

## **Code Working Group – Questions for Focus Groups**

[October 2017]

### **Background: Regulatory Framework for the Code of Conduct for Financial Advice Services (the Code)**

The new regulatory regime for financial advice aims to promote investor confidence, participation in financial markets, and informed decision making in a way that will ensure consumers can access the financial advice they need, ensure the quality of financial advice, not impose any undue compliance costs, complexity, or barriers to innovation, and ensure access to redress.

The Code will be a service code. It will apply to everyone giving regulated financial advice to retail clients in any form; whether that's individuals or companies, and whether face-to-face, in a brochure, or via the internet. The coverage is much wider than the current Code of Professional Conduct for Authorised Financial Advisers which is an occupational code and applies to a much narrower range of advisers.

We must set:

- (a) minimum standards of general competence, knowledge and skills that will apply irrespective of the provider of the advice, its nature, and the delivery mechanism;
- (b) minimum standards of particular competence, knowledge and skills that will apply in respect of different types of financial advice, financial advice products, or other circumstances;
- (c) minimum standards of ethical behaviour, conduct and client care; and
- (d) minimum requirements of continuing training for persons that are involved in giving financial advice.

We may specify different standards or requirements in respect of different types of financial advice, financial advice products, or other circumstances.

We are able to limit or modify standards or provide for separate standards for periods of transition.

### **Code Working Group's Approach to the Design of the Code**

In approaching the design, structure, and requirements of the Code, we are deliberately placing at the centre of our thinking the recipients of advice (ie retail clients).

When considering retail clients, we have in mind a very broad range of people seeking advice outcomes. It covers the full diversity of advice complexity from (for example) simple general insurance product advice to sophisticated, multi-faceted planning.

A key design criteria for us is that the Code is effective for that complete range of retail clients, for those that provide financial advice (entities and individuals) and for regulators (in this case primarily the FMA in respect of licensing).

We also need to ensure that the Code works effectively across a wide spectrum of circumstances and contexts in which financial advice is given, such as:

- Scope of advice: from situations where standardised advice is given in a brochure, to where a client is asking whether a particular product is appropriate for them, to a client wanting advice on which of a range of similar products is most appropriate for them, through to personal investment planning based on a client's overall financial situation;
- Product complexity: from the more straightforward (eg bank deposit or basic mortgage choices), to more circumstance-dependent products (eg life insurance or investment funds), to highly technical products (eg forex, hybrid-equity);
- Delivery mechanisms: ranging from bespoke advice activities with minimal reliance on formal processes to highly systematic process-driven advice or standardised solutions, from face-to-face meetings to fully electronic interactions via the internet;
- Adviser business models: from sole-trader advisory practices to vertically-integrated multinationals (ie that provide both products and advice); and
- Conflict: from advisers that do not get any remuneration or reward from providers in respect of any of the products that they are advising on, to advisers that do, and to businesses that both provide and promote products and give advice (either only on their products or on others' as well).

### **Code Working Group's Approach to Consultation**

- We view consultation as a critical component of the design process, and we are seeking input from the widest possible range of affected and interested parties. We will be doing this twice, this first round of consultation (through focus groups) will concentrate on basic design parameters so that we can use that as a basis for a relatively specific first-cut at a Code structure and high-level content. That will then be released for another round of consultation before we determine the final form and detail of a Code to be recommended to the Minister of Commerce.
- Given the breadth of situations that the Code will apply to, we are approaching the consultation process with no preconceptions as to outcomes, and our desire to not stifle input to us is reflected in the deliberately open nature of the questions on which we are seeking feedback (below).
- As far as is practical, we want to conduct the consultation in focus group-type situations to maximise the free flow of ideas and interaction amongst participants (however, we are happy to receive written submissions if any participants prefer).

## **First Round of Consultation Seeks Input on the Following Basic Design Elements:**

### **1. General principles that will underpin our development of the Code**

#### RETAIL CLIENT UNDERSTANDING

While there will be retail clients who have a high degree of competence and knowledge about financial matters and products, we consider it appropriate that all retail clients should be assumed to understand significantly less about those matters than any person giving financial advice.

#### RECOGNISABLE MINIMUM STANDARDS

The broad application of the Code will influence our approach to both consultation and design. It is important that every person that gives financial advice, and every retail client, can easily identify and understand exactly what minimum standards apply to them and the advice they are giving/receiving.

#### DELINEATION BETWEEN STANDARDS

Our desire is to minimise the number of different minimum standards and to clearly define and delineate when a different standard applies.

