



FEBRUARY 2023

Submissions report:

Reasonable grounds for financial advice about financial products

Summary of feedback themes, along with our response and individual submissions, from our consultation on the draft guidance on reasonable grounds for financial advice about financial products

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Introduction

In July 2022, we opened [consultation](#) on proposed guidance that explains the approach of the Financial Markets Authority – Te Mana Tātai Hokohoko (FMA) to applying and enforcing Code Standard 3 of the [Code of Professional Conduct for Financial Advice Services](#), in relation to financial advice about Initial Public Offerings (IPOs) and listed equity securities.

Code Standard 3 requires people who give regulated financial advice to retail clients to ensure that the financial advice given is suitable for the client, having regard to the nature and scope of the financial advice. The commentary to the standard explains that ensuring financial advice is suitable for the client should include having reasonable grounds for the financial advice.

The guidance was developed in response to a recommendation in the Capital Markets 2029 report, Growing New Zealand's Capital Markets 2029. It focuses on advice about IPOs and listed equity securities because it can be difficult to access expert research for these, particularly for smaller market capitalisation companies.

After considering all submissions received, as well as input from the Code Committee and Securities Industry Association, we have now finalised the guidance, which is available [on our website](#). We would like to thank everyone who contributed to the development of this guidance.

This document contains a summary of some key themes raised in those submissions, along with our comments in response to some points raised. It also contains a collation of the written submissions. This may withhold some information in accordance with the Official Information Act 1982 and the Privacy Act 2020.

Summary of themes and our response

High-level themes

- The draft guidance may not improve access to advice on IPOs and small caps as intended by the Capital Markets 2029 report and may impose unnecessary compliance costs.
- The draft guidance is over-prescriptive and inflexible. Reasonable grounds will vary depending on nature and scope of advice and the client's circumstances. Advisers should be able to give more limited advice where no or limited research is available, providing there are adequate disclosures.
- The guidance should recognise the protections of the financial advice regime under the FMC Act, and the knowledge and skill and professional judgment of financial advisers.
- Submitters made various comments on and suggested improvements for the examples in the guidance. Submitters suggested additional examples.
- Offer information and continuous disclosure information provides rich information that is more important for advisers to review than having access to expert research. The guidance should not require the adviser to have direct engagement with the issuer.
- Research should be best practice, not a requirement.
- The draft guidance should be neutral about who can conduct research.
- The research requirements in the guidance are gold standard and not always necessary or essential. They are too prescriptive and do not allow financial advisers to exercise their professional judgement and expertise. Should explore whether a lesser form of analysis by an adviser can be appropriate, providing advice clearly states the limits of the information relied on.
- Having fit-for-purpose research is just one matter to consider; advisers must also ensure advice is suitable in terms of the client's situation, risk profile and investment horizon.
- The research content requirements in the guidance are more relevant for IPOs than listed equity securities. They will not be necessary in all circumstances.
- Research does not always need to be written. Depending on the context, and the nature and scope of the financial advice service, a high-level verbal confirmation or comment from a respected researcher is sufficient. The guidance should leave this to the professional judgment of the adviser.
- FMA should not overburden advisers with extensive record keeping obligations.

FMA response to feedback

Some of the changes made to the draft guidance in response to feedback included:

- extending the guidance to cover financial advice on all investment products – not just IPOs and listed equities
- making the guidance more flexible and less prescriptive by:

- emphasising general principles at the start of the guidance
- acknowledging that the adviser is a professional who is qualified to exercise their professional judgement
- making it clear that what is required to support reasonable grounds is subject to the context, nature and scope of advice
- noting the requirement that an adviser makes any limitations on the nature and scope of their advice clear to the client
- explaining subject to the circumstances, that the requirement for research becomes more likely for advice on investment products towards the riskier end of the spectrum
- including additional examples
- removing prescription around the requirement for information to be in writing
- emphasising the need for, and benefits of, adequate record-keeping.

Submissions

1. Bell Gully
2. Dentons Kensington Swan
3. Financial Advice New Zealand
4. Individual submitter
5. NZX
6. Quartz Wealth
7. Securities Industry Association

Feedback form

Consultation paper: Proposed guidance on reasonable grounds for financial advice about IPOs and listed equity securities

Please submit this feedback form electronically in both PDF and MS Word formats and email it to us at consultation@fma.govt.nz with 'Feedback: proposed guidance on reasonable grounds for financial advice about IPOs and listed equity securities: [your organisation's name]' in the subject line. Thank you. **Submissions close on 5 August 2022.**

Date: Number of pages:

Name of submitter: [REDACTED]

Company or entity: **Bell Gully**

Organisation type: **Law firm**

Contact name (if different):

Contact email and phone: [REDACTED]

Question number	Response
1. Do you think the proposed guidance will help support advisers to provide quality advice on IPOs and listed equity securities, and improve access to advice on these products? Please give reasons for your view.	<p>As a general proposition, we agree that guidance issued by the FMA would be a valuable addition to the Code's principles. We also agree that in the context of Code Standard 3 it would be helpful for the FMA to provide some guidance on the Standard's application to financial advice on IPOs and listed equity securities, particularly where an adviser proactively recommends IPOs or listed equity securities to a client.</p> <p>However, we are concerned that the way in which the proposed guidance has been framed may place further obligations on the advice process, without improving access to quality advice on IPOs and listed equity securities. There is also a real risk, despite the FMA's clear intention that the guidance should not "result in New Zealanders having less access to financial advice ... in smaller market capitalisation stocks", that the guidance (in its current form) will contribute to such an outcome.</p> <p>Our reasons for these views are discussed in more detail in our responses below.</p>
2. Do you consider that an adviser will generally need to access or undertake research to support having reasonable grounds for advice on IPOs and listed equity securities? Please give reasons for your view.	<p>No. We do not consider that an adviser needs to access or undertake research to support having reasonable grounds for advice on IPOs and listed equity securities. Having said that, we do consider that where an adviser accesses, or undertakes, research, it could provide "reasonable grounds" for providing such advice. We do not think that the FMA guidance should frame it as generally being a <u>necessary requirement</u> for compliance with Code Standard 3 (as stated on page 4 of the guidance).</p> <p>Reasons</p> <p>There will be a range of factors that are relevant to whether or not it is in a client's best interests to subscribe for equity securities in an IPO (or other capital raising), or acquiring equity securities on-market. Those factors will include:</p> <ul style="list-style-type: none">• Issuer-specific factors – what does the issuer do; is its business model sound; what are issuer-specific risk factors etc;• Client-specific factors – what else is in the client's portfolio; what age and stage is the client at; what are their financial objectives; and• Macro-factors – what is likely to happen to interest rates; what is forecast for the broader economy? <p>To give good advice, a financial adviser should consider these different factors. Investment research tends to primarily focus on issuer-specific factors, with some</p>

focus on macro-factors, but no focus on client-specific factors. As a result, research alone does not appear to be enough to support financial advice to a client.

Also, material published by the issuer (not research) should be the primary source of information about issuer-specific factors. New Zealand's securities law regime requires an issuer of equity securities to produce rich information about their business that is specifically designed to support investment decisions. In our view it is more important that a financial adviser has reviewed relevant materials published by the issuer than had access to research. The proposed guidance includes a section on "Content of research" – in our view that information is better sourced from the issuer. Furthermore, financial advisers are required to be financially literate and should be assumed to have the skills required to review issuer produced information.

The proposed guidance suggests on page 2 that direct engagement with the issuer might be required to identify and assess what the company does (etc). We do not agree. The rich information published by an issuer should be sufficient to make an investment decision. We do not think that the FMA should be inferring that direct engagement with the issuer is required to support an investment decision (whether by the adviser or a research analyst that the adviser can rely on).

For example, if a financial adviser made a recommendation to a client that they buy some Meridian Energy shares, it would seem sufficient to us if they based that decision on the fact that they had:

- Read Meridian's recent corporate announcements, financial results; listened into results announcement calls; etc;
- Understood the composition of the client's portfolio (e.g., to what extent did they already have Meridian shares? What about other gentailers?);
- Understood the client's investment objectives (risk tolerance; yield focus etc);
- Considered the impact of a rising interest rate environment and other macro factors.

The above could be reasonable grounds for financial advice without needing to refer to independent research or having direct engagement with Meridian.

Further Comment

We prefer the approach that the FMA adopted in its previous guidance - [FMA Guidance Note: Code Standard 6 \(d\) – Analysis Before Recommendation](#) (noted in footnote 4), where it was made clear that the extent of analysis that was required by a financial adviser, including whether written research was obtained, depended on the context in which the advice was given. This includes:

- the nature of, and risks associated with, the particular financial product;
- the nature of the relationship between the financial adviser and the client and the client's resulting expectations of the level of service the financial adviser will provide; and
- the scope of the service the financial adviser has agreed to provide to the client (which includes ensuring the client understands whether or not any recommendation is supported by written research).

The 2011 guidance also made it clear that there was no expectation for a financial adviser to obtain detailed written research before making a recommendation. It was left to the adviser to make a professional judgement (including, if relevant, complying with the obligations of NZX Participants under the NZX Participant Rules) as to what information was material and relevant to inform the client's decision making process.

