

Consultation Paper: Proposed exemption to facilitate personalised robo-advice

About this consultation paper

We are considering using our exemption powers to facilitate the provision of personalised robo-advice services. Our current preference is to do this through a class exemption, if practicable. The current regulatory settings impede the development of personalised robo-advice models in the New Zealand market. This situation is proposed to be addressed through changes to financial adviser laws; however, these law reforms are not likely to come into effect until 2019.

If granted, the exemption will enable entities to provide personalised financial advice through a digital channel before the law reform, provided they comply with certain conditions which are outlined in this paper. This will facilitate greater access to advice for consumers while providing consumer protection safeguards.

We welcome your feedback on the exemption proposal discussed in this paper. Please use the feedback form at the back for any comments.

Submissions close on 19 July 2017.

Next steps

After we have considered all submissions, we will finalise our policy proposals. We aim to have any exemption in force by late 2017.

Who needs to read this consultation paper?

This consultation is for financial advisers, financial product providers, consumers and other interested parties.

It seeks feedback on the exemption proposal to facilitate the provision of personalised robo-advice.

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Document history

This version was issued in June 2017 and is based on legislation and regulations as at the date of issue.

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Background

What is robo-advice?

Robo-advice (also known as ‘digital advice’ or ‘automated advice’) is financial advice generated by algorithms without the direct involvement of a human adviser. The usual channel for the delivery of robo-advice is through a provider’s website, but it can also be delivered through other digital channels such as mobile apps. Robo-advice providers range from new fintech start-ups to large existing financial institutions.

Growth of robo-advice internationally is improving access to advice

Globally, robo-advice is growing rapidly, with established financial services firms and new entrants offering the service. Due to advances in technology, over the last few years services provided solely through online channels have increased considerably. Many new services target young, internet-savvy consumers. Some services offer low-cost advice options aimed at those without other financial advice options. In New Zealand, our review of KiwiSaver sales in 2015 showed most consumers do not obtain personalised advice on KiwiSaver.¹ Personalised robo-advice services could help address this advice gap.

Giving personalised financial advice

Currently, the law is hindering the development of personalised robo-advice models in New Zealand. The current law, passed in 2008, did not contemplate robo-advice. Under the FA Act, personalised advice to a retail client must be given by a natural person.² This restriction ensures that a natural person is responsible for the advice provided meeting the standards of the FA Act and the Code of Professional Conduct for AFAs (the ‘Code’) (where relevant), and promotes industry professionalism.

The FA Act permits an entity to provide class robo-advice.³ However, the line between personalised and class advice is unclear. This means providers may be hesitant to develop class robo-advice tools. Industry feedback also indicates that this does not meet consumer demand for personalised robo-advice; for example, on KiwiSaver products.

¹ The FMA’s [review of KiwiSaver sales and advice practices](#) in 2015 found that only 3 in 1000 sales or transfers had occurred with personalised advice. Personalised advice is advice taking into account the person’s individual situation or goals.

² Generic recommendations based on characteristics such as age and risk profile.

³ Personalised advice may be provided by an authorised financial adviser (‘AFA’), registered financial adviser (‘RFA’) or qualifying financial entity (‘QFE’) adviser.

³ Generic recommendations based on characteristics such as age and risk profile.



Proposed law reform will enable personalised robo-advice

The recent review of financial adviser laws revealed that New Zealand financial service providers could not develop online advice channels fully under the current law which creates a barrier to advice, especially for consumers investing smaller sums of money. As a solution the proposed reforms to financial adviser laws will allow entities to provide personalised robo-advice, as well as a natural person. When a consumer uses a digital advice tool (like a website or mobile app) the advice generated will be treated as advice given by a financial advice provider.

Delays in law reform

Although the policy decision to enable personalised robo-advice has been made, the proposed reforms will not come into effect until 2019. Until then, the current environment of reduced access to advice for consumers and barriers to technological innovation for providers will continue. We have received strong feedback from providers that they would like to offer personalised robo-advice sooner.



Proposed solution

Use exemption powers to facilitate personalised robo-advice

Temporary solution

To find a workable solution until the proposed law reform takes effect in 2019, we have been looking at how we can use our exemption powers to help facilitate the provision of personalised robo-advice under the current FA Act. We are keen to embrace innovation in this space. We also want to create opportunities for those who may not otherwise have access to it, a low-cost option to gain financial advice.

We are considering granting a class exemption for robo-advice providers from the requirement that personalised advice to retail clients be provided by a natural person. Advice generated by a robo-advice tool (on a provider's website or mobile app) will be treated as advice given by a financial advice provider.

