise version 3 of the Level 5 Certificate

The Committee proposes amendments to the Code to recognise version 3 of the Level 5 Certificate. Those who already meet existing requirements do *not* need to update their qualification.

The Code's minimum standards of competence, knowledge, and skill in CS6 to CS8 currently refer to the qualification outcomes of version 2 of the Level 5 Certificate. The Services Workforce Development Council, Ringa Hora, recently reviewed the Level 5 Certificate, and the New Zealand Qualifications Authority approved version 3 of the Level 5 Certificate in May 2024.

The Committee is satisfied that, for the Code's purposes, the qualification outcomes of version 3 are materially similar to version 2.

The Committee proposes, therefore, that version 3 be recognised in the Code, both in how the minimum standards of competence knowledge and skill are defined, and in the ways in which a person may demonstrate their competence, knowledge, and skill.

Under this proposal, future candidates for the Level 5 Certificate can be assured that achieving the relevant qualification outcomes of version 3 is a valid way of demonstrating the minimum standards of competence, knowledge, and skill.

In addition, the Committee intends to ensure that individuals who currently demonstrate their competence, knowledge, and skill by reference to version 1 or version 2 of the Level 5 Certificate, or an equivalent qualification, do not need to update their qualification or do any bridging course.

The Committee's view is that the Code's use of qualification outcomes at Level 5 on the qualifications framework is operating effectively. Those qualification outcomes help ensure that all persons who give financial advice have a reasonable base level of competence, knowledge, and skill, having regard to the cornerstones of availability and quality of advice.

QUESTION 1: What comments do you have on the proposal to recognise version 3 of the Level 5 Certificate for the Code standards of competence, knowledge, and skill? Do you support the proposal?

PROPOSAL 2:

Retain the Level 5 Certificate qualification outcomes in CS7

The Committee proposes amendments to the Code to retain the Level 5 Certificate qualification outcomes as the minimum standard of particular competence, knowledge, and skill for designing an investment plan, and remove the interim status of CS7.

INTRODUCTION

The Code Working Group in 2018 consulted on the minimum standards of competence, knowledge, and skill.² The minimum standard of particular competence, knowledge, and skill for designing an investment plan in CS7 currently is an interim standard.

The Committee has considered whether the current minimum standard in CS7 is appropriate, having regard to the purposes of the FMC Act, including the availability and quality of financial advice. For the reasons summarised below, the Committee's conclusion is that the current minimum standard in CS7 is appropriate. The Committee therefore proposes to remove the interim status of CS7.

AVAILABILITY AND QUALITY OF FINANCIAL ADVICE

In general, there is a lack of evidence that a higher minimum standard of competence, knowledge, and skill will enhance materially the quality of financial advice. It is challenging to establish a causal link between examples of unsuitable advice, and competence, knowledge, and skill in isolation from other factors, such as ethics or inadequate processes and controls. It is reasonably foreseeable, however, that a higher minimum standard of competence, knowledge, and skill could adversely affect the availability of financial advice. In particular:

- experienced financial advisers understandably may be reluctant to requalify mid-career; and
- additional costs may be passed on to clients, which may operate as a barrier to seeking financial advice.

COMPETENCE, KNOWLEDGE, AND SKILL

The competence, knowledge, and skill needed to ensure suitable advice in some complex advice situations may exceed the minimum standards in CS6 to CS8. The competence, knowledge, and skill required, however, might not be gained from a higher qualification. It might be other competence, knowledge, and skill, for example hands-on experience, specific product-related

² See the summary of submissions at: financialadvicecode.govt.nz/2021/03/15/update-15-march-2021-code-takes-effect

knowledge, or the ability to uncover, analyse and understand the implications of a client's unique needs or personal circumstances.

One approach would be for the Code to identify the advice situations where additional competence, knowledge, and skill might be required (for example, certain types of investment planning), and to define a comprehensive standard for that competence, knowledge, and skill. If the Code took that approach, defining the boundaries would be difficult and, inevitably, the standard would need to be continually reviewed and updated.³

In the Committee's opinion, such an approach is not necessary, due to the way in which other obligations under the financial advice regime operate in an integrated manner. Those obligations collectively ensure that, in advice situations where it is needed, additional competence, knowledge, and skill should be held by the person giving the financial advice.

INTEGRATED REGIME

The standards of competence, knowledge, and skill in CS6 to CS8 are minimum standards, which act in conjunction with other obligations including, for example, the duty to exercise care, diligence, and skill (section 431L of the FMC Act), and the standards to treat clients fairly (CS1), to ensure that financial advice is suitable (CS3), and to undertake continuing professional development (CS9). The Code takes a principles-based approach that recognises the combined effect of all relevant obligations on persons who give financial advice, reinforced by the obligation on financial advice providers to "take all reasonable steps to ensure" compliance with duties by the persons that it engages to give advice (section 431Q of the FMC Act).

