

#24

COMPLETE

Collector: Web Link 3 (Web Link)
Started: Tuesday, October 16, 2018 3:51:46 PM
Last Modified: Tuesday, October 23, 2018 10:03:12 AM
Time Spent: Over a day

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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.

Commentary second bullet point – The proposal suggesting that an adviser be able to respond to client preference is important, rather than the Code seeking to impose requirements on the adviser that extend beyond client preference, provided the outcome is still fair and not directly against client interests.

Commentary fifth bullet point – Equally important is having regard to the nature and scope of the financial advice, thereby again ensuring that the Code does not impose requirements beyond what the adviser and client agree to be an appropriate financial advice service.

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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.

Agree, as stated

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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.

Commentary first bullet point – Agree in general with the “Where practicable, avoid conflicts of interest” but suggest that this should not preclude delivery of a service where:

- Despite the conflict, the product or service would not otherwise be available to the client, or would require the client to incur additional inconvenience and cost to obtain the same product or service elsewhere
 - The client still wishes to proceed, despite the disclosed conflict and despite it being practicable to avoid the conflict by otherwise not providing the product or service
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Q7 Overall, do you agree or disagree with [standard 4] **Agree**
and proposed commentary?

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

Strongly agree with the requirement relating to ensuring client understanding of the nature and scope of the financial advice (and any limitations). This helps support flexibility for both the adviser and client in determining between them what the nature and scope will be.

Noting the standard is about nature and scope of service, in the example included (Beth), it is disappointing that the opportunity wasn't taken to outline in the example what the nature and scope of the service being provided is. In particular, the example could have been used to demonstrate how to outline whether there were any limitations on the range of products being considered and offered by Beth.

However, somewhat more of a problem with the example is the fact that it is fundamentally flawed. The example states that a comparison is excluded, but then goes on to state that there ARE specific things in the current policy that MAY NOT BE covered under the new policy, thereby implying that the old policy has been reviewed and, worse, the adviser is uncertain of the cover being offered under the new policy being recommended. Surely, if no comparison is being done, this wording should be the other way around, along the lines of, "It is possible that the new policy may not provide cover that is provided under the old policy but, because no comparison has been completed, such circumstances, if any, have not been identified."

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

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

Suitability can only ever be appropriately tested to the level applicable within the agreed nature and scope of financial advice being provided. In general, this is recognised in the commentary, thereby providing flexibility to the adviser and client to determine and agree a nature and scope for the financial advice service being provided.

However, this flexibility might be strengthened by reversing the order of parts of the second sentence. That is, change the first paragraph, which currently reads as, "A person who gives financial advice must ensure that the financial advice is suitable for the client. The person must have reasonable grounds for the financial advice, having regard to the nature and scope of the financial advice and the client's circumstances" to instead read as, "A person who gives financial advice must ensure that the financial advice is suitable for the client. Having regard to the nature and scope of the financial advice and the client's circumstances, the person must have reasonable grounds for the financial advice.

I note the paragraph stating, "The client's circumstances means those aspects of the client's situation, needs, goals, and risk tolerance that a prudent person engaged in the profession of giving financial advice would consider to be relevant to the financial advice." To be absolutely clear, the level of flexibility that I believe is proposed could be further emphasised by again adding to this sentence, "having regard to the nature and scope of the financial advice."

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

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

I would find it helpful if the Standard was crystal clear as to what parts of the Standard and commentary reflect current law and what is an additional requirement.

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

Q14 Please provide any comments on [standard 7] and the proposed commentary.

While generally always practicable for investigation and assessment of complaints to be independent of the relevant individual, one should not preclude such relevant individual from potentially being part of the team that assists with resolution.

In fact, such individual, generally the adviser, may frequently resolve the complaint to the complete satisfaction of the client without any independent help, albeit the complaint should still be recorded and independently reviewed in such a circumstance. Think of inadvertently buying an incorrect number of shares – the client tells the sharebroker adviser that took the order that it is wrong and the sharebroker fixes it. Record the complaint or error, independently review it, and everyone can move on without unnecessarily introducing a third “independent” person into interaction with the client.

Further, the standard requiring independence for all complaints is likely to be problematic for a small practice, albeit not impossible to get an independent assessment but always at a cost. Is the benefit of independence always likely to outweigh such cost?

Outside of the circumstances outlined above, I acknowledge that there will be situations where the complaint should be handled independently from the start. Examples include complaints that suggest potential criminal or inappropriate behaviour carried out by the person or entity being complained about.

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

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

I particularly support the provisions allowing comment made in good faith, as anything less may introduce an unintended block to appropriate submission, public comment or free speech.

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Q17 Overall, do you agree or disagree with [standard 9] **Neither agree nor disagree** and proposed commentary?

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

I have heard it suggested that this means the large “no advice” service offerings from the likes of the existing QFEs (such as banks) may not be a feature of the new regime. However, I remain unconvinced and believe it entirely possible that the imposition of such educational requirements (and the related costs) may result in the opposite outcome, whereby even more choose not to provide advice, disclosing (as presumably will be required by a licensed financial advice provider under the disclosure regulations or the nature and scope Code provisions) that this is what they are doing, providing no advice. The alternative possibility is that more choose not to seek a licence as a financial advice provider at all and only offer no advice services, not even being required to advise the consumer that this is the case.

