

October 2017

Submissions Report

Exemption to facilitate personalised robo-advice

A summary of submissions on the proposed exemption to
facilitate personalised robo-advice.

Individual submission papers are appended.



www.fma.govt.nz

AUCKLAND OFFICE | Level 5, Ernst & Young Building | 2 Takutai Square, Britomart | PO Box 106 672 | Auckland 1143
WELLINGTON OFFICE | Level 2 | 1 Grey Street | PO Box 1179 | Wellington 6140

FMA document reference code 3933149

Contents

Executive summary	4
Feedback themes	5
Strong support for exemption	5
Opposition to limits	5
Robo-advice should meet AFA standards	5
Conditions should align to new regime	5
Applicants should be pre-approved or licensed	6
Appendices	7

Executive summary

We would like to thank all submitters for their feedback on our consultation on a [proposed exemption to facilitate personalised robo-advice](#). We received 49 written submissions from a wide range of stakeholders including financial advisers, product providers, fintech start-ups, dispute resolution schemes, industry bodies, and law firms. We acknowledge the points raised and the effort put into the submissions.

This document contains a summary of the key themes raised in the submissions, with individual written submissions papers attached. Two submitters requested their submissions remain confidential. These submissions have not been published. Others have sections redacted. We can withhold information in accordance with the Official Information Act 1982 and Privacy Act 1993.

The themes are:

- strong support for an exemption
- opposition to limits
- robo-advice should meet the same standards that apply to authorised financial advisers (AFAs)
- exemption conditions should be aligned with new advice regime requirements
- exemption applicants should be pre-approved or licensed.

The summaries of each theme outlined below include our responses to them.

Feedback themes

Strong support for exemption

We received strong support from submitters for using our exemption powers to facilitate personalised robo-advice under the current Financial Advisers Act 2008 ('FA Act'). Submitters felt this would improve consumer access to advice. Submitters also believed that delay would mean New Zealand will lag further behind other jurisdictions in this sector.

Submitters who opposed the exemption raised concerns that robo-advice has risks and we should not rush to enable it. Some submitters also felt robo-advice should be implemented through a law reform process and not through the use of our exemption powers.

Our view is that an exemption has the potential to improve consumer access to advice in a cost-effective and innovative manner. The exemption will have conditions in place to help address the risks and provide consumer protection safeguards.

Opposition to limits

There was general opposition to the imposition of any financial limits. For example, an individual client investment limit or a limit on the total investment amount of products. We recognise financial limits may be difficult to apply in practice or may have unintended consequences. These concerns were reflected in the submission feedback. We do not plan to impose any financial limits.

Many submitters also felt the eligible product list should be expanded to include mortgages and personal insurance products. Submitters believed our objectives of improving consumer access to advice apply to these products. We have considered the feedback and will expand the eligible product list to include mortgages and personal insurance products.

Robo-advice should meet AFA standards

Many submitters believed robo-advice should meet the same standards as those that apply to AFAs. Submitters felt that the delivery channel should not affect the requirements that apply. We agree with this principle. Our view is that personalised robo-advice should be delivered in a manner that is consistent with the principles of the Code of Professional Conduct and other requirements that apply to AFAs. This will be reflected in the exemption conditions. Providers will also need to apply to us to rely on the exemption. This is consistent with the requirement for AFAs to apply to us before they can enter the advice market.

Conditions should align to new regime

Submitters requested that the exemption conditions align with the requirements that will apply under the new advice regime. Submitters raised concerns about incurring costs to comply with requirements that then change; and the risk that providers rely on the exemption then fail to obtain a licence.

Our exemption powers allow us to enable personalised robo-advice under the current FA Act regime. We cannot bring forward requirements that will apply under the new advice regime. Many of these requirements are still in development- such as the new Code Standards.

Providers will need to apply to us to rely on the exemption. The exemption application process is not a substitute for obtaining a licence under the new financial advice regime. If a provider is approved to rely on the exemption, they will still need to undergo a full Financial Markets Conduct Act 2013 (FMC Act) licensing process in the same way as any other financial advice provider.

