

Code Working Group
c/o Code Secretariat
Ministry of Business, Innovation and Employment
code.secretariat@mbie.govt.nz

27 April 2018

Dear Code Working Group

Thank you for the opportunity to submit on your consultation paper about the Code of Professional Conduct for Financial Advice Services (Code). We commend you for your work on this difficult project, with such a broad industry mandate across product types and business models.

Partners Life are a New Zealand life insurance company who distribute products through non-aligned financial advisers. The Code has significant implications for these financial advisers. We are actively engaging with financial advisers to keep them informed about the proposed changes, and to seek their feedback to incorporate into our submissions.

We strongly support the objectives of the Code Working Group, and the broad themes addressed by this consultation paper. However, there are some areas where we think the proposals in the paper may cause suboptimal unintended outcomes for retail clients.

We attach our answers to the 52 questions asked in the consultation paper. Broadly, our key themes are:

1. The proposed particular standard of competence, knowledge and skill for financial planning (level 7 degree) is likely to result in reduced access to advice, and reduced quality of advice for many retail clients.
2. While we support the concept of meeting the required standards in aggregate, a “financial adviser” should independently have the required competence, knowledge and skill for the product type(s) in which he or she specialises.
3. We support efforts to enable existing financial advisers to evidence their existing competence, knowledge and skill. We surveyed financial advisers and compiled a list of ways this could be recognised.
4. Some of the suggested requirements are appropriate for entities where providing financial advice is separated from management. They introduce an unnecessary compliance burden for small Financial Advice Providers where advisers and managers are the same people.
5. Some of the suggested requirements would require particular approaches to deliver good advice. We submit that flexibility should be allowed so Financial Advice Providers can deliver good advice with alternative compliance methods innovatively.

6. We submit that standards are not required where existing law already exists (e.g. the Privacy Act). Instead, guidance with the Code should refer to existing law.
7. We support separate strands of standards for organisations and those giving financial advice. We support importing standards from the existing AFA Code of Conduct. We also support the additional conduct standards proposed in principle, subject to how they are framed, and we request further information about these standards.

We are available to discuss our response further, if you have any questions.

Regards

S 9 (2) (a)

Naomi Ballantyne
Managing Director

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>Naomi Ballantyne, Managing Director Partners Life</p>
ii.	<p>Please provide your contact details</p> <p>Mark Banicevich, Strategy Analyst</p> <p style="color: red; font-weight: bold; font-size: 1.2em;">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>Established in 2010, Partners Life is a NZ financial services company specialising in life insurance and medical insurance. Our individual risk protection products target middle and upper income New Zealanders, and key personnel of established New Zealand businesses. Our medical products are designed to pay for non-acute medical costs where the customer elects to have tests or treatment provided privately, rather than through the public system.</p> <p>Partners Life has grown rapidly since inception, and now has a leading market share of life insurance new business annual premium income. The Partners Life philosophy is to share the value it creates with all stakeholders, including customers, advisers, shareholders and staff, by “rewarding partnership – for life”.</p> <p>Partners Life has been built from the ground up by a highly experienced team with an outstanding track record as a model growth life insurance business:</p> <ul style="list-style-type: none"> • proven best-in-class products; • powerful adviser distribution proposition; • highly efficient, scalable systems and processes; • global partners provide reinsurance support; • best practice underwriting; and • highly capable management team with extensive experience. <p>Partners Life aspires to become the most valuable and valued life insurance company in New Zealand as measured by: profitability, product value, employee engagement, customer satisfaction, brand awareness, adviser satisfaction, customer retention and efficiency. Partners Life is focused on achieving its ambitions without creating legacy systems or processes.</p> <p>Partners Life’s products are distributed by non-aligned financial advisers. For this reason, the financial advice Code of Conduct will impact our business. We support the proposed regime, and we are actively engaging non-aligned advisers about the potential changes and what they may mean for their businesses.</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>We request that the contact details in (ii) above be redacted.</p>
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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>We agree with the concept of “good advice outcomes”. Perhaps it could be clarified as “good advice outcomes (in the circumstances at the time the advice is given)”. This could overcome the criticism that “outcomes” could be interpreted as “the outcome for the client after the passage of time and changes in global and personal circumstances”.</p> <p>Alternatively, “good advice” removes the ambiguity introduced by the word “outcomes”.</p> <p>We agree with the principles, generally.</p> <p>In principle 2, we submit that “basic knowledge” is unclear. Research suggests that many New Zealanders are unable to calculate percentages. Therefore, “basic knowledge” of financial matters should be assumed to be low. However, it would frustrate both those giving financial advice and retail clients if those giving financial advice were required to deliver advice to all retail clients at this lowest level of “basic knowledge”.</p>
B.	<p>Are there any further principles that should be included, or existing principles that should be removed?</p> <p>No comment.</p>

Ethical behaviour

Act with honesty, fairness and integrity

Share your views

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| C. | Do you agree with a requirement to act with honesty, fairness and integrity? If not, please set out your reasoning.
We agree with this requirement. |
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Keep the commitments you make to your client

