

#61

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Q1 Overall, do you agree or disagree with [standard 1] and proposed commentary? **Agree**

Q2 Please provide any comments on [standard 1] and the proposed commentary.

We agree in principle with this standard, however there are two issues that we would like to raise with and request further consideration by the CWG.

Firstly, we maintain concerns with respect to the ambit of 'fairness'. Whilst the commentary notes that 'fairness' is not one-sided and is dependent on the particular circumstances, we are the view that the standard itself should be limited with respect to the nature and scope of the services agreed by the client. Fairness is a subjective concept, and an assessment of that concept would invariably be coloured by the surrounding circumstances. Accordingly, any assessment of 'fairness' must be undertaken with those circumstances, being the nature and scope of the services provided or to be provided to the client, in mind. Further, we are concerned with how this concept may be applied to fees or charges. Fees and charges relate directly to the services provided. Respectfully, we suggest that 'having regard to the nature and scope of the financial advice' should be added after 'interests' in Code Standard 1. In addition, for the purposes of the fees and charges, we suggest that the commentary provide that fairness is the full and transparent disclosure of any fees and charges, and not the quantum of the fees and charges themselves. Secondly, we disagree with the inclusion of 'vulnerabilities' in the fourth bullet point of the commentary. An adviser cannot be expected to be cognisant of all generic, current or potential 'vulnerabilities' of a client. Any advice provided to the client must be within the ambit of the nature and scope of the services to that client. We appreciate the sentiment of the commentary in this code standard, but are of the opinion that this point needs to be amended to focus on the financial advice itself and the delivery of that financial advice, this would then be consistent with the balance of the points in this commentary. We suggest that the bullet point be amended to require that the adviser, when giving the advice, is cognisant of the client's financial knowledge or lack thereof only.

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Q3 Overall, do you agree or disagree with [standard 2] and proposed commentary? **Agree**

Q4 Please provide any comments on [standard 2] and the proposed commentary.

We agree with this standard, however, we disagree with the inclusion of 'consistently does the right thing'.

It is our view that the 'right thing' is largely dependent on the circumstances of the advice at the time and the nature and scope of the services to the client. For example, a client may have agreed an aggressive portfolio with a directive to purchase a particular sector, which, in the event of negative market conditions, may seem contrary to doing the 'right thing' for the client. Accordingly, we recommend that this point is amended by way of reference to the nature and scope, such as 'having regard to the nature and scope of the financial advice and the client's instructions'.

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Q5 Overall, do you agree or disagree with [standard 3] and proposed commentary? **Agree**

Q6 Please provide any comments on [standard 3] and the proposed commentary.

We note that this standard does not include any commentary. In principle we agree with this standard, however we do not agree with the order of the bullet points, in particular the bullet point, 'where practicable, avoid conflicts of interest' being first.

The legislation and, for our purposes as an NZX Firm, the NZX Market Participant Rules, impose requirements for the purposes of managing conflicts. The legislation and rules recognise that conflicts do occur, and it is the management of the conflicts that are fundamental. Accordingly, this standard goes beyond the ambit of the legislation and Rules. It is our view that this bullet point being the first step is inappropriate. For completeness, Rule 15.10 of the NZX Market Participant Rules deals directly with Conflict Management. Further, the NZX Participant Guidance Note - Conflict Management dated January 2018 includes the key obligations in relation to conflicts for NZX Participants; provides guidance on identifying a conflict of interest; prescribes conflict obligations in relation to policies and procedures and employees; and management of the conflicts. For completeness, we note that the Guidance Note requires the NZX Participant to maintain a method for avoiding a conflict of interest, however avoidance is where conflict cannot be effectively managed or controlled, not the first step as proposed by the Code. Accordingly, it is our view that the order of the bullet points should be: identify conflicts of interests; ensure that conflict of interests are managed and controlled; adequately disclose conflicts of interests to client; and finally avoid if cannot be managed and controlled.

We note the inclusion of 'where practicable', however it is our view that this is a soft and somewhat meaningless carve out on the basis that what amounts to 'where practicable' is not clear. We respectfully suggest that significant further work here is required. From a practical perspective, a business such as ours, maintains internal conflicts at all times, and it is the management of those conflicts that is required and strictly adhered to at all times. For completeness, examples of conflict management policies and procedures include, but are not limited to:

- Sales and Trading Conflicts:
 - o Client Order precedence – client orders take priority over staff/NZX prescribed persons trades.
 - o Trading in Advance of Published Research - restrictions from advisers trading in advance of published research, and prohibition on selective disclosure.
 - Trading as Principal – Institutional Sales trading and risk desks are separated from retail desk by location, former in Auckland, latter in Wellington.
 - Conflict Clearance policy and process for all potential investment banking assignments.
 - Disclosures – advisers disclose where they have a threshold interest in a stock or when the NZX firm is acting on behalf of a company.
 - Gifts and benefits – policies and procedures for managing perceived conflicts in giving or receiving gifts.
 - Chinese Wall crossing policy and procedures.
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Q7 Overall, do you agree or disagree with [standard 4] and proposed commentary? **Agree**

Q8 Please provide any comments on [standard 4] and the proposed commentary.

We agree in principal, however we maintain concerns with this Code Standard.

As discussed with MBIE, our concern with this standard, and Code Standard 5 below, relates to the application of the same, and the legislative requirements of the Financial Markets Conduct Act, to research analysts that are employed by our firm. Research analysts are currently caught within the ambit of the legislation and therefore the Code on the basis that they may provide 'regulated financial advice'.