#### DELIVERY AGNOSTIC

It is also our desire that the Code's minimum standards should as far as possible be the same irrespective of the method of delivery of the financial advice. The Code must work across the entire advice ecosystem (advisers, systems and processes) – allowing for different ways in which competence, knowledge and skill may be demonstrated – so that minimum standards apply consistently to the same type of financial advice however delivered (eg by an individual face-to-face or a robo-advice platform), and irrespective of whether that type of advice is provided by a one-person business or a vertically-integrated company.

#### **Question for Focus Groups:**

*Do you agree with the general principles above? If not, why not (and what is the suggested alternative principle)?*

*Are there any other general principles that we should follow? Why?*

### **2. Standards of particular competence, knowledge and skills**

The new regulatory regime provides for us to set minimum standards of specific competence, knowledge and skills in respect of different types of financial advice, financial advice products, or other circumstances.

#### **Questions for Focus Groups:**

*How should we identify different types of financial advice? For example:*

- *Scope of advice: whether the financial advice is limited or unlimited, for example limited by needs (e.g. life insurance needs only), limited by fulfilment options (e.g. financial advice products of only one issuer or particular issuers), limited by the*

*extent of personal enquiry (e.g. part of a cohort with shared characteristics, or answers to a standard questionnaire), or unlimited (e.g. a full investment planning service);*

- *Product or plan: whether the financial advice includes designing an investment plan or is limited to a recommendation or opinion about acquiring or disposing of a financial advice product;*

*How should we differentiate between different financial advice products (as a basis for different minimum competence standards)? For example, complexity, risk to the client, duration of client commitment/ease of exit.*

*Are there any other circumstances that we should identify for the purpose of setting different minimum standards of specific competence, knowledge and skills? For example, between different delivery mechanisms, highly judgmental v highly systematised advice processes, or the nature of the relationship between the financial advice provider and the issuer of any financial advice products that are the subject of the financial advice.*

*If we were to have a minimum standard for financial advice that includes designing an investment plan, is the current Code of Professional Conduct for Authorised Financial Advisers a useful benchmark?*

### **3. Other Minimum Standards**

We also must set standards of general competence, knowledge and skills that apply to all persons that give financial advice, and minimum standards of ethical behaviour, conduct and client care.

#### **Questions for Focus Groups:**

*Should there be different standards of ethical behaviour in respect of different types of financial advice, financial advice products, or other circumstances? Why?*

*Are there other codes of ethics that contain provisions that would be useful inclusions in this Code?*

*What situations, if any, warrant different standards of ethical behaviour? For example, advice situations where the adviser may receive remuneration in respect of one or more products which are the subject of their advice, or where the adviser gives advice on the advice business' own products? What should those different standards be?*

*Should there be different standards of conduct and client care in respect of different types of financial advice, financial advice products, or other circumstances? Why?*

## Simplified glossary

conduct	the manner in which a person acts
consumer credit contract	debtor is a natural person, and credit intended to be used, wholly or predominantly for personal, domestic, or household purposes (Credit Contracts and Consumer Finance Act 2003 s11)
contract of insurance	a contract that transfers risk where the insurer agrees, in return for a premium, to pay the client on the happening of an uncertain event (Insurance (Prudential Supervision) Act 2010 s7)
ethical	relating to moral principles and values (integrity, fairness)
financial advice	recommendation or opinion about acquiring or disposing of (or not) a <b>financial advice product</b> OR design of an investment plan, based on an analysis of the client's overall financial situation and investment needs and identification of their investment goals, with recommendations to meet those goals.
financial advice product	a <b>financial product</b> , a DIMS facility, a <b>contract of insurance</b> , a <b>consumer credit contract</b> , or a renewal or variation of an existing financial advice product
financial advice service	in the ordinary course of business, a person engages 1 or more individuals to give <b>regulated financial advice</b> on their behalf, or gives <b>regulated financial advice</b> on their own account.
financial product	a debt security, an equity security, a managed investment product, or a derivative
professional	characterised by technical and ethical standards worthy of or appropriate to a professional person; competent, skilful, assured
regulated financial advice	<b>financial advice</b> given in the ordinary course of business and not specifically excluded
retail client	a client who is not a <b>wholesale client</b>
wholesale client	defined in detail (proposed FMCA Schedule 5 cl 3) but includes (among other tests) a person who owns a portfolio of specified financial products of a value of at least \$1m