The class exemption would be granted under the FA Act to permit personalised robo-advice to be provided under the current law. The FA Act will be repealed when the law reform comes into effect and all FA Act exemptions will be revoked. Existing providers will have a two year transitional period to fully comply with the new financial adviser laws. We are discussing transitional arrangements with MBIE so that, if the exemption is granted, entities can continue offering personalised robo-advice during this transitional period.

Consumer benefits and risks

Using an exemption to allow entities to give personalised robo-advice before the law reform takes effect means consumers have the benefit of this at an earlier stage, and may help address the current advice gap. Although robo-advice services are usually directed at consumers not currently served by existing providers, we recognise nevertheless that robo-advice could cause disruption to existing financial advisers with traditional business models.

As with all advice, robo-advice carries a risk of poor consumer outcomes and there would be an associated reputational risk for the industry. Potential harm to consumers from unsuitable robo-advice or from the failure of one of the first robo-advice offerings could, in addition to the potential financial loss suffered by individual consumers, undermine consumer confidence and have a chilling effect on the development of this sector.

Class vs. individual exemption

We prefer the option of developing a class exemption rather than individual exemptions because this would promote certainty and reduce regulatory burden on individual providers. If granted, we think the exemption should be subject to limits and conditions as this strikes a balance between enabling access to personalised robo-advice and promoting innovation – while still providing consumer protection safeguards.

These requirements may be different from the new ones that will apply once the law reform takes effect. In particular, following the law reform, entities who give advice to retail clients would need to be licensed. This includes any firm giving advice through a robo-advice channel.



If the exemption requirements differ materially from the requirements that will apply under the new regime, having to comply with two different sets of requirements in a relatively short space of time would lead to increased regulatory burden for providers.

Ability to use exemption powers

At the time the FA Act regime was designed, it was thought that personalised advice by its very nature would need to be provided by a human adviser. It was assumed that only a human adviser could assess a person's individual situation and goals and match them to the financial product or products best suited to their needs. Therefore, the original design of the regime focused on individual accountability as the means of ensuring personalised advice was delivered in a manner consistent with the purposes of the FA Act.⁴ However, technology has advanced since the FA Act became law. Entities now have the capability to use robo-advice tools to deliver personalised advice in a manner that meets the standards of the FA Act and is consistent with the purposes of the regime. We are able to grant exemptions where this is consistent with the overall purposes of the regime. Our view is that it is within the scope of our powers to consider an exemption to accommodate the use of this new delivery channel.

Statutory test

To grant an exemption under the FA Act, we must be satisfied that the costs to comply with the relevant obligation:

- would be unreasonable; or
- would not be justified by the benefit of compliance.

In this context, the compliance cost to a provider of the 'natural person' requirement is the cost of incorporating a human adviser into the robo-advice process. This might involve a provider using individual AFAs to review and approve each piece of advice generated by the robo-advice algorithm before the consumer receives it. This may not be economic, and only offer limited benefits given the technological advances which now enable personalised advice to be generated by a robo-advice tool, without using a human adviser.

Our decision on the exemption will be based on whether we are satisfied the statutory test is met, and that the exemption will be consistent with, and promote, the overall purposes of the FA Act. We also need to be satisfied that measures are in place to help mitigate the risks arising from the advice service being delivered digitally and protect consumers.

Proposed limits and conditions of exemption

Risks of robo-advice services

Advice delivered through a digital channel poses the same risks of poor outcomes for consumers as advice developed and delivered by human advisers in terms of suitability and product selection. However, robo-advice poses greater risks in some areas than human advice. Robo-advice could cause poor advice outcomes for consumers because:

⁴ The main overarching purposes of the FA Act are to promote the sound and efficient delivery of financial adviser services, and to encourage public confidence in the professionalism and integrity of financial advisers. The purposes of the Financial Markets Conduct Act 2013 ('FMC Act') are also incorporated into the FA Act, including promoting innovation and flexibility in the financial markets.



- The robo-advice service does not recognise situations not suited to a digital tool and fails to filter out consumers for whom robo-advice is not appropriate.
- Consumers do not appreciate the limitations of getting financial advice via a digital platform.
- A digital interface has limitations compared to human interaction, including the absence of body language cues and tone.

Due to the scalability of robo-advice, poor advice outcomes (for example, from an error in the algorithm) may affect a larger number of consumers. The robo-advice tools available today also cannot do everything that a human adviser can, such as complex financial planning services.

To help address these risks and protect consumers, we are considering the following limits and conditions:

Exemption limits on scope of service

Service: The exemption would be limited to financial advice or investment planning services provided through the robo-advice service. It would not cover the provision of discretionary investment management services ('DIMS'), which have additional tailored requirements under the FA Act or the FMC Act (as applicable). We invite feedback on whether investment planning services should be included in the exemption or whether this should be limited to financial advice only.

