

30 April 2018

Attention: Code Working Group  
c/o Code Secretariat (Poppy Haynes and Max Lin)  
Ministry of Business, Innovation & Employment  
PO Box 1473  
Wellington 6140  
New Zealand

E-mail: [code.secretariat@mbie.govt.nz](mailto:code.secretariat@mbie.govt.nz)

Dear Sir or Madam,

**Code Working Group consultation paper on the Code of Professional Conduct for Financial Advice Services**

I attach the submission prepared by the Securities Industry Association (SIA) in respect of the Code of Professional Conduct for Financial Advice Services Consultation Paper.

No part of this this submission is required to be kept confidential.

Contact information:

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In the event that there are further questions or areas of the submission where the Code Working Group would appreciate further input or clarification, in the first instance, please contact Bridget MacDonald, Executive Director, SIA.

Bridget MacDonald	Executive Director, SIA
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Yours faithfully

**S 9 (2) (a)**

Nick Hegan  
**Chairperson**  
**SECURITIES INDUSTRY ASSOCIATION**

## Information about you

i.	<p>Please provide your name and (if relevant) the organisation you represent</p> <p>Securities Industry Association (<b>SIA</b>)</p>
ii.	<p>Please provide your contact details</p> <p style="text-align: center;"><b>S 9 (2) (a)</b></p> <p>If there are further questions or areas of the submission where the Code Working Group would appreciate further input or clarification, in the first instance, please contact Bridget MacDonald, Executive Director, SIA.</p> <p style="text-align: center;"><b>S 9 (2) (a)</b></p>

<p>iii.</p>	<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>The Securities Industry Association (<b>SIA</b>) represents the New Zealand Sharebroking industry, including leading NZX firms:</p> <ul style="list-style-type: none"> <li>- ANZ Securities Ltd.</li> <li>- ASB Securities Ltd.</li> <li>- Craigs Investment Partners Ltd.</li> <li>- First New Zealand Capital Securities Ltd.</li> <li>- Forsyth Barr Ltd.</li> <li>- Goldman Sachs NZ Ltd.</li> <li>- JBWere (NZ) Pty Ltd.</li> <li>- Macquarie Securities (NZ) Ltd.</li> <li>- OM Financial Ltd.</li> <li>- Somerset Smith Partners Ltd.</li> <li>- UBS New Zealand Ltd.</li> </ul> <p>The SIA provides a forum for discussing important industry issues and developments, managing industry change, and represents the broking industry in respect of legislative management, operational and regulatory issues that impact the industry as a whole to help grow and support a successful and sustainable capital markets ecosystem that benefits New Zealand.</p> <p>SIA members employ circa 400 Authorised Financial Advisers and deal with a combined 300,000 New Zealand retail investors with total investment assets exceeding \$80 billion, including \$40 billion held in custodial accounts. They also deal with virtually all global institutions with the ability to invest in New Zealand.</p>
<p>iv.</p>	<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>This submission does not contain any confidential information and may be published.</p>

## Principles for drafting the Code

A.	<p>What comments do you have regarding the overarching theme of “good advice outcomes” and the underlying principles?</p> <p><b>Good advice outcomes</b></p> <ol style="list-style-type: none"><li>1. The Securities Industry Association agrees in principal with the overarching theme of “good advice outcomes”, however we have concerns with the terminology used, in particular the term “outcomes”.</li><li>2. The SIA is of the view that this term will lead to a focus on the result, that is, the performance of the product the advice related or relates to, rather than the process of the advice.</li><li>3. Whilst we appreciate the Consultation Paper emphasises that the focus is not the performance, but rather the outcome of the advice process, we are of the view that over time the intention and focus of the Committee will be eroded and the natural meaning of “outcome” will prevail, being “result, end result, effect, conclusion”.</li><li>4. We understand this was an issue raised at one or more of the Consultation Working Groups held throughout the country, and that the consensus supports our view.</li><li>5. The SIA submit that the terminology be changed to a concept whereby the consumers will intuitively focus on the advice process as envisaged by the Committee. In our view, terminology such as “good advice experience” or “good advice framework” would be better aligned with the vision of the Committee.</li></ol>
B.	<p>Are there any further principles that should be included, or existing principles that should be removed?</p> <ol style="list-style-type: none"><li>6. No.</li></ol>