Providers will need to make a commercial decision about whether they wish to apply to rely on the exemption and provide personalised robo-advice under the FA Act, or wait until the proposed law reforms take effect in 2019.

Applicants should be pre-approved or licensed

A number of submitters believed we should pre-approve exemption applicants rather than applying a pre-notification procedure. Some submitters felt providers should be a qualifying financial entity (QFE) or FMC Act licensee to rely on the exemption. Reflecting this feedback, while we will not require providers to have a licence, they will need to apply to us to rely on the exemption. Similar to the AFA application process, providers will need to provide us with good character declarations and information showing they are competent to provide the robo-advice service. The application process will provide further opportunity for providers to engage with us. We continue to encourage all providers developing innovative services to [engage with us early in the design process](#).

Appendices

- [Accordia Asset Management Limited and Accordia Services Limited](#)
- [Alistair Bean & Assoc's Financial Services Limited](#)
- [AMP](#)
- [ANZ Bank New Zealand Limited](#)
- [ASB](#)
- [Banking Ombudsman Scheme](#)
- [Bell Gully](#)
- [BNZ](#)
- [Chapman Tripp](#)
- [Cigna Life Insurance NZ Ltd](#)
- [Code Committee](#)
- [Cygnus Law Ltd](#)
- [Delta Insurance New Zealand Limited](#)
- [DLA Piper New Zealand](#)
- [Dynamique \(UK & NZ\)](#)
- [Fidelity Life Assurance Company Limited](#)
- [Financial Services Complaints Ltd](#)
- [Financial Services Council](#)
- [Financial Services Federation Inc.](#)
- [Fisher Funds Management Ltd](#)
- [FNZ](#)
- [Health Funds Association of New Zealand Inc](#)
- [Ilumony Ltd](#)
- [Institute of Financial Advisers](#)
- [Insurance Council of New Zealand](#)
- [Insurely Global Limited \(trading as 'Teddy'\)](#)
- [InvestNow Savings and Investment Service Ltd, Implemented Investment Solutions Ltd](#)
- [Kehlmann Berleys Capital Ltd](#)
- [Kensington Swan](#)
- [Kiwibank, Kiwi Wealth Limited and the Gareth Morgan Investments Limited Partnership](#)
- [Medical Assurance Society New Zealand Limited](#)
- [Mercer \(N.Z.\) Limited](#)
- [Milford Asset Management Limited](#)
- [MinterEllisonRuddWatts](#)
- [New Zealand Bankers' Association \(NZBA\)](#)
- [New Zealand Funds Management Limited](#)
- [New Zealand Shareholders Association Inc. \(NZSA\)](#)
- [Nikko Asset Management New Zealand Limited](#)
- [Partners Life](#)
- [Peter Dredge Limited](#)
- [Russell McVeagh](#)
- [Sharesies Limited](#)
- [Southern Cross Medical Care Society \(trading as Southern Cross Health Society\)](#)
- [TSB Bank](#)
- [Westpac New Zealand Limited](#)
- [Personal submission 1](#)
- [Personal submission 2](#)

Feedback form: Proposed exemption to facilitate personalised robo-advice

Please submit this feedback form electronically in both PDF and MS Word formats and email it to us at consultation@fma.govt.nz with 'Proposed exemption to facilitate personalised robo-advice: [your organisation's name]' in the subject line. Thank you.

Submissions close on 19 July 2017.

Date: 5th July 2017 Number of pages:

Name of submitter: [REDACTED]

Company or entity: Accordia Asset Management Limited and Accordia Services Limited

Organisation type: MIS and Adviser Firm

Contact name (if different): [REDACTED]

Contact email and phone: [REDACTED]

