

25 November 2015

David Ireland
Code Committee Chair
C/- Kensington Swan
PO Box 10246
WELLINGTON

Dear David

Submission: Code Committee review of the Code of Professional Conduct for AFAs

We write to make a brief submission on questions 9 and 10.

We agree that it is appropriate that the Code provide a transactional advice mechanism, and generally agree with the provisions of Code Standard 8(b). However we query why, where a client has instructed an AFA to provide transactional advice, it is necessary for the AFA expressly to confirm to the client that the transaction has been completed without determining suitability, and suggest that this requirement be deleted from the Code.

We also comment that, in our view, the FMA's current guidance on this topic (*Guidance Note: Limited Personalised Advice*, revised June 2014) has inhibited advisors' use of Code Standard 8(b) and therefore the accessibility of transactional advice.

For example, para 36 suggests that it may be inappropriate for advisors to rely on opt-out provisions such as Code Standard 8(b) where they do not have full information about the client, and emphasises that "Code Standard 8 requires AFAs to make enquiries about a client, having regard to the nature of the service, including any limits to the scope of the service."

In our view, this has created an unhelpful "chicken and egg" situation where advisors are seemingly required to gather information about a client in order to form a view as to whether it is appropriate for the client to receive transactional advice – in effect, putting the onus on the advisor to ensure that it is suitable to provide advice without determining the suitability of that advice. In these circumstances, it is not surprising that advisors have been reluctant to rely on this mechanism.

We suggest that the Committee considers discussing with the FMA whether the guidance note could be amended to better reflect what we understand to have been the intent of Code Standard 8. Failing that, we suggest that the Committee consider revising the drafting of Code Standard 8 to clarify the position, with particular reference to considering what the Committee and FMA can do better to support the declining numbers of AFAs in the industry. We maintain our view that rules, guidance and regulations remain overly prescriptive and complex in this area; until this is addressed, the concerning decline in numbers of 'real' financial advisers will continue.

No part of this submission is confidential.

Yours sincerely
Forsyth Barr Limited

A handwritten signature in blue ink, appearing to read 'Nick Hegan', with a stylized, flowing script.

Nick Hegan
Head of Legal & Compliance