Product type: The exemption would be limited to personalised robo-advice on products which are easy to exit - for example, products that are highly liquid or readily transferable. The ability to easily unwind an investment decision reduces potential harm if a consumer has received poor or unsuitable robo-advice. The proposed eligible products are:

- KiwiSaver schemes and other managed funds⁵
- Listed equity securities
- Government bonds
- Listed debt
- General insurance products (home, contents, vehicle)
- Savings products and credit contracts (excluding mortgages).

The complexity of advice varies across the products listed above. For example, advice on managed funds would typically be relatively simple and straightforward to automate using standard algorithms. By contrast, advice on

⁵ A 'managed fund' is a managed investment scheme where either the interests are ordinarily continuously offered and redeemed on a basis calculated wholly or mainly on the value of the scheme property, or where at least 80% of the scheme's assets are in certain liquid assets.



individual listed shares is much more complex and may be more difficult to automate. This may suggest that a narrower product list could be appropriate. We invite your feedback on the current list of eligible products, including whether products should be added or excluded from this list.

We could also include personal insurance products - such as life, health, income protection. However, we have concerns that these products can sometimes not be easily exited, and the consequences of failing to disclose material information are high. Therefore, if included we are considering imposing a value cap or duration limit. This could limit the robo-advice to personal insurance products where:

- the sum insured is not more than \$100,000 per product; or
- the duration is one year or less; or
- the contract can otherwise be cancelled easily.

We invite feedback on whether we should include personal insurance products in the eligible product list and, if so, whether a value cap or duration limit on these products would be appropriate.

We also invite feedback on whether we should apply a value cap or duration limit on some or all of the other proposed eligible products. This may not be necessary as these products are easy to exit - reducing the risk of poor consumer outcomes.

There are also other possible limits we could consider. At this stage we do not plan to impose these but we invite feedback on this:

Individual client investment limit

We could consider imposing an investment limit restricting the robo-advice service to clients seeking advice on amounts or assets for investment under a certain amount (such as \$100,000 or less per client). Advice on significant portfolios would then need to be provided by a human adviser which would add protection for consumers, but may undermine our objective of increasing access to advice.

Limit on total investment amount of products

We could also consider limiting the total investment amount of products that a robo-advice service can advise on (such as a maximum limit of \$5 million). This may help mitigate the overall risk of harm if a robo-advice service fails. However, it may be difficult to set an appropriate total limit given the different size and scale of the robo-advice services and providers who may rely on the exemption. We could consider applying two limits, with a higher limit for entities that are QFEs (or members of a QFE group). This would recognise that these businesses undergo an initial assessment to obtain QFE status and are subject to ongoing supervision by us; and they are required to comply with ongoing QFE obligations and conditions.

We invite feedback on whether we should impose an individual client investment limit or limit on the total investment amount of products that the robo-advice service can advise on, including an appropriate amount for these limits. We recognise advice is not always provided in terms of the amount purchased or invested, so these limits may be difficult to apply in practice or there may be unintended consequences. We invite feedback on this.



We also invite feedback on any other appropriate limits.

Exemption conditions

(a) **Pre-notification procedure:** Before a provider can offer a personalised robo-advice service relying on the exemption, they must notify us that they intend to provide the service. They also then need to receive written confirmation back from us confirming we have no objection to any of the ‘good character’ matters disclosed. The notification must include the following ‘good character’ declarations:

- Details of any matters that may have a negative impact on our view of any of the provider’s directors or senior managers.
- Details of any criminal convictions in New Zealand or overseas with a potential prison term of six months or greater; and details of any other criminal convictions which could have a negative impact on our view of the character of any of the provider’s directors or senior managers.

These are modified versions of the required declarations made by AFAs in connection with the eligibility criteria for authorisation in section 54 of the FA Act. The FMA has published a ‘Good character’ guidance note which would assist providers to understand the types of matters they need to disclose.⁶

We are considering publishing a list of providers who are relying on the exemption, if granted, on our website. We invite feedback on whether you would find this useful.

(b) **Status disclosure:** The provider must include a clear and prominent statement on the digital tool that it is providing a personalised robo-advice service in reliance on the FMA exemption notice. Providers must not suggest that their robo-advice service has been in any way endorsed, approved, or reviewed by us. We are considering prescribing the form of this statement and invite feedback on this approach.

(c) **Disclosure:** Before giving robo-advice, the provider must give the client sufficient information about the personalised robo-advice service so the client can make an informed decision about whether to use the service or not, including a description of:

- (i) The nature and scope of the robo-advice service provided, including any limitations on this. The client needs to be made clearly aware if the robo-advice service is limited to a particular range of products.