The Proposed Guidance appears internally inconsistent

In the proposed guidance the FMA seems to be re-iterating aspects of this approach in the commentary provided under "*Key principles*" (on pages 5 to 7). However, the preceding commentary (on pages 2 to 5) contradicts this approach by suggesting that there is an expectation that a financial adviser would generally be required to assess or undertake 'fit for purpose' research to support having "reasonable grounds" for their advice.

	<p>For example, it is unclear how the sections on “<i>Content of research</i>” and “<i>Is research always required</i>” (on pages 3 to 5) are to be read with the later section on “<i>Have you considered relevant material information to form a view?</i>” (on page 6). “Relevant material” in this context is focused on certain “fundamental information” that is publicly available. For IPOs this is stated as including the PDS and information on the register entry. For investments in listed equity securities it includes “material information publicly released by the issuer” and “information about the issuer or the equity securities on NZX or other financial product market on which the securities are listed”. In this section, whether the adviser should also refer to, or undertake “research” is left to the adviser’s professional judgement. As noted above, it is difficult to reconcile this with the guidance provided in the earlier sections on pages 2 to 5.</p> <p>Confusion as to what is meant by “research”</p> <p>It may be that some of our concerns could be alleviated by expanding the definition of “research” to include work done by the financial adviser themselves. This appears to us to be an unnatural extension of the language.</p> <p>Concluding comment</p> <p>For the reasons described above, we prefer a formulation where research is acknowledged as one of the potential building-blocks for providing good financial advice, instead of it being a required component.</p>
<p>3. Do you agree that the two examples on pages 4 to 5 of the proposed guidance represent circumstances where research is not available and/or is not needed, but it is still possible to have reasonable grounds for advice on IPOs and listed equity securities? Please give reasons for your view.</p>	<p>Example one - ‘Preventing non-diversified, high-risk investment of life savings’</p> <p>As described above, we consider that there will be many examples where advice can be given without access to research.</p> <p>We question the value of the scenario in <i>Example one</i>. It is an extreme set of facts and, in our view, is not a particularly useful addition to the contents of the guidance. It seems very obvious that research is not required in this instance. There is a risk that it infers that, absent such extreme facts, research will always be required.</p> <p>In general, we would prefer to see case studies used to illustrate the guidance have more complexity, such as scenarios where there are multiple appropriate alternatives. Simple case studies, like <i>Example one</i>, are of minimal value and often do not reflect the reality of client scenarios.</p> <p>One of the key aspects of the guidance that would benefit most from case studies/examples relates to the FMA’s commentary around “other information” that would support “reasonable grounds” where there is no ‘fit for purpose’ research available on an entity.</p> <p>Therefore, if the FMA does retain <i>Example one</i>, it would be of benefit for the example to be expanded to illustrate what the FMA means by the following paragraph (included immediately after the examples on page 5):</p> <p><i>“While in these examples the client’s interests are served by the adviser making a recommendation without access to research, the adviser would still need to have and be able to evidence other information supporting reasonable grounds for the advice; in each case, by reference to other factors discussed in this guidance.”</i></p> <p>Example two – ‘Preventing dilution of existing investment’</p> <p>We agree that it is possible to have “reasonable grounds” for providing advice on a rights offer without research being available.</p> <p>However, whether to take up a discounted rights issue is not as straightforward as it appears to be suggested in <i>Example two</i>. As the FMA points out in its Guide to taking part in a rights issue there are a number of factors to bear in mind before taking part in such an offer. This includes whether the company could be in difficulty, and whether increasing the size of the client’s investment in this company fits with the client’s overall investment portfolio and strategy. The risk profile of an investment in the company might have started out as relatively low, but may have increased if the company is in difficulty – so the shares may be cheaper but at a higher level of risk. That might not be right for the investor.</p>

	<p>Many of these factors could, in fact, lead an adviser to seek out 'research' on the company, before providing advice.</p> <p><i>Example two</i> on the other hand seems to suggest that it would be appropriate for a financial adviser to provide affirmative advice simply because the client is an existing shareholder and the acceptance of the offer would prevent the dilution of the client's existing investment. For most investors, the fact of dilution is not particularly relevant (as their holding is small and they have no level of control – e.g., what is the difference between holding 0.001% of a company or 0.0005%?).</p>
<p>4. Please describe any other situations where you consider that research would not be needed to support having reasonable grounds for advice on IPOs and listed equity securities</p>	<p>For the reasons noted in our response to Question 2 we would prefer that FMA's commentary on the use of 'research' to support "reasonable grounds" was not framed as a requirement. It would be more appropriate as an example of best practice. This would encourage financial advisers to use their own judgement about whether or not to use research in a particular situation, and help develop a culture commensurate to assessing its relevance in the light of the financial advice being sought, rather than a catch-all approach.</p> <p>It is well-known that financial advisers are already hesitant to recommend equity securities where third-party research is not readily available. This means that many small market capitalisation stocks receive limited focus by the broking community in New Zealand. So, any further commentary by the FMA which would add to this problem should be avoided.</p> <p>We would also like to see an example given to provide further context to what is meant by "appropriate research" in the following guidance on page 5:</p> <p><i>"The timetable for an IPO may not provide much time to access or produce 'fit for purpose' research. This does not excuse the requirement to have appropriate research supporting reasonable grounds to proactively recommend an investment in the IPO."</i></p>
<p>5. Do you think that the proposed guidance should be neutral about the source of research used to support reasonable grounds for advice on IPOs and listed equity securities? Please give reasons for your view. If you disagree, please explain what you think the guidance should say about the source of research?</p>	<p>Yes. What constitutes a reasonable source of research will differ depending on the adviser's recommendation and the needs of the client.</p>
<p>6. Generally, for research to be 'fit for purpose' to support reasonable grounds for advice on IPOs and listed equity securities, does it need to:</p> <ul style="list-style-type: none"> • describe the company's activities – why it exists and how it generates cashflow or intends to do so • encompass (quantitatively and qualitatively) the relevant financial and operational aspects of the company, its risks, its value drivers, its outlook, and the quality of its management? <p>Please give reasons for your view</p>	<p>We agree that these content requirements represent good practice for IPOs, but would prefer them not to be framed as being essential for all 'research'.</p>

<p>7. Please tell us about any situations where you think that research does not need to meet some or all of the criteria set out in question 6 to be fit for purpose to support having reasonable grounds for advice on IPOs and listed equity securities? Please describe the situations and the research that would instead be required and explain why this would support reasonable grounds for advice</p>	<p>These factors are more relevant for IPOs than subsequent research relating to listed equity securities. There is no need to include this information in subsequent research, which tends to be shorter and just focuses on recent events / announcements.</p>
<p>8. Should research used to support reasonable grounds to recommend IPOs and listed equities generally be in writing and documented to a standard the financial advice profession would expect for the nature and scope of the advice? And if other information is used to support advice on IPOs and listed equities –such as for the examples on pages 4 to 5 – should that information also generally be documented in writing to a standard the financial advice profession would expect for the nature and scope of the advice? Please give reasons for your views.</p>	<p>Again, we view this as an example of what would be good practice. However, we would prefer this not to be in a form of a prescriptive requirement. Inevitably this could lead to increased costs for investors, and not necessarily increased value to investors. The documentation of research should ultimately rest on the professional judgement of the financial adviser.</p>
<p>9. Do you have any other comments on the guidance</p>	<p>The “Purpose” section seems to suggest the focus of the guidance only relates to what is meant by “reasonable grounds” in the commentary to <i>Code Standard 3</i> where there is an absence of ‘expert research’ for a particular IPO or listed equity security. Whereas the guidance, as stated on Page 4, addresses this issue in a much larger context:</p> <p><i>“Much of this guidance deals with an adviser proactively recommending IPOs or listed equity securities to the client. We expect in this situation that generally the adviser will need to access or undertake research to support having reasonable grounds for their advice.”</i></p> <p>For clarity, and to provide better context to the content of the guidance, it would be helpful to address this in the “Purpose” section.</p>

Feedback summary – if you wish to highlight anything in particular

Please note: Feedback received is subject to the Official Information Act 1982. We may make submissions available on our website, compile a summary of submissions, or draw attention to individual submissions in internal or external reports. If you want us to withhold any commercially sensitive or proprietary information in your submission, please clearly state this and note the specific section. We will consider your request in line with our obligations under the Official Information Act.

Thank you for your feedback – we appreciate your time and input.

5 August 2022

Financial Markets Authority
Level 2, 1 Grey Street
PO Box 1179
Wellington 6140

By email: consultation@fma.govt.nz

Submission on Consultation Paper – Proposed guidance on reasonable grounds for financial advice about IPOs and listed equity securities

- 1 This is a submission by Dentons Kensington Swan on the Financial Markets Authority ('FMA') *Proposed guidance on reasonable grounds for financial advice about IPOs and listed equity securities* consultation paper dated July 2022 ('Consultation Paper').

