

Code of Professional Conduct for Financial Advice Services

Submission Template

Submissions close Monday 30 April 2018

Please send submissions to:

code.secretariat@mbie.govt.nz or

Code Working Group
c/o Code Secretariat (Poppy Haynes and Max Lin)
Ministry of Business, Innovation & Employment
PO Box 1473
Wellington 6140
New Zealand

Submissions process

The Code Working Group (CWG) seeks written submissions on the issues raised in this document by **5pm on Monday 30 April 2018**

We welcome submissions on any or all consultation questions. You are welcome to comment only on the issues most relevant to you.

Where possible, please include evidence to support your views, for example references to independent research, facts and figures, or relevant examples.

Please direct any questions that you have in relation to the submissions process to code.secretariat@mbie.govt.nz.

Use of information

The information provided in submissions will be used to inform the CWG's development of the draft Code. We may contact submitters directly if we require clarification of any matters in submissions.

Release of information

The CWG intends to upload PDF copies of submissions received to MBIE's website at www.mbie.govt.nz. The CWG will consider you to have consented to publication of your submission, unless you clearly specify otherwise in your submission.

If your submission contains any information that is confidential or you otherwise wish us not to publish, please:

- indicate this on the front of the submission, with any confidential information clearly marked within the text
- provide a separate version excluding the relevant information for publication on our website.

Submissions remain subject to request under the Official Information Act 1982. Please set out clearly in the cover letter or e-mail accompanying your submission if you have any objection to the release of any information in the submission, and in particular, which parts you consider should be withheld, together with the reasons for withholding the information. The CWG will take such objections into account and will consult with submitters when responding to requests under the Official Information Act 1982.

Private information

The Privacy Act 1993 establishes certain principles with respect to the collection, use and disclosure of information about individuals. Any personal information you supply to the CWG in the course of making a submission will only be used for the purpose of assisting in the development of the draft code. Please clearly indicate in the cover letter or e-mail accompanying your submission if you do not wish your name, or any other personal information, to be included in any summary of submissions that the CWG may publish.

Information about you

<i>Share your details</i>	
i.	Please provide your name and (if relevant) the organisation you represent <i>Mike Waiting</i>
ii.	Please provide your contact details S 9 (2) (a)
iii.	Please provide any other information about you or your organisation that will help us understand your perspective (e.g. the financial advice situations you have experience with) <i>The views expressed are those of the submitter whose experience arises from a banking background in credit scoring and data analytics and from his current employment as a compliance manager at Somerset Smith Partners. Somerset Smith Partners is a NZX advising firm with investment advisers based in Napier and Havelock North.</i>
iv.	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. (See page 2 of this document) <i>No part of this submission is required to be kept confidential</i>

Principles for drafting the Code

<i>Share your views</i>	
A.	<p>What comments do you have regarding the overarching theme of “good advice outcomes” and the underlying principles?</p> <p><i>A “good advice outcome” implies a requirement to hindsight any advice given at that time. At what stage must the hind-sighting be conducted?</i></p> <p><i>It is not a trite task to come up with a good/bad definition as “good”, “bad” and “indeterminate” for example will vary depending on the time lapse since the advice was provided.</i></p> <p><i>Is “Good” to be defined in terms of numbers turning out to be “good” during a period since the advice was provided or since the transaction(s) was/were undertaken (e.g. is “good” 80% good 6 to 18 months after the advice was given, at maturity of the investment or some other point of exit?). Given industry disagreement, it is recommended the Code committee seek specialist assistance in such definitions such as available from Fair Isaac (www.fico.com)</i></p> <p><i>“Advice” is often cumulative and delivered over many years. “Advice” given but not followed is not easily measurable, nor are “outcomes” where performance may be attributable to luck or investor selections instead of an outcome to the advice given.</i></p>

B. Are there any further principles that should be included, or existing principles that should be removed?

The Principle that should be included is one seen as an opportunity missed by the current drafting viz.

The Code does not embody a principle to promote professionalism within the industry.