Robo-advice will be new to most consumers, so there may be gaps in a client’s understanding of the business model and how the advice will be provided. In describing the nature of the service, it is important that the provider must give clients a clear explanation of how the digital tool works. This could include:

- *Clarifying the extent of human involvement.* For example, explaining that the advice is automatically generated by an algorithm without direct human involvement and has not been individually checked

⁶ See [Guidance Note: Good character and criminal convictions, Financial Advisers Act 2008](#).



or approved by a human adviser. Also providers should explain to the client what they should do if they have questions, including whether they are able to speak to a human adviser, if necessary.

- *Clarifying the information used as the basis for the advice.* For example, explaining that the advice is based solely on the information the client provides as part of the robo-advice service. Otherwise, if the provider has access to other client information, they need to explain what this is and how the client's information is used.
 - *Explaining how tailored the advice recommendations are.* For example, if the algorithm generates a limited set of portfolios that should be clearly described and explained to the client.
 - *Setting out a concise description of the principal benefits and risks* relevant to the robo-advice service, such as errors in the algorithm or technical difficulties resulting in algorithm failure.
- (ii) Explaining any fees the client must pay for the service.
- (iii) Setting out clearly how the provider is paid, and details of any material interests, incentives, relationships, or arrangements that may influence the service the client receives. This includes disclosing whether the robo-advice given is limited to products associated with the provider or related persons.
- (iv) Explaining how a consumer can make a complaint and/or use the provider's dispute resolution arrangements.

Disclosure is particularly important because the robo-advice may be provided with limited or no human interaction. We are not proposing to prescribe the form or method of disclosure, because we are keen to encourage providers to consider how they can use technology to better present disclosures in a user-friendly manner that consumers will understand. These might take the form of pop-ups at appropriate points in the process, or using short videos or graphics to explain how the service works. We also recognise this disclosure will vary from platform to platform (website vs. mobile app). We invite your feedback on this approach.

We have also considered whether the provider should obtain active confirmation from the client to say they have read the disclosures and agree to receive the advice through the robo-advice service on the basis described. At this stage, we do not propose to impose an express client confirmation condition, but we invite feedback on this approach. We expect that many providers would build a client confirmation into their system design. We encourage providers to think beyond a 'tick box' approach to how they can use technology to better engage with the client, and proactively help them to understand the information provided.

- (d) **Conduct:** The provider must comply with conduct obligations when providing the personalised robo-advice service. These are modified versions of Code Standards 1, 2 and 9. Because the advice is generated by an algorithm, in practice providers would need to consider these requirements as part of their system design process.



The proposed conduct obligations are:

- (i) The provider must place the client's interests first. As with advice provided through 'non-digital' channels, the provider is not required to provide advice on products outside of the scope of the robo-advice service.
- (ii) The provider must take reasonable steps to ensure that the advice given is suitable for the client, taking into account the nature and scope of the robo-advice service provided (as disclosed to the client). Suitability of advice is a key obligation providers must comply with regardless of the delivery channel.
- (iii) The provider must not do anything or make an omission that would or would be likely to bring the financial advisory industry into disrepute.

We seek feedback on these obligations, including on whether there may be any difficulties applying these to robo-advice services.

We also invite feedback on whether any other modified versions of the Code Standards need to be included as exemption conditions. Our initial view is that many of the other Code Standards are tailored to individual advice and have not been designed for advice delivered through a digital channel. However, we have looked at the Code Standards when forming the proposed exemption conditions. The personalised robo-advice should be delivered in a manner that is consistent with the principles of the Code.

The Appendix at the back of this paper sets out a table showing how the proposed exemption conditions map to the Code Standards.

- (e) **Capability.** The provider must maintain appropriate expertise to provide the personalised robo-advice service. This includes having:
 - (i) Employees or contractors with appropriate expertise in the technology and algorithms used to provide the robo-advice service. For example, the provider may have engaged contractors with the technical expertise to design and build the robo-advice tool, make changes to the algorithms, and monitor system performance on an ongoing basis - including identifying any system issues.
 - (ii) Appropriately qualified employees or contractors who can oversee and review the advice output that is generated by the algorithms. For example, individuals who are AFAs with experience in the robo-advice product set.
- (f) **Filtering processes:** The provider must have appropriate processes in place to filter out clients who are not suited to receive personalised robo-advice - both initially and throughout the advice process. They might do this by having appropriate filtering questions at the start of the process. This could be directed at filtering out clients who are not suited to receive robo-advice or who are seeking advice on areas outside the scope of the advice service being offered. There could also be a process for flagging potentially inconsistent responses a client provides.