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| 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.
Yes, limited to where the retail client's expectations are reasonable in the circumstances.
This standard should align with the requirement to act fairly (question C). |
| 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?
We disagree with this requirement. An additional Financial Advice Provider code of ethics should be optional.
See our answer to question M, below. |

Manage and fully disclose conflicts of interest

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| F. | Should the Code include a minimum standard on conflicts of interest in addition to the legislation?
We agree that the Code should include minimum standards on conflicts of interest, including requiring a conflicts management policy.
It is common for financial advice to be remunerated by commission and other incentives in New Zealand. <u>A recent FMA report</u> identified financial advisers who were unaware their interests conflicted with client interests.
In this environment, we submit that Financial Advice Providers should be required to have a conflicts of interest policy that covers the elements outlined in paragraph 94 of the consultation paper.
The cost to Financial Advice Providers to develop a policy is outweighed by the benefits to consumers when those providing financial advice manage and communicate their conflicts. |
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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>We agree.</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>We submit that an overarching principle provides context to the rest of the Code, and aids interpretation of subsequent standards and guidance.</p> <p>We further submit that the overarching principle for this Code of Conduct should be to prioritise clients' interests and do no harm to the client.</p> <p>Although the Bill includes a requirement to prioritise the client's interests in the event of a conflict of interest, we suggest there are benefits for the industry and consumers to having an overarching principle to this effect. This enables the industry to communicate a clear message to consumers that advice will always be given in the interests of clients, which will help the industry build trust and confidence (a main purpose of the <i>Financial Markets Conduct Act, s3</i>).</p> <p>Possible wording for the Code Standard could be:</p> <p style="padding-left: 40px;">Any person who provides financial advice must prioritise the client's interests and must do no harm to the client. These obligations are paramount.</p> <p>Note that a "person" includes a Financial Advice Provider.</p> <p>Prioritising the client's interests includes not selling a product to a client if the product is not suitable for that client. If the Financial Advice Provider does not have a product suitable for a client, the Financial Advice Provider should recommend that the client not buy a product from them.</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>The Code should have broad standards about the use of data. We submit that it does not require a particular Code Standard about the use of anonymised bulk data.</p> <p>The use of anonymised bulk data is subject to the Privacy Act. The Code could refer to the Privacy Act in these situations.</p>
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<p>J.</p>	<p>Do you agree that the Code should cover the various aspects of maintaining client confidentiality discussed in this paper?</p> <p>We agree that the Code should cover aspects of maintaining client confidentiality.</p> <p>However, we submit that there are occasions where Financial Advice Providers should be permitted to use client data:</p> <ul style="list-style-type: none"> • <u>Training</u>: Financial Advice Providers should be able to use client data in case studies to train financial advisers and nominated representatives. Financial Advice Providers may also train financial advisers who have agency agreements with them, but are not engaged by them. It may be reasonable for these data to be anonymised. • <u>Compliance</u>: small Financial Advice Providers may outsource their compliance function. Compliance providers should be permitted to examine raw client files during compliance reviews. These data could not be anonymised. • <u>Machine-learning and automated advice</u>: one way to decide the financial advice products required by a new client is to use bulk data about existing clients. These data are anonymised, and the circumstances of new clients are compared to historical client data. Some models may use the entity’s own client data, while other models may obtain client data from third parties. If Financial Advice Providers were not permitted to use client data to earn revenue, it would stifle innovation and limit ways of automating advice. This is contrary to the objectives of the proposed regime. The Privacy Act contains sufficient protection for client data. • <u>Opt-out</u>: some modern businesses earn revenue by offering a service for free in exchange for client permission to use their data to earn revenue (e.g., Google). Retail clients should have the authority to opt-out of full data privacy and allow the Financial Advice Provider to earn revenue from their data. However, this opt-out should be overt, not hidden in fine print.
<p>K.</p>	<p>Are there other aspects of maintaining client confidentiality to consider?</p> <p>The Code could include broad standards about the storage, back-up and protection of client data.</p> <p>If the client data provisions in the Code would duplicate legal requirements in the Privacy Act, it may be more efficient for the Code to refer Financial Advice Providers to that Act (or its replacement), instead of duplicating them. This would also mean that the Code would remain current if privacy law changes.</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>Yes, we agree.</p> <p>It should be clear that documenting these processes need not be arduous. For a small business, it should be possible to document these processes in a few pages.</p> <p>If these documents are required to a significant level of detail, it will introduce significant compliance burden on small Financial Advice Providers, which will not meet the objectives. Most will need to engage external consultants to develop these documents.</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>No.</p> <p>We submit that Financial Advice Providers should be permitted to have their own codes of ethics to supplement the financial advice Code of Conduct. However, ethical standards in the financial advice Code of Conduct should be complete enough that additional codes are not required for every Financial Advice Provider.</p> <p>Developing and maintaining a code of ethics will require specialist skills, and the cost of those skills will not be insubstantial for small Financial Advice Providers. This does not meet the objective of minimising compliance costs (paragraph 76, and Financial Markets Conduct Act 2013, s4(c)).</p> <p>If each Financial Advice Provider has its own code of ethics, without minimum standards in the financial advice Code of Conduct, it will not achieve the objective of paragraph 77, that advice provided should not vary between two businesses delivering identical advice merely based on their respective size.</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>We would support a broad, principle-based standard about leadership and culture in Financial Advice Providers. This aligns with the FMA’s finding that leadership and culture are major drivers of good customer outcomes (Strategic Risk Outlook 2017, p19).</p> <p>We submit that small Financial Advice Providers (e.g. 1-2 financial advisers) should have minimal requirements, because leadership and culture is provided by the same people that provide advice. This standard becomes more relevant in larger organisations where leadership is distinct from financial advisers.</p> <p>We further submit that this standard should only apply to areas of the business that affect financial advice services to retail clients.</p> <p>There is a risk that inequality will be introduced for wholesale clients if Financial Advice Providers are required to meet particular standards across their entire businesses (paragraph 103). A Financial Advice Provider with both retail and wholesale clients that is required to meet standards across its business will have greater requirements than an entity that only serves wholesale clients. This kind of regulatory inequality is suboptimal. (This is similar to the current situation of an AFA and an RFA providing insurance advice having different disclosure requirements, which resulted in many AFAs dropping their authorisation for the lower requirements.)</p>
O.	<p>Do you propose other additional standards of ethical behaviour that should apply to Financial Advice Providers?</p> <p>We do not propose further standards.</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>Yes, we agree.</p> <p>We note a risk that this could become a box-ticking exercise if it is not designed carefully.</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>Ethics training requirements should apply to all officers and employees that affect how financial advice is provided to retail clients, whether directly or indirectly.</p> <p>We note there is a risk that inequality will be introduced for wholesale clients if Financial Advice Providers are required to meet particular standards across their entire businesses (paragraph 103). A Financial Advice Provider with both retail and wholesale clients that is required to meet standards across its business will have greater requirements than an entity that only serves wholesale clients. This kind of regulatory inequality is suboptimal. (This is similar to the current situation of an AFA and an RFA providing insurance advice having different disclosure requirements, which resulted in many AFAs dropping their authorisation for the lower requirements.)</p>

