



Submission

to:

**Code Working Group
C/- Code Secretariat
Ministry of Business, Innovation & Employment**

Code of Professional Conduct for Financial Adviser Services

Submitted by:

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- 1 This is a submission by MoneyTree Financial Services relating to the Code Working Group (CWG) consultation paper on the Code of Professional Conduct for Financial Advice Services (the Code). The Code will apply when regulated financial advice is given to retail clients.
- 2 The Consultation Paper seeks feedback on the key concepts and high-level approach for the Code generally, and on certain suggested questions provided in a Submissions Template.

About MoneyTree Financial Services Ltd

- 3 MoneyTree is a small adviser firm, employing one adviser – myself, Regan Thomas. I have been practicing since 2002, mostly working in life, disability and health insurance advice. I also provide some mortgage services, and through a partnership with a Broker I offer Fire and General insurance.
- 4 Until 2010 I offered KiwiSaver advice. I was part way through a Graduate Diploma of Business Studies endorsed in Personal Financial Planning until 2010, which I stopped in order to pursue and complete the National Certificate in Financial Services Level 5 in time for the Financial Advisers Act 2008 being enacted.
- 5 I am a member of the IFA, and Chairman of Financial Advice New Zealand's Member Advisory Committee – Risk. While my involvement with these two professional bodies gives me greater insight into the issues, and the concerns of fellow advisers, the opinions, comments and suggestions in this document are entirely my own.



Principles for drafting the code

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

- 6 I agree in principle with the intent behind “good advice outcomes”, however the description provided (5, p9) is more of a “good advice process”. This is acknowledged in 50, p17. While the CWG might define “advice outcome” as the advice delivered at the time the retail client engages with an adviser, there is a risk that the word “outcomes” in the mind of a retail client has to do with product performance such as a claim being paid or not paid, or an investment rising or falling in value long after the advice was given.
- 7 In large part the performance of a product is beyond the control of the Adviser. The CWG must decide whether the principle of “good advice process/outcome” is seeking to set standards for advice processes, documentation and consistency; or does it seek to impose a much tougher set of standards relating to the ultimate outcome the client experiences?
- 8 I suggest the latter is a step too far. Using the definition given (4, p9) looks more like a definition of process followed, than an “outcome” (as defined in 6 above) so I suggest naming the principle “good advice process” for clarity. This is important given the principle has ‘overarching’ status and is used throughout the consultation document.

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

Sales versus Advice – room for both

- 9 I submit that the use of the word “Financial Adviser” be limited to those who give Financial Advice. I further submit that “Financial Advice” be enshrined and restricted and a new term “Product Sale” (or something similar) be adopted.
- 10 As it stands the current regime defines regulated financial advice as “*making a recommendation or opinion about acquiring or disposing of a financial advice product, or designing a financial* plan, other than for certain specified exclusions*” and this has carried over to the new Code. Making no allowance for recommendations or opinions about acquiring or disposing of a financial product to be called anything other than “Advice” creates confused and impractical circumstances where either certain sales based activities are captured as advice, or the retail client expects they have been given advice but have in fact been sold a product solution without what the code is likely to define as a “good advice process/outcome”.
- 11 Disclosure alone in these situations may not be enough for retail clients to fully realise the implications of decisions made as a result of following a Sales process. Retail clients have an information disadvantage (63, p19). Such Sales processes may not provide comparisons of the suitability or advantages and disadvantages of the different products, but retail clients may not understand the implications of that, or be aware that an alternative provider will supply comparisons and research as to suitability.
- 12 By adopting a new term such as Product Sale process, and Computer-Generated Sales/Advice, certain aspects of the Code may not then have to apply to a Product Sale process. Likewise for sales/advice delivered by a computer. In both cases the name of the process and the disclosure requirements that go with them will assist retail clients in understanding and comparing the scope and nature of the processes offered by different Financial Advice Providers.