- (g) **Monitoring and testing:** The provider must:
- (i) Conduct regular reviews of the personalised robo-advice to test the quality of the advice and ensure it meets the standards required by the FA Act and the exemption conditions. We propose to provide flexibility for providers to determine the frequency and level of review that is appropriate. For example, in the initial stages or following a change to the algorithms a provider may wish to have every piece of advice (or a high proportion) reviewed by appropriately qualified individuals. At other times, regular file reviews of samples of the advice by appropriately qualified individuals may suffice.
 - (ii) Have appropriate processes in place to monitor and test the algorithms, and any changes to them.
- (h) **Systems and controls:** The provider must:
- (i) Have adequate risk management systems in place. This could include exceptions reporting to identify situations where the output deviates from expectations; having appropriate processes in place to suspend provision of the service if an error is detected resulting in unsuitable advice or poor consumer outcomes; and event-based testing of any changes to the algorithms.
 - (ii) Have adequate information security systems for the personalised robo-advice service.
- (i) **Complaints:** The provider must have an appropriate internal process for resolving client complaints about the personalised robo-advice service.
- (j) **Record keeping:** The provider must ensure that it keeps up-to-date records about the personalised robo-advice service, including adequate information about the advice provided to the client and the algorithms used by the robo-advice service. These records must be made available to us on request.
- (k) **Reporting:** The provider must notify us, in writing, within five business days of becoming aware of:
- (i) any significant matter about the robo-advice service, including any material breach of any of these exemption conditions or other legislative requirement in relation to the service; or any significant or systematic problem with the robo-advice service
 - (ii) any new matters or criminal convictions that may have a negative impact on our view of any of the provider's directors or senior managers.

The conditions would be applied proportionately to the size and scale of the service offered. If granted, we propose to publish an accompanying information sheet to explain the exemption and provide guidance to providers on the conditions. We invite feedback on whether this would be helpful.

We invite input on these proposed conditions, and on any other appropriate conditions.



Existing FA Act and other requirements

As well as complying with the limits and conditions of the exemption notice, providers of personalised robo-advice services would also need to comply with other existing legislative requirements. Under the FA Act, these include:

- Disclosure obligations in Part 2 of the FA Act.
- Conduct obligations in Part 2 of the FA Act. This includes duties to exercise care, diligence and skill; and not to engage in misleading or deceptive conduct.
- QFE providers would need to comply with the standard QFE conditions and other obligations.

The following existing requirements under the Financial Service Providers (Registration and Dispute Resolution) Act 2008 would apply:

- Register on the Financial Service Providers Register (FSPR)
- Belong to an approved dispute resolution scheme.

Exemption objectives

If the exemption is granted, this should help to facilitate greater access to advice for consumers while providing consumer protection safeguards – promoting the overall purposes of the FA Act.

Our view is that personalised robo-advice should be delivered in a manner consistent with the principles of the Code and other requirements for AFAs, regardless of the type of product advised on.⁷ We do not intend to apply a tiered approach that draws a distinction between eligible category 1 and category 2 products (as defined under the FA Act).

Our current preference is to develop a class exemption. This would promote certainty and reduce regulatory burden on individual providers. We invite feedback on this approach. Providers who wish to develop personalised robo-advice services outside of the exemption parameters would be able to apply to us for individual relief. We would make any decisions on individual relief based on whether the statutory grounds for granting an exemption are met and taking into account the purposes of the FA Act. The parameters of the class exemption would provide guidance to providers on the standards we expect robo-advice providers would be able to meet. Providers would need to explain why any modifications are appropriate for their particular robo-advice service.

However, we do need to take care that the exemption limits and conditions strike an appropriate balance between protecting consumers and promoting innovation. If too restrictive, the conditions may impose undue barriers to innovative robo-advice offerings, making the exemption ineffective to increase access to advice and help address the advice gap during the period before the law reform comes into effect. We invite feedback on whether our current exemption proposal strikes an appropriate balance.

⁷ Please see the Appendix for a table providing further detail of how the proposed exemption conditions map to the Code Standards, Standard Conditions for AFAs, and FA Act requirements for AFAs.



Enforcement

A robo-advice provider who breaches the exemption conditions would be in breach of the obligation to which the exemption applies. An entity providing personalised advice to retail clients (in this case, through a robo-advice service) commits a criminal offence liable on conviction to a fine not exceeding \$50,000. We could also prevent the provider from relying on the exemption going forward. Our usual range of enforcement tools would not be available, for example, the ability to refer an AFA to the Financial Advisers Disciplinary Committee for breach of a Code Standard.

If the provider is a QFE or a member of a QFE group, our supervisory tools in relation to QFEs would be available.

Consumers who receive poor or unsuitable advice would have access to the provider's internal complaints process and have recourse through the provider's dispute resolution scheme.



