30 August 2013

**Financial Services Federation (“FSF”) Submission: Code Committee review of the Code of Professional Conduct for Authorised Financial Advisers Consultation Paper**

**Submission by:**

**Person:** Lyn McMorran, Executive Director

**Company or Entity:** Financial Services Federation (“FSF”)

**Organisation type:** The FSF is the industry body for the responsible non-bank financial

services sector. We have forty members and associates providing financing, investment, banking and insurance services to over 1 million New Zealanders and our six affiliate members include internationally recognised legal and consulting partners. A list of our members is attached as Appendix A.

**Contact Person:** Lyn McMorran

**E-mail:** lmcmorran@fsf.org.nz

**Phone:** 04-472-1731 or 027-572-1731

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Before addressing the questions asked in the Consultation Paper, I should start by saying that FSF members, by the nature of their businesses, do not need to employ Authorised Financial Advisers. All members are either QFE’s or they employ people who are registered as financial advisers but not Authorised – with the exception of one member who has two or three AFA’s in their employ who have chosen to become Authorised for their own career development.

For that reason, FSF members are largely unaffected by the changes proposed to the Code of Professional Conduct for Authorised Financial Advisers in the Consultation Paper. I have therefore limited our comments to those areas where either our members do have an opinion or where our members may be directly affected by the proposed changes.

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| **Question number** | **Submission** |
| 1 | With the proposed changes to the commentary to Code Standard 1 (**CS1**), FSF believes that while this standard should have the "first among equals" status that the Committee is seeking, the proposed statement that a breach of any other CS is likely to also constitute a breach of CS 1 may present problems.  As an example, breaches involving poor administration may not fit well with this concept, as seen with a recent Financial Advisers Disciplinary Committee case, where the CS 1 complaint was dismissed.  Perhaps a better way to illustrate the relationship between CS 1 and the other CSs may be to add a sentence to the effect that: "The other Code Standards should be interpreted in light of Code Standard 1, so that where a Code Standard is ambiguous it should be interpreted in a manner consistent with the obligations to act in accordance with the client's interests and to act with integrity". |
| 12 | The FSF submits that in many cases too much paperwork is being produced at present. However we doubt if the Code Committee’ relatively permissive proposed wording will fix that. Indeed we suspect that the paperwork will continue to be lengthy until such time as the length is more or less prescribed as a maximum: that has generally been the experience in respect of risk disclosures in other areas (eg – investment statements) and we would doubt if the explanations, risk disclosures etc required by CS9 will prove much different. Having said that, advisers (whether they be AFA, registered or working under a QFE structure) should not be providing paperwork for the sake of it. Clients should be being provided with **relevant** information to allow them to make informed decisions. Paperwork associated with advice should also be seen by advisers to be a protection for them if there is any question later on from the client or regulator as to the advice provided.  |
| 16 | The FSF agrees that AFA’s should remain current as far as ensuring they keep up-to- date with current trends in providing advice, regulatory changes, product developments etc. However we would question what is intended when the Code Committee states “the AFA has a reasonable basis for believing that the AFA’s competence, knowledge and skills are at least equal to the competence, knowledge and skills required of a person applying to become an AFA at the time the service is provided.” In the case of other professions such as the law, the qualification taken at the time a person joins the profession may not look the same as the qualification taken by someone joining the profession 10 years later. We would submit that the purpose of requiring professionals to undertake relevant CPD is to ensure that competence, knowledge and skills are continually updated to current levels. |
| 18 | Assuming that Standard Set D (or whatever equivalent is required following the Skills Organisation’s review of the Level 5 National Certificate qualification) is indeed wider than needed for AFAs that deal only with Kiwisaver products, then it may well make sense for there to be a separate “Kiwisaver pathway” or a new “Kiwisaver Certificate”, as the Code Committee suggests. |
| 20 | Having said that in answer to question 18 above, however, the FSF would doubt it would be sensible for QFEs to be able to substitute for approved training providers in respect of it.The basis for this view is that firstly, most QFEs are not professional training organisations, so permitting them to provide AFA training would to some degree be at odds with the rest of the AFA qualification regime. However, many larger QFEs do have significant training capacity in house, so that could potentially mitigate this point.However, most QFEs are probably banks, NBDTs or other lenders, insurers or similar organisations, and very likely the only Kiwisaver products with which many of them are associated are their own. That being so, it does not seem sensible to permit a QFE to grant a certificate that might be used not only for their own Kiwisaver products but also for others with which not only are they not associated, but with which they may in fact be competitive! The competitive point alone means they are likely to be conflicted in providing such training.As well, such QFEs are probably not likely to be interested in training anyone other than their own staff to sell their own Kiwisaver products anyway, and if the only Kiwisaver products with which they are associated are their own then their staff are not required to have an AFA qualification anyway, so one suspects such QFEs are not likely to be very interested in providing training that their own staff do not actually need.Where a QFE’s staff may in fact be involved with  Kiwisaver products other than the QFE’s own product so that the AFA qualification is needed, then the conflict point noted above might still be a concern.For those reasons, overall FSF believes that permitting QFEs to be training providers for any proposed new Kiwisaver certificate might prove to be neither feasible nor sensible in many cases.  |
| 21 | Because the regulatory regime for AFAs is still relatively new for financial advisers, as opposed to the regulatory regimes of (for example) lawyers and accountants, there may not yet be an established consensus as to appropriate standards.  While the Committee's proposals would deal with any risk of a "tick-the-box" approach to CPD issues, this may be an area where increased guidance from the Committee and the FMA could have a useful role in allaying AFAs' concerns.  Although this concern doesn't fit neatly into the Committee's list of questions, this may be an important caveat to note.Amending CS18 to remove the distinction between structured and unstructured CPD hours would seem desirable as it has proven to be very confusing for most AFAs to determine which category the CPD they are undertaking falls into. The suggestion to Increase the number of structured hours of CPD an AFA is required to complete from 10 per annum to 30 over a two year period could perhaps be taken a step further to require them to complete 40 hours of structured CPD over the year period and do away with the idea that any unstructured CPD is required at all. This would provide clarity to both advisers and CPD providers.The FSF would also draw the Committee’s attention to our response to question 16 above. In order to keep current, it would seem desirable for AFAs to be required to complete sufficient CPD in order to keep current.  |

 **A National Federation of Financial Institutions**

Financial Services Federation Inc.

6th Floor, Wakefield House, 90 The Terrace, PO Box 10-053

Telephone (04) 472 1731, Fax (04) 472 1732, Wellington 6143

[www.fsf.org.nz](http://www.fsf.org.nz)

**Membership List as at 1st August 2013**

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| **Debenture Issuers - (NBDT)****Non-Bank Deposit Takers** | **Vehicle Lenders** | **Finance Company** **Diversified Lenders** | **Credit Reporting** | **Insurance** | **Affiliate Members** |
| **Rated*** Asset Finance (B)
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* Branded Financial Services
* European Financial Services
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* Yamaha Motor Finance
 | * Centracorp Finance 2000
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