

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.	<p>Please provide your name and (if relevant) the organisation you represent</p> <p><i>Philip Morgan Rees, AFA, Head of Private Wealth</i> <i>Milford Asset Management</i></p>
ii.	<p>Please provide your contact details</p> <p><i>PO Box 960</i> <i>Shortland street</i> <i>Auckland 1140</i></p> <p>S 9 (2) (a)</p>
iii.	<p>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)</p> <p><i>Milford Private Wealth Limited (FSP391786) was granted a DIMS licence under section 396 of the Financial Markets Conduct Act 2013 which came into effect 1 October 2015.</i> <i>There are currently 10 Milford Private Wealth Authorised Financial Advisers.</i></p>
iv.	<p>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)</p> <p><i>N/A</i></p>

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>We agree with the client centric approach of the code. We favour good advice and suitability at a given point in time as the appropriate aim and principle. Our concern is that the ‘outcomes’ could be outside of the control of an Adviser (and are determined</i></p>

	<i>with the passage of time). Suggest this could be reviewed along similar lines to the Trustee's duty of prudent investment, whereby Trustees are judged on their conduct (and process) rather than the outcomes or results achieved.</i>
B.	Are there any further principles that should be included, or existing principles that should be removed? <i>Subject to the use of the word 'outcomes' we agree with the principles.</i>

Ethical behaviour

Act with honesty, fairness and integrity

<i>Share your views</i>	
C.	Do you agree with a requirement to act with honesty, fairness and integrity? If not, please set out your reasoning. <i>Yes, however we note this requirement is subjective. We favour including definitions/benchmarks which use as a basis a reasonable person in the same profession test.</i>

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. <i>We believe there should only be one standard for ethical behaviours based on legal obligations. Each Adviser should be able to demonstrate how they acted ethically and be bound by specific claims and commitments made by them in any given situation without the need for standards covering a range of less formal understandings.</i> <i>It should be up to individual firms to set their own culture and corporate values, and it is those which will determine how a firm approaches non-legal obligations, and which may differentiate a firm from its competitors.</i>
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E.	<p>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?</p> <p><i>No, we believe there should only be one standard for ethical behaviours in relation to legal commitments. Clients could also find different sets of ethics confusing.</i></p>
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Manage and fully disclose conflicts of interest

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

G.	<p>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.</p> <p><i>Yes, we agree and recognise this as being similar to the requirement of AFAs under the current code.</i></p>
H.	<p>Is an additional minimum standard on doing no harm to the client necessary? If so, what standard do you propose?</p> <p><i>We do not believe this is necessary as we would expect that it is already covered in putting the client first.</i></p>

Keep your client's data confidential

I.	<p>In which situations, if any, should the retention, use or sharing of anonymised bulk customer data be subject to Code standards?</p> <p><i>In our view this is not a matter for the Code. The Privacy Act should prevail.</i></p>
J.	<p>Do you agree that the Code should cover the various aspects of maintaining client confidentiality discussed in this paper?</p> <p>-</p>
K.	<p>Are there other aspects of maintaining client confidentiality to consider?</p> <p>-</p>

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, but we believe the ethical processes should be captured and documented under the licencing regime.</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>No, we believe this should be part of the licencing regime.</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>No, but the licencing regime should cover how the licenced entity drives good conduct and capture this issue.</i></p>
O.	<p>Do you propose other additional standards of ethical behaviour that should apply to Financial Advice Providers?</p> <p>-</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>This should be included in the training framework under the licensing application and any review of a FAP meeting its licensing standards.</i></p>
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>Yes, ethics training should apply to all client facing and related management roles.</i></p>
R.	<p>Should there be a requirement for ongoing refresher training on ethics?</p> <p><i>Yes, this should also be included in a FAPs training framework under its licence and an (Authorised) Financial Advisers’ continuing professional development plans.</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>Yes. This should be included as part of licencing standards and requirements.</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>Yes for Digital Advice.</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, however in order to make it fit for size and nature of business, it should be able to be outsourced.</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>A second line monitoring function should be sufficient. A third line internal audit function should not be required – it is likely to impose unnecessary compliance costs.</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. A Financial Advice Provider should have the flexibility to determine its own compliance assurance programme, we believe (consistent with the DIMS and MIS licences) it should not be mandated by the Code.</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>The Financial Advice Provider should be accountable for the whole process.</i></p>
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Reinforcing good ethical behaviour

Y.	What principle or mechanism do you propose the Code could include to reinforce good ethical behaviour on a day-to-day basis? -
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Conduct and client care

Advice situations

<i>Share your views</i>	
Z.	Are there other delivery methods that should be considered when testing our thinking? <i>Digital Advice.</i>

Advice-giving standards

AA.	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). <i>All of our advice is covered by the current code.</i>
BB.	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.) -
CC.	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)? -
DD.	Are there any potential compliance costs for small and/or large Financial Advice Providers that need to be considered? <i>No, a level playing field is important.</i>
EE.	Are there any additional matters that should be addressed in the advice-giving standards? Those listed above? Others? <i>Where a commission or revenue share is paid to the adviser, the dollar value must be disclosed together with whether it is an ongoing or one-off payment.</i>

Advice process

FF.	Do you think there are any other components that should be included in the design considerations of an advice process? -
GG.	Should the Code include guidance material to help determine what needs to be considered when designing an advice process? <i>Firms should have the skill and competence to design this. No more guidance material is required other than what would be commensurate with the guidance provided for DIMS and MIS licensees.</i>
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? <i>No.</i>

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? <i>We agree with the continuation of a standard along the lines currently envisaged by the existing CS-9 and CS-10.</i> <i>We agree with the proposal where acquiring a straight forward product and they were satisfied regarding the broader financial situation and the client understood the advice scope did not include comparison with an existing, competing product.</i>
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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? -
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MM.	<p>Would implementing these organisational conduct and client care standards create a particular compliance burden for your firm? If yes, please explain why.</p> <p>-</p>
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General competence, knowledge and skills

<i>Share your views</i>	
NN.	<p>Do you agree with our interpretation of the meaning of “competence, knowledge, and skills”? If not, why not?</p> <p><i>Yes, where combining individual and organisation, we believe that there is a need to disclose the individual’s competence.</i></p>
OO.	<p>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.</p> <p>-</p>
PP.	<p>What do you think are the advantages of this approach to general competence, knowledge and skills?</p> <p>-</p>
QQ.	<p>What do you think are the disadvantages of this approach to general competence, knowledge and skills?</p> <p><i>Clients may be confused or misled if they don’t know what an individual is able to advise them about.</i></p>
RR.	<p>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)?</p> <p>-</p>
SS.	<p>What factors should we consider in determining whether to make the proposed unit standard a renewing obligation?</p> <p><i>Cost and monitoring should be considered.</i></p>

Particular competence, knowledge and skills

<i>Share your views</i>	
TT.	<p>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?</p> <p>-</p>
UU.	<p>How should RFA's experience be recognised?</p> <p><i>We believe this should be recognised on a transitional basis. For example, the RFA is given, say, 3 years to reach qualification competence.</i></p>
VV.	<p>What do you think are the advantages of this approach to particular competence, knowledge, and skill?</p> <p>-</p>
WW.	<p>What do you think are the disadvantages of this approach to particular competence, knowledge, and skill?</p> <p>-</p>
XX.	<p>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)?</p> <p>-</p>
YY.	<p>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?</p> <p>-</p>

Other comments

<i>Share your views</i>	
ZZ.	Are there any other comments you would like to make to assist us in developing the Code? -