Question or paragraph number	Response
<i>You don't need to quote from the consultation document if you note the paragraph or question number.</i>	
Q1	<p>Yes, we agree with the proposal to expand the giving of financial advice to non-natural persons.</p> <ul style="list-style-type: none">- We need to be more innovative around how we obtain information and advice and recognise that not everyone needs or wants to see a financial adviser.- Some people have simple needs they can meet themselves on-line and they will go there anyway.- We need to help make investment as 'every day' as on-line banking and that means allowing the investor to tailor the experience to their own needs. A well designed Robo platform will provide an easily understood menu.- Consumer protection needs to be strong to ensure consistency, control from manipulation and misrepresentation. Our biggest concern is that robo-advice is just a mechanism to manipulate people into doing what you want them to do anyway. Algorithms need to be tested against criteria to ensure they have the clients' best intentions at the forefront of their design.
Q2	<p>It is a positive step to allow an exemption prior to the official law change as long as the FMA has clear guidance on what is acceptable and what isn't. If that can be developed before 2019 and helps expand the market and maintain client protection then the risks to consumers are the same now or in 2019. The fact is that consumer demand and technology will outpace any law changes as proposed for 2019</p>
Q3	<p>To a pure robe-advice provider the costs would be unreasonable as there would be additional wages as well as process and document costs to attend to.</p> <p>For an adviser firm that is using robo-advice to streamline existing systems</p>

	<p>e.g. data collection, risk profiling, the costs should reduce and the exemption could make compliance easier, quicker and cheaper for all parties.</p> <p>The costs to a pure robo-advice firm of having a natural person would outweigh the compliance benefits. The reason being is that there are still inconsistencies when people provide advice and it is hard to monitor and manage advice given by people. A computer should provide the same advice to different people in the same situations or at least not be radically different. However, the robo process should be able to detect when a consumer is inputting certain data that would indicate that there may be the need for input from a natural person.</p> <p>The issue with robo-advice occurs when the firm tries to 'pigeon hole' people to make it easier to sell a product when in fact there are significant differences that require a different piece of advice.</p>
Q4	<p>A class exemption is acceptable if the criteria for acceptance is robust and can accommodate the varying types of robo-advisers. If someone is quite different then they can apply for a different kind of exemption. Yes, we agree that there should be limitations and conditions.</p>
Q5	<p>For customers, it will open the possibility of getting advice when they would have usually been excluded from the market. It may increase the general public's engagement with investment and financial services which is positive. Many different types of adviser could appear and we would hope that the majority offer services that add value to customers.</p> <p>For the providers it can provide opportunities to streamline existing services by allowing the customer to have more control over the experience e.g. with providing personal information. It can remove barriers to entry by simplifying the application and AML/CFT process.</p> <p>The concern is that it also opens the opportunity to exploit a vulnerable section of the market who are just starting out with savings and could be prone to scams or promises with no outcome.</p>
Q6	<p>By not granting the exemption you miss a valuable opportunity to meet the markets needs and do it in an environment that can to the best of its ability, protect the client as well.</p> <p>As KiwiSaver balances increase and people start taking more notice of what they have, industry must provide an affordable service to help them understand their investments. There is also an opportunity to help more people at the lower end of the market with financial difficulties. You can increase engagement around money, investments and insurances and help people become more confident in talking about and dealing with finances.</p>
Q7	<p>Yes there is definitely an advice gap. The majority of the advisers (AFAs) in the industry target high net worth clients with at least \$300,000 but would prefer over \$500,000. Many advisers want to accept savings clients but the cost to service them outweighs the benefits to the business. This results in an industry that has a database with an average age of over 60 and every</p>