About Dentons Kensington Swan

- 2 Dentons Kensington Swan is one of New Zealand's premier law firms with a legal team comprising over 100 lawyers acting on government, commercial, and financial markets projects from our offices in Wellington and Auckland. We are part of Dentons, the world's largest law firm, with more than 12,000 lawyers in over 200 locations.
- 3 We have extensive experience in financial services law issues, with a specialist financial markets team acting for established major players as well as niche providers and new entrants to the market. We assist a number of financial institutions with their regulatory obligations and conduct and culture initiatives, as well as a range of financial advice provider businesses involved in advising on equity securities and the distribution of products and services provided by financial institutions, including brokers, insurance and mortgage advisers and other financial market participants.

General comments

- 4 Our submission in response to the questions posed in the Consultation Paper is **attached** as a schedule to this letter, focusing on aspects where we believe there is a legal or regulatory issue to address or consider further.
- 5 We generally support the FMA's initiative to provide guidance in this area. However, we believe some adjustments are required to ensure a more appropriate balance is struck in order for the guidance to achieve its stated purpose, and not prove unduly burdensome in practice.

Fernanda Lopes & Asociados ► Guevara & Gutierrez ► Paz Horowitz Abogados ► Sirote ► Adepetun Caxton-Martins Agbor & Segun ► Davis Brown ► East African Law Chambers ► Eric Silwamba, Jalasi and Linyama ► Durham Jones & Pinegar ► LEAD Advogados ► Rattagan Macchiavello Arocena ► Jiménez de Aréchaga, Viana & Brause ► Lee International ► Kensington Swan ► Bingham Greenebaum ► Cohen & Grigsby ► For more information on the firms that have come together to form Dentons, go to dentons.com/legacyfirms

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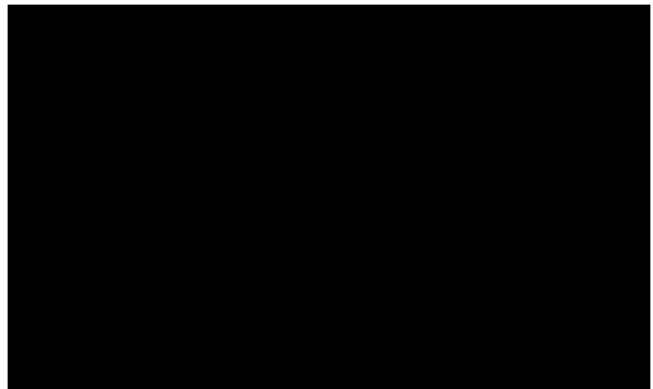
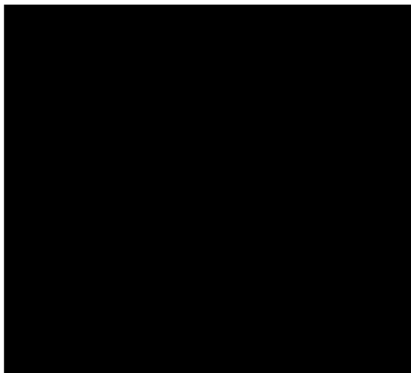
- 6 In particular, we are concerned the guidance carries a risk of unintended consequences and may negatively impact on the accessibility of advice.
- 7 A statutory purpose of the Financial Markets Conduct Act 2013 ('FMCA') is 'to provide for timely, accurate, and understandable information to be provided to persons to assist those persons to make decisions relating to financial products or the provision of financial services' (section 4(a)) with an additional purpose of the regulation of financial advice being to ensure 'the availability of financial advice for persons seeking that advice' (section 431B(a)). If the guidance is appropriately couched, it has the potential to support those purposes and add genuine value to New Zealand's capital markets by supporting greater access to financial advice. The draft guidance the FMA has produced risks having the opposite effect.
- 8 We welcome the recognition of the fact that appropriate research is determined by the nature and scope of the advice. However, we do not think the proposed guidance provided goes far enough in recognising the nuances of a limited nature and scope of advice, and misses an opportunity to remove a current barrier to both advisers' willingness to provide financial advice and to research providers to make their research available.
- 9 Advice is not just a recommendation as to a particular action, but also an expression of opinion. Where research is limited, a financial adviser may not be confident they have sufficient basis to provide a clear recommendation but may be sufficiently comfortable to express an opinion, caveated by reference to the limitations on the research available. We think this is entirely appropriate and in line with the FMCA's stated objectives. This approach should be encouraged by the FMA's guidance.
- 10 The extent of the written records contemplated by the proposed guidance are a key practical concern. In our view, the FMA's expectations regarding the explanation required from financial advisers as to the reasonableness of the basis of their advice, as expressed in the draft guidance, creates an undue regulatory burden and will serve as a practical impediment to the guidance being effective in practice.
- 11 Why do we say that? The concern we have is that the FMA's stated expectations in relation to the level of record keeping required may result in advisers not being prepared to provide advice at all, as it will not be economic for them to do so, given the amount of time involved. The regulatory risks involved may well be seen as excessive. This is especially likely to be the case for smaller offerings – the very offerings that the Capital Markets 2029 initiative intended to support. We see this as running counter to the expressed objectives of the proposed guidance, and the statutory objectives of the FMCA.
- 12 We also think the opportunity could be taken to include commentary as to when the FMA regards research itself as constituting financial advice. Or more importantly, when it will not. Our view is that equity research of itself would not normally be regarded as financial advice, but rather is information-only in nature. In our experience this is another factor that has limited the availability of quality research for retail investors, with research providers erring on the side of regulatory caution where there is any concern that their research might be construed as conveying an opinion as to the merits of acquiring, holding, or disposing of a stock. Clarifying the FMA's views on this technical point could be highly beneficial in freeing up access to quality research.

- 13 The increasing prevalence of DIY investors increases the risk of inadequately informed investing in IPOs and listed equity securities. That increase in a DIY approach is at least in part driven by the recent rise of technology platforms which facilitate easier access to our listed equity markets, but do not offer research or financial advice. Investors wishing to rely upon advice from financial advisers therefore either do not tend to make use of those platforms, or are looking for specific advice from a person they can trust.
- 14 Given the extent of the duty provisions that apply to financial advisers, there is a clear regulatory benefit for any investor to get as much guidance as possible from registered financial advisers to help them make decisions that are better informed than would be the case if they went alone, or than would be the case if they sought advice from someone other than a registered financial adviser. In our view, the proposed guidance should take this regulatory benefit into account when contemplating the extent of the research that is required in order to provide a reasonable basis for advice, and the extent of record-keeping required in relation to that research. The downside in suppressing the ease of professional advisers' ability to provide limited financial advice, and their willingness to do so, is the resulting likelihood that DIY investors will have even less access to informational support and guidance when making speculative investment decisions in relation to IPOs and listed equities

Further information

- 15 We are happy to discuss any aspect of our feedback on the Consultation Paper. Thank you for the opportunity to submit.

Yours faithfully



#	QUESTION	RESPONSE
1	<p>Do you think the proposed guidance will help support advisers to provide quality advice on IPOs and listed equity securities, and improve access to advice on these products? Please give reasons for your view.</p>	<p>In our view, the proposed guidance is likely to deter advisers from providing financial advice on IPOs and listed equity securities in the market. Depending on the nature and scope of the financial advice service provided for the particular client, detailed research is not always required. This is not mentioned in the proposed guidance. Instead, the guidance indicates that research has to be referenced in order to provide 'reasonable grounds' for giving the financial advice. This is not strictly required by Code Standard 3 and isn't always going to be a viable option for advisers when advising on investing in IPOs or non-mainstream listed equity securities.</p> <p>We do not think the proposed guidance provided goes far enough in recognising the nuances of a limited nature and scope of advice. As a result, it may not have the desired effect of improving access to financial advice in the industry. Financial advisers should be permitted to rely upon limited research, with a consequence being that they may be limited to expressing a high level opinion or pragmatic advice (caveated by reference to the limitations of the research available).</p> <p>We suggest that the proposed guidance may go further in providing an indication of what will constitute 'reasonable grounds'. In particular, the proposed guidance might consider 'reasonable grounds' to exist where an adviser has familiarised themselves with the IPO documentation and the disclosures provided by the issuer. Such an adviser is able to offer professionally informed opinions to their clients, caveated by the fact that their advice is solely based on their own interpretation of the disclosure documentation and publicly available information, without undertaking any further research. That is a far better outcome for clients than the adviser having to say they can't offer any opinion in the absence of analysing the research.</p> <p>The proposed guidance suggests advisers will be at high risk for non-compliance with their Code Standard 3 obligations if this approach is taken. We believe this is unhelpful in promoting access to financial advice, and unduly restrictive in imposing an undue regulatory burden on financial advisers.</p>
2	<p>Do you consider that an adviser will generally need to access or undertake research to support having reasonable grounds for advice on IPOs and listed equity securities? Please give reasons for your view.</p>	<p>As above, whether research needs to be undertaken or accessed in order to advise on IPOs and listed equity securities depends on the nature and scope of the services the adviser is providing to the client, and the quality of the disclosure material available.</p>