It is not that I am opposed to minimum qualification standards but, if this particular proposal, or any subsequent proposal, leads to avoidance of the fulfilment of the qualification requirement by entities and their staff by offering limited execution only or information only services, even if licensed, the objective to maintain access to services will not be fulfilled. Worse, we potentially continue with the circumstance where execution only or information only services are all that has been provided to a client, but the client believes that a financial advice service has been provided.

I fear that there is considerable risk of the outcomes outlined above among the individuals and entities that are not at AFA level or have not already completed the Level 5 qualification. Additionally, I believe that there is also considerable risk of loss of existing advisers from the industry, not only faced with having to complete the qualification, but to also fulfil the broader requirements of the amended regime, including the as yet unknown licensing conditions.

If the Level 5 qualification is to be retained as the minimum, then I suggest that consideration should be given to providing a means for all existing industry participants to prove competence at that level without necessarily having to complete the qualification to reduce the risks outlined above.

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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 commentary.

I have always opposed a requirement for completion of a set number of hours for continuing professional development on the grounds that completing a set number of hours often bears no relevance to whether competence is being maintained or not and, worst case, can create a false sense of maintenance of competence. Hence, I am delighted to see that this draft Code simply proposes that one must do whatever is necessary to maintain competence, knowledge and skill. Well done!

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Q21 Overall, do you agree or disagree with [standard 11] and proposed commentary? **Neither agree nor disagree**

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

Refer to the response to Standard 9.

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

Neither agree nor disagree

Q24 Please provide any comments on [standard 12] and the proposed commentary.

Refer to the response to Standard 9.

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Q25 Is there anything missing from the draft Code?

Unsure

Q26 If you answered yes, what is missing?

Not applicable

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

First, refer to the response provided relating to Standard 4. The example provided is incomplete and flawed.

It may be helpful to include an example outlining how, having determined nature and scope of a continuing service, a licensed financial advice provider can rely upon that agreed nature and scope when providing future services without having to reiterate it every time, until something changes.

Consideration might also be given to including one or more examples to help demonstrate how the Standards work together, perhaps in an appendix attached to the Code.

However, if the Beth example is anything to go by, any included examples should be very carefully formulated, recognising the risks of misinterpretation that could arise or inappropriate service restriction that examples might imply. If in doubt, leave the example out, and let the Code and commentary stand on their own merits.

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OFFICIAL INFORMATION ACT

Q28 Is there anything else you want to say?

The decision taken to shorten and simplify the Code from that originally outlined in the first consultation is supported.

However, the Code, in combination with the other requirements being introduced, such as disclosure and licensing, may produce some outcomes that can't yet be identified that don't deliver to the objectives.

In my submission on the earlier consultation, I suggested that this consultation should ask two questions to mitigate such risks, as follows:

- Is there anything in the proposed Code that you can identify that creates an inappropriate barrier to delivering to a consumer a product or service that such a consumer might otherwise reasonably expect to be available to them?
- Is there anything in the proposed Code that creates a barrier to either the financial advice provider (including related Financial Advisers and Nominated Representatives) or the consumer from respectively offering or receiving the products or services within their respective capabilities and preferences?

Since these questions have not been included in this consultation as requested in my earlier submission, I suggest that the CWG use every engagement opportunity during this consultation process to test for responses to these questions from interested parties to better gauge how the Code will work in practice.

I also suggest that two further questions be posed during such consultation engagement opportunities, as follows:

- Will you actually provide a financial advice service under the provisions of the Code, or will you choose instead to restrict your engagement with clients to execution only or information only services?
- Do you intend to remain in the industry and continue to provide services to consumers and, if not, why not?

My own experience in having great difficulty obtaining personalised services from banks under the current regime, as outlined in my submission on the earlier consultation, suggests that the first of these two additional questions might be targeted at such entities to determine whether the proposed Code will now encourage them to expand access to financial advice services for consumers. If it doesn't have this outcome, then we all might need to think again about what will deliver to that desirable outcome.

The second question may assist in building understanding as to how many existing industry participants may stay or go, which will then potentially assist in determining whether transitional proposals are set at an appropriate level and over an appropriate timeframe, or whether alternatives may need to be considered.

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Q29 Name

Rob Dowler

Q30 Your role or professional title

Operational and Compliance Risk Management Consultant

Q31 Individual or organisational submission

This is an individual submission and not on behalf of an organisation

Q32 If you give financial advice...

I am not an AFA, RFA or QFE adviser

Code Working Group - Online Submission Form

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

My organisation or I do not give financial advice

Q34 Organisation Name

Red Owl Consulting Ltd

Q35 Type of organisation

Other (please specify):

A company that provides consultancy services, principally to financial services organisations, covering management of operational and compliance risks

Q36 Size of organisation

Small firm (1-10 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.

I am a consumer of financial advice services and I have endeavoured to submit from this personal standpoint as well as from my professional position.

I have held various positions in the financial services sector for all of my working life, now some 40 plus years, with my most recently recognised position being the executive secretary of the Securities Industry Association, the industry body representing NZX Firms, which position I vacated earlier this year.

I have been a consistent submitter from my various professional positions as well as completing many personal submissions on a wide range of topics and consultations over the years.

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.

The information provided above is not confidential.

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)