Principle 5 (ethics) goes some way towards this, but “ethical behaviour standards for all advice situations” seems to seek consistency in the value for money equation (a quality/quantity versus cost/price trade-off).

What are needed in the Code (and arguably the very reasons for the Code) are the guidelines by which the industry would become more professional. Where the advice giver does not hold a specific qualification for the area of advice sought, they should be required by the Code to refer the enquirer to one qualified in that area.

As NZX share-brokers our investment advisers often observe that client advice on NZX shares and bonds has been obtained from articles by financial journalists, or consultations with advisers and professionals whose licences may exempt or empower them to offer advice on category 1 products, but who have little knowledge as to specifics of the securities they may be recommending.

In contrast, the NZX Participant Rules require NZX advisers to attain specialist training on the products and rules of the NZX stock exchange.

The medical profession is one where one would be referred to a specialist to treat a matter that may be beyond the GP’s range of skills. A similar process should occur in the financial advice industry, so I would expect the Code to require advisers asked for information on NZX products to refer their clients to specialist NZX advisers.

It may be that the omission of this Principle is due to the supply curve not being among the five identified principles.

The 5 Principles listed at para 55 page 18 generally do not address advice supply (viz):

1: The demand curve (outcomes for retail clients)

2: The assumed shape of this demand curve (inelastic)

3: Place/language (wide range of situations)

4: Promotion/delivery (Code will be drafted to promote good advice outcomes)

5: Advice situations/Product price/quality (ethical behaviour standards)

“Good advice outcomes” describe the points on a demand curve that plots advice quality/price against price/availability matched by the suppliers of advice at that time. Its focus on the demand curve describes only portion of the market and then only the points of intersection with suppliers.

To guide the conduct of advisers the theme of the Code should really accommodate the shape of the supply curve. This may be the separate overarching principle, standard or overlay that the consultation paper supports at page 19, paragraph 60?

Ethical behaviour

Act with honesty, fairness and integrity

Share your views

C.	Do you agree with a requirement to act with honesty, fairness and integrity? If not, please set out your reasoning. <i>It seems odd that "respect" should not be among the requirements?</i>
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Keep the commitments you make to your client

D.	Should minimum standards for ethical behaviour for the provision of financial advice extend beyond strict legal obligations, to include meeting less formal understandings, impressions or expectations that do not necessarily amount to strictly legal obligations? If no, please give reasoning. If yes, please propose how a standard for such commitments might be framed.
E.	If there was a minimum standard requiring Financial Advice Providers – or Financial Advice Providers in some situations – to have their own code of ethics in addition to the Code, how would you frame the requirement for it to deal with keeping commitments?

Manage and fully disclose conflicts of interest

F.	Should the Code include a minimum standard on conflicts of interest in addition to the legislation? Yes
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Do no harm to the client or the profession

G.	Do you 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? If not, please set out your reasoning. <i>No. It seems unfair to muzzle those best able to voice an opinion about the industry.</i>
H.	Is an additional minimum standard on doing no harm to the client necessary? If so, what standard do you propose?

Keep your client's data confidential

I.	In which situations, if any, should the retention, use or sharing of anonymised bulk customer data be subject to Code standards?
J.	Do you agree that the Code should cover the various aspects of maintaining client confidentiality discussed in this paper?
K.	Are there other aspects of maintaining client confidentiality to consider?

Ethical processes in Financial Advice Provider entities

L.	<p>Do you agree that the Code should require the Financial Advice Provider to document and maintain its "ethical processes"?</p> <p><i>Yes. The Code should also require FAP's to identify their specialist areas of advice, costs and capacity to provide advice.</i></p>
M.	<p>Should the Financial Advice Provider be required to have a publicly available corporate code of ethics? Are there particular situations where a corporate code of ethics should be or should not be required?</p> <p><i>Yes</i></p>
N.	<p>Should Financial Advice Providers also be subject to additional standards in respect of leadership and culture? If so, how should these be framed?</p> <p><i>Code standards that promote respect for clients would help professionalise the industry.</i></p>
O.	<p>Do you propose other additional standards of ethical behaviour that should apply to Financial Advice Providers?</p> <p><i>It is unprofessional to not respond promptly and to help monitor behaviours the Code should promote client ratings of FAP's.</i></p>