#	QUESTION	RESPONSE
		<p>Financial advisers should be able to modify the nature and scope to enable them to give advice that is only supported by very limited research where more in-depth research is not available, or by their own review of the disclosure documentation available.</p> <p>Many clients would expect their adviser to take a pragmatic approach based on their expertise and professional judgement in order to provide an opinion on IPOs and listed equity securities – which may form the basis of the ‘reasonable grounds’ required under Code Standard 3 rather than specific research undertaken. In our view, the answer lies in clarifying the ability of financial advisers to limit the nature of their advice by reference to the extent of research available. If the client is aware of the limitations on the quality of the advice being provided, they can take that into account in deciding whether or not to rely upon it, as opposed to being denied access to any advice altogether.</p>
3	<p>Do you agree that the two examples on pages 4 to 5 of the proposed guidance represent circumstances where research is not available and/or is not needed, but it is still possible to have reasonable grounds for advice on IPOs and listed equity securities? Please give reasons for your view.</p>	<p>Our view on the two examples provided is as follows:</p> <p>Example 1:</p> <p>We agree that this example is appropriate for where an adviser would have reasonable grounds for advising not to invest, despite the absence of research. This is a useful example to include. In this instance, the financial adviser should not be required to perform detailed analysis and undertake research to advise the client that investing their life savings into a non-diversified and high risk investment is not wise.</p> <p>However, stating that ‘going ahead would obviously be a bad decision’ is not valid. The investment in question may turn out to be spectacularly successful and the best decision the client ever made. It’s just that there is no research available to inform that decision. We agree with including an express acknowledgement that the client’s interests are unlikely to be served by not providing financial advice in these circumstances.</p> <p>Example 2:</p> <p>This example is too simplistic. In our view, this could be very bad advice provided to a client and is far from being ‘uncontroversial’. Any rights issue at a discount could be in relation to a company suffering ongoing losses with the client effectively throwing good money after bad.</p>

#	QUESTION	RESPONSE
		<p>Instead of taking the approach provided in the example, the adviser could give caveated advice or consider their duty of care and look to the basics of company information publicly available. A financial adviser should still consider any alarm bells or warnings for the particular company or sector it is involved in. That is what the client would reasonably rely upon when looking to a financial adviser for their expertise. The financial adviser may also be liable for not taking into account those considerations. With proper research, the adviser may be able to provide alternative advice to the client – for instance, if the outlook of the company or sector is not positive, then it might be best for the client to be advised to consider selling their current holdings or options, and not take part in the rights issue altogether.</p> <p>We recommend the example be caveated by referring to the adviser still needing to alert the client to any alarm bells and risks, and the fact that the adviser has not undertaken or accessed any research in offering their advice. If retained, the example should also be caveated by an acknowledgement that retail investors are generally small shareholders in the scheme of things, so where that is the case the relatively minimal impact of dilution on their holdings if they don't take up the offer should be explained also.</p>
4	Please describe any other situations where you consider that research would not be needed to support having reasonable grounds for advice on IPOs and listed equity securities.	<p>We consider periods of extreme volatility to be another situation where research may not be needed to support having reasonable grounds for advice on IPOs and listed equity securities. Depending on the nature and scope of the service provided, the adviser may determine that the client's risk appetite does not match the extreme volatility in the market, and may advise the client to avoid purchasing securities in particular sectors altogether. For instance, during the COVID-19 pandemic sell-off in March 2020, advisers should have been able to advise risk-adverse clients to not purchase securities in the tourism or aviation sectors without needing expert research. Conversely, clients with a high risk appetite may find advice on lightly researched equity investment opportunities highly suitable for a small portion of their portfolio. It all comes down to ensuring appropriate warnings are provided in the context of the agreed nature and scope.</p>

#	QUESTION	RESPONSE
5	Do you think that the proposed guidance should be neutral about the source of research used to support reasonable grounds for advice on IPOs and listed equity securities? Please give reasons for your view. If you disagree, please explain what you think the guidance should say about the source of research?	We strongly support the guidance not prescribing the source of research that must be used to support reasonable grounds for advice on IPOs and listed equity securities. In our view, doing so would make the guidance too prescriptive, with a high risk of unduly constraining the availability of advice, especially for an area where mainstream research is not available and clients may be relying more on the adviser's professional judgement and experience than full blown research.
6	<p>Generally, for research to be 'fit for purpose' to support reasonable grounds for advice on IPOs and listed equity securities, does it need to:</p> <ul style="list-style-type: none"> • describe the company's activities – why it exists and how it generates cashflow or intends to do so • encompass (quantitatively and qualitatively) the relevant financial and operational aspects of the company, its risks, its value drivers, its outlook, and the quality of its management? <p>Please give reasons for your view.</p>	<p>There is a continuum at play here impacting on the extent of the limitations that need to be placed on the nature and scope of the advice provided, based on the depth of research required. It is appropriate for the strength of the adviser's recommendation or opinion to reflect the extent and quality of the research available. The absence of detailed, quality research should not be regarded as a bar to advisers giving any advice at all. Rather, it just goes to the nature and scope of service they are providing, and the risk warnings provided to ensure their advice is suitable.</p> <p>We strongly disagree with the guidance prescribing any particular aspects that research must cover off before an adviser can rely upon it as providing reasonable grounds. Taking that approach risks precluding advisers from relying upon what would otherwise be high quality research and needing to refrain from offering advice, which runs counter to the FMCA's stated objectives, and is not a necessary requirement of Code Standard 3.</p>
7	Please tell us about any situations where you think that research does not need to meet some or all of the criteria set out in question 6 to be fit for purpose to support having reasonable grounds for advice on IPOs and listed equity securities? Please describe the situations and the research that would instead be required and explain why this would support reasonable grounds for advice.	In our view, setting out criteria such as those proposed is too prescriptive. Depending on the nature and scope of the financial advice service in question, knowing why a company exists for example, may have no bearing on the advice. We strongly recommend leaving the guidance at a principles-based level without specifying details like this.
8	Should research used to support reasonable grounds to recommend IPOs and listed equities generally be in writing and documented to a standard the financial advice profession would expect for the nature and scope of the advice? And if other information is used to support advice on IPOs and listed equities – such as for the examples on pages 4 to 5 – should that information also generally be documented in	In our view, depending on context and the nature and scope of the financial advice service, it may be that high level verbal confirmation or comment from a respected researcher will be sufficient. In many instances that may provide a sufficient basis for the financial adviser to proceed with a caveated opinion.

#	QUESTION	RESPONSE
	writing to a standard the financial advice profession would expect for the nature and scope of the advice? Please give reasons for your views.	
9	Do you have any other comments on the guidance?	<p>Research as information-only</p> <p>In our view, research that is focused on a company's commercial fundamentals and prospects is properly categorised as information-only and not financial advice (unless buy/sell/hold recommendations are included). However, providers are understandably nervous about the regulatory implications of relying on this position. This results in research either being withheld, or the extent of its analysis reduced to avoid any risk of financial advice being inferred, or extensive disclaimers being applied – or all three. This is not conducive to clients being able to make fully informed decisions or to encouraging confidence in our markets. We think the proposed guidance is a good opportunity for the FMA to facilitate the increased availability of quality research by expressly verifying that research on its own will not be regarded as financial advice, even if relied upon to inform advice or decision-making.</p> <p>Record keeping</p> <p>Requiring advisers to provide an explanation of why there are reasonable grounds for the advice provided as part of record keeping obligations needs to be reconsidered. It is important not to smother advisers with the extent of the records that must be kept. We expect financial advice providers will have good systems in place to allow their advisers to use repeatable/standard record-keeping statements to support the basis for their financial advice. The draft guidance provided risks implying more is required than might be necessary. Where the reasonableness of the grounds for the advice is apparent from the face of the research and/or financial advice provided, it is unduly burdensome (and somewhat pointless) to require the adviser to document the explanation as a matter of course. Again, this might discourage financial advisers from giving financial advice in this space because it is not an efficient use of their time.</p> <p>Ultimately the proposed requirement risks depriving investors of access to the advisers expertise. While we agree with the requirement to refer to the research (or other reasonable grounds) relied upon or as part of an adviser's record-keeping obligation, requiring an explanation in every instance is overly prescriptive and not conducive to improving the accessibility of financial advice.</p>

Feedback form

Consultation paper: Proposed guidance on reasonable grounds for financial advice about IPOs and listed equity securities

Please submit this feedback form electronically in both PDF and MS Word formats and email it to us at consultation@fma.govt.nz with 'Feedback: proposed guidance on reasonable grounds for financial advice about IPOs and listed equity securities: [your organisation's name]' in the subject line. Thank you. **Submissions close on 5 August 2022.**

Date: 04/08/22 Number of pages: 2

Name of submitter: Financial Advice New Zealand

Company or entity: Financial Advice New Zealand

Organisation type: Industry Association

Contact name (if different): [REDACTED]

Contact email and phone: [REDACTED]