# Ethical behaviour

Keep the commitments you make to your client

<p>D.</p>	<p>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.</p> <p><b>Minimum standards for ethical behaviour extending beyond strict legal obligations</b></p> <p>7. No. The SIA does not believe that minimum standards for ethical behaviour should extend beyond strict legal obligations to include meeting less formal undertakings. Unlike the International Organisation of Securities Commissions Model Code of Ethics, the Code of Professional Conduct (<b>Code</b>) will be legally binding, leading to the somewhat Kafkaesque situation that certain informal, non-binding undertakings would be binding.</p> <p>8. It would, however, be reasonable to require Financial Advice Providers to have, as part of their own code of ethics, a process for deciding whether a particular non-binding commitment should be met, and the factors that will be taken into account in making that decision.</p> <p>9. However, given the very wide range of advice situations that can occur and different business models that the Code will apply to, the SIA does not believe that the Code should attempt to describe what those factors might be.</p>
<p>E.</p>	<p>If there was a minimum standard requiring Financial Advice Providers – or Financial Advice Providers in some situations – to have their own code of ethics in addition to the Code, how would you frame the requirement for it to deal with keeping commitments?</p> <p>10. Please refer to our response to question D.</p>

## Manage and fully disclose conflicts of interest

F.	<p>Should the Code include a minimum standard on conflicts of interest in addition to the legislation?</p> <p><b>Managing conflicts of interest</b></p> <p>11. The SIA supports the notion of firms being required to have processes in place to manage conflicts of interest. As NZX Client Advising Participant firms, the SIA members are already required to have adequate arrangements for the management of conflicts of interest that may arise in relation to their businesses. However, we believe that any minimum standard in the Code should, similar to the NZX Participant Rules, be general in nature rather than focusing on particular situations.</p>
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## Do no harm to the client or the profession

G.	<p>Do you agree that a person who gives financial advice must not do anything or make an omission that would or would be likely to bring the financial advice profession into disrepute? If not, please set out your reasoning.</p> <p>12. The SIA agrees that CS-2 has worked adequately in practice.</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>13. We see no need to impose a standard additional to CS-2 and the well-tested standards set in common law.</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><b>Anonymised client data</b></p> <p>14. The SIA does not believe that the Code should address the use of anonymised client data. This is not an issue particular to the provision of financial advice, and there is no reason to hold Financial Advice Providers to different standards than those that apply to other businesses. See also our response to questions J and K below.</p>
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J. Do you agree that the Code should cover the various aspects of maintaining client confidentiality discussed in this paper?

**Client confidentiality and privacy**

- 15. We do not agree that the Code should cover client confidentiality. We are of the view that matters pertaining to client privacy and confidentiality are well-covered in legislation already, and accordingly are not required to be included in the Code.
- 16. Inclusion of client privacy and confidentiality in the Code may lead to conflict or contradiction with legislation, which is clearly not in the best interests of the consumer.
- 17. Furthermore, we are of the view that for the Code to be most effective it should focus on the Principles established and primarily “good advice” for the consumers. Inclusion of privacy and confidentiality may have the effect of diluting the impact of the Code. The scope of the Code would be unnecessarily broadened.

K. Are there other aspects of maintaining client confidentiality to consider?

**Client privacy**

- 18. We note that the Code of Banking Practice refers to Client Privacy. The reference in the Code of Banking Practice is very high level and acknowledges the Privacy Act.

**Reference to Anti-Money Laundering and Countering Financing of Terrorism**

- 19. We note there is no reference to the Anti-Money Laundering and Countering Financing of Terrorism legislation in the Code of Banking Practice. We are of the view that a similar reference is also not required in the Code, and would potentially be unduly limiting in the event of legislative change or amendment.