Ethics training

P.	<p>Do you agree that Financial Advice Providers should be required to meet standards relating to ethics training? If not, please state your reasoning.</p> <p><i>Yes – if a cost efficient basic standard else no.</i></p>
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Q.	<p>Should ethics training requirements apply to all officers and employees of a Financial Advice Provider, as appropriate to their role and contribution to the process of financial advice provision? If not, please state your reasoning.</p> <p><i>No – excessive training and compliance costs for monitoring would need to be recovered pushing up the costs of providing advice</i></p>
R.	<p>Should there be a requirement for ongoing refresher training on ethics?</p> <p><i>See answer for Q above</i></p>

Resolving ethical dilemmas

S.	<p>Do you agree that Financial Advice Providers should be required to have in place, and use, a framework for resolving ethical dilemmas that may arise in giving financial advice? If not, please set out your reasoning.</p> <p><i>No – FAP's will work out for themselves the most cost efficient means to resolve ethical dilemmas</i></p>
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Compliance functions

T.	<p>Should there be a requirement for explicit sign-off on the soundness of financial advice provided directly by a Financial Advice Provider?</p> <p><i>No. If the client ratings proposal per O above is adopted an explicit compliance sign-off would be superfluous.</i></p>
U.	<p>Do you agree that Financial Advice Providers should be required to have in place a compliance function aimed at following up on concerns raised by employees and other stakeholders? If not, please set out your reasoning.</p> <p><i>Yes. The playing fields are not level for all advisers as NZX Participants for example are bound by Rules that require compliance officers.</i></p>
V.	<p>Should this extend further into an internal audit obligation, having in place processes to systematically test for and detect violations of ethical behaviour?</p> <p><i>No – violations surface by way of existing staff and client complaint processes.</i></p>
W.	<p>Are there any potential compliance costs for small and/or large Financial Advice Providers that need to be considered?</p> <p><i>Yes – the compliance costs in employing staff to manage compliance processes and attend to prescribed reporting are significant for small FAP's. These costs would be compounded significantly if monitoring was extended to recording ethical standards during advice periods and environments and seeking certain outcomes.</i></p>

Responsibility for the whole advice process

X.	<p>Do you agree that Financial Advice Providers should be required to be able to demonstrate that they meet the standards of ethical behaviour as if the Financial Advice Provider carried out the whole advice process directly itself? If not, please set out your reasoning.</p> <p><i>Yes. NZX firms already have processes able to demonstrate compliance with the six steps of the advice process.</i></p>
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Reinforcing good ethical behaviour

Y.	<p>What principle or mechanism do you propose the Code could include to reinforce good ethical behaviour on a day-to-day basis?</p> <p><i>See proposal at O above.</i></p>
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Conduct and client care

Advice situations

<i>Share your views</i>	
Z.	<p>Are there other delivery methods that should be considered when testing our thinking?</p> <p><i>Yes- social media</i></p>

Advice-giving standards

AA.	<p>How do the current client care standards work in practice, especially in advice-giving situations not previously covered by the AFA Code? In answering this question, please ignore “scope of advice” (CS-8) and “suitability” (CS-9 and part of CS-10).</p>
BB.	<p>Could any aspect of the current client care standards be worded better? (For example, we are aware that the definition of “complaint” could be improved.)</p>
CC.	<p>Are there any aspects of the current client care standards that could be expanded or clarified (for example, in light of the published findings of the Disciplinary Committee)?</p>

DD.	Are there any potential compliance costs for small and/or large Financial Advice Providers that need to be considered?
EE.	Are there any additional matters that should be addressed in the advice-giving standards? Those listed above? Others?

