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**Code Working Group – Code of Professional Conduct for Financial Advice Services Consultation**

ASB Bank Limited (ASB) welcomes the opportunity to make a submission on the Code of Professional Conduct for Financial Advice Services (the Code) Consultation.

This submission addresses in sequence each section contained in the consultation. For each section, in some places we have chosen to highlight specific areas for comment rather than formally answer each question.

We acknowledge ASB's submission may be published on MBIE's website, and may be released in response to a request under the Official Information Act. ASB does not seek confidentiality for any aspect of this submission other than my contact details below.

If you require any further information, please do not hesitate to contact me.

Yours sincerely,

**S 9 (2) (a)**

Jonny Le Leu  
Regulatory Affairs Manager  
ASB Bank Limited

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## ***Principles for drafting the Code***

*Question A: What comments do you have regarding the overarching theme of “good advice outcomes” and the underlying principles?*

ASB supports the overall client-centric sentiment of the proposed ‘good advice outcomes’ theme, and considers it a useful overarching foundation for the Code. We suggest it could be improved if the word ‘outcomes’ is removed. The requirement for retail customers to receive ‘good advice’ is likely to be better understood by our employees and the New Zealand public, and reduces the potential that obtaining ‘good advice’ is perceived to be dependent on the underlying performance of the product being advised on. In addition, receiving ‘good advice’ is an easier fit under the Financial Markets Authority (FMA) conduct umbrella of a “good customer outcome” without unnecessary duplication of the potentially confusing word “outcome”.

*Question B: Are there any further principles that should be included, or existing principles that should be removed?*

ASB endorses principles 1 and 3-5; we consider the move towards a service-oriented code that prioritises customer outcomes, flexible delivery of financial services and creates universally applicable financial advice standards are welcome improvements to the financial services landscape.

ASB has reservations about principle 2 and the drafting assumption that retail customers have ‘basic knowledge’. We assume this means ‘basic financial knowledge’ and note that the 2016 S&P Global Financial Literacy survey found that only 61% of adult New Zealanders were financially literate (in response to five simple numeracy, inflation and risk diversification questions). This leaves a significant proportion of the population below the proposed drafting standard of the Code. Although we recognise there is a broader New Zealand financial literacy issue at play here, the code drafting should at least be cognisant of this environmental background and attempt to be accessible to as many New Zealanders as possible.

### ***Ethical behaviour***

ASB agrees that the five principles of the IOSCO framework provide a good foundation to develop the Code minimum standards of ethical behaviour, but do not agree these should extend beyond strict legal obligations. If it is difficult (or inappropriate) for the Code to prescribe minimum standards for certain principles, requiring FAPs to describe their own standards for such principles in their corporate code of ethics is a solution with merit, as it would allow tailoring of the principle to the FAPs values and business model. For this solution to hold weight, a FAP’s corporate code of ethics would need to be publically available so it can be held to account.

Note there is likely to be broader benefits to the advice industry by requiring FAPs to publish their corporate code of ethics. For example, it could incentivise FAPs to develop maturity around ethical good practice beyond the minimum standards required by the Code (for example, developing desired leadership and culture expectations) and also emphasises to all market participants that ethical behaviour is the foundation of good advice.

In addition to the above, we have the following comments on a number of the other specific proposals in the ethics section of the consultation paper.

**Act with honesty, fairness and integrity**

ASB unequivocally supports the requirement to act with honesty, fairness and integrity. We also strongly support the Code including guidance as to what these mean in practice with respect to advice giving situations.

**Manage and fully disclose conflicts of interest**

Minimum standards on conflicts management with a focus on incentives should be included in the Code. Best practice guidance on the management of conflicts of interest within advice giving situations would also be welcomed.

**Do no harm to the client or the profession**

We agree that a person who gives financial advice must not do anything or make an omission that would, or would be likely to, bring the financial advice profession into disrepute (note that an additional minimum standard on doing no harm to the client is not necessary, given the requirements of the legislation and other elements of the code).

**Keep your client's data confidential**

ASB strongly supports the requirement to maintain customer confidentiality. However, we do not believe it is necessary or desirable for the code to venture into areas that are already adequately addressed through privacy law. For example, retention, use or sharing of bulk customer data is a matter appropriately regulated by privacy law. The Code should include customer confidentiality standards but limit these obligations to avoid duplicating a bespoke privacy regime for the provision of financial advice.

**Ethical processes in Financial Advice Provider entities**

The Code should require that FAPs document and maintain 'ethical processes'.

**Ethics training**

FAPs should be required to have minimum standards with respect to ethics training, which should include the requirement for training to be provided to all officers and employees. In addition all officers and employees should be required to complete refreshed ethics training on a periodic basis.

**Resolving ethical dilemmas**

We support the requirement for FAPs to have a framework for resolving ethical dilemmas that might arise in giving financial advice. This might be one of the matters that must be addressed in a FAPs corporate code of ethics.

**Compliance functions**

FAPs should be required to have a compliance response function for following up on ethical concerns raised by employees and other stakeholders.

The Code should not stipulate an internal audit obligation for monitoring and testing violations of ethical behaviour. FAPs should (as proposed) have the obligation to demonstrate they have adequate systems and processes to ensure they are meeting the necessary standards of ethical behaviour, but should be able to choose whether the monitoring of this is via internal audit or through another robust process.