**Compliance costs**

- 20. Compliance costs will likely increase in the event the Code includes privacy and confidentiality requirements that are beyond the legislative requirements. It is our view that potentially these costs will increase even if the requirements are consistent with legislation, as there will need to be additional documented processes in place for the review and monitoring of the same for the purposes of the Regulator.
- 21. We note that even for medium to large size financial advice providers on relatively sophisticated Customer Relationship Management software, the cost of changing systems to restrict access to client data on a need to know basis within the organisation is significant.

## 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>22. The SIA agrees that Financial Advice Providers should be required to document and maintain their ethical processes.</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><b>Code of ethics</b></p> <p>23. We think that it is reasonable to expect that Financial Advice Providers have publicly available codes of ethics.</p> <p>24. However, we believe that the further suggestions in relation to standards of leadership and culture (question N), ethics training (questions P-R), frameworks for resolving ethical dilemmas (question S), and requirements as to compliance and internal audit functions (questions U and V) are too granular for inclusion into the Code, given the wide range of financial advice businesses and advice situations that the Code will apply to.</p> <p>25. The SIA suggests these issues are more appropriate for consideration by the Financial Markets Authority in the course of the licensing process, in the context of the particular Financial Advice Provider’s business.</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>26. Please see our response to question M above.</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>27. Please see our response to question M above.</p>
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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>28. Please see our response to question M above.</p>
R.	<p>Should there be a requirement for ongoing refresher training on ethics?</p> <p>29. Please see our response to question M above.</p>

### Resolving ethical dilemmas

S.	<p>Do you agree that Financial Advice Providers should be required to have in place, and use, a framework for resolving ethical dilemmas that may arise in giving financial advice? If not, please set out your reasoning.</p> <p>30. Please see our response to question M above.</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><b>Soundness of advice</b></p> <p>31. The SIA agrees that Financial Advice Providers should have adequate processes to ensure the soundness of advice. However, we believe this should be demonstrated as part of the licensing process, not explicitly as part of the Code.</p>
U.	<p>Do you agree that Financial Advice Providers should be required to have in place a compliance function aimed at following up on concerns raised by employees and other stakeholders? If not, please set out your reasoning.</p> <p>32. Please see our response to question M above.</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>33. Please see our response to question M above.</p>
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## 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><b>Responsibility for overall advice experiences</b></p> <p>34. The SIA agrees that the Financial Advice Provider should be accountable for the ethical behaviour experienced by its clients when receiving financial advice. However, we do not agree that there should be an obligation on the provider to be able to demonstrate that, in a hypothetical world where it carried out the whole advice process itself, the standards of ethical behaviour would be met.</p> <p>35. Rather, we think that this issue can be addressed through appropriate drafting in the Code, to ensure that the provider remains responsible for the overall advice outcomes of its clients and cannot “contract out” of responsibility. As an example of this approach, see the Financial Markets Conduct Act s 146.</p> <p>36. For example, an Authorised Financial Adviser (<b>AFA</b>) is expected to have a reasonable basis for any recommendation. In relation to SIA firms, this often comes in the form of research from an in-house or third party research provider. It is not feasible for a Financial Advice Provider to monitor the ethical behaviour of such third parties (which may be based overseas). It can however make a reasonable assessment at the time of selecting such a provider. To hold a firm liable in this situation would potentially restrict the bases of advice that a Financial Advice Provider may use, which would not be in the interests of consumers.</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><b>Compliance training and support</b></p> <p>37. The SIA would not support mandating of daily routines because a firm is best placed to determine what level of compliance training and support their particular employees require.</p>
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## 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><b>Client care standards</b></p> <p>38. The SIA believes these code standards work adequately overall.</p> <p>39. In general terms, the Code could be improved by being more concise and having the key elements more clearly articulated. It is also too long to be considered a ‘working document’. The SIA believes it would be improved if it focused on the key elements and did not include the level of detail contained in the current Code.</p> <p>40. In respect to these specific code standards, some improvement could be made on wording, which would assist clarity. This is addressed further in our response to question BB.</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><b>Improving clarity of code standards</b></p> <p>41. As noted in our response to question AA, the SIA believes there is scope to improve the wording, and therefore clarity of these key code standards.</p> <p>42. We have specific comments on each code standard as outlined below:</p> <p><b>CS-6 Behaving professionally, including communication and timeliness</b></p> <p>43. The ordering of CS-6 could be improved. For example, CS-6(c) covering the assessment and review of products recommended is a key element of this code standard, however it arguably does not have the prominence it deserves.</p>

