

06 September 2011

Investment Law Team
Competition, Trade and Investment Branch
Ministry of Economic Development
PO Box 1473
WELLINGTON 6011

By email: investment@med.govt.nz



RE: SUBMISSION ON DRAFT FINANCIAL MARKETS CONDUCT BILL

Dear Sir / Madam

ETITO is gazetted under the provisions of the Industry Training Act 1992 as the Industry Training Organisation for the financial services sector. It has the mandate to provide leadership on matters relating to skill and training needs within the financial services industry, develop national standards and qualifications, and manage the national training system for the sector.

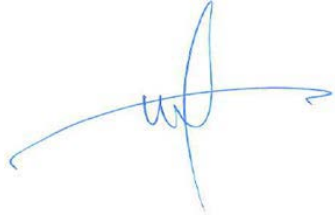
ETITO has previously worked with the Ministry of Economic Development, the Tertiary Education Commission, the Financial Markets Authority, the Code Committee for Financial Advisers, professional and industry bodies, training providers and firms to design and operationalise the competence framework for financial advisers. This work involved:

- the articulation of national standards and qualifications for advisers;
- the development of a national network of training and assessment provision in which public and private providers were engaged alongside firms in the provision of training and assessment;
- the design and operationalisation of a quality assurance system that ensured the national consistency of assessment process and outcomes; and
- the provision of services to firms and individuals that assisted their understanding of, and compliance with, their regulatory requirements.

ETITO believes that there are numerous advantages in framing competence requirements using national standards. To the extent that the draft Financial Markets Conduct Bill and, in particular, its licensing provisions envisage the imposition of competence requirements on licensees and their directors and senior managers, ETITO is able to assist the development of the framework for these requirements. While much of the detail will be a matter for regulations, the attached submission indicates matters about which ETITO considers that attention is warranted before the legislation itself is finalised.

If you require any further information or clarification, please feel free to contact me directly at michaelf@etito.co.nz or on [09] 583 1308.

Yours sincerely

A handwritten signature in blue ink, consisting of a stylized 'M' and 'F' followed by a horizontal line that ends in an arrowhead pointing to the right.

Michael Frampton

Manager – Strategy and Corporate Relations

**FINANCIAL MARKETS CONDUCT BILL
SUBMISSION ON EXPOSURE DRAFT
ETITO**

Clause Number	Clause heading	Submission
Part 1	Preliminary provisions	
		No comment.
Part 2	Misleading or deceptive conduct or false or misleading representations	
		No comment.
Part 3 and schedules 1 and 2	Disclosure offers of financial products	
		No comment.
Part 4 and schedule 3	Governance of financial products	
		No comment.
Part 5	Dealing in financial products on markets	
		No comment.
Part 6	Licensing and other regulation of market services	
Clause 377	Eligibility criteria for Discretionary Investment Management Services [DIMS] licensees, and requirements for their directors and senior managers	The split of DIMS regulation into two types of licensees – [1] DIMS licensees for class DIMS and [2] AFAs [and other financial advisers] for personalised DIMS – creates the prospect of two different sets of competence requirements arising for what are, in essence, very similar professional activities. We would recommend that wherever possible, competence requirements for DIMS be set out in the AFA Code, with the FMC legislation and / or regulations incorporating them by reference. This is because it is clearer to have requirements in one place for similar activities. It also avoids unnecessary duplication and differences in approach.
Clauses 416 - 418	Duties of DIMS licensee	Similarly, it would be desirable to synchronise the conduct requirements with the AFA Code in order that there be one unified set of DIMS conduct standards for applicants to be trained in.
	General comment on AFA Code in respect of DIMS	We note that the consultation process for the AFA Code was largely completed before DIMS was introduced to the Financial Advisers Act. Thus the structure of the competence requirements, and some aspects of the conduct requirements, within the Code do not adequately match reality for the DIMS and funds management sector. The best example is the six-step financial planning process, which, while a core part of the current competence requirements for AFAs, is arguably not appropriate for some types of DIMS. Thus, particularly if the FAA is extended to cover advice on obtaining/withdrawing from DIMS, we recommend that the AFA Code be amended to make specific reference to the DIMS sector before practitioners in this sector are expected to meet AFA standard.

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Clause Number	Clause heading	Submission
Part 7	Enforcement and liability	
		No comment.
Part 8	Regulations and exemptions	
Clause 503(1)	Issue of licences	<p>ETITO has the mandate under the Industry Training Act to provide leadership on matters relating to skill and training needs within the financial services industry. We would welcome the opportunity to discuss with you how national competence standards could support the framework for prescribing matters relating to competence, qualifications and experience for licensees and their directors and senior managers.</p> <p>The implementation of the Financial Advisers Act included a process to develop national standards that underpin competence requirements. National standards provide quality assurance and enable a range of public, private and in-house educators to be involved in training and assessing licensees.</p> <p>We suggest that:</p> <ul style="list-style-type: none"> ▪ 503(1)(a)(i) and (ii) be expanded to include specific reference to national standards to make clear that the regulations may – where appropriate – prescribe the use of national standards for those matters. ▪ Explicit provision be made in 503(1)(a) for the regulations to deal with timing – ie to permit a staged implementation of competence requirements because it may not be feasible to train and assess all licensees by the commencement of the legislation. ▪ 503(1)(a)(ii) make specific reference to competence, as is already the case in (i), to put beyond doubt that the requirements for directors and senior managers may include competence arrangements. ▪ 503(1)(a) and (b) are expanded to permit the FMA to specify continuing professional development (CPD) requirements for licensees, directors and senior managers. CPD is an effective tool for ensuring licensees maintain competence beyond initial licensing.
Clause 503(1)	Issue of licences – matters relating to AFA Code	We recommend that it be made clear that these regulations may incorporate by reference the standards and provisions of the AFA Code. This is particularly relevant to DIMS licensees [and their directors / senior managers] because in many cases they will be one-and-the-same people as AFAs carrying out almost identical functions to those governed by the Code.
Part 9 and schedule 4	Miscellaneous provisions	
		No comment.