

#83

COMPLETE

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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.

The minimum standard requiring advisers to act in clients' interests overlaps to a degree with the duty under the FMC Act to give priority to the client's interests where there is a conflict between the interests of the client and the interests of the adviser. However, the minimum standard under the proposed Code is wider than the duty under the FMC Act and, therefore, we query why the Code should set a standard which is higher or wider than the requirements of the FMC Act.

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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.

It would be helpful to expand on what it means to "consistently do the right thing". The commentary states that this standard includes how a person describes themselves and publishes information. Unless there are other obligations contained in other legislation or regulations, there is no "right" answer to, say, how an adviser describes themselves. There is also no objective "right" way to interact with clients and regulators. Given that this is the case, we query how it will be determined that someone is not consistently doing the right thing.

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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.

N/A

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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 found the example difficult to follow. The example states that the nature and scope of the financial advice given by Beth excludes a comparison between the existing and the new policy. Notwithstanding the fact that the nature and scope of the financial advice excludes such a comparison, the example then goes on to say that Beth explains that there are some situations that are covered under the existing policy that may not be covered under the new policy. Is the point of the example that Beth does not in fact tell the client which situations are covered or not covered, ie she only makes a general statement that such situations exist? If so, this should be clarified.

The example could clarify that Beth must still comply with her obligations under section 431I of the FMC Act. It could also be helpful to expand the example to address the second element of proposed standard 4, ie taking reasonable steps to ensure that the client understands all material risks and consequences of following the financial advice, including any associated fees and costs. It would also assist to include a short commentary at the end of the example setting out which points of the standard/commentary are demonstrated in the example.

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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.

The commentary refers to situations where it may be reasonable to conclude that the financial advice is suitable where the client's circumstances include "particular characteristics." It would be helpful to provide an example (either in the commentary or the example) of what this means. For example, would a "particular characteristic" be that a client has a certain sum of money to invest, or that a client has a mortgage?

The example provides that an electronic file note is kept by the bank of the advice that was given and why it was suitable for the client. We query if the intention of this is to impose a documentation obligation as part of standard 5. Is it the intention that advisers are also required to document when they have relied on another person's assessment of a financial advice product or strategy and why?

In relation to the requirement that the person giving advice demonstrate that it is reasonable to rely on another person's assessment of a financial advice product or strategy, we assume that the key situation where this would occur would be where an individual adviser relies on their employer's recommended product. We would have thought that in such a situation the individual adviser's reliance should be seen as reasonable, and that the adviser should not be required to conduct due diligence on their employer. It would be helpful to have clarity as to whether choosing a product from an approved list would constitute reasonable grounds for the financial advice.

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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.

The commentary provides that unless disclosure is required by law or the client agrees otherwise, client information about a particular client may be used only for giving financial advice to the client or another purpose that is directly related to giving that financial advice. This would apply even where the information is used in an anonymised form.

We consider that where information is used in an anonymised form, that information should be able to be used regardless of whether the client agrees otherwise. This is necessary for example for market research purposes, for conducting audits or for carrying out work to improve the service or product provided to clients. As there may not always be documents under which clients agree otherwise, the limitation on using the information when it is in anonymised form appears to be unduly restrictive.

Further, we are concerned as to what it means for a client to agree to disclosure of their information. We believe that the standard should reflect business reality which is that a client's consent may not be express, but rather may be reasonably implied through the course of business. For instance, many large institutions publish their privacy policies without expressly seeking consent from their customers to act according to these policies. Express client agreement to disclosure of their information would seriously impede on the current standard practices in the industry. In our view, the language used should mirror the language in the Privacy Act, ie client information should be protected "unless disclosure is required by law or there are reasonable grounds to believe the client agrees otherwise".

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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.

N/A

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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.

N/A

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Q17 Overall, do you agree or disagree with [standard 9] **Don't know** and proposed commentary?

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

The standard required of nominated representatives seems high. We query:

o if the onus would be on the nominated representative to determine if they, together with their financial advice provider, would achieve the general qualification outcomes. This would seem onerous.

o how an adviser would prove that they, together with the procedures, systems and expertise would achieve the general qualification outcomes.

It would be helpful to include a non-Nominated Representative related example, such as how a university qualified financial adviser may equate their credentials to the Level 5 qualification standard.

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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.

N/A

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Q21 Overall, do you agree or disagree with [standard 11] and proposed commentary? **Don't know**

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

See comments on code standard 9, which apply equally here.

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Q23 Overall, do you agree or disagree with [standard 12] and proposed commentary? **Don't know**

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

See comments on code standard 9, which apply equally here.

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Q25 Is there anything missing from the draft Code? **No**

Q26 If you answered yes, what is missing?

N/A

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

Some of the examples demonstrate parts of the standard/commentary. In order to be a helpful demonstration, perhaps there should be an explanation following the example of what aspects of the standard/commentary are intended to be demonstrated or there should be more than one example to cover off the pertinent aspects of each standard/commentary.

Q28 Is there anything else you want to say?

1: Interaction with legislation

Generally we found the draft Code lacking in regards to clearly setting out how the Code interacts with the FMCA and FMC Regulations. Our understanding is that the FMCA and FMC Regulations are prescriptive and binding obligations, whereas the Code's standards are intended to compliment and further elaborate upon these obligations. However, the Code appears to set new or slightly different standards which overlap with the obligations that apply under the FMCA and FMC Regulations. This leads to uncertainty with regards to the application of the respective obligations.

2: General clarity of terminology

There were a couple of phrases used, and highlighted in our responses above, which we found confusing or at the very least, unconcise. We understand that the Code is intended to be aspirational in nature, setting out the ideal practices of financial advisers. However, the intention is hindered if it cannot be understood. Our suggestion would be to either use terms defined in the legislation or to redraft the standards/commentary to ensure clarity.

3: Part 1 vs 2

Part 2 of the Code on Competence, Knowledge and Skill clearly sets out the application of the standard according to the different types of financial advisers, namely: Individuals, Entities, and Nominated Representatives. We think that Part 1 would benefit from this type of delineation, particularly in regards to how the Code duties apply to individuals employed by entities (who may not necessarily be nominated representatives).

4: Clarification that code standards may be met by a combination of the financial advice provider and the person giving advice.

The Code is currently unclear on whether the various standards may be satisfied through the collective efforts/skills/processes of an individual and an entity. This is an issue for:

o Code standard 3. The arrangements for managing conflicts would usually be developed at entity level and the individual financial adviser themselves may simply rely on the arrangements that the financial advice provider has in place.

o Code standard 6. It would usually be the financial advice provider that would have data storage and protection systems, and the individual financial adviser may not have any input into how client information is protected.

o Code standard 7. It would usually be the financial advice provider rather than the individual financial adviser that has arrangements for resolving complaints.

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Q29 Name

Joanna Khoo

Q30 Your role or professional title

Senior Associate

Q31 Individual or organisational submission

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

Code Working Group - Online Submission Form

Q32 If you give financial advice...

I am not an AFA, RFA or QFE adviser

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

Other (please specify):
Legal Advice

Q34 Organisation Name

Russell McVeagh

Q35 Type of organisation

Law 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.

N/A

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.

Our submission 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)