	<p>increasing drawdown diminishing the size of the book.</p> <p>Robo-advice can provide a significant advantage to these firms, as it can allow them to accept savings clients to build up the business at low to no extra costs. A Robo Advice model will also allow consumers to select what service level they are comfortable with, and any fees associated with that.</p> <p>A simple service level can be developed for these savings clients and then face to face engagement (based on hourly rate or fixed fee if necessary) can be provided as requested.</p>
Q8	<p>Yes we would use robo-advice. Initially to streamline services to clients and allow them to 'drive' more of the experience. We would use it to improve our service to clients both at the initial stages and for ongoing servicing. We would want this opportunity in the next 12-18 months.</p>
Q9	<p>We believe that both financial advice and investment planning services be offered under robo-advice. Consumers need access to both, however the criteria for working in the clients best interests is key and ensuring the client is not just manipulated into a product is essential to protect against. People need to understand what they are buying.</p> <p>We agree that DIMs are problematic as it does assume the client is savvier around choosing investments as opposed to simply choosing a conservative, balanced or growth fund which has set parameters. The importance of a Robo model is that it should be a clear investment process. There is definitely a significant risk with a DIMs solution, where there could be a lack of understanding as to what is required on an ongoing basis to build and maintain an appropriate portfolio without sufficient knowledge and experience.</p> <p>We agree that liquidity must be a key consideration for accepting a robo-advice provider. The clients must be able to exit quickly (within 2 months) if they find they made a mistake.</p> <p>The provider must be able to demonstrate that there is a very clear link between the value they purport to provide to the client and the value received by the client.</p> <p>We do not believe there should be a value minimum or cap as all types of people with varying levels of wealth can benefit from increased access to advice.</p> <p>We agree with the other conditions to notify the FMA of the intention to offer a robo-advice service, the extent of the service and all of the key aspects affecting the client. Disclosure about it must be clear for the customer, they must be able to understand the benefits and risks to them and how much work they need to do themselves. The limitations of the service should be easy to understand and prominent, not buried in the back of a website in fine print.</p> <p>Actual acknowledgements from the client on what they are getting/not getting would be better rather than assumed acknowledgements. People</p>

	need to be conscious of how the system works. This will provide greater confidence and trust and ultimately a more robust industry.
Q10	<p>No we do not believe the conditions pose any unnecessary costs. The conditions are needed to protect the customer and enhance the industry.</p> <p>Filtering is a particularly important one and should be taken seriously as there will be people who do not suit working only on-line with money or investments. These people will need face to face advice (regardless of wealth) and this should be identified with integrity.</p>
Q11	Please see answers to question 9 above See commentary on DIM's
Q12	Yes, we agree with the proposed list of products. As noted above, liquidity is an essential element of this service offering we believe.
Q13	<p>Yes, we believe that with insurance there needs to be different considerations especially where there are exclusions and complicated situations. Simple funeral cover or simple life plans that mainly cover funeral and some other costs are relatively simple to understand. However, the more complicated plans for trauma, income protection and medical, where there are extensive disclosures, may not be appropriate to buy without face to face advice. Insurance products are becoming complex, and the real danger of a Robo risk customer not appreciating the importance of disclosure for example, could be profound. For that reason, any filters should be set with care to ensure that where required, adviser intervention occurs.</p> <p>If they are part of robo-advice, the filtering process becomes even more important to use. As soon as a client discloses a particular illness or pre-existing condition, they may need to be directed to a person to discuss the condition.</p>
Q14	No, we don't not believe a value cap will offer any extra protection. If the amount of funds to invest is significant, the filtering process may show these people and ask different questions or direct them to speak to someone to cover off a wider range of topics.
Q15	No, we do not see any extra advantages in imposing individual client limits as the filtering process and suitability testing should be robust enough to manage different wealth levels.
Q16	No there should not be any limits posed and we also disagree with allowing QFEs advantages over non-QFEs. By 2019 everyone will be in a licensing regime and so the license obligations should be the same for everyone, including those offering robo-advice. It may also be too costly for the FMA to monitor and apply different rules for different providers. For consistency, it must be remembered that the regulatory environment is there for the benefit of the consumer. To avoid any potential for confusion, it is therefore not reasonable to impose differing standards for the delivery of Robo advice between QFE's and non QFE's.
Q17	Yes, there should be a consistent standard disclosure that everyone must