R.	<p>Should there be a requirement for ongoing refresher training on ethics?</p> <p>Yes.</p> <p>Training that is provided once can lose its impact over time. Refreshing ethics training, perhaps every three years, can help ensure that strong ethics remains part of the entity's culture.</p> <p>We note a risk that this could become a box-ticking exercise if it is not designed carefully.</p>
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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>This requirement is reasonable.</p> <p>It should be clear that the framework need not be arduous. For a small business, it should be possible to document the framework in a couple of pages.</p> <p>If the framework is required to a significant level of detail, it will introduce significant compliance burden on small Financial Advice Providers, which will not meet the objectives.</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>The overall methodology, yes; each piece of advice, no.</p> <p>If each piece of advice provided directly by a Financial Advice Provider requires explicit signoff, then two benefits of automated advice would be negated – lower cost and greater speed of service. Such a requirement would effectively return our regime to the existing restriction that only a natural person could give financial advice – a major criticism of the regime.</p> <p>We would support a requirement for explicit signoff of the methodology, algorithms and procedures that a Financial Advice Provider uses to develop and deliver financial advice. This signoff should be performed by the entity's subject matter experts and its senior management. A robust process would review the methodology, algorithms and procedures regularly, possibly including reviewing advice provided to a random selection of clients.</p>
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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>We agree with this requirement, subject to our comments below.</p> <p>We note that this requirement must be flexible to be effective in small Financial Advice Providers who may have one financial adviser, possibly with some administrative support. A whistle-blower policy would be an unnecessary compliance burden in a business where the only person to whom concerns could be escalated is likely to be the same person about whom the concerns were raised.</p> <p>Perhaps guidance with the relevant standard could exempt Financial Advice Providers where the requirement would be ineffective.</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>While we support this suggestion in principle, we ask that the Code Working Group carefully balance this requirement with the cost it would impose on small adviser businesses. We also submit that this requirement is restrictive, and removes the possibility for Financial Advice Providers to devise other innovative ways to be confident that financial advice is provided ethically.</p> <p>Throughout this review, MBIE and the FMA have stated explicitly that one-person advice businesses will be able to become licensed Financial Advice Providers. If this is legally possible, but the costs are prohibitive, then the assertions of MBIE and the FMA are effectively broken. We submit that this requirement introduces a high compliance burden on small Financial Advice Providers.</p> <p>Perhaps the objective could be achieved if Financial Advice Providers were required to have processes that give confidence that ethical behaviour standards are met. One way to meet this requirement would be through systematic testing, and this could be provided as an example in the Code’s guidance. However, other approaches should be allowed, and Financial Advice Providers should be able to innovate.</p>
W.	<p>Are there any potential compliance costs for small and/or large Financial Advice Providers that need to be considered?</p> <p>Yes. We submit that Financial Advice Providers should be allowed the flexibility to design their own methods to achieve the goals of an internal audit of ethical behaviour.</p> <p>It would not be viable for a sole adviser Financial Advice Provider to have internal audit capability independent of the financial adviser. Moreover, if a Financial Advice Provider with one financial adviser could outsource this requirement, it would add measurable costs to the business.</p> <p>For a large Financial Advice Provider, an internal audit function carries costs of staff and equipment, plus the initial costs of developing systems and processes.</p> <p>It is possible that the benefits of such a restrictive process may outweigh the costs. Financial Advice Providers may develop ways to achieve the same goals at lower cost, if they have the flexibility to do so.</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>We agree with this requirement.</p> <p>The requirement should be flexible enough to allow Financial Advice Providers to be innovative in their approach to meeting the requirement.</p> <p>We suggest that this requirement may not be necessary in a sole adviser Financial Advice provider, because with this business model the ethical behaviour of the adviser is the ethical behaviour of the Financial Advice Provider. Requiring a defined process or documentation would add cost, without additional benefit, in these circumstances.</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>We submit that the Code should not require this kind of mechanism. While such a mechanism could be encouraged, to require it would add a compliance burden while stepping beyond normal practice.</p> <p>Such mechanisms are untested in a financial advice environment, so to codify them would seem to cater to an interesting trend.</p> <p>Encouraging this behaviour, however, would enable Financial Advice Providers to innovate and test various alternative mechanisms, and other methods of reinforcing ethical behaviour, and implement the methods that work best for them. Those methods may not be 'nudges', and may instead include regular training, or a strong company culture.</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>Yes. "Human" should be further divided, and advice to groups should be considered.</p> <p>We suggest that human interaction should be divided into various methods, because they have very different characteristics:</p> <ul style="list-style-type: none"> • Face-to-face (oral, supplementary written) • Telephone (oral, may be recorded) • Video conference (oral, visual, may be recorded) • Email (written, recorded) • Online chat (written, may not be recorded) • Other. <p>We also submit that advice to groups should be considered, as well as advice to individuals (or small, related groups, such as families). Advice to groups can also be given in various ways, such as in-person presentations, mass distributed written messages, and webinars.</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> <p>We are comfortable with these standards.</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> <p>We agree that the definition of "complaint" should be standardised. A modified version of the definition in ISO10002 may be suitable:</p> <p>"A complaint is an expression of dissatisfaction made to an organization, related to its products <i>or services</i>, or the complaints handling process itself, where a response or resolution is explicitly or implicitly expected."</p> <p>https://www.iso.org/obp/ui#iso:std:iso:10002:ed-2:v1:en, words "or services", in italics, added.</p> <p>We do not have any further comments on the existing standards.</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> <p>No comment.</p>