- 13 Vertically Integrated Organisations (VIOs) for example may follow processes that involve delivering their own products to retail clients. In some cases, disclosure is made that the person giving the recommendation or opinion about acquiring the VIOs products and/or disposing of a currently held financial product has not made comparison of the products, is limited advice, or is class advice. How effective is that disclosure? (63, p19).
- 14 In some cases, a VIO “bundles” certain products such as life insurance or house insurance with another product such as a mortgage. The special pricing, discounts etc make this very appealing to a retail client. This is not “Financial Advice” though. It’s a product sale. Such offers may not provide comparisons of the suitability or advantages and disadvantages of the different products, and VIO staff may not have suitable training to be “capable” in those existing products (175, p48).
- 15 It would be simpler for retail clients to call this process a “product sale”. Naming different processes as a Sale or Advice greatly assists the retail client to differentiate between different types of Provider, and makes clear the nature and scope (47, p17), and creates the right expectations (48, p17) of the advice process they are engaging in.
- 16 The retail client may, for example, as a result of this type of sale process, switch one KiwiSaver for another, or a life policy, under the circumstances described in 15 above, but they must be very clearly informed that they are not engaging in an Advice Process with a “Financial Adviser”.
- 17 That same retail client in engaging a Financial Adviser giving regulated financial advice will receive a very different process, because a Financial Adviser must understand the product(s) they are giving advice on (175, p48). The advice-giver must be capable in all those products, plus determine suitability.
- 18 I submit that both advice processes (Sales and Financial Advice) are acceptable, and in fact both are currently occurring in the current environment. What is not acceptable is that in the current environment retail clients may not know the difference. By providing for different Processes with different names and disclosure requirements around them, retail clients will feel more confident and informed as they choose which type of adviser and advice process they need.

Ethical Behaviour

Do you agree with a requirement to act with honesty, fairness and integrity? If not, please set out your reasoning.

- 19 I agree with the idea (8, p9 and 73, p22) of two categories of minimum standards of ethical behaviour. This concept works well, for example in Workplace Safety legislation – providing accountabilities both on directors, officers, and employers, and on individual staff. Where the director and staff are one and the same it would be practical to have scalable (12, p9) obligations that meet the requirements of the code without duplicating the documentation involved.
- 20 Where the organisation is of medium to large size care must be exercised that obligations imposed on individuals are not conflicting with the obligations of the organisation, and the expectations normally in place in a typical employer/employee relationship.



- 21 An example of this could be where an employer makes available a limited range of product solutions, with staff training limited only to those product solutions, and staff are expected to sell those product solutions to retail clients, who may already hold alternative products. For a retail client engaging with a Sales consultant in this situation, Fairness and Integrity means very clear disclosure of the limitations of that engagement. It may also mean honestly and fairly describing the features, costs and benefits of the VIOs products.
- 22 It also means being honest and fair in describing the limitations of their sales process, whether or not they are comparing and researching the client's existing products and whether or not they are recommending the client dispose of an existing product.
- 23 Unless the code allows for a sales-based process to be called a Sales process as different and distinct from an Advice process; the current phenomenon of a sales-labelled-advice process will persist, and will continue to lack integrity in the eyes of retail clients. It is difficult to see how 46 – 50, p17 can be met without adopting this.
- 24 "The requirements ... should not vary between two businesses delivering identical advice merely based on the respective size of each Financial Advice Provider" (12, p9). I do agree with that assertion. The key here is "identical advice". Regardless the nature and scope of what is being provided – be it a "Financial Advice" process or "Sales" process I agree that the requirements (for either process) should not vary by the size of the business. I do submit that it is vital the retail client understands what type of process they will receive (per 9, 10, 11, above) and that they can tell whether they have received "identical advice" or not.

Manage and fully disclose conflicts of interest

Should the Code include a minimum standard on conflicts of interest in addition to the legislation?

- 25 No, other than non-specific 'overarching' code principles. Leave that to legislation.

Ethics training

Do you agree that Financial Advice Providers should be required to meet standards relating to ethics training? If not, please state your reasoning.

- 26 Yes. Ongoing CPD should include a specification for 2 hours of Ethics training.

Conduct and client care

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).

- 27 Currently client care standards in advice-giving situations not covered by the AFA Code are poor and almost non-existent. The FMA enquiry into replacement business, when considering action, relied on S33 – Care Diligence and Skill, and no enforcement other than a 'sternly written letter' seems possible. C, D & S is not clearly defined and/or measurable.
- 28 I would submit that CS-6 through 13, or carefully adapted versions of these could and should be adopted to apply to all Financial Advice situations. Once again, it is vital that emphasis is given to ensuring these elements applicable and relevant to "Sales" processes.



Do you think there are any other components that should be included in the design considerations of an advice process?

- 29 Yes. The first design consideration should be whether or an Advice process is being designed (133, p36)
- Client-centricity and good conduct principles should be at the heart of the design and delivery of all types of processes – Sales, Advice, Computer.
 - Financial Advice Providers should consider how a client will engage with the advice process to ensure it meets the point above. Including whether or not clients will actually receive Advice.
 - The complexity of any advice process should be correlated to the complexity of the financial advice service being provided.
 - Financial Advice Providers should be able to justify how and why their advice processes deliver good advice outcomes, and meet the regulatory requirements.