Question number	Response
1. Do you think the proposed guidance will help support advisers to provide quality advice on IPOs and listed equity securities, and improve access to advice on these products? Please give reasons for your view	We agree that the guidance is helpful as it gives useful and practical examples of what research is required and how to view research as well as the wider view of a client's situation.
2. Do you consider that an adviser will generally need to access or undertake research to support having reasonable grounds for advice on IPOs and listed equity securities? Please give reasons for your view.	We believe that advisers should have assessed the publicly available information for an IPO, and it is common sense that this information is read and understood by both the client and the adviser. We don't think it needs to go any further than analysing publicly available information.
3. Do you agree that the two examples on pages 4 to 5 of the proposed guidance represent circumstances where research is not available and/or is not needed, but it is still possible to have reasonable grounds for advice on IPOs and listed equity securities? Please give reasons for your view.	The examples clearly show that very little analysis would need to be done on the actual IPOs or listed equity securities because in both examples it is common sense based on the client's individual circumstances what is suitable for them.
4. Please describe any other situations where you consider that research would not be needed to support having reasonable grounds for advice on IPOs and listed equity securities.	A client's risk profile and time horizon may show that IPO's or listed equity securities are unsuitable.
5. Do you think that the proposed guidance should be neutral about the source of research used to support reasonable grounds for advice on IPOs and listed equity securities? Please give reasons for your view. If you disagree, please explain what you think the guidance should say about the source of research?	Yes – due to there being numerous avenues to obtain the research and it's all dependent on what is available in the IPO or listed security.
6. Generally, for research to be 'fit for purpose' to support reasonable grounds for advice on IPOs and listed equity securities, does it need to:	Generally, this information is all provided in a PDS, so it is practical. We are not sure these two aspects are required to ensure if it is 'fit for purpose' but we do think understanding company activities, financial analysis and risks would be the basic for research. To ensure if it is 'fit for

<ul style="list-style-type: none"> • describe the company's activities - why it exists and how it generates cashflow or intends to do so • encompass (quantitatively and qualitatively) the relevant financial and operational aspects of the company, its risks, its value drivers, its outlook, and the quality of its management? Please give reasons for your view.	purpose' we suggest that the analysis should be more around the client and how it fits into their situation, risk profile and time line.
7. Please tell us about any situations where you think that research does not need to meet some or all of the criteria set out in question 6 to be fit for purpose to support having reasonable grounds for advice on IPOs and listed equity securities? Please describe the situations and the research that would instead be required and explain why this would support reasonable grounds for advice.	Any situation where an IPO or listed equity is actually not a suitable investment for a client (regardless of the company involved) because it does not fit their situation or circumstances.
8. Should research used to support reasonable grounds to recommend IPOs and listed equities generally be in writing and documented to a standard the financial advice profession would expect for the nature and scope of the advice? And if other information is used to support advice on IPOs and listed equities -such as for the examples on pages 4 to 5 - should that information also generally be documented in writing to a standard the financial advice profession would expect for the nature and scope of the advice? Please give reasons for your views.	Yes - as part of record keeping obligations.
9. Do you have any other comments on the guidance?	At times clients come to Financial Advisers and request they buy a particular share or IPO to add into their portfolio. They don't want advice, they wish to hold the share for their own personal reasons (they may have a family member that works there, or an interest in that company activity etc). In this case they are not asking for advice, they just want help to transact it. There should be allowances for this instance when it is a transaction only. The client would sign off on this as 'transaction only' so it would be helpful to know if this is covered off and acceptable under a guidance note. "Non Advised" assets in a portfolio for example that is reported on but advice given. It would form part of the asset allocation review. The adviser would not take an advice fee to manage this part of the portfolio and make this very clear to the clients in their nature and scope of advice, disclosure process and any written reports.
Feedback summary – if you wish to highlight anything in particular	
Please note: Feedback received is subject to the Official Information Act 1982. We may make submissions available on our website, compile a summary of submissions, or draw attention to individual submissions in internal or external reports. If you want us to withhold any commercially sensitive or proprietary information in your submission, please clearly state this and note the specific section. We will consider your request in line with our obligations under the Official Information Act.	
Thank you for your feedback – we appreciate your time and input.	

Feedback form

Consultation paper: Proposed guidance on reasonable grounds for financial advice about IPOs and listed equity securities

Please submit this feedback form electronically in both PDF and MS Word formats and email it to us at consultation@fma.govt.nz with 'Feedback: proposed guidance on reasonable grounds for financial advice about IPOs and listed equity securities: [your organisation's name]' in the subject line. Thank you. **Submissions close on 5 August 2022.**

Date: Number of pages: 1

Name of submitter: [REDACTED]

Company or entity: [REDACTED]

Organisation type: Companies

Contact name (if different):

Contact email and phone: [REDACTED]

Question number	Response
Thanks for asking!	<p><i>NZ Inc need to break the cycle of property asset addiction and there is no will for a capital gains tax so</i></p> <p><i>I would like to offer a general opinion:</i></p> <p><i>I think you need to consider that people in NZ who invest are adults who vote, stand on juries, buy houses, have bank accounts, jobs and families</i></p> <p><i>They engage pretty freely in very dangerous activities such as driving cars and drinking alcohol!</i></p> <p><i>By and large ... we are "larger" in body shape than we should be for good health</i></p> <p><i>So my point is the idea that you need to baby sit people completely is inconsistent with society</i></p> <p><i>I suggest you SIGNIFICANTLY lower the freedom to invest and assume that ANYONE who chooses to invest say \$25,000 or more in a start-up or other is not a complete idiot, and understands there is risk – as there is in property BTW, as many will have forgotten until this year!</i></p> <p><i>Put it on all capital raiser they need to have 5% of the offer document warning in character and that the text must be larger and more readable: including up front as a heading:</i></p> <p><i>"This investment offer is riskier than most other forms of investment and you should only invest funds that you can lose completely"</i></p> <p><i>Notice under section 23;1.5 of the Securities Act (or whatever!)</i></p>

Feedback summary – if you wish to highlight anything in particular

Please note: Feedback received is subject to the Official Information Act 1982. We may make submissions available on our website, compile a summary of submissions, or draw attention to individual submissions in internal or external reports. If you want us to withhold any commercially sensitive or proprietary information in your submission, please clearly state this and note the specific section. We will consider your request in line with our obligations under the Official Information Act.

Thank you for your feedback – we appreciate your time and input.



NEW ZEALAND'S EXCHANGE
TE PAEHOKO O AOTEAROA

NZX Limited
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11 Cable Street
Wellington 6140
New Zealand

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5 August 2022

Financial Markets Authority

Level 2, 1 Grey Street,

Wellington, New Zealand

by email only: consultation@fma.govt.nz

NZX Submission: Code standard 3 'reasonable grounds for financial advice'

1. NZX Limited (**NZX**) submits this response to the Financial Markets Authority (**FMA**) consultation paper '*Proposed guidance on reasonable grounds for financial advice about IPOs and listed equity securities*' (**Consultation Document**).
2. NZX strongly endorses the commentary contained in Capital Markets 2029, which suggests that the FMA provide guidance to enable New Zealanders to access advice, particularly in relation to smaller market capitalisation stocks for which expert research coverage is not provided. We are encouraged by the FMA's recognition of this principle in the proposed guidance, which we consider aligns with the purposes of the Financial Markets Conduct Act 2013 (**FMCA**) to promote confident and informed participation of investors and innovation and flexibility in the financial markets.
3. We consider that this objective could be better achieved by the proposed guidance expressly recognising that it is acceptable for an adviser to provide limited scope advice on the basis of the adviser's analysis of a listed issuer's disclosures, which may not encompass all of the 'gold standard' research content identified in the proposed guidance. We note that financial advice providers are subject to obligations under the Code of Professional Conduct for Financial Advice Services (**Code**) to meet standards of competence, knowledge and skill, which supports this approach.
4. We also consider that it would be helpful if the proposed guidance included more illustrative examples to provide financial advisers with confidence as to the FMA's conduct expectations. In particular, it would be helpful to clarify the circumstances in which the FMA would regard an adviser as having reasonable grounds to provide advice in the absence of expert research, for smaller stocks that are not covered by research analysts.
5. We set out below our responses to the relevant consultation questions contained in the Consultation Document, in respect of which we wish to provide a submission. Nothing in this submission is confidential.

Response to consultation questions

Question 1: Do you think the proposed guidance will support advisers to provide quality advice on IPOs and listed equity securities, and improve access to advice on these products? Please give reasons for your view.

6. The proposed guidance recognises the FMA's intention is not to discourage advisers from giving opinions or recommendations in relation to equity securities that are not backed by expert research. We consider that the guidance needs to go further to enable advisers to have the confidence to provide advice in relation to listed equity securities that are not covered by research analysts, noting the additional purpose of the FMCA which is to ensure the availability of financial advice for persons seeking that advice¹.
7. Specifically, we suggest that the content expectations for research should be less prescriptive and allow an adviser to exercise more discretion in determining whether the adviser has reasonable grounds to provide the advice, including by considering the nature and scope of the advice given.
8. NZX Participants are subject to additional conduct obligations under the NZX Participant Rules to maintain expected standards of objectivity and professionalism². We consider that these obligations support the proposed guidance recognising that an NZX Adviser who is employed by an NZX Participant, is able to place some reliance on its employer's policies around relying on reports of particular providers, or other information, when determining whether the adviser has reasonable grounds for providing advice. Whether the adviser has reasonable grounds would continue to need to be assessed on the basis of the nature and scope of the advice, and the client's circumstances.
9. We also recommend that the proposed guidance includes an express acknowledgment that an adviser may be able to provide opinions based on the adviser's analysis of disclosures provided by a listed issuer (that may not meet the proposed research content requirements), on the basis that the adviser includes a statement as to the nature of the information the adviser has relied on to form an opinion, and in light of the scope of the advice provided.
10. We also consider that it would be helpful for the proposed guidance to include a clear statement that providing factual information does not amount to the provision of financial advice³.