DD.	<p>Are there any potential compliance costs for small and/or large Financial Advice Providers that need to be considered?</p> <p>We submit that the suggested standards are suitable for small and large businesses.</p>
EE.	<p>Are there any additional matters that should be addressed in the advice-giving standards? Those listed above? Others?</p> <p>Cyber risk and cyber security, and client confidentiality</p> <p>Further to our answers to questions I and K above, we submit that it would be inefficient if the Code duplicated privacy law. It would also introduce a risk that the Code become outdated if privacy law changes. Therefore, we submit that the Code should not duplicate privacy law, but refer to it.</p> <p>If privacy law is insufficient to protect client data from cyber and confidentiality risks, then the Code should include standards to supplement the law.</p> <p>Transferring a client from one adviser to another</p> <p>We submit that the Code Working Group should consult with financial advisers before defining rules for transferring clients from one client to another.</p> <p>In life insurance, the adviser effectively “owns” the relationship with the client. The adviser usually receives an annual trail commission while a client’s policy remains in force. If a client wants to change adviser, the original adviser continues to receive trail commission until the new adviser “buys” the client from the existing adviser at an agreed price. This process is often facilitated by the insurer.</p> <p>The new adviser can be remunerated directly without “buying” the client from the existing adviser, only by recommending that the client buy a new policy (and cancel the existing policy). This introduces risks to the client replacing an existing policy (e.g. <u>outlined by the FMA here</u>).</p> <p>Life insurance advisers consider their total trail commission represents a saleable asset. Advisers would see any change to this paradigm as an unfair reduction in the value of their asset. Therefore, if the Code Working Group seeks to change this paradigm, we submit that financial advisers should be carefully and specifically consulted.</p> <p>Where a trail commission is paid</p> <p>We support a Code Standard to ensure clients receive service when trail commission is paid.</p> <p>We believe that it is very important that life insurance advisers continue to support their clients during the life of a policy. This includes ensuring they have the correct mix of policies and cover amounts as their needs change (e.g. buying a house, having a family, or changing jobs), and assisting the client if they need to make a claim.</p> <p>We submit that one way to achieve this objective is to include a Code Standard that requires anyone who provides financial advice to service any client for whom they receive a trail commission.</p> <p>It is important to note that this standard would not limit the ability of product providers to pay trail commission to people or entities that are not licensed financial advice providers or financial advisers (e.g. entities that sell without advice, and entities that receive referral fees).</p>

