

INVESTMENT SAVINGS & INSURANCE ASSOCIATION OF NZ INC

Submission
to the
Code Committee for Financial
Advisers
on the
Draft Code of Professional Conduct
for Authorised Financial Advisers

7 May 2010



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Investment Savings and Insurance Association of NZ Inc.

1.0 Introduction

- 1.1 The Investment Savings and Insurance Association ("ISI") is the industry association for the companies that issue and manage life insurance, superannuation and managed funds in New Zealand. ISI members are responsible for approximately \$50 billion funds under management. ISI members are also the leading providers of KiwiSaver funds and all six default providers are members of ISI.

A list of members is attached.

- 1.2 ISI supports the development of workable regulation in the interests of consumers, advisers and product providers and has taken every opportunity to provide comments during the development of the financial adviser legislation.
- 1.3 We now welcome the opportunity to comment on the consultation draft of the Code Committee's Code of Professional Conduct for Authorised Financial Advisers.

2.0 General Comments

- 2.1 As a general comment, ISI recommends that the Code of Professional Conduct should set standards for conduct in areas where specific requirements have not been covered by existing or planned legislation and/or regulations.
- 2.2 The Code should not, however, set standards that go significantly further than the legislation.
- 2.3 We note that the draft Code will need to be revised in some respects to take account of amendments to the Financial Advisers Act foreshadowed by the Cabinet Paper released by the Minister of Commerce on 3 May.

3.0 Specific Comments

Code Standard 1

ISI supports the requirement that AFAs must act with integrity and that an AFA must place the interests of the client first in the provision of financial adviser services.

Code Standard 2

We assume that the same context that applies to Code Standard 1 also applies to this standard and that the wording should be: "When providing financial adviser services, an AFA must not do anything....".

Code Standard 3

We support Code Standard 3, although we consider it is already covered to a large extent by existing legislative requirements that statements should not be misleading.

ISI is in the process of introducing a policy for ISI members that will result in providers ceasing to pay commission to advisers in relation to acquisition of an investment product. It is expected that the ISI policy will require an adviser to negotiate the level of an appropriate fee for service and how that fee will be paid.

Code Standard 4

As for Code Standard 3, we believe the intention of this Code Standard will be achieved by compliance with regulations covering adviser disclosure. While the disclosure regulations have not yet been released, Cabinet Paper EGI (10) 14 provided the recommendations of the Minister of Commerce to Cabinet and included essentially the same ground covered by Code Standard 4.

Code Standard 5

ISI supports Code Standard 5 but recommends that the definition of a related person should be amended to delete reference to the product provider and refer instead to "...the body corporate".

The definition of *wholesale client* in the Code will need to be amended to match the definition in legislation once the recommendations in the Cabinet Paper have been drafted. **Code Standard 6**

We do not understand the application of this Code Standard and recommend it is redrafted to make its meaning clear.

Code Standard 7

We support this Code Standard, subject to provision of protection for whistle-blowers in legislation.

Code Standard 8

We support this Standard.

Code Standard 9

The explanation that is required by this Code Standard appears to be a basic element of a good advice process. It is difficult to see how the adviser could be giving *personalised financial advice* if s/he does not provide such an explanation. Accordingly, we cannot see any justification for either allowing an opt-out or allowing an additional charge for the service.

If an authorised adviser is simply arranging, on the instructions of the client, acquisition of a product without financial advice the service is "execution-only" and the Committee may consider adding a Code Standard to cover AFAs providing that service.

Code Standard 10

Our comments on Code Standards 9 and 11 also apply to this Code Standard.

Code Standard 11

While we agree with the intent of Code Standard 11 we do not see the necessity to introduce the new concept of "non-personalised financial advice" which is not included in the legislation. An adviser conducting an investment seminar or providing a newsletter to clients is likely to be covered by the exemption in section

12 (t) of the Financial Advisers Act (unless the commentary is sufficiently specific as to be classed as ‘a recommendation, an opinion, or guidance’) and therefore will not be providing a financial adviser service. That adviser should provide explicit disclosure that the service is not financial advice but merely the provision of general commentary without taking into account the financial situation of a specific person or persons. Clients should be recommended to obtain financial advice before taking any action. This standard should be reworded explicitly to exclude commentary given by investment specialists on both general market conditions and specific stocks.

This Code Standard should also take into account the recommendations of the Cabinet Paper in respect of ‘class’ advice.

Code Standard 12

We agree with Code Standard 12.

Code Standards 13 and 14

We support these Code Standards.

Code Standard 15

Subject to our comments above under Code Standards 9 and 11, we support this Standard.

Code Standard 16

We support this Standard. However, there is an issue with its application in a corporate context where the client files are owned by the employer rather than the employee. It should be sufficient that an employee AFA takes “reasonable steps” to ensure that the relevant measures taken by the AFA’s employer are consistent with the measures contemplated under this Code Standard”. We recommend inclusion of similar wording to the employee clause used in Code Standard 13.

It would be useful also to have some indication of the expectations when a client changes adviser or when an adviser business is transferred.

This standard should state that “documents relating to the provision of advice” need to be kept for 7 years. There should also be some clarification as to when the 7 years should date from. That could be “from the date of the advice” or it could be “from the date the client relationship ceases”, on the basis that some advice may have effect for a long time e.g. a life insurance recommendation or information.

Code Standard 17

We support this Standard. We note that the Code is silent on how Trainee AFAs will be able to obtain their qualifications if they are unable to provide three client files as evidence and we recommend that the Standard should also include some provision for Trainee AFAs. In a corporate environment, their work could be overseen or signed off by an AFA.

Code Standard 18

We support this Standard.

Code Standard 19

We support Code Standard 19 and the proposed ‘carve-outs’ which allow advice to be given in specific circumstances without the adviser having attained a specific Unit Standard Set. For example, paragraph (c) will allow an adviser to be an AFA in respect of insurance advice without being authorised to provide advice on Category 1 products.

See comments under Code Standard 5 regarding wholesale clients.

Code Standards 20 and 21

We support both of these Standards.

List of ISI Members

ISI MEMBERS

AIA New Zealand
AMP Financial Services
Asteron Life Ltd
AXA New Zealand
BNZ Investments and Insurance
CIGNA Life Insurance NZ Ltd
Dorchester Life
Equitable Group
Fidelity Life Assurance Co Ltd
Gen Re LifeHealth
Hannover Life Re of Australasia Ltd
ING New Zealand Ltd
Kiwibank Ltd
Medical Assurance Society NZ Ltd
Mercer
Munich Reinsurance Co of Australasia Ltd
Public Trust
RGA Reinsurance Co. of Australia Ltd
Sovereign Ltd
Southsure Assurance
Swiss Re Life & Health Australia Ltd
TOWER New Zealand
Westpac/ BT Funds Management Ltd

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Deloitte Touche Tohmatsu
DLA Phillips Fox
Ernst & Young
InvestmentLink (New Zealand) Ltd
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Melville Jessup Weaver
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Morningstar Research Ltd
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