Should any of the key aspects that we have listed above be removed? If so, why?

- 30 I question the need for the client to “actively acknowledge” (133, p37) they understand the risks and benefits of following a recommendation. This places a high burden on the advice-giver, and creates an extra step that may not protect either party. The client effectively waives or reduces a future claim, and may later claim not to have understood the implications of their undertaking, or to have been coerced/misled anyway.

Are there any situations in which an advice process need not be followed?

- 31 Yes. Class Advice is still a useful and needed avenue for clients to receive general information. This could be from a website, brochure, phone enquiry or personal interaction. The name itself is misleading. It is not Advice, it is information. The client needs to know they are not receiving Regulated Financial Advice (formerly *Personalised Financial Advice*).
- 32 I submit that Class Advice risks abuse/overuse (as has “Wholesale Client”) in an attempt to circumvent the regime, so it needs to be carefully defined and clearly guided.
- 33 I further submit that an Adviser or representative receiving payment/consideration (including meeting ‘targets’) based on a client purchasing a Financial Product on the basis of Class Advice is problematic. Do these clients believe they have received Advice, or been Sold something? See 11, and 29 above.

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

- 34 I broadly agree with 136 - 143, p37, 38. However, the circumstances described (in 141, p38) are not “Advice”. It cannot be Advice if the “broader financial situation” was not considered, and comparisons with a competing or existing product was not made. This is yet another example of a Sale-Labelled-Advice. In this situation a client may be offered a Financial Product either as a replacement for another, or as an alternative (say the client is ‘shopping around’) and the information disadvantage I mentioned in 11 above is in play.



- 35 I submit that "Personalised Suitability" is a good concept and that the CWG concern that advice-givers may be inclined to try and scope out suitability is valid. Clear guidance on what Suitability is, and creating a framework for scaling the extent of Suitability testing/discussion that is required, to suit the nature and complexity of the process being followed will be useful.
- 36 This may be an occasion where a 'principles' based framework needs to be augmented by a "safe harbour" minimum standard that clearly shows those who would be inclined to avoid Suitability what must be considered, discussed and included in their process.

Particular competence, knowledge and skills

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?

- 37 In all cases the limitations, and whether or not comparisons are being made should be clearly and robustly disclosed. It is vital that clients understand the type of process they are engaging, and the scope, nature and limitations of that process.
- 38 I submit that a lot of activity currently occurring in the market does not look like either of the two types of advice described in 175, p48 which references particular competence, knowledge and skill where comparisons with similar or existing products are being made, or a higher level of complexity involving "consideration of many variables".
- 39 Currently a lot of "advice" situations are Sales-Labelled-Advice because the current regime also does not allow for the correct naming of the process involved. No allowance is made for processes that I have described in 10, 11, 12, 21 and 23 above as Sales.
- 40 To be clear I think Sales (as described) are a valid part of the industry and will be part of the industry going forward.
- 41 I submit that Sales processes have the greatest risk for poor advice outcomes for clients because they may believe they have had advice (they believe they have received a Financial Advice process), or that Suitability has been established, or that reasonable Comparisons have been made, or that their individual financial situation has been considered, or that the advantages and disadvantages of acquiring or disposing of a financial product has been considered.
- 42 Naming a process that does not deliver Financial Advice "Product Advice" is confusing.
- 43 I submit that the proposed two adviser designations are unworkable, and would suggest that designations which reflect three types of process would be more appropriate:
- Sales
 - Financial Advice
 - Financial Planning
- 44 The requirements and minimum standards for competence knowledge and skill (179 – 186 p49, 50) could easily be applied to the three above: where Level 5 is suitable for Sales and Financial Advice, and level 6 is an option depending on complexity. Level 6 with other degree or Level 7 is required for Financial Planning.





- 45 I submit that insurance and investment advisers who prepare detailed insurance or investment plans for their clients do not identify themselves as "financial planners" nor do they describe their statements of advice to clients as a "financial plan". They are Financial Advisers in the business of delivering Financial Advice.
- 46 It is problematic to defy the commonly accepted definition of "Financial Planning". A Financial Planner is commonly regarded as being someone who prepares detailed, in-depth, multi-faceted goal-based plans for retail clients. Financial Planners hold the pinnacle mark CFP, and would see the use of the term Financial Planning being applied to an insurance plan (for example) as inappropriate use of that term.
- 47 The confused use of the term Financial Planning in the discussion document risks causing widespread confusion among consumers if adopted into the Code.

If you have any queries about any matter raised in this submission, please contact me.

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