



CONSULTATION – REQUEST FOR COMMENT ON PROPOSED STANDARD CONDITIONS FOR AUTHORISED FINANCIAL ADVISERS (AFAs)

9 September 2010

Introduction

The Financial Advisers Act 2008 (the Act) allows the Securities Commission (the Commission) to authorise financial advisers for a range of specified financial adviser services for a specified period. Financial advisers will need to be authorised by 1 July 2011. The Commission can process applications now for authorisations to commence from 1 December 2010.

The Act provides that authorisation of financial advisers may be subject to terms and conditions and may also incorporate standard conditions. The Commission intends to adopt a set of standard conditions that will apply to all Authorised Financial Advisers (AFAs), unless there are exceptional circumstances requiring modifications.

The Act provides mechanisms for the Commission to approve and incorporate standard conditions in authorisations and, in particular, requires that the standard conditions must be consulted on before they are approved. This consultation paper is relevant for all financial advisers applying for authorisation including those advisers working within QFEs who need to be individually authorised.

Period of authorisation and FAS scope

The Act requires the Commission to set a period of authorisation for financial advisers. The Commission is considering setting all licence periods for between three and seven years. The particular period granted in each case will reflect the Commission's risk based assessment of products and services provided. In the absence of information on which to base that assessment, the default period proposed for all advisers is five years.

Each AFA will be authorised to provide the financial adviser services (FAS) described in the AFA's FAS Scope allocated by the Commission and stated on the AFA's Certificate of Authorisation. The AFA must only provide the financial adviser services that are described within the AFA's FAS scope. The FAS scopes are listed in the table below. The AFA will select the FAS scope that best fits their activities when applying for authorisation through the FSPR website at: www.fspr.govt.nz.

The Securities Commission intends to issue a Certificate of Authorisation to each AFA. This will include the FAS Scope authorised by the Commission, the period of authorisation, the standard conditions and any modifications.

For this stage of the regime, the FAS scopes will be limited to the activities and combinations of activities that are referenced in section 55 (1) of the Act. Future scopes of practice may be refined to include specific types of products and services.

FAS scope codes and proposed periods of authorisation:

FAS scope code	Full description of financial adviser services	Proposed period of authorisation
FA	Financial Advice – Cat 1 and 2	5 years
FA + IP	Financial Advice and Investment Planning Services	5 years
DM	Discretionary Investment Management Services	5 years
FA +DM	Financial Advice and Discretionary Investment Management Services	5 years
ALL	Financial Advice, Discretionary Investment Management Services and Investment Planning Services	5 years
WS+C	Financial Advice to Wholesale clients and provision of Class services	5 years

*Additional FAS scope codes may be included for Category 2 authorisations subject to regulations being made under s55(1)(d)

The Commission’s powers

The Commission’s approach will be to work with industry to encourage high standards of professionalism. The Commission will deal with issues through constructive dialogue but will take action when standards fall below the required level. The Commission has a range of powers under the Act which it can use in relation to default by an AFA, including a breach of the Act or breach of conditions of authorisation. The powers include the ability to cancel or suspend authorisation or debarring a person from re-applying for authorisation for a specified period. Any actions taken may be publicised by the Commission.

The Commission intends to use a risk based approach to its monitoring of advisers and will use a range of sources of information to inform its responses under the Act.

In addition, the Commission may vary terms and conditions of authorisation or the period of authorisation, on the following grounds:

- a) where an adviser has been or is involved in market practices that are in material respects, inconsistent with the purpose of the Act, and/or
- b) the business of the adviser has changed in such a way that there is a material risk to consumers.

Failure to comply with the terms and conditions of authorisation is an offence under the Act and carries a maximum penalty of \$5000. It is also an offence under the Act to provide a financial adviser service without being permitted to do so and this carries a maximum penalty (for individuals) of \$10,000.

Request for comment

This paper sets out the content of the proposed standard conditions. The conditions appear in bold in this paper with explanatory notes underneath.

This paper can be downloaded from the Commission's website:

www.seccom.govt.nz.

Printed copies are also available from the Commission.

Please forward written submissions to:

The Securities Commission
Level 8, 56 The Terrace
PO Box 1179
Wellington 6011

or email submissions to: sara.bruce@seccom.govt.nz

Submissions close at 5.00pm on 1 October 2010.

Next steps

Once submissions have been considered, the Commission will finalise and approve the standard conditions by notice in the *Gazette*. These will be published on our website and will also be available in printed form. From 1 December 2010, all authorisations will be subject to the standard conditions.

Submissions will be subject to the Official Information Act 1982. The Commission may also make submissions available on its website, or draw attention to submissions in internal or external reports. If you would like the Commission to withhold any commercially sensitive, confidential or proprietary information included in your submission please say so in your submission. Any request to have information withheld will be considered in accordance with the Official Information Act.

Proposed Standard Conditions for Authorised Financial Advisers (AFAs)

Pursuant to section 55 of the Financial Advisers Act 2008 (the Act), the AFA is authorised by the Securities Commission to provide the financial adviser services specified in the Certificate of Authorisation subject to terms and conditions. Those terms and conditions may include, by way of incorporation, the following standard conditions:

1. REQUIREMENT TO HAVE AND MAINTAIN AN ABS

The AFA must maintain and keep current a written Adviser Business Statement (ABS) in accordance with the most current published version of the AFA ABS Guide. The AFA must ensure this accurately reflects the AFA's business and compliance arrangements at all times. The AFA must provide annual confirmation to the Securities Commission that the AFA's ABS is current and must provide a copy of the ABS to the Securities Commission on request and within the time period requested.

