

20 July 2010

Ross Butler
Chairman
Code Committee for Financial Advisers
Level 8, Unisys House
56 The Terrace
Wellington 6011

By email to: consultation@financialadvisercode.govt.nz

Dear Ross,

Subject: Code of Professional Conduct for Authorised Financial Advisers – Draft for Consultation dated 2 July 2010.

Pre-amble

Workplace Savings NZ suggests that because of existing practices and custom, a section of the workplace savings industry has fallen between the gaps in relation to the Financial Service Providers (Registration and Disputes Resolution) Act 2008, the Financial Advisers Act 2008, and the Code of Professional Conduct for Authorised Financial Advisers.

By definition, a ‘financial adviser service’ occurs when a person in the ordinary course of business:

- Gives **financial advice**
- Provides a **discretionary investment management service**
- Provides an **investment planning service**

Workplace Savings NZ contends that the coverage gap referred to above appears in relation to Workplace Savings Professionals (“WSP”) working for businesses engaged in providing third party administration services for Category 1 products (e.g. corporate superannuation schemes, multiple employer master trust arrangements, and KiwiSaver schemes).

The issue concerns the WSP providing financial adviser services to the investors in those workplace savings solutions.

The Specific Issue

Third party administration businesses, who are usually neither the product promoter or issuer, play a central role in the operation of a workplace super scheme or a KiwiSaver scheme. The administration business through its WSPs is required to intimately understand the features and workings of a scheme in order to effectively carry out its function.

Offer documents typically refer to the administration business as the contact for member enquiries. Additionally, where a member helpline is provided as a feature of a scheme, the third party administration business is often also the provider of this function.

It is the WSPs who will actively assist members with a range of routine queries such as composition, eligibility and payment of benefits, changes of address, and contribution enquiries. Importantly, advice given (and expected by members) commonly extends to recommendations and opinions in respect of a member's selection from the investment choices offered by the product. Where such advice is given, it is invariably provided on a narrow basis from the set menu of investment choices applicable for the scheme as previously disclosed to members in the product's Investment Statement.

The WSP employee of a third party administration business will exclusively be engaged to service the product administration needs of the workplace savings product Issuer (or multiple Issuers, in the case of large business), and through the provision of an investor helpline service the information and advice needs of the investors in those workplace savings products. These WSPs therefore routinely provide what will be deemed a financial adviser service under the Financial Advisers Act 2008 even though it is a necessary adjunct to their function as WSP employees of an administration business.

For clarity, the financial adviser services about which we speak in this submission are largely restricted to making a recommendation or giving an opinion in relation to:-

- acquiring (including refraining from acquiring) a financial product;
- movement between the investment choices available within the financial products;
- commencement of a contributions holiday;
- withdrawing (including refraining from withdrawing) from a financial product once normal withdrawal eligibility criteria have been satisfied; and
- making a withdrawal from the financial product due to significant financial hardship, or other permitted early withdrawal feature.

Under the legislation, if the WSP was to provide a financial adviser service in relation to the guidance provided, then he/she would need to be an Authorised Financial Adviser.

A workplace savings scheme administration business may become compliant by choosing to pay to have one or more of its WSP's become full Authorised Financial Advisers. In so doing the WSP will be required to comply with the Code's competence schedule by completing the National Certificate in Financial Services (Financial Advice) being Unit Standard Sets A, B, C & D.

Herein lays the conundrum!

To meet the Code requirement of Unit Standard Set C the WSP must demonstrate:-

1. the steps in the financial advice process relating to client relationships and gathering information;
2. the steps in the financial advice process relating to the development and presentation of recommendations;
3. the steps in the financial advice process relating to the implementation and review processes; and
4. apply the requirements of regulations, professional practice standards, and operational guidelines as a financial adviser.

However, as explained above, the WSP is restricted to only providing the financial adviser service to investors for a limited set of transactions in relation to their personal workplace savings product (albeit they might administer numerous different workplace savings products – when dealing with an individual employee, there will often just be a single savings option available to the employee).

The narrow nature of this engagement has not historically warranted completion of documentation that could usefully be used to support assessment of the requirements under Unit Standard Set C. In most instances, the decision to acquire the financial product will already have been made by the investor (often as a result of his or her employment arrangements/remuneration) prior to the initial contact with a WSP. The WSPs role in these circumstances is often largely to outline or reinforce the features and benefits of the product in question or to provide guidance on the member's investment choice from within the product's menu of available options.

Regrettably, in our opinion, this probably means that WSPs in this scenario will be unlikely to be able to qualify as an AFA because they will be unable to provide the necessary supporting documentation to be assessed for Unit Standard Set C, and the advisory processes set out in Unit Standard Set C are not relevant to the limited scope of advisory services such WSPs perform.

Alternative Approaches

Workplace Savings NZ has considered the range of alternatives allowed by the legislation that might enable workplace saving administration businesses to continue with "business as usual" and comply with the legislation. It seems to us that each has more business risk or cost than should be necessary, and it appears choice might be limited to:-

1. Have all WSPs restrict engagement to class services only on behalf of the administrator or ensure their services do not extend to making recommendations or giving opinions;
or
2. Have all WSPs refer the investor needs to an external AFA of the Issuers choosing.

Nether of these choices really delivers an outcome we consider appropriate for the investor, and would in fact be providing a lesser service than the current narrow nature of the financial adviser service being provided. The first option is high risk, as member-facing WSPs will be placed in the position of needing to carefully manage the extent of the assistance they provide, with those limitations likely to be a cause of frustration to members. The 2nd option has the perverse outcome of the specialist who is best equipped to provide technical advice to the member needing to send them away to a generalist who is unlikely to possess the same level of technical expertise - and who may either need to defer to the WSP to ensure they have got their understanding of the product correct in advising the investor/potential investor, or risk getting the detail wrong and confusing the investor.

This odd outcome is amplified by the fact that employers in this scenario have a blanket exemption from the reach of the regime when assisting employees with their workplace savings decisions. Whilst we fully support that exemption, it is unfortunate that it does not extend to a third party expert effectively acting on the employer's behalf in guiding employees - and we have not interpreted the exemption at section 14(1)(g) of the Act as extending to WSPs.

Recommendations

We accept that it may be problematic to introduce further complexity to the Code of Professional Conduct itself at this stage, by creating a specific competence standard carve-out for Workplace Savings Professionals in relation to Unit Standard Set C.

Workplace Savings NZ believes we have a class of industry professionals, who provide a very narrow range of expert financial adviser services to an easily defined sub-set of the public. The quality of that sector's experience within the financial services sector will be diminished if Workplace Savings Professionals are forced to limit their range of support as outlined above, and the quality of service those Workplace Savings Professionals will be able to provide will be frustrated. In our view a workable outcome in this case would be for the Securities Commission to exercise its powers and grant an exemption for a Workplace Savings Professional from having to complete Unit Standard Set C.

We are making this submission to the Code Committee in light of the latest draft of the Code, in the hope that the Committee will concur with our recommendation, and support any subsequent request that may be made to the Commission for a specific exemption in this area. We suspect that the Commission will be best placed to impose appropriate conditions on any exemption granted to ensure the consumer protection objectives of the legislation are maintained.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Bruce Kerr', with a large loop at the start and a long horizontal stroke.

Bruce Kerr
Executive Director