It is our strong view that New Zealand and offshore research analysts should be exempt from the Financial Markets Conduct Act requirements, and, following this, the Code. In the event an exemption is not provided, there is a real risk that research analysts within New Zealand and offshore will cease providing research reports or presentations. This therefore limits the information and research offered to New Zealand clients, and the New Zealand public. Research reports will only be available to the New Zealand public through financial advice providers. Accordingly, the current approach and the changes being imposed by the Financial Markets Conduct Act and the Code will restrict the research that the public can access to make an informed decision, for completeness being detrimental to the transparency and fairness of the industry and financial literacy of the general public. Further, the commentary does not provide guidance on what constitutes "reasonable steps". We are of the view that more guidance is required to ensure that compliance with the Code Standard is possible. We suggest that clarification that will be dependent on the particular circumstances, including the nature and scope of the financial advice, the level of interaction with the client, and the manner in which the advice is provided.

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Q9 Overall, do you agree or disagree with [standard 5] and proposed commentary? **Agree**

Q10 Please provide any comments on [standard 5] and the proposed commentary.

Please see our comments to Code Standard 4.

Whilst we agree with this Code Standard, and acknowledge that the outcomes derived from this Standard will benefit the consumer, we are concerned with the limited guidance regarding the process for determining the nature and scope of the advice. We appreciate the desire to minimise/ avoid prescription, however without further guidance in this area there is a real risk that suitability may be determined by the use of defined 'opt outs' rather than a fuller appreciate of the suitability. By way of example, an elderly lady may wish to buy an aggressive hedge fund, and by virtue of such a product not being explicitly carved out of her suitability analysis, the fund may be purchased. At first glance, this acquisition does not look to be suitable to the client.

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Q11 Overall, do you agree or disagree with [standard 6] and proposed commentary? **Disagree**

Q12 Please provide any comments on [standard 6] and the proposed commentary.

It is our strong view that this Code Standard is not required.

These obligations are already regulated by the Privacy Act. The Privacy Act is currently undergoing a significant review and overhaul to ensure it is fit for purpose in today's environment. Accordingly, any further obligations with respect to privacy may lead to inadvertent conflict or misunderstanding.

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Q13 Overall, do you agree or disagree with [standard 7] and proposed commentary? **Agree**

Q14 Please provide any comments on [standard 7] and the proposed commentary. **Respondent skipped this question**

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Q15 Overall, do you agree or disagree with [standard 8] and proposed commentary? **Agree**

Q16 Please provide any comments on [standard 8] and the proposed commentary.

We agree in principle with this Code Standard, however we question the relevance of 'informed participation' in bullet point 1. We would like further guidance in the commentary as to what amounts to promoting 'informed participation'. It is a positive obligation on those required to adhere to the Code, and accordingly what action(s) required need to be clarified. We suggest that "always act" should be replaced with "seeks to".

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Q17 Overall, do you agree or disagree with [standard 9] and proposed commentary? **Agree**

Q18 Please provide any comments on [standard 9] and the proposed commentary.

We agree in principle with these standards. However, as discussed with MBIE we are concerned with how this may apply to research analysts and overseas research providers, please see comments above. For completeness, in the event it is determined, following advice from MBIE, that research analysts are subject to the Code, it would be not make sense for their individual requirement to contain any element related to the provision of personalised advice.

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Q19 Overall, do you agree or disagree with [standard 10] and proposed commentary? **Agree**

Q20 Please provide any comments on [standard 10] and the proposed comentary.

We agree in principle with these standards. However, as discussed with MBIE we are concerned with how this may apply to research analysts and overseas research providers, please see comments above. For completeness, in the event it is determined, following advice from MBIE, that research analysts are subject to the Code, it would be not make sense for their individual requirement to contain any element related to the provision of personalised advice.

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Q21 Overall, do you agree or disagree with [standard 11] and proposed commentary? **Agree**

Q22 Please provide any comments on [standard 11] and the proposed commentary.

We agree in principle, however the reference to 'investment plan' requires significant further clarification and guidance. There are a wide range of investment planning services in the market. The Code Standard should refer to the 'particular competence, knowledge and skill required for the services to be provided'. The services that a client receives is dependent on the nature and scope agreed. It is highly probable that an Adviser would be engaged on a restricted basis and not expected or requested to put in place an 'investment plan'.

Once again, we question how this would be applicable to research analysts. Research analysts clearly do not design 'investment plans'.

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Q23 Overall, do you agree or disagree with [standard 12] and proposed commentary? **Agree**

Q24 Please provide any comments on [standard 12] and the proposed commentary. **Respondent skipped this question**

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Q25 Is there anything missing from the draft Code? **Unsure**

Q26 If you answered yes, what is missing?

NA

Q27 Do you have any feedback on the examples, or suggestions on other examples that should be included in the draft Code?

NA

Q28 Is there anything else you want to say?

NA

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Q29 Name

s 9(2)(a)

Q30 Your role or professional title

Legal Counsel

Code Working Group - Online Submission Form

Q31 Individual or organisational submission

This is a submission on behalf of an organisation (eg employer)

Q32 If you give financial advice...

Respondent skipped this question

Q33 My organisation or I give the following types of advice...

Investments

Q34 Organisation Name

s 9(2)(a)

Q35 Type of organisation

Financial advice firm ,
Investment firm

Q36 Size of organisation

Large firm (50+ staff)

Q37 If there are other things we should know about you or your business that would provide context to your answers, please provide details below.

Respondent skipped this question

Q38 Please indicate whether your submission contains any information that is confidential or whether you do not wish your name or any other personal information to be included in a summary of submissions.

There is commercially sensitive information contained in our submission. Please do not include our Firm name or any personal information in the summary of submissions.

Q39 Please provide your contact details (email and/or phone number) This is the only question that requires an answer. This information would not be released publicly. We may get in touch with you in order to help us understand particular points from your submission.

s 9(2)(a)