Questions

General questions

- Q1. Do you support the proposed exemption from the requirement for personalised advice to retail clients to be provided by a natural person, provided this is subject to the proposed limits and conditions to provide consumer protection safeguards? Please give reasons for your view.
- Q2. Do you agree it is appropriate for us to consider using our exemption powers to facilitate the provision of personalised robo-advice in advance of the law reform, or do you believe that we should wait for the law reform to come into effect? Please give reasons for your answer.
- Q3. Do you think the costs for robo-advice providers to comply with the 'natural person' requirement (if no exemption is granted):
- Would be unreasonable? or
 - Would not be justified by the benefit of compliance?
- Please give reasons for your answer.
- Q4. Do you support the proposed approach of granting a class exemption, or do you consider that granting individual exemptions would be more appropriate – in either case subject to limits and conditions? Please give reasons for your view.
- Q5. What impact would this exemption have if granted? We are particularly interested in any risks, costs, or other impacts this may have for consumers; as well as any risks, costs or other impacts this may have on providers (including robo-advice providers and other advice providers).
- Q6. What would be the impact if no exemption is granted (status quo)? We are interested in any risks, costs, or other impacts this may have for consumers; as well as any risks, costs or other impacts this may have on providers. (For providers) we are also interested in whether you would provide class robo-advice services if no exemption is granted.
- Q7. Do you agree that there is an advice gap which means consumers are not able to access financial advice? What do you believe is the approximate balance a consumer would need for a provider or an AFA to be willing to provide advice to them?
- Q8. (For providers) Do you intend to rely on the proposed exemption? Why or why not? If we granted an exemption in late 2017, when would you expect to be able to launch your personalised robo-advice service? Which products would your robo-advice service provide advice on? We are interested to hear more about proposed robo-advice services, so it would be helpful to have a brief description of your proposed model.



Exemption limits and conditions

- Q9. Do the proposed limits and conditions strike an appropriate balance between consumer protection and promoting innovation? Please give reasons for your view.
- Q10. Are any of the limits or conditions in this paper likely to cause your business unreasonable costs or make providing a personalised robo-advice service unworkable for your business? If so, please indicate which limit(s) or condition(s) do this, and what those costs or impracticalities are. Please also propose alternative conditions that would provide a similar level of protection, if possible.
- Q11. Do you agree that the exemption should be available for financial advice or an investment planning service, or do you think it should be limited to financial advice only (excluding investment planning services)? Do you agree that discretionary investment management service (DIMS) should not be covered by the exemption? Please give reasons for your view.
- Q12. Do you agree with our proposed list of eligible products? Please indicate if there are products that should be included or excluded from this list.
- Q13. Should personal insurance products be included in the eligible product list? If so, should these products be capped at a certain value or have a duration limit? For example, should advice on personal insurance products be limited to products where the sum insured would not exceed \$100,000 per product, or where the duration is one year or less? Please give reasons for your view. If you consider a different value cap or duration limit would be appropriate, please specify what this should be.
- Q14. Should we also apply a value cap and/or duration limit on some or all of the other proposed eligible products? Please give reasons for your view. If you consider a value cap and/or duration limit would be appropriate, please specify what this should be.
- Q15. Should we impose an individual client investment limit (a requirement that advice only be provided to clients seeking advice on investment amounts or investable assets of (for example) \$100,000 or less per client)? Do you think there are any practical difficulties or unintended consequences that may arise from this? Please give reasons for your view. If you consider a monetary limit would be appropriate, please specify what this should be.
- Q16. Should we impose a limit on the total investment amount of products advised on through the robo-advice service? Or should we impose two limits, a higher limit for QFEs and a lower limit for non-QFEs? Are there any practical difficulties or unintended consequences you can see from imposing a limit? Please give reasons for your view. If you consider a monetary limit would be appropriate, please specify what this should be.
- Q17. Should we prescribe the form that the status disclosure statement (that the provider is providing a personalised robo-advice service in reliance on the FMA exemption notice; and that this has not been endorsed, approved or reviewed by us) must take? Yes or no? If not, why not?
- Q18. Do you think providers should have flexibility to decide how to comply with the disclosure condition, or do you think we should prescribe the form and method of disclosure - such as through a prescribed form of disclosure statement? Please give reasons for your view. For providers - what form and methods would you propose to use to comply with the disclosure condition?



- Q19. Should we impose a condition that requires the provider to obtain active confirmation from the client that they have read the disclosures and agree to receiving advice through the robo-advice service on the basis described? Please give reasons for your view.
- Q20. Do you agree with the proposed conduct obligations? Please give reasons for your view, including whether there may be any difficulties or unintended consequences from applying these to a robo-advice service.
- Q21. Are there any other conduct obligations that should apply? For example, other modified versions of the Code Standards. Please tell us why any additional obligations would be appropriate and provide proposed wording for these, if possible.
- Q22. Do you have any feedback on the table set out in the Appendix which maps the proposed exemption conditions to the Code Standards, Standard Conditions for AFAs and FA Act requirements for AFAs? Are there modified versions of any of these requirements that are not currently reflected in the proposed exemption conditions that should apply? Please give reasons for why any additional conditions would be appropriate and provide proposed wording for this, if possible.
- Q23. Should the conditions be applied in a manner that is proportionate to the size and scale of the robo-advice service offered? Please give reasons for your answer.
- Q24. Are there any other limits or conditions you think would be appropriate to put in place?
- Other**
- Q25. As well as the exemption notice, would you find an information sheet explaining the exemption and providing guidance on how to comply with it helpful? Yes, or if not, why not?
- Q26. Would you like to see a list of providers relying on the exemption, if granted, on our website? If not, why not?
- Q27. Do you think we should continue to use the term 'robo-advice', or should we use a different term such as 'digital advice' or 'automated advice'?
- Q28. Do you have any other feedback or comments?