	<p>Replacement business</p> <p>We support a Code Standard to reduce the risks of replacement business.</p> <p>We submit that financial advice must be required when a financial advice provider recommends that a retail client replace a financial product he or she already holds with a substitute financial product. This is because the client faces a heightened risk in these instances (e.g. <i>outlined by the FMA here</i>). In these situations, a financial services provider should not be permitted to sell a financial product to a retail client without advice unless the retail client proactively and expressly refuses advice, and signs a document to that effect.</p> <p>This will address the risk that financial advice products are often similar, but with important differences that are difficult to detect. Unless product documentation is compared by an expert, there is a risk that retail clients will not make fully informed decisions, and be in a worse position with a substitute product.</p> <p>There is a particular risk of this occurring in cases of life and health insurance. In many cases, a policy will cover the client for a condition that arose after the policy was purchased, but a new policy will not cover that condition, as it will be considered a pre-existing condition under the new policy. We set out two examples below to demonstrate this:</p> <p style="padding-left: 40px;">Example 1: Client has a trauma policy. Five years after taking out the policy, she develops a skin condition. The existing policy covers the condition. If she changes her policy, the new insurer excludes (does not cover) the skin condition.</p> <p style="padding-left: 40px;">Example 2: Client has a life insurance policy. A few years after taking out the policy, the client changes career and begins work as a peacekeeper in a DFAT level 4 country. The existing policy covers the client at work. The new policy does not cover travel to DFAT level 4 countries.</p> <p>We submit that the risks to consumers of replacing financial products without advice are too great to permit it. However, in some circumstances following suitable advice to replace financial advice products can result in better client outcomes.</p> <p>Additional matters</p> <p>We do not have any further comments.</p>
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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>We support the flexible approach outlined in paragraph 131. We also support the components of advice process design in paragraph 133. We have no further components to add.</p>
GG.	<p>Should the Code include guidance material to help determine what needs to be considered when designing an advice process?</p> <p>Yes. Guidance will help financial advice providers understand the requirements. It would also help if the guidance includes examples that meet the requirements, and examples that do not meet the requirements, together with commentary.</p>

HH.	<p>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?</p> <p>Further to our answer to question EE above, we submit that advice about replacing existing products should be explicitly included in these aspects. That is, the client should understand the risks and benefits of replacing existing products, and of not replacing existing products.</p>
II.	<p>Should any of the key aspects that we have listed above be removed? If so, why?</p> <p>We agree with all of the key aspects proposed.</p>
JJ.	<p>Are there any situations in which an advice process need not be followed?</p> <p>There are situations when a full advice process should not be required. For example:</p> <ul style="list-style-type: none"> • Execution only. When a client requests a particular action without advice. It should be sufficient for the adviser to explain the risks of acting without advice. • Presentations and updates. When an adviser delivers generic advice without considering each client’s individual circumstances. It should be sufficient for the adviser to clearly state that the advice may not be suitable for everyone, and the recipient should seek personalised advice.

Personalised suitability

KK.	<p>What comments do you have about a proposed minimum standard on personalised suitability analysis? What are your views on the example above?</p> <p>We understand the difficulties created by “class advice” in the current regime. For example, it created a fine line that some advisers would try to walk to advise on products on which they could not offer personalised advice (e.g. KiwiSaver). It also created an exemption where people without knowledge, competence and skill could advise groups of clients if they could be treated as a class. We agree that the class advice exemption in the existing legislation is problematic, and should be removed.</p> <p>We also agree that the complexity of advice exists on a continuum, and there is no simple distinction between circumstances when personal suitability is required and when it is not.</p> <p>We submit, however, that requiring personal suitability to be considered in all circumstances would reduce access to financial advice. This is contrary to the additional purpose of the proposed regime in clause 431B of the Financial Services Legislation Amendment Bill.</p> <p>As stated in JJ above, there are situations when a full advice process should not be required. For example:</p> <ul style="list-style-type: none"> • Execution only. When a client requests a particular action without advice. It should be sufficient for the adviser to explain the risks of acting without advice. • Presentations and updates. When an adviser delivers generic advice without considering each client’s individual circumstances. It should be sufficient for the adviser to clearly state that the advice may not be suitable for everyone, and the recipient should seek personalised advice. <p>We submit that a Code Standard should be written in terms of the client understanding</p>
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	the limitations of any advice provided, and the risks of following advice that does not consider an individual's circumstances.
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Organisational standards