Explanatory note:

Having and maintaining an ABS is a core requirement of authorisation and provides the Securities Commission with important information about the AFA's business and the systems and processes the AFA has in place to ensure business is conducted in a professional way. The AFA ABS Guide can be found at www.seccom.govt.nz/afa. We will be making changes to the ABS Guide to reflect changes to the Act and the Code. We also welcome any comments on parts 1 and 2 of the current guide. A revised AFA ABS Guide will be published that takes into account any feedback from this consultation. However, AFAs can continue to develop their ABS based on the current version of the Guide.

2. REPORTING

The AFA must report in accordance with the periodic and other reporting, accounting and notification requirements contained in the Regulatory Reporting Guide for AFAs.

Explanatory note:

In future, all AFAs will be asked to provide information to the Securities Commission on a periodic or ongoing basis, or on request, in accordance with the requirements set out in a regulatory reporting guide. The information will help the Securities Commission to understand the profile of advisers in the industry and to focus its resources appropriately. This is likely to require reporting of factual business information, such as business volumes for different product groups and services types, numbers of customers, numbers and types of breaches, and complaints information.

Soon financial adviser businesses will also have obligations under the new Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (the "AML/CFT

Act"). Under the AML/CFT Act, the Commission is responsible for supervising financial advisers. In order to avoid duplication and minimise compliance costs the Commission will, where appropriate, seek to align reporting requirements for anti-money laundering/countering financing of terrorism purposes with those in the Regulatory Reporting Guide for AFAs.

The Securities Commission intends to consult separately on the form of the Regulatory Reporting Guide, and the content and frequency of regulatory reporting. This consultation will take place prior to 1 July 2011 and for all authorisations this standard condition will take effect from 1 July 2011.

3. NOTIFICATIONS

The AFA must notify the Securities Commission in writing within five business days of any significant matter concerning the AFA's authorisation, or financial adviser activities including:

- **Changes to the AFA's financial services business or activities, including any changes that may affect the AFA's FAS scope authorised by the Securities Commission**
- **Changes that may impact upon the Certificate of Authorisation, the period of authorisation, or any exemption granted to the AFA by the Securities Commission**
- **Any serious breach by the AFA of the Standard Conditions, the Code of Conduct for Authorised Financial Advisers, the Act or any regulations, the Securities Act or the Securities Markets Act**
- **Any adverse findings, convictions, or rulings by any regulator, professional body or any court or tribunal in New Zealand or overseas, relating to the AFA where any such finding or ruling would have been a matter required to be disclosed in the AFA's initial application for registration and authorisation**
- **Any changes to the AFA's relationship with a QFE or employer, such as joining or leaving a QFE or changing employers**
- **Any other matter that has arisen since the date of grant of authorisation, which would have been required to be disclosed at the time of the AFA's application to be authorised.**

Explanatory Note:

These notifications form part of the reporting requirements but are ongoing obligations and must be made to the Securities Commission within five business days of the AFA becoming aware of any of these events occurring. The Securities Commission will consider issuing guidance on the sorts of matters that are expected to be reported.

4. RECORDS

The AFA must ensure that all records pertaining to his or her financial adviser business are available for inspection by the Securities Commission at any time. This includes the AFA's client files containing the records required by Code Standards 12 and 13, the Continuing Professional Development records and personal professional development plan required by Code Standards 17

and 18, and any other records required to be kept under the Act or any regulations.

5. CLIENT MONEY

Where the AFA acts as an intermediary for a client in the receipt, holding, payment or transfer of client money or client property, the AFA must act in accordance with the brokers' conduct and trust accounting obligations in Part 3A of the Financial Advisers Act 2008 (even if the obligations would not otherwise apply to the AFA).

Explanatory Note:

This condition is to ensure that employee AFAs meet the same standards required of registered brokers (likely to be their employers) under Part 3A where those AFAs carry out any of the services covered in the definition of broking services. Inclusion of this condition will ensure the Securities Commission can take direct action (for a breach of this condition) against any adviser who is not separately registered as a broker but who has dealt with client money in a manner inconsistent with the requirements of Part 3A and his or her professional obligations.

The Act also allows the Securities Commission to impose specific terms and conditions in relation to broking services. In future, conditions may be developed either as a remedial response or as more specific broking obligations for all AFAs.

6. SUPERVISING TRAINEE ADVISERS

Where the AFA is responsible for supervising trainee financial advisers, the AFA must act professionally and must always ensure there is an appropriate level of supervision of the trainee including during any client interaction. The supervising AFA must ensure that the trainee does not provide services to clients that can only be provided by AFAs.

Explanatory note:

This condition is designed to encourage high standards of professionalism when mentoring and supervising those entering the profession and training to become authorised, while ensuring that consumers who are in contact with trainees have an adequate level of protection.

7. NO ENDORSEMENT

The AFA must not at any time state or imply that the Securities Commission has endorsed or approved the AFA's business, advice, or solvency, or any other agreements or business arrangements of the AFA.

8. DISPLAY OF CERTIFICATE OF AUTHORISATION

The AFA must display his or her Certificate of Authorisation at all times in a prominent place at his or her principal place of business.