**Reinforcing good ethical behaviour**

Some suggested mechanisms that would reinforce good ethical behaviour are:

- an attestation to clients when giving advice; and
- an annual attestation to the regulator.

We note however, that these mechanisms are more likely to fit within the licensing regime than within the Code itself.

### **Conduct and client care**

ASB in principle supports the proposed use of the Code of Professional Conduct for Authorised Financial Advisers (AFA code) requirements of minimum standards of client care as the starting point for the Code's conduct and client care standards.

#### **Advice situations**

*Question Z: Are there other delivery methods that should be considered when testing our thinking?*

The standards of conduct and client care should be thoroughly tested under the following scenarios:

- delivery of digital financial advice across a variety of products; and
- delivery of financial advice on products not previously subject to AFA code considerations (for example, debt products).

#### **Advice-giving standards**

Code Standard 7 (CS7) from the current AFA code will require some revision to adequately cater for the way financial services may be accessed under the new regime. The current drafting appears to consider a linear approach to accessing financial advice where a customer directly engages with a financial advisor (on the phone or in person). It is relatively easy in this situation to see how an adviser is able to ensure that the customer has sufficient information to allow them to make an informed decision about whether to use the adviser services. It is less clear how this would work in an environment where a more flexible delivery of financial advice services is available. For example, a customer may commence the advice process digitally but then complete it in person at a later stage. In our view, CS7 will need to be adapted to accommodate these types of scenarios.

*Question EE: Are there any additional matters that should be addressed in the advice-giving standards? Those listed above? Others?*

A new financial advice standard that requires the vulnerability of a customer to be taken into account in the advice process should be included in the Code. This is already a feature of the responsible lending regime under the Credit Contracts and Consumer Finance Act 2003 (CCCFA) but we consider this should form an explicit component of advice giving standards irrespective of the product on offer. Vulnerable customers may be at increased risk of harm in their financial interactions, have reduced tolerance to financial stress and may suffer disproportionately if things go wrong. Requiring an explicit consideration of customer vulnerability in the Code would ensure the advice process is truly client-centric and focused on good conduct principles.

#### **Advice process**

*Question GG: Should the Code include guidance material to help determine what needs to be considered when designing an advice process?*

ASB strongly supports the development of guidance material to inform the design considerations of the advice process. We consider guidance material will assist FAPs to understand how to provide financial advice under the new regime and will help them to develop systems and processes to ensure compliance with the code.

*Question HH: Are there any other important aspects you think should be included in the advice process for all types of financial advice activities under the new regime?*

ASB supports the advice processes outlined in paragraph 134 of the consultation document. We consider the nature and scope of the advice including any limitations should be explicitly addressed in the advice process (currently this is implicit in paragraph 134).

#### **Personalised suitability**

ASB supports the move towards promoting a flexible approach to personalised suitability. We think this model will work well in the context of a customer discussing a single product but becomes more difficult in the context of a customer specifically seeking advice on multiple products at the same time. In our experience, customers prefer to have a single interaction with the bank to address all their financial advice needs. This could make it more challenging to determine at what point in the conversation a personalised suitability analysis is required. As such, guidance as to when this point is likely to have been reached would be helpful.

#### **Organisational standards**

ASB supports the intent behind the introduction of organisational standards to the Code, but recommend these are set at a general principles level to avoid duplicating FAP licensing requirements imposed by the FMA.

### ***General competence, knowledge and skills***

#### **Aggregate Competency**

ASB supports the proposed overall competence, knowledge and skill requirements, in particular the ability to rely on aggregate competency to demonstrate financial advice outcomes (noting that the concept of “aggregate” applies to both general and particular competency). We consider the best model for demonstrating level 5 or level 7 financial advice outcomes via aggregate competency is through the proposed documented and reviewed ‘processes, controls and limitations’ approach as outlined in paragraphs 165 – 167 of the consultation. This is essentially a continuation of a remodelled Qualifying Financial Entity (QFE) regime where FAPs, through licensing, will demonstrate they have the expertise, systems and processes to achieve the outcomes required under legislation and the Code. The FMA are then in a position to test financial advice outcomes as a condition of licensing with the added weight of obligations under the Code. ASB has maintained in prior submissions on proposed reforms to the Financial Advisors Act 2008 that the QFE regime is fundamentally sound and considers that a remodelled ‘expertise, systems and processes’ test to fit the new requirements would be a pragmatic and practical way to demonstrate financial advice outcomes at required aggregate competency levels (both general and particular).

#### ***Particular competence, knowledge and skills***

Consideration should be given to changing level 7 competency from a mandatory to recommended requirement in respect of financial advice outcomes for financial planning. This amendment could assist in mitigating the risk financial advice would be unintentionally restricted under the new regime for some products (e.g. homes loans) out of a concern that financial planning may be required to adequately advise the customer. FAPs, FA and NR would be required to notify customers when providing financial advice in circumstances where level 7 competency is recommended but not achieved as a limitation in the scope of advice. This would allow market participants to differentiate themselves based on whether they want to provide financial advice with explicit competency limitations or not.