

AUTHORISED FINANCIAL ADVISERS CODE

BACKGROUND NOTE

FROM THE CODE COMMITTEE

INTRODUCTION

This background note sets out useful information for those wishing to find out more about:

- the Authorised Financial Advisers Code;
- the Code Committee that is responsible for preparing a draft Code;
- how to provide feedback to the Code Committee on consultation papers in relation to the draft Code that the Committee will make available in the next few months.

BACKGROUND

In 2008 the Financial Advisers Act (“the Act”) was enacted. Its purpose is *“to promote the sound and efficient delivery of financial advice, and to encourage public confidence in the professionalism and integrity of financial advisers.”*

The Act has not yet come fully into force but, when it is, it will regulate financial advisers.

AUTHORISED FINANCIAL ADVISERS

The Act will permit individuals who are authorised financial advisers to :

- give financial advice in relation to category 1 products;
- make an investment transaction in relation to category 1 products;
- provide a financial planning service.

An authorised financial adviser is an individual who is:

- registered under the Financial Services Providers (Registration and Dispute Resolution) Act 2008; and
- authorised by the Securities Commission under the Financial Advisers Act.

Category 1 product means:

- (a) certain securities defined in the Financial Advisers Act;
- (b) any estate or interest in land; or
- (c) a futures contract; or
- (d) other products specified by the regulations.

Authorised financial advisers will be required to comply with certain obligations under the Act and its regulations. One of those will be an obligation to comply with a Code providing minimum standards of professional conduct for authorised financial advisers.

THE CODE

The Code will set out minimum professional standards for:

- competence;
- knowledge and skills;
- ethical behaviour;
- client care;
- continuing professional training.

CODE COMMITTEE TO PREPARE DRAFT CODE

The Commissioner for Financial Advisers has, under the Act, appointed a committee to prepare a draft Code.

The names, and contact details, of its members can be found at www.sec-com.govt.nz

The Code Committee must prepare a draft Code.

It must, in preparing the draft Code, consult with representatives of the financial adviser industry, and with interest groups within that industry. It must allow an opportunity for anyone affected by the Code to make submissions.

The Code Committee began work in early August 2009 with preliminary discussions on competence standards being the starting point (Press Release 14 August 2009).

A Secretariat has also been appointed to assist the Code Committee in preparing the draft Code.

THE PROCESS FOR APPROVING THE DRAFT CODE

Approval by the Commissioner for Financial Advisers and the responsible Minister

The Act sets out a detailed procedure for approval of the draft Code by the Commissioner for Financial Advisers and then by the responsible Minister.

Both the Commissioner and the responsible Minister may –

- refer the draft Code back to the Committee for further work before approving it; or
- in certain cases, make changes themselves.

Coming into force

After the Minister has approved the draft Code, the Commissioner must give notice in the *Gazette* of when the Code will come into force. This must not be less than 28 days after the date of notification

The Securities Commission's objective is to have the Code in force by late 2010.

CONSULTATION IN RELATION TO THE DRAFT CODE

The Code Committee will release consultation papers in the coming months on the following topics:

- competence, knowledge and skill;
- ethical behaviour;
- client care;
- continuing professional training.

The Code Committee anticipates that the first consultation paper on competence, knowledge and skill will be released in the next two weeks.

There may be further consultation on other areas.

The Code Committee considers that its consultation and engagement should be iterative in nature, rather than consulting only when a complete draft Code has been developed. The Committee prefers to give the sector a clear vision of its thinking in relation to the various aspects of the Code as they evolve.

This approach enables the Committee to consult with groups and individuals during the process so it can change or refine its thinking. It will also enable the industry to prepare for the new regulatory environment.

The Commissioner for Financial Advisers supports this iterative process.

The Code Committee is committed to effective consultation, building on the useful dialogue that has already occurred with sector engagement on:

- Securities Commission staff papers; and
- proposals and discussion papers issued by other bodies currently engaging with the sector.

We are approaching issues relating to the Code with an open mind, and are keen to get feedback on our proposals.

The Code Committee aims to release a draft Code for discussion by the end of the year. The release of the draft Code will be the trigger for a further round of consultation. Details will be advised at the time of release of the draft Code.

FEEDBACK ON THE DRAFT CODE

Each consultation paper will seek feedback. This will enable the Committee to change or refine the standards proposed for the Code, if that is desirable.