Appendix – Mapping of exemption conditions to Code Standards and other AFA requirements

As discussed in the paper, our view is that personalised robo-advice should be delivered in a manner consistent with the principles of the Code and other requirements for AFAs, regardless of the product type advised on. This Appendix provides further detail on how the proposed exemption conditions map to the Code Standards, Standard Conditions for AFAs, and FA Act requirements for AFAs. We invite feedback on this and whether modified versions of any of the requirements that are not currently reflected in the proposed exemption conditions are relevant and important to include.

Code Standard	Exemption condition
<p>1 – An AFA must place the interests of the client first, and must act with integrity.</p>	<p>Principle reflected in proposed conduct condition for the provider to place the interests of the client first.</p> <p>Because the advice is generated by an algorithm, we expect that providers would need to have regard to this requirement as part of the system design process.</p> <p>We have not built in an express requirement to act with integrity as this does not seem directly applicable to a robo-advice service.</p>
<p>2 – An AFA must not do anything or make an omission that would or would be likely to bring the financial advisory industry into disrepute.</p>	<p>Principle reflected in proposed conduct condition that the provider must not do anything or make an omission that would or would be likely to bring the financial advisory industry into disrepute.</p> <p>We invite feedback on whether there may be any difficulties in applying this in a robo-advice context.</p>
<p>3 – An AFA must not state or imply that the AFA is independent, or that any financial adviser services provided are independent, if a reasonable person in a position of a client would consider that the AFA or the services provided are not independent.</p>	<p>Principle reflected in proposed disclosure condition for providers to disclose details of any material interests, incentives, relationships, or arrangements that may influence the service provided to the client, including disclosing whether the robo-advice given is limited to products associated with the provider or related persons.</p>



<p>4 – An AFA must not borrow from or lend to a retail client.</p>	<p>We have not reflected this Code Standard in the proposed exemption conditions. Entities may borrow from or lend to retail clients in the ordinary course of business.</p>
<p>5 – An AFA must effectively manage any conflicts of interest that may arise when providing a financial adviser service.</p>	<p>Principle reflected in proposed disclosure condition for providers to disclose details of any material interests, incentives, relationships, or arrangements that may influence the service provided to the client.</p> <p>Also reflected in proposed conduct condition for the provider to place the interests of the client first. If the provider is unable to manage the conflict so as to place the interests of the client first, we would expect the provider to decline to act. This would need to be built into the system design.</p>
<p>6 – An AFA must behave professionally in all dealings with a client, and communicate clearly, concisely and effectively.</p>	<p>We have not expressly prescribed this.</p> <p>The requirement to behave professionally does not seem directly applicable to a robo-advice service.</p> <p>In complying with the proposed disclosure condition we expect providers to act consistently with the principle of clear, concise and effective communication. As discussed in the paper, we encourage providers to consider how they can use technology to do this.</p> <p>We note that the additional provisions to Code Standard 6 provide that an AFA must make recommendations only in relation to financial products that have been assessed or reviewed by the AFA to a level that provides the AFA with a reasonable basis for any such recommendation. We invite feedback on whether it would be useful to include a modified version of this requirement as an exemption condition.</p>
<p>7 – An AFA must ensure each retail client has sufficient information to enable the client to make an informed decision about whether to use the AFA’s financial adviser services.</p>	<p>Principle reflected in proposed disclosure condition for the provider to ensure that the client has been given sufficient information about the personalised robo-advice service before the advice is provided to enable the client to make an informed decision about whether to use the</p>