In the Committee's view, having regard to the combined effect of all relevant obligations of the regime, a higher minimum standard of particular competence, knowledge, and skill for designing an investment plan (or a sub-set of advice situations) would risk a deterioration in the availability of advice with no assurance of an increase in the quality of advice outcomes for consumers.

The Committee also proposes to supplement the commentary to CS3 to highlight the integrated nature of the regime, including that, in some advice situations, the competence, knowledge, and skill needed to ensure that the financial advice is suitable may exceed the minimum standard of competence knowledge and skill provided for in CS6 to CS8. Financial advice providers who take on more complex work must ensure they and their financial advisers have the competence,

³ The Committee considered whether a different minimum standard of competence, knowledge, and skill may be justified for investment planning, or other advice situations. The Committee notes that basic planning for the purpose of compliance with CS3 could inadvertently be taken to be "designing an investment plan" even when formal investment planning is not intended or included in the nature and scope of the advice. The Committee notes also: that requiring higher qualification outcomes for investment planning might incentivise an artificial or inappropriate limitation on the nature and scope of advice by some financial advice providers, to the detriment of consumers; that definitional precision on terms such as "investment planning" is challenging; and that differentiating between straightforward and complex advice situations in a principles-based Code would present practical difficulties.

knowledge, and skill necessary for that work, which in some situations may exceed the Code's minimum standards of competence, knowledge, and skill.

In parallel with this proposal, the Committee makes Proposal 3 below, to clarify requirements for continuing professional development.

QUESTION 2: What comments do you have on the proposal to retain the Level 5 Certificate qualification outcomes as the minimum standard of particular competence, knowledge, and skill for designing an investment plan? Do you support the proposal?

PROPOSAL 3:

Clarify the requirements for continuing professional development in CS9

The Committee proposes amendments to the Code to clarify the requirements for continuing professional development in CS9, including the adoption of a more principles-based standard and supplementing the commentary.

There are various activities that may build the competence, knowledge, and skill of an individual who gives financial advice including, for example, getting additional qualifications, formal courses, informal and self-directed learning, formal mentoring or coaching, and gaining on-the-job experience. For entities, competence, knowledge, and skill usually will be demonstrated by reference to the competence, knowledge, and skill of the persons it engages to give advice on behalf of the entity and by reference to the entity's procedures, systems and expertise. For nominated representatives in particular, demonstration of competence, knowledge, and skill may include reference to the financial advice provider's procedures, systems and expertise.

The Committee wants the Code to promote:

- financial advice providers fostering the professional growth of their financial advisers and nominated representatives, and ensuring that the financial advice provider's procedures, systems and expertise appropriately support them
- financial advisers taking personal responsibility for their continuing professional development (CPD)
- CPD activities that develop (not just maintain) the competence, knowledge, and skill of persons who give financial advice.

A key indicator of success for this proposal would be emerging evidence that diverse activities are being included in financial advisers' CPD, for example structured learning, informal learning, participation in relevant professional association activities, and formal mentoring or coaching arrangements. Failure would be that financial advisers' CPD is routinely limited to only a few hours of external seminars each year.

The Committee proposes to replace CS9 with the following:

"A person who gives financial advice must undertake continuing professional development as follows:

Individuals must, at least annually, plan for and progressively complete learning activities designed to ensure that they continually develop their competence, knowledge, and skill for giving financial advice.

Entities must, at least annually, review and where necessary update their procedures, systems and expertise to ensure that they continually develop their competence, knowledge, and skill for giving financial advice."

The Committee also proposes to supplement the Standard with commentary that would:

- Clarify, non-exhaustively, the breadth of activities that can be included in CPD. Learning activities can, for example, be structured or informal and can include mentoring, coaching, professional association activities, and development of soft skills, etc., provided they are relevant to competence, knowledge, and skill for giving financial advice. While the current CS9 commentary about understanding the regulatory framework remains relevant, the Committee is intending to use more principles-based language.
- Encourage new financial advisers (and experienced financial advisers proposing to practise in new fields) to enter into a formal mentoring or coaching arrangement with an experienced financial adviser. Established advisers may wish to enter into co-mentoring arrangements with peers.
- Highlight the financial advice provider’s obligation under section 431Q of the FMC Act to “take all reasonable steps to ensure” compliance by their financial advisers, including in relation to ensuring those advisers have appropriate competence, knowledge, and skill to satisfy all Code standards and FMC Act duties in connection with the financial advice that they give. Financial advice providers have a standard licence condition to keep records that demonstrate compliance with the standards and duties.

QUESTION 3: What comments do you have on the proposal to clarify the requirements for continuing professional development in CS9? Do you support the proposal?

QUESTION 4: Do you have any other comments about this consultation?