**CS-7 Ensuring retail clients can make informed decisions about using the adviser**

44. As with the previous code standard, the SIA suggests clarity may be improved by listing the information Financial Advisers will be required to provide in writing in this disclosure, for example:
- Information about the range of the AFA's financial adviser services
  - Any limits on the AFA's authorisation
  - Basis on which the services are provided.
45. The SIA suggests that the obvious duplication with the disclosure regulations (which are yet to be determined) is removed from this standard in the new Code once drafted. Ideally, the regulations would be the primary source of disclosure obligations, and cover the field in all but unusual circumstances.
46. There is also a requirement to provide any other information that the client needs to make an informed decision. This is currently undefined. The SIA suggests that to the extent not covered by the regulations, this standard could be improved by providing some context, such as 'any other information that a retail client would reasonably expect', along the lines of CS-10.

**CS-10 Ensuring clients can make an informed decision about the advice**

47. The reference to a concise description of principal benefits and risks relevant to the financial advice provided is generally interpreted as being a high level description and therefore is given relatively infrequently in a client relationship. It is critical in the wealth management industry that the new Code does not take steps that imply every piece of advice needs to be in writing (whether in whole or in part). This would impact the timeliness and therefore quality of advice. One suggestion is that the Scope of Service provisions in the new Code give more flexibility to allow risk and benefit language to be given other than in writing. Refer also to the comments at question HH.

**CS-9 and CS-11-13**

48. The SIA does not have any proposed changes to these code standards.

CC. Are there any aspects of the current client care standards that could be expanded or clarified (for example, in light of the published findings of the Disciplinary Committee)?

49. The SIA supports the current client care standards, noting the recommendations made in our response to question BB.

DD.	<p>Are there any potential compliance costs for small and/or large Financial Advice Providers that need to be considered?</p> <p><b>Compliance costs</b></p> <p>50. The SIA notes that the Code Working Group's stated intention to make only minor modifications to these client care code standards and move them across to the new Code, suggests that there should not be any material change in existing compliance costs arising from this part of the new Code.</p>
EE.	<p>Are there any additional matters that should be addressed in the advice-giving standards? Those listed above? Others?</p> <p>51. No, we do not have any additional matters.</p>

## Advice process

GG.	<p>Should the Code include guidance material to help determine what needs to be considered when designing an advice process?</p> <p><b>Guidance material</b></p> <p>52. The SIA does not think it will be useful for the Code to include guidance material of this kind. As noted in the Consultation Paper, the Code will apply to a wide range of advice situations, and guidance that is appropriate for one situation will not necessarily be appropriate for another.</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><b>Ongoing client relationships</b></p> <p>53. The SIA believes "key aspects" of the advice process set out in para 134 illustrate how difficult it is for generic guidance to cover all advice situations. In particular, the process set out appears to envisage infrequent or "one-off" advice, as opposed to the kind of advice typically given by NZX firms in a broking context, which will often be of the nature of various security recommendations made over time in the context of a particular client's portfolio.</p> <p>54. In this broking context, it will generally not make a lot of sense for clients to be provided with a full explanation of the recommendation, risks and benefits each time. Rather, each security recommendation will sit within the context of the client's ongoing relationship with the firm, and the</p>

	<p>information previously provided to the client about the nature of the service being provided and its benefits and risks. In that context, full documentation each time will be of little value to the client and may actually detract from the advice experience. In addition, as the advice is often required by the client in “real-time”, any statement of advice or similar document is likely to be post-decision and therefore of limited value to the client; similarly, the risks and benefits are likely to be of a similar nature for each security recommendation given.</p> <p>55. The SIA suggests that, to the extent that the Code is to set out key aspects of the advice process, that these are drafted in sufficiently general terms to allow application to the full range of advice situations, including broking or other ongoing (as opposed to discrete) advice situations.</p>
II.	<p>Should any of the key aspects that we have listed above be removed? If so, why?</p> <p>56. Please refer to our response to question HH.</p>
JJ.	<p>Are there any situations in which an advice process need not be followed?</p> <p>57. Please refer to our response to question HH.</p>