The background note and all future consultation documents are being sent to a list of individuals and groups in the following categories:

- adviser associations, professional bodies, and industry associations
- advisers
- product companies
- education, training, assessment groups
- Ombudsmen
- Government departments and agencies
- adviser dealer groups
- consumer groups
- legal
- consultants
- Legislation Advisory Committee
- respondents to previous Inquiries and consultation documents

Once the consultation papers are released you will be able to provide feedback by:

- emailing us at consultation@financialadvisercode.govt.nz ; or

- writing to:

Code Committee

c/o Securities Commission

PO Box 1179

Wellington 6011

Your feedback can be in a form that suits you. Some may be formal. You must specify in writing if you require a submission to remain confidential.

In addition, the Code Committee is hoping to have a blog style site from 15 October 2009. If it is functioning when consultation papers are released, it will enable feedback to be provided possibly with discussion chains emerging.

ADDITIONAL OPPORTUNITIES FOR FEEDBACK

The Code Committee is also proposing the following additional opportunities for consultation in the coming months:

1. We anticipate holding the following three public meetings:

- Wellington 28 October 2009
- Auckland 29 October 2009
- Christchurch 30 October 2009

Further details of times, locations, and booking arrangements will be provided shortly.

2. Ross Butler (the Code Committee Chair) and members of the Code Committee are willing to speak at national and regional forums and meetings of advisers, consumers, dealer groups, financial service product companies, and other groups in the financial adviser sector in November 2009.

The Code Committee has limited resources and a frugal budget, and we all have our own commercial commitments. It would be helpful if regional meetings might be planned across organisational boundaries. For instance local meetings could be arranged by regional leaders of adviser groups, professional bodies, financial service product companies, training providers, and consumers.

Please email the Code Committee's Secretariat at jane.standage@chambers.co.nz if you would like to invite us to attend such a meeting. In most circumstances, particularly at a regional level, we would expect the organisers to meet travel costs for Code Committee members.

3. We will be proactively seeking to meet with the peak bodies of adviser associations, industry and consumer groups.
4. We will also be continuing our useful dialogue with other Review/Taskforces/Inquiries engaging with the sector.
5. The Committee will also be engaging with the media, particularly those that focus on advisers and financial services.
6. Opportunities to consult on the draft Code will be advertised in the major newspapers.

OTHER RELEVANT REVIEWS/INQUIRIES

There are many bodies undertaking reviews and inquiries in the financial adviser sector. The Committee is mindful of other relevant reviews and inquiries. Some of these are set out below.

Dispute Resolution

The Ministry of Consumer Affairs has issued discussion papers on default schemes and approved schemes. The Ministry expects to release draft rules later this month relating to the default dispute resolution scheme and guidelines for approved schemes.

More details can be found at www.consumeraffairs.govt.nz

Disclosure

The Ministry of Economic Development is developing draft regulations as to how financial advisers are to disclose the basis of their engagement with clients, conflicts, and remuneration.

More details are available at www.med.govt.nz

Finance Company Failures

The Commerce Select Committee is conducting an Inquiry into finance company failures. The inquiry includes an investigation into the roles of trustees, auditors, and advisers:

“... to examine the quality of information provided to investors when considering an investment decision and an investor’s ability to understand financial matters.....is the disclosure of advisers’ commission adequate/ Should advisers’ commission be banned?”

You can read more by going to www.parliament.nz

Capital Market Development Taskforce

This Taskforce is considering the current state of New Zealand capital markets. It is examining the opportunities and key changes required to deliver the best financial services system for New Zealand.

Its July progress report featured comments on financial advisers including that investor outcomes were being undermined by poor regulation of intermediaries and advisers. It suggested a range of changes including the imposition of a fiduciary duty on advisers.

The Taskforce’s final report is due out in December. More information is available at www.med.govt.nz

CONTACTING THE CODE COMMITTEE

A domain name, website and email addresses for the Code Committee are being established. They will be based around www.financialadvisercode.govt.nz

In the meantime, should you wish to contact the Committee on any matter, please email us at:

Secretariat jane.standage@chambers.co.nz

Chairman ross@merlotconsulting.co.nz

Thanks for taking the time to read this background note.

We are keen to hear your views on the up-coming consultation documents, and we value your input.

Sincerely,

Ross Butler

Chairman, on behalf of the Code Committee.

Wellington, 9 October, 2009.