	service.
8 – When providing a financial adviser service to a retail client, an AFA must agree with the client the nature and scope of the service to be provided.	<p>Principle reflected in proposed disclosure condition for the provider to disclose the nature and scope of the robo-advice service provided, including any limitations on this.</p> <p>As discussed in the paper, we have not at this stage included a condition that the provider obtains active confirmation from the client that they agree to receiving advice through the robo-advice service on the basis described; however, we invite feedback on this</p>
9 – When providing a personalised service to a retail client an AFA must take reasonable steps to ensure that the personalised service is suitable for the client, having regard to the agreed nature and scope of the personalised service provided.	Principle reflected in proposed conduct condition for the provider to take reasonable steps to ensure that the advice given is suitable for the client, having regard to the nature and scope of the robo-advice service provided (as disclosed to the client).
10 – Where an AFA provides a personalised service to a retail client that is an investment planning service or relates to a category 1 product, the AFA must provide an explanation of the service provided that is sufficient to enable the client to make an informed decision about the financial adviser service.	Principle reflected in proposed disclosure condition for the provider to ensure that the client has been given sufficient information about the personalised robo-advice service before the advice is provided to enable the client to make an informed decision about whether to use the service. As discussed in the paper, we consider it particularly important in this context that the provider gives a clear explanation of how the digital tool works.
11 – An AFA must ensure there is an appropriate internal process in place for resolving client complaints in relation to the AFA’s financial adviser services	Principle reflected in proposed complaints condition for the provider to have an appropriate internal process for resolving client complaints in relation to the personalised robo-advice service.
12 – An AFA must record in writing adequate information about any personalised services provided to a retail client.	Principle reflected in proposed record keeping requirement for the provider to ensure that it keeps up-to-date records relating to the personalised robo-advice service, including adequate information about the advice provided to the client and the algorithms used by the robo-advice service and makes those records available to the FMA on request.
13 – An AFA must ensure that records of all information and documents required under the Code are kept for a	Principle reflected in proposed record keeping requirement. To make this workable as an exemption



minimum of 7 years.	condition, we have framed this as a requirement to keep up-to-date records rather than imposing a 7-year minimum period.
14 - Before providing a financial adviser service, an AFA must have the competence, knowledge, and skills to provide that service.	Principle reflected in proposed capability condition. This has been tailored to the robo-advice context; for example, through the requirement to have employees or contractors with appropriate expertise in the technology and algorithms used to provide the robo-advice service, as well as appropriately qualified individuals to oversee and review the advice output.
15 – An AFA must have a knowledge of the Act, the Code, and other legal obligations relevant to the operation of the AFA’s practice as a financial adviser (including relevant consumer protection laws), that is adequate for the proper operation of that practice.	Not directly applicable to a robo-advice service.
16 – To be an AFA, a financial adviser must attain the components of the New Zealand Certificate in Financial Services (Level 5) that are relevant to the financial adviser services to be provided by the AFA.	Not directly applicable to a robo-advice service.
17 – An AFA must maintain and keep current a professional development plan for each CPD period.	Not directly applicable to a robo-advice service.
18 – An AFA must undertake sufficient continuing professional training to maintain the AFA’s competence at a level appropriate for the financial adviser services the AFA provides or intends to provide, and keep up to date with developments relevant to the AFA’s practice.	Not directly applicable to a robo-advice service.
Summary of Standard Conditions for AFAs	Exemption conditions
1. Requirement to have and maintain an Adviser Business Statement.	Not directly applicable to a robo-advice service.
2. Reporting – The AFA must report in accordance with the periodic and other reporting, accounting and notification requirements contained in the Regulatory	Not workable to impose as an exemption condition (this would be a condition subsequent). We note that we can exercise our section 25 powers to



Reporting Guide for AFAs.	require providers to supply information if necessary.
3. Notifications - The AFA must notify FMA in writing within five business days of any significant matter concerning the AFA's authorisation, or financial adviser activities, including certain specified notifications.	Reflected in proposed reporting condition. We note that not all of the standard notifications are relevant to a robo-advice service.
4. Records - The AFA must ensure that all records pertaining to his or her financial adviser business are available for inspection by FMA at any time.	Reflected in proposed record keeping condition.
5. Client money - Where the AFA acts as an intermediary for a client in the receipt, holding, payment or transfer of client money or client property, the AFA must act in accordance with the brokers' conduct and trust accounting obligations in Part 3A of the FA Act.	Not applicable.
6. Supervising trainee advisers	Not applicable.
7. No endorsement - The AFA must not at any time state or imply that FMA has endorsed or approved the AFA's business, advice, or solvency, or any other agreements or business arrangements of the AFA.	Reflected in proposed status disclosure condition.
FAA requirement	Exemption condition
Disclosure obligations – subpart 2 of Part 2 (eg section 22-23); Financial Advisers (Disclosure) Regulations 2010	AFA disclosure requirements are reflected in proposed disclosure condition. We note however that this condition has been tailored with information we consider relevant for personalised robo-advice services. We also do not intend to prescribe the form of disclosure.
Conduct obligations – subpart 3 of Part 2, including sections 37-45A	Conduct obligations in sections 22-25 apply to all financial advisers, including entities providing personalised robo-advice services. The other AFA-specific conduct obligations do not seem directly relevant, applicable or important to include in the context of a robo-advice service. For example, many of the conduct duties relate to the provision of personalised DIMS to retail clients.

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