



Financial Adviser Standards and Ethics Authority

Code of Ethics for Financial Advisers

Exposure Draft of Proposed Standard

CONSULTATION OPEN

Exposure Draft issued March 2018

Consultation closes 1 June 2018

The *code of ethics for financial advisers* has been released as an exposure draft for consultation and is open until 1 June 2018. The Standards Authority is seeking feedback on the practical implications of key parts of the Code.

The Standards Authority invites you to provide written submissions and/or comments via a dedicated consultations email address (consultation@fasea.gov.au).

The Standards Authority intends hosting a series of events, potentially including webcasts and presentations at industry and consumer forums.

Further details on event dates and venues will be released via the website.

Background to Code development

The Standards Authority is required by section 921U(2)(b) of the *Corporations Amendment (Professional Standards of Financial Advisers) Act 2017* to make a Code of Ethics to ensure 'relevant providers' (or advisers) are compliant under section 921E of the Act.

The following legal considerations have informed the development of the Code:

1. Compliance with the Code of Ethics is a general requirement for all relevant providers from 1 January 2020. Licensees must have notified ASIC of their selected code monitoring body (or bodies) and committed to compliance by 15 November 2019; and existing providers have until 1 January 2020 to be covered by a compliance scheme.
2. The Code is to be monitored and enforced, by one or more monitoring bodies, under a compliance scheme approved and supervised by ASIC.
3. As the Act does not specify the scope or content of the proposed Code, FASEA could develop a Code that reiterates the legal obligations that apply to relevant providers. However, the Explanatory Memorandum to the Act states (3.58) that:

The same course of conduct may amount to a failure to comply with the Code and a breach of another substantive requirement in the Corporations Act or the criminal law. In these situations, the monitoring body may only make findings about the failure to comply with the ethical aspects in the Code and apply 'soft sanctions' . Monitoring bodies are not courts, nor vested with judicial power. They cannot determine whether there has been a breach of any of the requirements in the Corporations Act (apart from the obligation to comply with the Code), cancel or suspend licences, or impose any civil or criminal sanctions. If the monitoring body suspects that there may be a breach of any obligations other than the ethical aspects in the Code, the monitoring body should refer the matter, for investigation, to ASIC or the appropriate investigative authorities.

4. As such, the Code issued by FASEA is essentially a set of **principles** and **core values**. A principles based model provides a powerful framework to shape and reinforce ethical conduct and encourages a deeper engagement by the individual with their duties to their client as well as wider society. We anticipate strong disciplinary and enforcement practices will improve visibility of inappropriate practices and distinguish between the Code of Ethics and the application of legislative rules, as shared elements of consumer protection.

The following **professional considerations** have also informed the Code's development:

1. In designing a Code of Ethics, a range of ethical issues should be considered, including historical consumer detriments that need to be addressed, the role of institutional culture and organisational systems impacting on ethical practice and the need and opportunity to professionalise financial advice.
2. *These ethical obligations go above the legal requirements in the law and are designed to encourage higher standards of behaviour and professionalism in the financial services industry* (Explanatory Memorandum 3.5).
3. A Code of Ethics on its own will not address the above issues, but rather a combination of strong educational infrastructure, conduct review processes and appropriate sanctions are also required.
4. Appropriate financial advice can significantly improve people's financial well-being, so it is vital that consumers have trust and confidence in the advice they receive. This requires that financial advisers have the knowledge and skills, and honour the public commitments, required to earn that trust.
5. This Code lays the foundation for a true profession in financial advice to emerge.

A relevant provider must act, at all times and in all cases, in a manner that is demonstrably consistent with the following principles, in the discharge of their professional duties.

Standards of

Ethical behaviour

a relevant provider must:

Standard 1

Act in accordance with the spirit- and not only the letter - of all relevant laws and regulations (including this Code).

Standard 2

Must neither advise, refer, nor act in any other manner, where inappropriate personal advantage is derived by the relevant provider.

Standard 3

Act with personal integrity and as an independently minded professional, for the benefit of each client.

Standards of

Client care

a relevant provider must:

Standard 4

Act only on the basis of the free, prior and informed consent of a client.

Standard 5

Ensure that all advice and products are:

- in the best interest of each client,
- appropriate to the individual circumstances of each client,
- presented in terms easily understood by the client.

Standard 6

Take into account the broad effects arising from a client acting on their advice.

Standards of

Quality process

a relevant provider must:

Standard 7

Obtain informed consent to act and to receive agreed fees and payments for agreed services.

Standard 8

Obtain informed consent, and agree, to maintain records relevant to the advice provided, in accordance with relevant privacy, regulatory and confidentiality obligations.

Standard 9

Ensure that all advice and products are:

- offered in good faith and with competence,
- based on information that is neither misleading nor deceptive.

Standards of

Professional commitment

a relevant provider must:

Standard 10

Develop and maintain a high level of relevant knowledge and skills.

Standard 11

Accept that potential breaches of this Code will be subject to investigation and discipline from the responsible Code Monitoring Body, undertaken in accordance with ASIC's approval and oversight of that Body.