### 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><b>Suitability obligation</b></p> <p>58. The SIA agrees with the general observation that there should be a suitability obligation that is scaled or tailored to the particular advice context. However, we are concerned that the proposed minimum standard potentially requires the provider to “step outside” the scope of the advice that is being offered.</p> <p>59. For example, para 141 states that, in order for a personalised suitability analysis not to be required, the provider would need to be “satisfied that the individual client’s broader financial situation was not material to the advice”. This causes obvious difficulties if the advice is offered expressly on the basis that the client’s broader circumstances are not taken into account – there is no way to be satisfied that information the provider does not have, is not material.</p> <p>60. In similar vein, para 138 states that a “more ‘personalised’ suitability analysis is justified where consideration of the client’s personalised situation and goals... is necessary to achieve a good advice outcome”. Again, this suggests that the provider needs to consider the client’s situation and goals, even if the advice is expressly not provided on that basis.</p>
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	<p>61. In our view, the suitability standard must be drafted so that the obligation is relative to the scope of the advice that is being provided. If this is not the case, there is likely to be a chilling effect on the scopes of advice that providers will offer – that is, providers will avoid risk by opting to provide either fully-personalised or fully non-personalised services. That would have a clear detrimental impact on the availability of advice, as well as impeding innovation in the advice industry.</p> <p>62. If the intent is to have a “safe harbour” as to when a personalised suitability analysis is not required, then we suggest that a minimum standard worded similarly to the current CS-9 could be workable. That is, “reasonable steps” to ensure that the advice is suitable for the client, having regard to the agreed nature and scope of the advice, could well be “generic steps” where the scope of the advice was such that only high-level information about the client was taken into account in providing the advice.</p>
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## Organisational standards

<p>LL.</p>	<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><b>Good advice outcomes</b></p> <p>63. We agree with the statements at para 151 that the Code will recognise that good advice outcomes can be achieved without traditional advice documentation.</p>
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## General competence, knowledge and skills

SS.	<p>What factors should we consider in determining whether to make the proposed unit standard a renewing obligation?</p> <p><b>Continuing Professional Development</b></p> <p>64. We agree with the principle that Financial Advisers and Nominated Representatives should be able to demonstrate a minimum standard of general competence, knowledge and skill. However, rather than the Code including a stipulated renewing obligation we believe Advisers should retain the flexibility to meet this obligation through their Continuing Professional Development (<b>CPD</b>). Completing CPD will therefore demonstrate competence.</p> <p>65. The current Code already requires advisers to “keep up to date with developments relevant to the adviser’s practice”. We presume a similar requirement will be carried over into the new Code, along with perhaps a more explicit obligation to include training on regulation within CPD.</p>
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## Particular competence, knowledge and skills

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><b>Types of Financial Advice</b></p> <p>66. While the SIA does not disagree with the proposal of two types of financial advice, we note that when the Financial Advisers Act came into effect there was inconsistency in the interpretation or definitions of ‘Financial Advice’ and ‘Investment Planning Service’. Some firms interpreted financial planning as a subset of Financial Advice, and as a result their AFAs are registered on the Financial Services Provider Register as being able to provide “Financial Advice”. Others firms took a different approach and registered their AFA’s as being able to provide “Financial Advice and Investment Planning Services”. Therefore, it is important that in “grandfathering” these AFA’s into the new regime that they are treated equally.</p> <p>67. We also note that, given the proposed step up in competence standards for “financial planning” (a term as yet undefined in the Bill), it would be helpful for the Code to clearly delineate the boundary between “product advice” and “financial planning”. For example, product recommendations may involve consideration of investment objectives and financial goals, but will not necessarily amount to financial planning.</p>
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## Other comments

ZZ. Are there any other comments you would like to make to assist us in developing the Code?

68. The SIA welcomes the opportunity to answer any further questions the Code Working Group may have and to be part of any further discussions.