LL.	<p>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?</p> <p>We support the idea of organisational conduct standards, except as discussed in MM below.</p> <p>For large organisations with many people offering financial advice, the suggestions in paragraphs 145 to 151 will help to maintain a consistent culture of client care.</p> <p>We submit that the Code of Conduct should not require financial advice to comply with suggestions made by the Financial Markets Authority in documents released that have not followed a robust consultation and review process, such as "<u>A guide to the FMA's view of conduct</u>". Although we support this particular document, industry rules should not be created without the robust processes followed by legislation and regulation.</p>
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>Partners Life distributes its products through non-aligned financial advisers, many of whom are small businesses with one financial adviser. Throughout this review, MBIE and the FMA have stated explicitly that one-person advice businesses will be able to become licensed Financial Advice Providers.</p> <p>We submit that many of the organisational standards suggested would add a significant compliance burden to small businesses, with negligible benefits.</p> <p>Financial Advice Providers with one adviser would have to either take time away from advising clients to develop and maintain the documents required, or pay an external consultant to do so. However, for single adviser Financial Advice Providers:</p> <ul style="list-style-type: none"> • there is no risk of inconsistency across people giving financial advice • the culture, values and organisational environment rest in a single financial adviser • each client interaction is usually documented and specifically describes how the needs of the client were considered, and • keeping pace with external good conduct practice is achieved by continuing professional development. <p>We submit that these standards should require documentation only in circumstances where there is a risk of inconsistency across those giving advice on behalf of the Financial Advice Provider, and where other requirements do not adequately mitigate the risk addressed by each standard (i.e. excluding small Financial Advice Providers).</p>

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>We agree with the interpretation provided in paragraph 158.</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><i>We have no comment.</i></p>
PP.	<p>What do you think are the advantages of this approach to general competence, knowledge and skills?</p> <p><i>We support the focus on giving good advice to clients, rather than the internal process. A process is not advice. This client-centric approach changes focus from providing a compliant process, to providing high quality financial advice to retail clients within the scope, and subject to the limitations, agreed with the client.</i></p>
QQ.	<p>What do you think are the disadvantages of this approach to general competence, knowledge and skills?</p> <p><i>With this approach, the standards required for financial advisers and Financial Advice Providers are unclear. Therefore, it will be challenging for a Financial Advice Provider to prove that they meet the required standards.</i></p> <p><i>We submit that financial advisers and Financial Advice Providers will require clear, detailed guidance to understand how they can prove that they meet the required standards. The guidance should include examples of both compliance and non-compliance, with explanations.</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><i>We submit that the Code Standard should be drafted to require documented processes that are regularly reviewed only if the requirements are met otherwise by all financial advisers meeting the requirements individually.</i></p> <p><i>Consistent with our answer to question MM, above, single adviser Financial Advice Providers developing and maintaining documentation of these processes will add little benefit, while incurring costs that are not insignificant. This does not meet the objective of minimising compliance costs (paragraph 76, and Financial Markets Conduct Act 2013, s4(c)).</i></p> <p><i>A Financial Advice Provider with one or few advisers is likely to meet the requirements of competence, knowledge and skill by ensuring that the financial advisers individually meet those requirements. Therefore, documenting processes about how those requirements are met is superfluous.</i></p>

SS.	<p>What factors should we consider in determining whether to make the proposed unit standard a renewing obligation?</p> <p>We support the goal of ensuring that those giving financial advice continue to comply with standards of client conduct and client care.</p> <p>We submit that Financial Advice Providers should have flexibility to use other approaches that ensure those who provide financial advice maintain a current knowledge of the contents of the unit standard. Approaches could include a standing item in team meetings, a regular test using an online learning platform, or periodic workshops.</p> <p>We suggest there is a risk that requiring advisers to repeat the same unit standard every three years will become a box-ticking exercise for financial advisers.</p> <p>It would also be costly. For example, <i>one provider</i> charges between \$35 and \$206 per adviser to sit unit standard 26360. With 8,760 financial advisers on the FSPR at 1 April 2018, that would be a cost to the industry of between \$200,000 and \$1.8 million every three years (assuming no advisers enter or leave the industry). If we include QFE advisers, estimated <i>by the FMA</i> to be 26,000 in June 2015, the cost to the industry (assuming no turnover of advisers) would be between \$1.2m and \$7.2m every three years.</p>
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Particular competence, knowledge and skills

