

1 June 2018

By email

consultation@fasea.gov.au



Dear Standards Authority,

Re: Code of Ethics for Financial Advisers Exposure Draft

FINSIA welcomes the opportunity to provide feedback to FASEA on the exposure draft of the Code of Ethics for Financial Advisers.

Founded in 1886, FINSIA is Australasia's leading membership body for financial services professionals. Our members work across retail and business banking, funds management, superannuation, financial advice and capital markets for a range of institutional types including the emerging fintech market.

FINSIA's mission is to deepen trust in financial services by raising standards of professionalism. In this FINSIA has identified three goals:

- Drive an aspiration for conduct at a higher level of integrity than regulatory compliance to bolster the industry assets of trust and reputation.
- Raise skill levels to improve customer outcomes and support the transition of prudent stewardship of customers' finances.
- Attract and retain the right talent to work in the sector by providing a professional pathway.

Recently, FINSIA launched its first internationally-recognised professional qualification in banking — Professional Banking Fundamentals. This qualification is the entry point of the Chartered Banker qualifications pathway. Later this year FINSIA will introduce the next stage of the qualifications pathway, Certified Professional Banker, to facilitate deeper skills development in specific functions including credit risk management, banking team leadership and business banking.

FINSIA has also formed a partnership with the Chartered Institute for Securities and Investment (CISI) to deliver professional qualifications in wealth, compliance and risk, operations, corporate finance, and Islamic finance. Through this partnership, FINSIA is also delivering professional education in ethics and integrity, including the Integrity in Financial Services Workshop.

FINSIA has taken a leadership role in global initiatives to raise professional standards in banking through its membership of the Global Banking Education Standards Board (GBESTB). In April, the GBESTB released its first global banking education standard focusing on ethics education and training. The standard applies to education programmes delivered by the GBESTB's 20 member institutes, covering two million professional bankers globally.

In preparing this submission, FINSIA consulted with its Financial Advice and Services Advisory Council, a group that includes senior FINSIA members from a range of financial advice businesses including independent advisers, and those that operate as part of dealer groups, or as a representative of a licensee. FINSIA also received direct feedback from members — just over 20 per cent of FINSIA's members are part of the financial advice industry.

finsia.com

Level 18
1 Bligh Street
Sydney NSW 2000
Australia

T 61 2 9275 7900
T 1300 346 742
F 61 2 9275 7999
membership@finsia.com

PO Box H99
Australia Square
NSW 1215
Australia

ABN 96 066 027 389

General comments on the Code and its application to relevant providers and licensees

FINSIA notes that the Code is intended to apply to the individual adviser as the relevant provider of services to the client. Overall, FINSIA supports this approach and has advocated for the development of a code of ethics that binds individuals across other sectors of the financial services value chain. FINSIA believes that a lack of focus on individual conduct, and a regulatory emphasis on system stability in the post-Global Financial Crisis period, has given rise to poor conduct across the financial services industry leading to unacceptable outcomes for consumers.

FINSIA agrees that a basic tenet of professionalisation is individual accountability, and that a Code is the appropriate instrument to give expression to these obligations. The licensee should support this obligation by addressing legitimate concerns that a relevant provider has about a licensee's operations. A licensee should have structures and procedures in place to support relevant providers in fulfilling their obligations under the Code.

Given the operational context for the Code and bearing in mind that many advisers operate under a licensee, FASEA should make explicit the licensee's role in relation to the Code. This role should not be inconsistent with the licensee's legal and regulatory obligations and should not confer personal obligations on licensees. This is essential to prevent regulatory duplication. FINSIA submits that supplementary guidance, or information resources from FASEA, could achieve these goals.

FASESA requested feedback on the implications of the Code for licensees. These implications are discussed further below (see 'Practical application of the proposed Code').

How the Code addresses consumer detriments

The Code sends an important signal to consumers about the standard of ethical conduct that they should expect of financial advisers. Over time, it can be expected that the Code's application to all relevant providers, supported by ethics education, and coverage of a code compliance scheme, will improve industry conduct and consumer perceptions of the reputation and trustworthiness of the industry.

FASEA's program of reform furthers the goal of professionalisation in the financial advice industry and is consistent with FINSIA's mission to raise standards of professionalism.

FINSIA's own consumer research supports the proposition that professionalisation is something that customers expect of finance professionals. Nearly three out of four consumers (73%) surveyed by FINSIA believe that bank staff should be professionally qualified, with 78% agreeing that continuous professional development is important to maintain standards.