	give and there should be a clear expectation set about how easy that is for clients to find, read, understand and acknowledge.
Q18	We believe that mandating the wording and form is a good idea but with consultation from industry to ensure it does not hinder the process. As long as the disclosure is early on in the process with the client, is not buried and does not hide any key details that affect decision making, there is plenty of scope for flexibility. There should be some form of acknowledgement from the client, whether this is a tick box which is attached to a video, voice recording on the site, a written page etc. can be up to the provider.
Q19	Yes, this is important otherwise you run the risk of an uninformed person agreeing to invest very high amounts of money into a risky investment.
Q20	Yes, we agree that the conduct obligations be applied to protect the client's best interests. It will be more difficult to prove you are working in the client's best interests so guidance around how this is effectively demonstrated may be required.
Q21	No, we believe the ones noted are sufficient.
Q22	No additional feedback.
Q23	Yes, the conditions on the provider do need to account for the nature and scale of services offered. For instance a provider simply using it to streamline a face to face advice process will not need the same level of scrutiny for the on-line portion as a full robo-advice model with no face to face adviser time.
Q24	No.
Q25	Yes as the more information we can obtain to explain the obligations and help prepare is always helpful. Then frameworks can be set in place and discussions had with the FMA on interpretation.
Q26	We do not see an issue with a list of robo-advice providers on the FMA site.
Q27	Robo-advice is acceptable at this time as long as it is clear what this means in terms of regulation. It is unlikely that consumers will be too concerned about the terminology used at this point. So long as any provider in this space makes clear online what the nature of the advice is, the name should not be of concern. (Observance of fair dealing should be considered in this space.)
Q28	No other questions or comments
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: Proposed exemption to facilitate personalised robo-advice

Please submit this feedback form electronically in both PDF and MS Word formats and email it to us at consultation@fma.govt.nz with 'Proposed exemption to facilitate personalised robo-advice: [your organisation's name]' in the subject line. Thank you.

Submissions close on 19 July 2017.

Date: 24/06/2017

Number of pages: 5

Name of submitter: [REDACTED]

Company or entity: Alistair Bean & Assoc's Financial Services Limited

Organisation type: Personalised Financial Advice

Contact name (if different):

Contact email and phone: [REDACTED] [REDACTED]

Question or paragraph number	Response
<i>You don't need to quote from the consultation document if you note the paragraph or question number.</i>	
1.	<i>No, I do not support the proposal in its current form. Above everything else in no way should the word "Personalised" be used in the exemption. The proposal would allow "Class advice" to achieve greater exposure of Financial Advice to the public. Investors would be asked a list of prescribed questions which would end up with recommendations by a robot (computer algorithm) to group these Clients together into a risk profile for certain outcomes. This is not personalised Advice, this is Class Advice. Anything to the contrary would not be transparent, fully disclosed and/or blatantly misleading</i>
2.	<i>Neither – Personalised Advice must only be given by a Natural Person. Class Advice can be an Algorithm, the Legislation should continue to recognize this and New Zealand should continue to lead the way on full transparency of this Fact.</i>
3.	<i>I strongly believe that any robo-advice provider such as a global bank that declares half year operating income to march '17 of \$9.9bn - ANZ and \$10.7bn - Westpac (source NZX Announcements) can more than adequately face the costs of complying with the "natural person" requirements without question</i>
4.	<i>Class exemption is fine provided it is clearly and fully disclosed that advice offered is on a class basis by an algorithm or computer, clearly stating that it is not personalised advice, so no members of the public are misled in any way, to thinking that they are receiving personalised advice that treats them as an individual and not part of a group. If the Client is okay with their own personal choice to become part of a group after answering a list of prescribed questions, then this is the Clients personal choice – provided once again that this is made clear to them.</i>
5.	<i>The most progressive point with the FAA is that It currently differentiates between class advice and personalised advice. Every one of us is an individual and should be treated as such. In saying that, many of us have similar needs and therefore could be grouped together, provided individuals are given non-ambiguous, fully transparent and disclosed</i>