¹ Refer to section 431B(1)(a) of the FMCA.

² NZX Participant Rule 9.1.1.

³ Refer to clause 7 of Part 2 of Schedule 5 of the FMCA.

11. We also suggest that additional examples would be useful to enable advisers to have certainty as to the FMA's conduct expectations. We comment further on the examples provided in our response to consultation question 3.

Question 2: Do you consider that an adviser will generally need to access or undertake research to support having reasonable grounds for advice on IPOs and listed equity securities? Please give reasons for your view.

12. As noted in our response to question 1, we consider that an adviser will generally need to have completed analysis to support having reasonable grounds to provide advice on IPOs and listed equity securities, but that this would not need to always meet the research content standard proposed by the FMA.
13. We support the ability for a financial adviser to consider a client's circumstances in determining the level of research or analysis that is required to support the advice to be provided, for example in situations where the client is not highly diversified or has a high-risk exposure to a particular security or asset class.

Question 3: Do you agree that the two examples on pages 4 to 5 of the proposed guidance represent circumstances where research is not available and/or is not needed, but is still possible to have reasonable grounds for advice on IPOs and listed equity securities? Please give reasons for your view.

14. We agree that a client who is not highly diversified is an example of a situation in which a client's circumstances are such that a financial adviser could reasonably provide financial advice without expert research. The example provided on page 4 of the proposed guidance does not provide colour as to the broader investment portfolio of the client, and is therefore unclear as to how the investment of a client's house sale proceeds into the micro-cap stock represents a lack of a diversified investment portfolio. We suggest that it would be helpful for an example to be included that relates to a small investment portfolio where a large proportion of the portfolio is proposed to be invested into a single stock. We also suggest that the reference in the example to the investment '*obviously being a bad decision*' is removed as this expresses a value judgment in relation to the merits of the investment in the example, which is irrelevant to the analysis as to whether research should be relied upon to provide the advice.
15. We have some concerns with the example on page 5 of the proposed guidance, that relates to the provision of advice to a client to take up their allocation under a discounted rights issue. We presume that the example is intended to relate to a listed issuer who is making an offer in reliance on the qualifying financial products (QFP) regime contained in clause 19 of Schedule 1 of the FMCA. In these circumstances we would expect the financial adviser to have regard to the disclosures provided by the issuer to enable reliance on the QFP regime, which coupled with the information disclosed by the issuer under its continuous disclosure obligations should be sufficient to enable the adviser to make a reasonably informed assessment as to

whether it is appropriate for the client to take up its entitlement to avoid being diluted. We consider that the example should clarify that these would be reasonable steps for the adviser to take, rather than implying that no research is required, as there may be circumstances relating to the risk profile of the issuer, where the client would be better advised not to take up the client's entitlements despite the dilutive effect on the client's investment.

Question 4: Please describe any other situations where you consider that research would not be needed to support having reasonable grounds for advice on IPOs and listed equity securities.

16. We consider that it would be helpful for the guidance to include examples of situations where it is appropriate for an adviser to provide advice based on analysis which is less than 'expert research'. We consider that this would be appropriate where the adviser clarifies the basis on which the advice is being provided, and in light of the scope of the advice being provided.

Question 5: Do you think that the proposed guidance should be neutral about the source of research used to support reasonable grounds for advice on IPOs and listed equity securities? Please give reasons for your view. If you disagree, please explain what you think the guidance should say about the source of research?

17. We support the proposed guidance being neutral as to the source of research used to support reasonable grounds, and the acceptance that an adviser may rely on another person's assessment of an IPO to support its assessment of reasonable grounds.

Question 6: Generally, for research to be 'fit for purpose' to support reasonable grounds for advice on IPOs and listed equity securities, does it need to:

- describe the company's activities – why it exists and how it generates cashflow or intends to do so*
- encompass (quantitatively and qualitatively) the relevant financial and operational aspects of the company, its risks, its value drivers, its outlook, and the quality of its management?*

Please give reasons for your view.

18. As noted earlier in our submission, we consider that the matters above reflect 'gold standard' content for research, and may not be necessary in all cases. In the context of the Code's duties that require financial advisers to meet an appropriate standard of competence, knowledge and skill, we query whether this level of prescription is needed, and whether the guidance should allow financial advisers more latitude to determine whether they are comfortable with providing financial advice on the basis of their own analysis.

19. It would be useful for the proposed guidance to explain the circumstances in which a lesser degree of analysis may be appropriate to evidence reasonable grounds, which we consider would be appropriate in respect of advice which clearly states the limits of the information on which it is provided. There may also be other situations where a client's circumstances and the scope of the advice being provided warrant the provision of advice on the basis of a lesser standard of analysis, for example portfolio allocation advice.

Question 7: Please tell us about any situations where you think that research does not need to meet some or all of the criteria set out in question 6 to be fit for purpose to support having reasonable grounds for advice on IPOs and listed equity securities? Please describe the situations and the research that would instead be required and explain why this would support reasonable grounds for advice.

20. Please see our comments above.

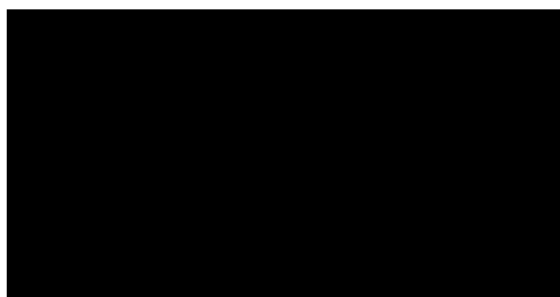
Question 8: Should research used to support reasonable grounds to recommend IPOs and listed equity securities generally be in writing and documented to a standard the financial advice profession would expect for the nature and scope of the advice? And if other information is used to support advice on IPOs and listed equities- such as for the examples on pages 4 to 5 – should that information also generally be documented in writing to a standard for the financial advice profession would expect for the nature and scope of the advice? Please give reasons for your view.

21. We consider that it would be appropriate for the financial adviser to record and document the nature of the advice provided and the information on which the advice was based. We do not consider it necessary for the financial adviser to document why the advice was considered to be appropriate for the client, as this should be apparent from reviewing the nature of the advice provided.

Closing comments

22. We would like to thank the FMA for this opportunity to submit on these proposals and would welcome the opportunity to meet or discuss any aspect of this submission.

Yours faithfully,



Feedback form

Consultation paper: Proposed guidance on reasonable grounds for financial advice about IPOs and listed equity securities

Please submit this feedback form electronically in both PDF and MS Word formats and email it to us at consultation@fma.govt.nz with 'Feedback: proposed guidance on reasonable grounds for financial advice about IPOs and listed equity securities: [your organisation's name]' in the subject line. Thank you. **Submissions close on 5 August 2022.**

Date: 02 /08/2022 Number of pages: 2

Name of submitter [REDACTED]

Company or entity: Quartz Wealth

Organisation type: FAP & DIMS Licensee

Contact name (if different):

Contact email and phone: [REDACTED]

Question number	Response
1 Do you think the proposed guidance will help support advisers to provide quality advice on IPOs and listed equity securities, and improve access to advice on these products? Please give reasons for your view	<i>Yes. It will help set the expectations</i>
2 Do you consider that an adviser will generally need to access or undertake research to support having reasonable grounds for advice on IPOs and listed equity securities? Please give reasons for your view.	<i>Yes. Unless they are trained analysts in this field, it is likely research support will be required as part of the advice process</i>
3 Do you agree that the two examples on pages 4 to 5 of the proposed guidance represent circumstances where research is not available and/or is not needed, but it is still possible to have reasonable grounds for advice on IPOs and listed equity securities? Please give reasons for your view.	<i>Yes. The first example relates to concentrated risk and would not be in the best interest of the client. In fact there are very few if at all (unless investing in your own business) where this would make sense.</i> <i>The second example is more generic and not necessarily good advice as it depends on the level of dilution</i>
4 Please describe any other situations where you consider that research would not be needed to support having reasonable grounds for advice on IPOs and listed equity securities.	<i>None</i>
5 Do you think that the proposed guidance should be neutral about the source of research used to support reasonable grounds for advice on IPOs and listed equity securities? Please give reasons for your view. If you disagree, please explain what you think the guidance should say about the source of research?	<i>Yes, source of research support can change over time but the fundamentals of it does not.</i>
6 Generally, for research to be 'fit for purpose' to support reasonable grounds for advice on IPOs and listed equity securities, does it need to: • describe the company's activities – why it exists and how it generates cashflow or intends to do so • encompass (quantitatively and qualitatively) the relevant financial and operational aspects of the company, its risks, its value drivers, its outlook, and the quality of its management? Please give reasons for your view.	<i>Yes. This the bare minimum expected anything beyond would depend on the complexity on the underlying securities involved and the extent as to which qualitative research is possible</i>
7 Please tell us about any situations where you think that research does not need to meet some or all of the	<i>Again, most of the criteria in 6 should be met in any analysis, but there may be circumstances where obtaining qualitative research is</i>

criteria set out in question 6 to be fit for purpose to support having reasonable grounds for advice on IPOs and listed equity securities? Please describe the situations and the research that would instead be required and explain why this would support reasonable grounds for advice	<i>challenging and therefore may not form part of the research pack collated.</i>
8 Should research used to support reasonable grounds to recommend IPOs and listed equities generally be in writing and documented to a standard the financial advice profession would expect for the nature and scope of the advice? And if other information is used to support advice on IPOs and listed equities – such as for the examples on pages 4 to 5 – should that information also generally be documented in writing to a standard the financial advice profession would expect for the nature and scope of the advice? Please give reasons for your views.	<i>Yes it should</i> <i>Even for the examples on 4 or 5. Scope and nature of advice the key – ie in these examples the “advice” will not be as comprehensive as say a Rights Issue and can be encapsulated in an email rather than a report.</i>
9 Do you have any other comments on the guidance?	<i>No</i>
Feedback summary – if you wish to highlight anything in particular	
<p>Please note: Feedback received is subject to the Official Information Act 1982. We may make submissions available on our website, compile a summary of submissions, or draw attention to individual submissions in internal or external reports. If you want us to withhold any commercially sensitive or proprietary information in your submission, please clearly state this and note the specific section. We will consider your request in line with our obligations under the Official Information Act.</p>	
Thank you for your feedback – we appreciate your time and input.	