Additionally, consumers support the role of professional membership bodies in maintaining industry standards. The three leading activities carried out by professional membership bodies that people believe would most contribute to ethical behaviour in the financial sector are:

- Adhering to the membership body's code of professional conduct and disciplining those who breach the code's standards.
- Overseeing continual professional development (CPD)
- Providing guidance and advice on ethical issues.

FASEA specifically requested feedback on Standard 2, which makes plain that a relevant provider must not derive inappropriate personal advantage from advice and referrals. Inclusion of the word 'refer' in this standard recognises that relevant providers may refer clients to other advisers who have specialist expertise in matters such as business planning or taxation (for example) that are outside their regular advice practice.

FINSIA members agree that any referral should be made in the best interests of the client, but that the best interests obligation extends to the adviser at the point of referral only. That is, the best interests obligation should not extend further, such as to subsequent advice or service accepted by the client from the adviser referred to.

How other standards respond to consumer detriment and other considerations

FINSIA members raised concerns with some of the language adopted in the Code and indicated that it would impose hurdles for its practical application. Specific examples are discussed in the following section.

The Tax Practitioner Board Codes of Conduct were noted as examples of codes binding individual practitioners that uses clearer language that licensees can measure practitioner conduct against. The TPB Codes also provides further guidance on how to implement the code in various areas of practice. Tools and resources of this nature would be highly beneficial for relevant providers bound by the FASEA Code.

Similarly, FASEA could look to the form and structure of the FX Global Code, which provides an explanation of its guiding principles, as well as annexures that illustrate examples of the code's application in practice.

Practical application of the proposed Code

FINSIA recommends that FASEA produce supplementary guidance for relevant providers and licensees on how to operationalise the Code. FASEA should also encourage Code Monitoring Bodies to provide forums for relevant providers and licensees to share best practice by providing information resources on the practical application of the Code.

Noting that many relevant providers provide advice to clients through a licensee, FINSIA reiterates that FASEA specify the obligations of the licensee in respect of the Code.

FINSIA members raised concerns about the practical application of the Code. Much of this concern stemmed from the language of the Code, which in some areas is aspirational, but not measurable. For the industry to successfully implement the Code, its standards must be couched in terms that industry participants and the community at large can form a judgment on. To achieve this, FASEA should consider amendments to the following:

- Standard 1, which broadly asks relevant providers to 'act in ... the spirit — and not only the letter — of all relevant laws and regulations'. The spirit of relevant laws is necessarily a matter of inference in the standard as presently drafted. Key principles informing the development of laws and regulations, such as fairness or consumer protection could be referred to in this standard to give relevant providers a practical reference point in its application to their interactions with clients.
- Standard 9, paragraph (b), says that relevant providers must ensure that advice and products are not based on information that is 'misleading and deceptive'. The meaning of this is unclear, particularly how the reference to 'misleading and deceptive' furthers or refines the obligation in paragraph (a).
- Standard 11, which refers to a 'high standard of relevant knowledge and skills'. The practical meaning of high standard, and its reference point, is unclear. Is meeting the educational expectations of FASEA's other reform program, including continuing professional development, sufficient here?

FINSIA agrees that the sanction of peers is a powerful symbol in the professionalisation of financial advice, and in principle approves of Standard 12 that requires that relevant providers 'hold each other accountable for the protection of the public interest'. However, advisers are quite understandably concerned about the implications of this from the perspective of whistleblower protections and natural justice principles for advisers who call out bad behaviour. Whistleblowing in good faith should be protected — FASEA, Code Monitoring Bodies, and licensees have equal roles to ensure this is the case. Further guidance and support mechanisms for relevant providers are desirable. The Australian Institute of Company Directors' standards on whistleblowing could be a useful reference point for financial advice industry to bring Standard 12 to life.

Conclusion

FINSIA thanks FASEA for the opportunity to provide feedback on the proposed Code of Ethics for Financial Advisers. For further clarification of any matter raised in this submission please contact Caroline Falshaw A Fin, Head of Industry Affairs and Policy: c.falshaw@finsia.com.

With kind regards,

A handwritten signature in black ink, appearing to read "Chris Whitehead". The signature is fluid and cursive, with the first name "Chris" and the last name "Whitehead" clearly distinguishable.

Chris Whitehead F Fin
CEO and Managing Director, FINSIA