Share your views

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>The Code Working Group have a difficult task. We agree that those giving more complex advice require a higher minimum qualification than those offering less complex advice. The challenge is in defining complexity.</p> <p>We are not convinced that the distinction between product advice and financial planning achieves this goal.</p> <p>We note that a significant issue is that “financial planning” is not clearly defined in the consultation paper.</p> <ul style="list-style-type: none"> • If financial planning were limited to those who provide an holistic financial plan that covers multiple areas of financial advice (investment, life insurance, retirement planning), then a minimum of a relevant level 7 degree may be appropriate. • If financial planning is as broad as a life insurance adviser recommending the appropriate mix of life insurance products and cover amounts, then almost all life insurance advisers offer this level of service. A relevant level 7 degree is not an appropriate qualification to require of all existing financial advisers who are not authorised to transition to the regime. <p>We surveyed almost 1,900 advisers in April 2018, and one of the five questions we asked was, “Do you consider yourself to be: [select] A financial adviser, A financial planner, An insurance adviser, An insurance broker, Other (please specify)”. Only 7% of respondents considered themselves to be “A financial planner”. (Note that 20% of respondents were AFAs, and 21% of the 8,760 financial advisers on the FSPR at 1 April 2018 are AFAs.)</p> <p>We submit that a more robust distinction could be drawn with a range of criteria. For example, the higher qualification could be required if the adviser answers yes to one or more of the following questions:</p> <ul style="list-style-type: none"> • Are you advising on more than two categories of product (e.g. budgeting advice, investments, retirement planning (including KiwiSaver), decumulation advice, life and health insurance, fire and general insurance, mortgages)? (We note, however, that many advisers provide simple insurance, mortgage and budgeting advice to low socio-demographic clients with limited ability to pay fees or buy products.) • Are you advising on a portfolio of investments that includes direct investments into listed or unlisted companies? • Are you advising on products that are inherently complex (e.g. derivative instruments, margin trading)? • Are you advising a commercial client who is not a wholesale client on bespoke financial products?
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UU.	<p>How should RFA's experience be recognised?</p> <p>We surveyed our financial advisers in April 2018, and received 312 responses to our question, "How could RFAs provide evidence efficiently that they already meet these standards without holding the requisite qualifications?" Some of the suggestions were:</p> <ul style="list-style-type: none"> • An independent audit of a random sample of recent client files. • Independent review of documented processes, or an independent process audit. • A written assessment, or case study, as an exam or an assignment, tailored to the types of products the adviser offers. • Recipients of industry awards for financial advice (which may no longer be awarded). • Alternative qualifications, such as the New Zealand Diploma in Life Insurance, Diploma in Business Studies (Personal Risk Planning), Advanced Financial Planning Certificate (UK). • An interview or oral exam. • Mystery shop each adviser. • Testimonials from product providers and industry groups. This could include statistics such as (for life insurance) persistency, and denied claim rates. • Testimonials from a number of clients. • A random survey of clients. • No complaints upheld with a Disputes Resolution Scheme. • Evidence of ongoing education (CPD credits). • A bridging course. • Offer a transition period for RFAs to qualify as AFAs. <p>A combination of these methods could be used. Each acceptable method could assigned a number of points, and competence could be deemed met if a required number of points is achieved (similar to <u>Skilled Migrant Visa</u> expressions of interest).</p> <p>It would be possible to allow financial advisers with more years of experience a longer transition period than those with less experience. This would smooth the capacity demands on the entities that test or qualify advisers.</p> <p>QFE advisers</p> <p>We submit that QFE advisers should be able to evidence their experience in the same way as RFAs. There may be QFEs that decide not to obtain Financial Advice Provider licences. Experienced financial advisers in these entities would have no alternative other than meeting the full requirements to become a financial adviser. Some QFE advisers have as much knowledge, skill and experience as many RFAs. It would increase access to advice if these advisers could be recognised the same way as RFAs can.</p>
VV.	<p>What do you think are the advantages of this approach to particular competence, knowledge, and skill?</p> <p>With a clear definition of financial planning, the distinction between the two categories of competence would be very clear and unambiguous.</p>

WW.	<p>What do you think are the disadvantages of this approach to particular competence, knowledge, and skill?</p> <p>We support the concept that the Financial Advice Provider must meet the competence requirements in aggregate.</p> <p>However, we submit that there is a significant disadvantage of the suggestion that the Financial Advice Provider must meet the qualification standard in aggregate: there is no significant distinction between financial advisers and nominated representatives. The only difference is that financial advisers will be registered on the FSPR, and they are individually accountable to the Financial Advice Disciplinary Committee.</p> <p>In the extreme, it will be possible for a 15-year-old recruit to join a Financial Advice Provider with robust systems and processes that meet the required standards, and have the recruit registered as a financial adviser. This devalues the title “financial adviser”, which many in the industry aim to become a profession. (The recruit may meet the Financial Advice Provider’s requirements to be designated a nominated representative.)</p> <p>We submit that financial advisers should be individually qualified to prove that they have the knowledge required to provide compliant regulated financial advice for the financial advice products in which they specialise.</p> <p>We further submit that there should be a distinction between “financial advisers” and “nominated representatives” other than registration and liability. A financial adviser should be able to state that they are a “qualified financial adviser”, which would enable them to move from one Financial Advice Provider to another, the way other professionals can (e.g. an accountant, lawyer or doctor). A prospective employer can assume a base level of knowledge.</p> <p>Therefore, whatever the qualification standard decided in the final Code of Conduct, all financial advisers should be deemed to meet it (whether they achieve the qualification, an alternative qualification, or are “grandfathered” in as AFAs or by some other method).</p> <p>However, financial advisers should be permitted to specialise in particular types of financial advice products. If a financial adviser specialises in life insurance, he or she should not be required to obtain knowledge about investments or mortgages. Financial advisers would attain a base qualification, and one or more specialist strands in product types such as retirement planning, investments, life and health insurance, mortgages, or fire and general insurance.</p>
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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)?