5 August 2022

[REDACTED]

Financial Markets Authority
Level 2, Grey St
Wellington 6140

By email: consultation@fma.govt.nz

[REDACTED]

[REDACTED]

Feedback: Proposed guidance on reasonable grounds for financial advice about IPOs and listed equity securities (July 2022)

The Securities Industry Association (SIA) wishes to thank the Financial Markets Authority (FMA) for considering the previous SIA's feedback on this matter. We greatly appreciate the opportunity to provide further input through this consultation round.

We support the intentions of the guidance to encourage the growth of capital markets, particularly through investment in small capitalisation companies. However, SIA is concerned that the draft guidance is potentially too prescriptive in nature, which may lead to unintended consequences. The key implication is an additional compliance burden created when the guidance is applied in practice. There is a risk that this could lead to reduced accessibility to advice for potential investors to this market segment or more generally, contrary to its intention.

Please find our submission **attached** for your consideration.

We welcome the opportunity to discuss this further. If you have any questions or require further information, please do get in touch.

Yours sincerely

[REDACTED]

[REDACTED]

[REDACTED]

Feedback form

Consultation paper: Proposed guidance on reasonable grounds for financial advice about IPOs and listed equity securities

Please submit this feedback form electronically in both PDF and MS Word formats and email it to us at consultation@fma.govt.nz with 'Feedback: proposed guidance on reasonable grounds for financial advice about IPOs and listed equity securities: [your organisation's name]' in the subject line. Thank you. **Submissions close on 5 August 2022.**

Date: 5 August 2022 Number of pages: 6

Name of submitter: [REDACTED]

Company or entity: Securities Industry Association

Organisation type: Industry Association

Contact name (if different): As above

Contact email and phone: [REDACTED]

Question number	Response
1. Do you think the proposed guidance will help support Advisers to provide quality advice on IPOs and listed equity securities, and improve access to advice on these products? <i>Please give reasons for your view.</i>	<p>The Financial Markets Authority (FMA) has indicated its intent to encourage financial advice and pathways for investor participation in the financial markets, particularly where expert research coverage is unavailable on small market capitalisation companies. The Securities Industry Association (SIA) wholly support efforts encouraging financial advice and strengthening New Zealanders' financial capability to underpin their participation in financial markets and investment decisions. We also support measures such as licensing and the Code of Professional Conduct for Financial Advice Services (the Code) that serve to ensure customers receive the highest standard of professional services and financial advice in such circumstances.</p> <p>Furthermore, SIA appreciates the efforts of the FMA to develop guidance to clarify how Code Standard 3 should be interpreted in relation to 'reasonable grounds'. This recognises that there are limits to the practicalities of research analysts undertaking in-depth research on every listed stock. However, the guidance retains a strong bias towards requiring and referencing research in order to meet Code Standard 3. SIA holds concerns that the guidance will be interpreted as being still too narrow in scope to improve access to advice on Initial Public Offerings (IPOs) and listed equity securities of small capitalisation stocks.</p> <p>SIA believes there still needs to be further examples on the circumstances where there is a limited nature and scope of advice and limited expert research available, and what then constitutes as 'reasonable grounds'.</p> <p>Also, given reports, information or research on their own are not advice, and an Adviser provides advice or a recommendation based on the scope and nature of the advice and the customer's circumstances, customers are better served to receive advice even when the research is limited and based on the information available with that being acknowledged as part of the advice given, rather than providing limited research and information to the client and sending them away to make a</p>

	<p>decision. (However, in the latter situation, it would still be appropriate for the Adviser to convey to the customer the limitations of the research and information.) An example could be included to highlight this.</p> <p>The purpose of introducing the new Financial Services Legislation Amendment Act (FLSAA), supported by the Code, is to ensure Financial Advisers are highly qualified and meet professional standards. SIA suggests that the guidance should recognise that the competence, experience, skill, knowledge and professional judgement of licensed Financial Advice Providers and Financial Advisers play a role in providing quality financial advice in addition to the high accountability and customer service standards to impart this expertise and provide advice accordingly (to act or not to act) on the basis of what is available (noting the limitations of what may be available) and taking into account the client's circumstances and the nature and scope of the advice service.</p>
<p>2. Do you consider that an Adviser will generally need to access or undertake research to support having reasonable grounds for advice on IPOs and listed equity securities? <i>Please give reasons for your view.</i></p>	<p>Advisers cannot provide advice or recommendations without assessing the scope and nature of the advice and each customer's circumstances, including portfolio, goals and risk, for example. The assessment of what constitutes 'reasonable grounds' should be suitably flexible to align with each customer, and the Adviser can reasonably make that informed assessment.</p> <p>If there is no readily available market research/commentary, it comes down to what is considered to constitute "undertaking research". SIA believes that the guidance needs to be more apparent that the level or form of research or analysis needs to be appropriate to the circumstances of the customer and may not always be in the form of a research analyst report.</p> <p>Please refer to the comments responding to Question 1.</p>
<p>3. Do you agree that the two examples on pages 4 to 5 of the proposed guidance represent circumstances where research is not available and/or is not needed, but it is still possible to have reasonable grounds for advice on IPOs and listed equity securities? <i>Please give reasons for your view.</i></p>	<p>SIA supports the inclusion of examples in the guidance to clarify how it should be interpreted.</p> <p>We note that the examples provided in the guidance are fact set specific and therefore narrow in application, which should be noted in the guidance. We have comments on the current examples below and have provided further suggestions where we think examples would be of benefit to ensuring the intentions of the guidance are well understood.</p> <p>Example one: Preventing a non-diversified, high-risk investment of life savings</p> <p>We think it would be prudent just to note that research would not be the only element to be considered in any such situation. For example,</p> <p><i>"In this situation, the Adviser would have grounds to advise the client not to invest even without research after assessing the client's circumstances."</i></p> <p>Example two: Preventing dilution of existing investment</p> <p>We suggest the approach to the scenario in this example needs to factor in other complexities, as there is a risk that it could be a case of 'throwing good after bad'. As such, the resulting position falls short of what we would expect from our firms given:</p>

- Any listed company will have produced a disclosure document for the offer containing relevant information such as:
 - Whether the offer is underwritten, and if so, who is providing the underwriting
 - Whether or not major shareholders intend to participate
 - Whether any debt financing will be renewed/extended as a consequence of a successfully completed offer
 - A qualitative outlook for prospects of the business
 - Prospects for future dividends
 - A comprehensive disclosure of material risks

At a minimum, an Adviser would read the salient parts of the offer document

- The terms of the offer will also outline if rights are renounceable and, if so, tradeable and what happens in the event of a shortfall. These facts need to be considered.
- An Adviser then might consider that the best course of action could be to take up rights, sell rights, sell the share position or other actions based on relative trading prices.

Any Adviser could likely review the materials and circumstances and make a more informed decision for the benefit of their client. Typically this would not be time-consuming.

As such, we suggest the example could be rewritten to read:

"A client asks an Adviser whether they should take up a discounted rights issue. Even if the issue structure is complex, the client is an existing holder, their holding is small, the price is substantially discounted and taking up their rights will avoid the client's holding being diluted. Without access to research on the company offering the rights issue, the Adviser is likely to have reasonable grounds for advising the client whether to take up their rights based on the disclosures provided by the issuer and an assessment of the client's circumstances. ~~The advice is uncontroversial and, on its face, sensible in the circumstances;~~ Having to get research before giving the advice would not be warranted in the circumstances, nor likely to be in the client's interests."

SIA further suggests there needs to be a clear distinction between providing proactive and reactive advice, given the nature and scope of each customer are quite different, as is each circumstance and interaction.

For example, if a customer directly contacted an Adviser enquiring about investing in a small capital market stock, the Adviser would likely not give advice on it, likely stating they had not had an opportunity to research it. The Adviser would need to look at the customer's portfolio, risk profile and circumstances and undertake due diligence on the stock.

