

30 April 2018

T: **S 9 (2) (a)**

Code Working Group
c/o Code Secretariat
Ministry of Business, Innovation & Employment
WELLINGTON

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Dear Members

Code of Professional Conduct for Financial Advice Services

1. As an NZX Participant firm, QFE and one of the largest single employers of AFAs, Forsyth Barr has a unique perspective on the operation of the financial advice industry.
2. We have contributed to the Security Industry Association (SIA) submission, but also wish to provide a separate submission on what we see as some key issues raised by the consultation paper. We otherwise support the SIA submission.

General comments

3. We note the assumptions made by the Code Working Group in paragraph 45 of the consultation paper. Some of these – in particular, the assumption in relation to ongoing advice obligations - have the potential to significantly alter the reach of the Code. We assume that to the extent that any of these assumptions are not borne out, the Code Working Group will consider whether further consultation is desirable.
4. We also note the comment under paragraph 1 that wholesale clients are “*generally large or sophisticated clients ... who do not require or benefit from the same degree of protection as retail clients.*” While this is not an issue directly within the Code Working Group’s remit, we remain concerned that the relatively low activity, asset and income thresholds under which a client may qualify as “wholesale”, will lead to potential abuse. We suggest that the Code Working Group consider a standard of ethical behaviour requiring providers to have processes in place to ensure that clients are not treated as wholesale clients unless the risks and benefits of that have been explained to, and understood by, the client.
5. We comment that a number of the proposed standards focus on the content of internal processes as opposed to the conduct of client-facing activity. For example, paragraphs 103-116 and questions L-Y discuss requirements in relation to ethical processes and their content. While it may be appropriate for the Code to deal with internal processes at a high level, given the wide range of advice businesses and advice situations that will arise in practice, we believe that the detail of such processes should be left to be assessed as part of provider licensing rather than prescribed in the Code. This would allow providers a degree of flexibility in how they meet the requirements of the Code, thereby encouraging innovation and competition and, ultimately, access to advice.

6. Finally, we agree with the Code Working Group's intent (as expressed in paragraph 68) that the Code should be agnostic as to delivery mechanism. Care needs to be taken in the drafting of the Code to ensure that there is no unintended bias in favour of "robo" advice channels. For example, when assessing whether a client has understood the basis on which advice has been given, a robo-provider will of necessity be relying on positive confirmation to that effect from the client rather than any sort of holistic assessment, and it would be inappropriate to hold financial advisers to a higher standard.

Comments on specific consultation questions

Ethical behaviour / ethical processes

7. On question T, we believe that providers should be required to give explicit sign-off on the soundness of robo-advice. It is important for there to be clear accountability in the case where an automated advice process produces unsound advice.
8. On question Y, we do not believe that requiring a formal acknowledgement whenever advice is about to be delivered that the Code applies, will assist in promoting good advice outcomes. Given that the typical financial adviser would be "ticking this box" many times per day, the process would likely soon become automatic on the part of the adviser. More generally, we think that the Code should not include content as granular as mechanisms to reinforce good ethical behaviour. Please refer to our comment at paragraph 5 above.

Conduct and client care / Advice process

9. On question GG, we do not believe that the Code should include guidance material. Guidance material in a Code is in effect more Code; this can have the unintended effect of complicating what it intends to simplify. We would prefer that the Code was a concise statement of principles and standards than a lengthy guidance document.
10. On questions HH-JJ, we comment that it is important that the "key aspects" of the advice process are sufficiently flexible to allow for the full range of advice businesses and advice situations that will arise in practice. For example, in a typical stockbroking situation there is an ongoing advice relationship with the client, within the context of which advice is provided to the client from time to time on specific transactions. In terms of the "explanation of recommendation" referred to in paragraph 134, it makes little sense for a "statement of advice" or similar document to be prepared and sent to the client following each advice occasion, both because the advice is being given in the context of a wider relationship with the client (so that the context of the advice is apparent to the client), and also because the client will likely want to act on the advice at the time of the conversation with the adviser (making the "statement of advice" of historical interest only). Similarly, requiring an "active acknowledgement" from the client on each advice occasion that they understand the risks and benefits of following the advice, is, in a stockbroking context, unlikely to contribute to good advice outcomes.

Conduct and client care / Personalised suitability

11. On question KK, we support the SIA's submission that the wording of the current Code Standard 9 provides a sufficiently proportionate and flexible approach to

suitability that could easily be adapted to the new Code. To the extent there is an industry issue of “over-compliance” in this area, it does not seem to be driven by the wording of the standard.

Particular competence, knowledge and skill

12. On questions TT-YY, we comment that it will be difficult to know where “product advice” ends and “financial planning” begins. For example, advice might be given that was largely product advice, but was also, in some limited aspects, a financial plan. In that case, we think that the drafting of the Code should reflect that the advice-giver would be required to meet the Level 7 standard set out in paragraph 185 only to the extent that the advice given was a financial plan. We also suggest that the list of Bachelor’s degrees in paragraph 185 be extended to include degrees such as mathematics or science subjects.

Yours sincerely
Forsyth Barr Limited

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