Advice process

FF.	<p>Do you think there are any other components that should be included in the design considerations of an advice process?</p> <p><i>Desired Outcome: Professional advice structure</i></p> <p><i>Proposed means to achieve this:</i></p> <p><i>Design code requirements so that financial advice is confined to the adviser's area of expertise and require an adviser to refer a client to a specialist adviser when the advice sought is outside his area of expertise</i></p> <p><i>e.g.</i></p> <p><i>Fixed interest and derivative products to advisers qualified to provide advice in these areas</i></p> <p><i>Property and mortgages limited to advisers with real estate qualifications</i></p> <p><i>Insurance advice should be limited to advisers and actuaries qualified to provide insurance advice</i></p> <p><i>Share and Bond Investment advice likewise limited to qualified share brokers</i></p>
GG.	<p>Should the Code include guidance material to help determine what needs to be considered when designing an advice process?</p> <p><i>There should be a financial advice assessment level which identifies the type of financial advice expert needed and ensures the client is referred to that level.</i></p>
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?
II.	Should any of the key aspects that we have listed above be removed? If so, why?
JJ.	Are there any situations in which an advice process need not be followed?

Personalised suitability

KK.	What comments do you have about a proposed minimum standard on personalised suitability analysis? What are your views on the example above?
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Organisational standards

LL.	What are the practical advantages and disadvantages of including organisational standards as described? What explanatory material or examples could we provide in the Code that might help to make these standards easier to comply with in practice?
MM.	Would implementing these organisational conduct and client care standards create a particular compliance burden for your firm? If yes, please explain why.

General competence, knowledge and skills

<i>Share your views</i>	
NN.	Do you agree with our interpretation of the meaning of “competence, knowledge, and skills”? If not, why not?
OO.	Are there other factors, which contribute to combined expertise , that we have not listed? We are particularly interested in factors that are relevant to financial advice that is given by a Financial Advice Provider directly, including by digital means.
PP.	What do you think are the advantages of this approach to general competence, knowledge and skills?
QQ.	<p>What do you think are the disadvantages of this approach to general competence, knowledge and skills?</p> <p><i>Principle 2 at para 64 “that expertise comes from the combined competence, knowledge and skill of the Financial Advice Provider’s business (including its management, support people and resources) and of its included Financial Advisers and/or nominated representatives.</i></p> <p><i>This Principle seems to assume this information is encapsulated in a single point of reference. If not so encapsulated, then to meet this requirement an advice request will have to be referred to all the mentioned points of reference. This is unlikely to lead to advice being delivered cheaply or promptly which may not be a “good advice outcome”.</i></p>
RR.	In what ways do you think this proposed standard contributes to, or detracts from, the legislative purposes (for example ensuring the quality and availability of advice, avoiding unnecessary compliance costs, and promoting innovation and flexibility)?
SS.	What factors should we consider in determining whether to make the proposed unit standard a renewing obligation?

Particular competence, knowledge and skills

<i>Share your views</i>	
TT.	What are the advantages and disadvantages of our approach of identifying two types of financial advice? What impact would it have on the type of advice you give and on your compliance costs?
UU.	How should RFA's experience be recognised?
VV.	What do you think are the advantages of this approach to particular competence, knowledge, and skill?
WW.	What do you think are the disadvantages of this approach to particular competence, knowledge, and skill?
XX.	In what ways do you think this proposed standard contributes to, or detracts from, the legislative purposes (for example ensuring the quality and availability of advice, avoiding unnecessary compliance costs, and promoting innovation and flexibility)?
YY.	What alterations, if any, would you suggest to the baselines we have nominated: specialist strand for product capability, Level 5 for discipline capability, and relevant degree (or other degree plus Level 6) for planning capability?

Other comments

<i>Share your views</i>	
ZZ.	<p>Are there any other comments you would like to make to assist us in developing the Code?</p> <p><i>I thank the Code Working Group for the opportunity to comment on their proposals and have every confidence that the approach they are taking will enable improvements to the previous Code of Professional Conduct for Authorised Financial Advisers.</i></p>