Standard 12

Individually and in cooperation with peers, uphold and promote the ethical standards of the profession, and hold each other accountable for the protection of the public interest.

Our values

A relevant provider must always act to realise and promote the values of:

- Trust
- Competence
- Honesty
- Fairness
- Diligence

MAKE YOUR SUBMISSION

Your feedback and submissions on this consultation paper will assist the Standards Authority to finalise the development of the Code of Ethics for financial advisers.

Submissions must be provided in writing to our dedicated consultation address (consultation@fasea.gov.au).

Due date for submission: 5pm 1 June, 2018

Consultation interests of FASEA

We encourage you to provide feedback on any aspect of the proposed Code of Ethics.

The Standards Authority is interested in your specific feedback on:

1. how the Code addresses the **consumer detriments** that have arisen in financial advice, particularly Standard 2, which is intended to ensure that the advice (or referral or other service) that a consumer gets from an Adviser does not produce inappropriate personal advantage to the Adviser.

Standard 2: [Relevant providers] Must neither advise, refer, nor act in any other manner, where inappropriate personal advantage is derived by the relevant provider.

Other issues to consider in relation to this Standard are:

- a) What types of personal advantage are appropriate vs inappropriate?
 - b) What might be the unintended consequences of the current draft?
 - c) How might the Standard be expressed to avoid unintended consequences?
2. How do the other Standards respond to this type of consideration?
 3. The **practical application** of the proposed Code in terms of:
 - a) Adviser practice
 - b) Licensee practice
 - c) Education and support
 - d) Compliance requirements
 - e) Consumer experience

The Standards Authority appreciates that specific questions may arise about the proposed Code. We invite you to provide your submission and feedback through this process and advise that, while we will not be able to respond to individual queries, feedback received will be collated for consultation and may assist FASEA in the development of FAQs that will be progressively updated on our website – www.fasea.gov.au

PLEASE **DOWNLOAD A COPY** OF THE PROPOSED CODE FROM THE FASEA WEBSITE
(www.fasea.gov.au) TO AID IN MAKING YOUR SUBMISSION

FASEA CODE OF ETHICS

PREAMBLE

While the *ethos* of ‘the market’ legitimises the pursuit of self-interest through the satisfaction of others’ wants, the *ethos* of ‘the professions’ aims to secure the public good through the subordination of self-interest in favour of serving the interests of others.

In return for renouncing the pursuit of self-interest, society often provides members of the professions with a range of formal and informal privileges (such as a ‘monopoly’ right to undertake certain types of work).

Appropriate financial advice can significantly improve people’s financial well-being. In a time of increasing volatility, it is in the public interest that consumers can trust and have confidence in the advice they receive. In turn, this requires that financial advisers develop the knowledge and skills, and honour the public commitments, required to earn that trust.

The Code lays the foundations for a true profession to emerge. As such, those who formerly provided a commercial service, are now committed to offering a professional service – informed by a *Code of Ethics* that is intended to shape every aspect of their professional conduct.

This Code and the Standards within it are a matter of legal obligation and provide a foundation for conduct for all relevant providers, whatever their employment circumstance.

¹ For example, the *Corporations Amendment (Professional Standards of Financial Advisers) Act 2017* restricts the right to use the terms ‘financial planner’ and ‘financial adviser’ to those subject to the professional obligations established by the Code issued by FASEA. That is, personal advice may only be provided to retail clients about relevant products, by what the Act calls ‘relevant providers’.

THE CODE

A relevant provider² must act, at all times and in all cases, in a manner that is demonstrably consistent with the following principles, in the discharge of their professional duties.

VALUES:

A relevant provider must always act to realise and promote the values of:

- Trust
- Competence
- Honesty
- Fairness
- Diligence

STANDARDS:

STANDARDS OF ETHICAL BEHAVIOUR

A relevant provider must:

Standard 1: Act in accordance with the spirit – and not only the letter – of all relevant laws and regulations (including this Code).

Standard 2: Must neither advise, refer, nor act in any other manner, where inappropriate personal advantage is derived by the relevant provider.

Standard 3: Act with personal integrity and as an independently minded professional, for the benefit of each client.

² The term 'relevant provider' is defined in the *Corporations Amendment (Professional Standards of Financial Advisers) Act 2017*, as an individual authorised to provide personal advice to retail clients,, in relation to relevant financial products.

STANDARDS OF CLIENT CARE

A relevant provider must:

Standard 4: Act only on the basis of the free, prior and informed consent of a client.

Standard 5: Ensure that all advice and products are:

- a) in the best interest of each client,
- b) appropriate to the individual circumstances of each client,
- c) presented in terms easily understood by the client.

Standard 6: Take into account the broad effects arising from a client acting on their advice.

STANDARDS OF QUALITY PROCESS

A relevant provider must:

Standard 7: Obtain informed consent to act and to receive agreed fees and payments for agreed services.

Standard 8: Obtain informed consent, and agree, to maintain records relevant to the advice provided, in accordance with relevant privacy, regulatory and confidentiality obligations.

Standard 9: Ensure that all advice and products are:

- a) offered in good faith and with competence,
- b) based on information that is neither misleading nor deceptive.