However, given all risks are not equal, the approach and advice outcome might be quite different for an Adviser assisting a client with a large well-diversified portfolio who wants to invest in a smaller, lesser-known stock because they want to support investment in that particular company or sector, and would potentially carry different risks for this client upon assessing their portfolio, risk profile and circumstances.

	<p>Further suggestions for examples are provided below (which SIA provided in earlier feedback):</p> <p><i>Proactive advice</i></p> <p><u>Additional Example A</u> Adviser A advises a number of clients on their whole investment portfolio. Adviser A has undertaken analysis on various investments that are not independently researched for possible inclusion in clients' portfolios. Adviser A has selected the investments based on various themes that may interest particular clients. The analysis is only based on publicly available information. It includes an assessment of basic ratios and peer and sector performance. The assessment includes Adviser A's views on how speculative each investment is and what might be an appropriate limit for inclusion in portfolios with different risk characteristics. In these circumstances, Adviser A is likely to have reasonable grounds for recommending the various investments to clients, considering each client's particular circumstances.</p> <p><i>Reactive advice</i></p> <p><u>Additional Example B</u> Adviser B gets a phone call from a client asking for advice about buying shares in a company that B is unfamiliar with, and for which no research reports are available. While on the call, Adviser B googles the company and looks at information about the company on the NZX website. At this stage, Adviser B is unlikely to have reasonable grounds to make a recommendation about buying shares in the company.</p> <p><u>Additional Example C</u> Adviser C gets a phone call from a client asking for advice on buying shares in a company that Adviser C has read a research report about. Adviser C's employer is a licensed Financial Advice Provider and approves the use of research reports from that provider. Adviser C has no reason to question the report's analysis or conclusions. Adviser C is likely to have reasonable grounds to rely on the report in providing financial advice to the client, taking into account the nature and scope of the advice.</p> <p>SIA suggests that further examples should be included for further clarity on a wider range of situations where the guidance would likely be considered, including where an Adviser should be less inclined to act, i.e. when not to recommend a stock.</p> <p>Any examples should illustrate that Adviser needs to be able to determine what is considered 'reasonable grounds' for the advice, and the assessment of 'reasonable grounds' should be suitably flexible to align with each customer and the context of the transaction and the information available for their professional analysis and advice or opinion.</p>
<p>4. Please describe any other situations where you consider that research would not be needed to support having reasonable grounds for advice on IPOs and listed equity securities.</p>	
<p>5. Do you think that the proposed guidance should be neutral about the source of research used to support reasonable grounds for advice on IPOs and listed equity securities? Please give reasons for your view. If you disagree, please explain what you think</p>	<p>SIA supports the guidance being neutral about the source of research used to support reasonable grounds for advice, and furthermore that an Adviser may rely on another person's assessment of an IPO to support their assessment of what is considered reasonable grounds.</p>

<p>the guidance should say about the source of research?</p>	<p>What may need to be recognised is that the vernacular needs to distinguish between 'research' and 'analysis'. 'Research' has quite a specific meaning in sharebroking and wealth management firms – and the global standard has been set high. Advisers who do not have access to 'research' should still have 'reasonable grounds' by completing an 'analysis' based on the company's disclosure.</p>
<p>6. Generally, for research to be 'fit for purpose' to support reasonable grounds for advice on IPOs and listed equity securities, does it need to:</p> <ul style="list-style-type: none"> • describe the company's activities – why it exists and how it generates cashflow or intends to do so • encompass (quantitatively and qualitatively) the relevant financial and operational aspects of the company, its risks, its value drivers, its outlook, and the quality of its management? <p><i>Please give reasons for your view.</i></p>	<p>While these would be standard elements required for research and analysis, SIA believes that all these elements may not be necessary for all advice circumstances.</p> <p>As mentioned, Advisers cannot provide advice or recommendations without assessing the scope and nature of the advice and each individual customer's circumstances, including portfolio, goals, risk etc. The assessment of what constitutes 'reasonable grounds' should be suitably flexible to align with each customer, and the Adviser can reasonably make that informed assessment. The Adviser should make clear any assumptions and the limitations and scope of the research or information on which they are providing advice or recommendations. The approach to what is considered 'reasonable grounds' also needs to be looked at in the context of the transaction. For example, proactive advice when recommending an IPO, an Adviser would typically require more robust information, ideally the industry standard of a full research report, but could give an opinion or recommendation if they have more 'skinny' research based on nature, scope and circumstances.</p> <p>It should also be recognised that listed companies provide regular information to the market through reporting, compliance with continuous disclosure, and their own investor relations efforts.</p>
<p>7. Please tell us about any situations where you think that research does not need to meet some or all of the criteria set out in question 6 to be fit for purpose to support having reasonable grounds for advice on IPOs and listed equity securities?</p> <p><i>Please describe the situations and the research that would instead be required and explain why this would support reasonable grounds for advice.</i></p>	<p>In terms of an existing listed security, 'reasonable grounds' for an Adviser recommending that a particular stock be added to a client's portfolio should also include an Adviser forming a reasoned, positive view of the company based on receiving and understanding the information outlined within the offer materials published by an issuer subject to continuous disclosure (including presentations by management).</p>
<p>8. Should research used to support reasonable grounds to recommend IPOs and listed equities generally be in writing and documented to a standard the financial advice profession would expect for the nature and scope of the advice?</p> <p>And if other information is used to support advice on IPOs and listed equities – such as for the examples on pages 4 to 5 – should that information</p>	<p>SIA submits that the paragraph on recordkeeping in the proposed guidance is sufficient and should be limited to referring only to the obligations of the Financial Advice Provider licence. Specifying that research (where required) must be documented to a particular standard is overly prescriptive and likely to have a chilling effect on the Advisers doing their own research or analysis (or compliance departments allowing them to) and on Advisers providing advice on small market capitalisation stocks.</p>

also generally be documented in writing to a standard the financial advice profession would expect for the nature and scope of the advice? <i>Please give reasons for your views.</i>	
9. Do you have any other comments on the guidance?	Please see the summary below.

Feedback summary

SIA appreciates FMA working with the industry to ensure that this guidance meets its intentions to support the recommendations of the Capital Markets 2029 Report (**the Report**), particularly facilitating investment into smaller market capitalisation companies. We strongly agree with the Report that this presents an opportunity for the industry to play its part in stimulating investment for growth opportunities in New Zealand's capital markets, economy and businesses.

SIA acknowledges that the industry has taken a conservative approach to this market segment in response to its assessment that FMA has presented a relatively conservative view of what previously may have been considered as 'reasonable grounds'. We believe that this has shown the intention of both the industry and regulator to uphold high standards to maintain the integrity of the market and quality of advice to customers.

It is noted that FMA has taken steps to ensure that the current draft guidance is less directive than the previous versions and has taken a step to recognise the circumstances in which would be appropriate to evaluate the nature and scope of the advice and individual circumstances of the client as well as reasonable information relating to securities. We note the draft guidance now better describes the spirit in which Code Standard 3 should be interpreted in relation to financial advice about IPOs and listed equity securities.

As professionals, when providing financial advisory services and recommendations, Financial Advisers are prudent in ensuring they meet all legislative and regulatory responsibilities and the requirements of the Code. The guidance notes that "it does not constitute legal advice", it should therefore be noted that NZX Participants will also apply a 'legal lens' to its interpretation.

However, it remains our concern that the draft guidance could still be perceived as still somewhat narrow in its scope to encourage advice on small market capitalisation companies, and we are not confident that NZX Participants will be prepared to advise without further indications of what would be acceptable or not acceptable as 'reasonable grounds'. Being overly prescriptive in nature may lead to unintended consequences. The key implication is that the additional compliance burden could lead to reduced accessibility to advice for potential investors to this market segment or more generally, which runs contrary to its intention.

It should be recognised, in addition to professional competence, experience and judgement, that 'reasonable grounds' go hand in hand with the nature and scope of providing advice and the disclosure of limitations in the particular circumstances and considering the client's situation. Ultimately, clients receiving some advice is better than no advice, even if the advice is to act or not act, and Advisers should not be discouraged from providing appropriately qualified advice with limited information.

We strongly recommend the addition of more examples to the guidance to support and clarify the FMA's intent for the spirit in which the guidance should be interpreted. SIA has provided several examples, and we would welcome the opportunity to work closely with FMA on any further examples or refinement of the examples provided.

SIA has indicated that previous drafts of the guidance may not have been workable when applied in a practical and operational sense. We suggest that it could be helpful for FMA to convene a brief feedback workshop in 12 months to ensure that when the final guidance is introduced that it is being applied as intended, or if any further changes are required, or other levers are needed to stimulate investment into this market segment.

Thank you for the opportunity to comment on this consultation paper. SIA has appreciated FMA's engagement throughout the consultation process. Please do not hesitate to contact us should you wish to discuss our submission, require further information or have any questions.

Please note: Feedback received is subject to the Official Information Act 1982. We may make submissions available on our website, compile a summary of submissions, or draw attention to individual submissions in internal or external reports. If you want us to withhold any commercially sensitive or proprietary information in your submission, please clearly state this and note the specific section. We will consider your request in line with our obligations under the Official Information Act.

Thank you for your feedback – we appreciate your time and input.