We submit that the proposed standard will reduce access to advice and the quality of advice for many years after the regime applies.

If “financial planning” is broadly defined, such that insurance and mortgage advisers who recommend more than just products to their clients (e.g. cover amounts, mortgage structure), then requiring these advisers to obtain a relevant level 7 degree to continue offering financial advice as they do today will result in reduced access to advice, and reduced quality of advice. This is contrary to both limbs of the additional purpose of the proposed regime in clause 431B of the Financial Services Legislation Amendment Bill.

In evidence, we surveyed over 1,900 financial advisers, and received 355 useable responses (19%). Our survey indicated:

Level 5 certificate:

- Of those who are not AFAs and do not hold a level 5 certificate, 80% would be willing to get a Level 5 certificate to continue offering financial advice.
- 11% of all respondents would leave the industry if forced to obtain a level 5 certificate. If this sample is representative of the industry, approximately 960 advisers would stop offering financial advice altogether.

Level 7 degree in a relevant business subject:

- Of those who are not AFAs and do not hold a relevant business degree:
 - 47% would obtain a level 5 certificate, and only offer product advice (reducing the quality of advice)
 - 31% would stop offering financial advice altogether (reducing access to advice).
- 19% of all respondents would leave the industry if required to obtain a relevant degree, approximately 1,680 advisers if the sample is representative.
- 29% of all respondents would only offer product advice (and obtain a level 5 certificate), approximately 2,570 advisers if the sample is representative.
- 48% of all respondents would leave or reduce quality of advice, approximately 4,240 advisers if the sample is representative!

Other useful statistics:

- 71 (20%) are AFAs who would qualify for the proposed regime. This is broadly in line with the 1,876 AFAs (21%) out of 8,760 financial advisers currently on the FSPR.
- 56 (16%) non-AFAs have National Certificates, and can apply to become authorised if finalised before 1 January 2019 (AFA Code Standard 16, page 15).
- 28 (8%) non-AFAs have NZ Certificates, and can apply to become authorised.
- 35% of respondents (124) have no formal qualification.

Moreover, respondents to the survey will be financial advisers who are more engaged with the process, and we deduce that they are more likely to have attained qualifications than non-respondents. (Our survey was extended by industry researcher QuoteMonster, who provided the final 20 respondents.)

We submit that this survey provides strong evidence that changing the existing requirement (no qualification) to a level 7 degree for most advisers will be harmful for consumers because almost half of advisers will leave the industry or limit their offering to product advice.

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>Introduce the level 7 requirement for new financial advisers</p> <p>We submit that many financial advisers will leave the industry (stop offering financial advice) if our qualification requirements for existing financial go from nil to a level 7 degree. Although Australia and other nations are moving to degree requirements (and this is logical for the financial advice industry to become a profession), the starting points for those countries are higher than our current requirements.</p> <p>We submit that the Code Working Group could signal a degree requirement for new entrants to the industry from a defined future date, and offer a transition arrangement for existing advisers designed to retain most in the industry, upskilling those who do not meet a defined minimum standard (e.g. a level 5 certificate).</p> <p>By deeming that AFAs meet both qualification levels, the proposed standards already grandfather a fifth of financial advisers into the new regime. We submit that the remaining 80% of advisers should be given an opportunity to be grandfathered into the regime at the same level. This comprises of two elements:</p> <ul style="list-style-type: none"> • Non-AFAs could prove that they already provide advice to the level 5 standard using the method described in our answer to question UU above. • Those who are unable to prove that they meet this standard would be allowed the two-year transition period to meet the AFA requirements. • The AFA requirements could continue for a specified period of 3-5 years to allow the new regime to settle in. • At the end of this 3-5-year period, new financial advisers would have to meet the level 7 degree and level 6 certificate requirement. <p>This proposal has the additional benefit that tertiary organisations, Skills and other educational organisations would have 5-7 years to develop the required programmes.</p> <p>Require higher qualifications based on a compound measure of complexity</p> <p>As outlined in our answer to question TT above, we agree that a higher qualification standard should be required for complex financial advice. However, we submit that the product advice / financial planning distinction is not a strong measure of complexity. We suggest that there is no single way to distinguish complex advice from simpler advice. Therefore, we offer an alternative way to identify complex advice, using a list of questions (and we provide examples).</p>
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Other comments

Share your views	
ZZ.	<p>Are there any other comments you would like to make to assist us in developing the Code?</p> <p>We have no further comments.</p>