STANDARDS OF PROFESSIONAL COMMITMENT

A relevant provider must:

Standard 10: Develop and maintain a high level of relevant knowledge and skills.

Standard 11: Accept that potential breaches of this Code will be subject to investigation and discipline from the responsible Code Monitoring Body, undertaken in accordance with ASIC's approval and oversight of that Body.

Standard 12: Individually and in cooperation with peers, uphold and promote the ethical standards of the profession, and hold each other accountable for the protection of the public interest.

A general mapping of how the Code Standards deal with issues of public and regulatory concern

ANALYSIS of PROPOSED CODE AGAINST CONDUCT ISSUES AND CASES	
Conduct to address	Draft Code response to key issues
Conflicts of interest (including conflicted remuneration, conflicts of duty and priority etc..)	<ul style="list-style-type: none"> ▪ Act in accordance with the spirit – and not only the letter – of all relevant laws and regulations (including this Code). ▪ Must neither advise, refer, nor act in any other manner, where inappropriate personal advantage is derived by the relevant provider. ▪ <i>(Note that the Standards Authority is seeking your feedback on what should constitute ‘inappropriate personal advantage’ and any unintended consequences of this aspect of the Code)</i> ▪ Act only on the basis of the free, prior and informed consent of a client. ▪ Ensure that all advice and products are in the best interest of each client
Independence (of mind, ownership, employment, payment source, product, research, etc..)	<ul style="list-style-type: none"> ▪ Act with personal integrity and as an independently minded professional, for the benefit of each client. ▪ Must neither advise, refer, nor act in any other manner, where inappropriate personal advantage is derived by the relevant provider. ▪ Take into account the broad effects arising from a client acting on their advice. ▪ Develop and maintain a high level of relevant knowledge and skills. ▪ Note that the Standards are a matter of legal obligation and provide a foundation for conduct for all relevant providers, whatever their employment circumstance.
Client care (including understanding specific needs of particular client and tailoring advice to suit etc..)	<ul style="list-style-type: none"> ▪ Fairness ▪ Ensure that all advice and products are: <ul style="list-style-type: none"> ○ in the best interest of each client, ○ appropriate to the individual circumstances of each client, ○ presented in terms easily understood by the client. ▪ Take into account the broad effects arising from a client acting on their advice. ▪ Act with personal integrity and as an independently minded professional, for the benefit of each client
Quality of process	<ul style="list-style-type: none"> ▪ Competence ▪ Diligence ▪ Act in accordance with the spirit – and not only the letter – of all relevant laws and regulations (including this Code). ▪ Ensure that all advice and products are: <ul style="list-style-type: none"> ○ offered in good faith and with sound competence, ▪ Develop and maintain a high level of relevant knowledge and skills.
Quality of documentation (disclosure documents and	<ul style="list-style-type: none"> ▪ Competence ▪ Diligence ▪ Act in accordance with the spirit – and not only the letter – of all relevant laws and regulations (including this Code).

ANALYSIS of PROPOSED CODE AGAINST CONDUCT ISSUES AND CASES

Conduct to address	Draft Code response to key issues
Statements of Advice etc..)	<ul style="list-style-type: none"> ▪ Must neither advise, refer, nor act in any other manner, where inappropriate personal advantage is derived by the relevant provider. ▪ Act only on the basis of the free, prior and informed consent of a client. ▪ Ensure that all advice and products are: <ul style="list-style-type: none"> ○ presented in terms easily understood by the client. ○ Based on information that is neither misleading or deceptive ▪ Take into account the broad effects arising from a client acting on their advice.
Quality of education and competence	<ul style="list-style-type: none"> ▪ Competence ▪ Develop and maintain a high level of relevant knowledge and skills.
Quality of output (cost of advice vs benefit to be gained for clients – scaled advice etc..	<ul style="list-style-type: none"> ▪ Honesty ▪ Fairness ▪ Ensure that all advice and products are: <ul style="list-style-type: none"> ○ offered in good faith and with sound competence, ○ in the best interest of each client, ○ appropriate to the individual circumstances of each client, ▪ Take into account the broad effects arising from a client acting on their advice.
Illegality	<ul style="list-style-type: none"> ▪ Accept that breaches of this Code will be subject to investigation and discipline from the responsible Code Monitoring Body, undertaken in accordance with ASIC' s approval and oversight of that Body. ▪ Reliance on ASIC and Code Monitoring Body provisions that the Code sits additional to the law. It cannot replace or conflict with the law (in particular on matters of criminality). Breaches of the Code will give rise to sanctions and potential civil liabilities.
A generalised lack of consumer trust	<ul style="list-style-type: none"> ▪ Trust ▪ Honesty ▪ Fairness ▪ Ensure that all advice and products are: <ul style="list-style-type: none"> ○ offered in good faith and with sound competence, ○ in the best interest of each client, ○ appropriate to the individual circumstances of each client, ○ based on information that is neither misleading nor deceptive, ▪ Individually and in cooperation with peers, uphold and promote the ethical standards of the profession, and hold each other accountable for the protection of the public interest.