

#75

COMPLETE

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Page 3

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

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

We agree with the proposed standard, but suggest that it should be clear that the standard does not limit the ability of persons giving financial advice to decide the scope and terms of the services that they offer to their clients. That is, fairness should be assessed in the context of the particular services offered by the provider.

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

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

We agree with the proposed standard. The wording in the commentary could be amended to "consistently seeks to do the right thing", this places the focus on the time of the action whereas the current wording seems to focus on the outcome of the action. For example, a client may have agreed an aggressive portfolio with a directive to invest in a particular sector, which, in the event of negative market conditions, may seem contrary to doing the 'right thing' for the client.

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

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

We generally agree with the proposed standard. However, we disagree with the order of the bullet points. In logical order, the steps are to identify any conflicts of interest, assess them, and then decide on the appropriate response (which could be to avoid any conflict, or to control and/or disclose it). The current drafting implies that the first decision is whether the conflict can be avoided, however conflicts of interest are inevitable in practice and can always be avoided by declining to act for the client, which we assume is not the intention of the standard.

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**Q7** Overall, do you agree or disagree with [standard 4] and proposed commentary? **Agree**

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

We generally agree with the proposed standard. However, we are concerned about the application of this standard to class advice such as single security analysis and (underperform/neutral/outperform) ratings published by research analysts and received by clients by mail or online. In these cases, there may be no actual interaction with the client, and so the relevant "reasonable steps to ensure the client understands" will, of necessity, be disclosure-based. We suggest that the commentary clarifies that what are "reasonable steps" will depend on the particular circumstances, including the nature and scope of the financial advice, the level of interaction with the client, and the mode of delivery of the advice.

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

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

We generally agree with the proposed standard. We think that it should be clear that the "client's circumstances" means the relevant aspects of those circumstances, having regard to the nature and scope of the financial advice. For example, where the advice expressly does not take into account the client's circumstances (as in the case of security recommendations, as discussed in our response above for Standard 4), the client's circumstances should not be relevant to Standard 5. However, the current drafting suggests that the client's circumstances are always relevant to the standard. We suggest "having regard to the nature and scope of the financial advice" could be inserted at the end of the paragraph to explain the meaning of the "client's circumstances".

In a similar vein, the second paragraph of the commentary could also be expanded to include an example where the advice expressly does not take into account the client's circumstances.

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

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

We generally agree with the proposed standard, however, aspects of the proposed commentary appear to go beyond the standard and/or be unworkable. For example, the obligation to destroy or return client information at the end of the engagement goes well beyond taking reasonable steps to protect client information, and would in practice be unworkable in most organisations given the difficulty (for example) in deleting particular client information from electronic backup files or archived paper files held in remote storage.

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

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**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] **Agree** and proposed commentary?

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

We generally agree with the proposed standard. The wording "always act" in the first bullet point of the standard should, in our view, be replaced by "seek to act"; otherwise the standard reads as an ongoing positive obligation to promote "informed participation", which in itself is not defined or explained by the standard.

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

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

We generally agree with Standards 9, 10, 11 and 12. However, we note that it is not yet clear the extent to which research analysts (who, as discussed above, provide security recommendations based on an analysis of the security but without reference to the circumstances of any particular client) are subject to the Code. To the extent they are subject, it is also not clear whether they would be financial advisers or nominated representatives.

We have raised this issue with MBIE, but the current uncertainty makes it difficult to comment on these standards as they apply to research analysts.

Assuming that research analysts are subject to the Code, it does not make any sense for their individual competency requirements to contain any element related to the giving of personalised advice. We would like to engage further with the Code Working Group on this issue once we have more information from MBIE.

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

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

Please refer to comments for Standard 9.

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

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

It should be clear that Standards 11 and 12 only apply to the extent that the relevant kind of financial advice is actually given. We look forward to further consultation on Standard 11 given the wide range of investment planning services available in the market.

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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.

Please refer to comments for Standards 9 and 11.

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

**Q26** If you answered yes, what is missing? **Respondent skipped this question**

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

**Q28** Is there anything else you want to say? **Respondent skipped this question**

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**Q29** Name

Nick Hegan; and Bridget MacDonald

**Q30** Your role or professional title

Chair, Securities Industry Association; and Executive Director Securities Industry Association

**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,**  
Other (please specify):  
See question 37

**Q34** Organisation Name

Securities Industry Association

**Q35** Type of organisation

**Industry body**

**Q36** Size of organisation

**Respondent skipped this question**

**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.

The Securities Industry Association (SIA) is the voice of New Zealand's sharebroking and wealth management industry and represents NZX Market Participant firms, including:

- ANZ New Zealand Securities Limited
- ASB Securities Limited
- Craigs Investment Partners Limited
- First NZ Capital Securities Limited
- Forsyth Barr Limited
- Goldman Sachs New Zealand Limited
- JBWere (NZ) Pty Limited
- Macquarie Securities (NZ) Limited
- OM Financial Limited
- Somerset Smith Partners
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SIA members employ more than 500 accredited NZX Advisers, NZDX Advisers and NZX Derivative Advisers, and more than 400 Authorised Financial Advisers nationwide. and more than 400 Authorised Financial Advisers nationwide. The combined businesses of our members work with over 300,000 New Zealand retail investors with total investment assets exceeding \$80 billion, including \$40 billion held in custodial accounts. Our members also work with local and global institutions that invest in New Zealand.

**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.

This submission does not contain confidential information.

**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)