	<p>opportunities to make their own choice as to whether or not to receive class advice as a group or personalised advice as an individual and furthermore an option to receive personalised advice (along the way of answering any prescribed questions, that may result in class advice being offered) should be prompted to the Client, if they feel they would benefit more with their own individual circumstances being more appropriate to personalised advice. Individual organisations will have their own costs in charging for personalised advice and these charges typically are consistent with the dynamics of market pricing and are currently fully disclosed under the act – where individuals also make a choice of service within this pricing.</p> <p>The risks of not offering truly personalised advice are that Clients could receive class advice that typically doesn't move rapidly enough with global economic conditions and are caught with things like Brexit, change of world leaders, oil prices collapsing, fixed interest and bond traps – stuck in modern portfolio theory type risk profiles etc. therefore not receiving personalised advice but group /class advice, regardless of historically based algorithms that robo-advice would typically offer.</p>
6.	<p>I won't be providing robo-advice on the near future but would very happily participate in being a contact for clients wishing to receive the opportunity for personalised advice, should this be appropriate to their personal, individual needs</p> <p>Consumers need the opportunity to receive personalised advice, some will be happy with class advice. At present the big risks are to Clients who have for example – KiwiSaver default schemes that are cash and fixed interest only and may not gain sufficient to meet financial needs in their own retirement years, without the opportunity to explore other options that may be more appropriate to their circumstances.</p> <p>Many prescribed algorithms recommend defensive conservative schemes that are cash and fixed interest only for someone at age 65 – this may be truly negligent if the individual lives beyond age 95 (Prince Phillip just retired at age 95 and one would think that his financial circumstance would have allowed him to take an aggressive approach to investing at age 65, assuming that he knew he was going to work to age 95 – personalised advice would have discussed his individual views towards risk, which may personally have been very conservative or highly aggressive, taking into account his family situation, high budget needs, health and many other personal influences. – robo-advice is very limited in these circumstances and would risk, not being exact in uncovering all individuals' requirements.</p>
7.	<p>Yes, there is an advice gap – simply an advertising campaign to receive class or personalised advice would begin to address this – “become one of the group or remain an individual, you choose...” Balance should be irrelevant and in particular to larger organisations who clearly have sufficient revenues place the Clients interests first in providing natural person advice.</p>
8.	<p>No, I don't believe I require the exemption as I am already authorised to provide PDIMS as a natural person.</p>

9.	<p><i>The big end of town has cut costs and services for many years (decades) for their own financial benefit and profits and it appears that they are actively lobbying to continue to increase their profits by promoting this exemption. Personally, the smaller end of town has willingly faced considerable costs, time, and energy to continue to “Place the Clients interests first” and to continue to offer personalised advice – I note that What was the first rule of the code” placing the clients interest first” does not appear until page 11. Of the consultation paper.</i></p> <p><i>Perhaps, it is time that the big end of town used some of their ever-increasing multi-billion dollar profits to provide more natural person personalised advice and address the ever-growing gap of lack of personalised advice for Consumers.</i></p>
10.	<p><i>If there is an onslaught of Clients wishing to receive personalised advice as a result of the proposal then costs would rise but it is likely that this would be offset by increase in business</i></p>
11.	<p><i>Consumers should be given a very clear, fully-disclosed, transparent choice for the service that they wish to receive without ambiguity.</i></p> <p><i>Personalised DIMS should not be covered by the exemption as this is a specialized area that requires personalised interaction and is relative to an individual’s ever-changing circumstances. Class DIMS could perhaps receive the exemption if appropriate to individual’s needs, provided it is made clear that it is not personalised advice.</i></p>
12.	<p><i>The list may be irrelevant, the choice should only be, whether the consumer wishes to receive personalised advice or not</i></p>
13.	<p><i>Simple, exclusion free, Life insurance, only up to as high as, say, \$300,000 could be exempt as this is typically a straightforward product – (death occurs, the life insured is paid out) – the exemptions should not apply where intricacies start with life insurance when providers include exemptions, e.g. unless the life insureds’ death has occurred from a height of at least 20 metres, no benefit is paid etc... Consumers need advice in these situations, almost all other insurance requires advice</i></p>
14.	<p><i>Fair and reasonable exemptions could apply for low risk, low cost products and services and the providers should be charged with coming up with recommendations for low cost low risk, low sophistication products and services for the profession to consider.</i></p>
15.	<p><i>The obvious and future example would be KiwiSaver Clients. On asking Clients, those who had \$3,000 personal balances, did not seem to care about advice, those who had \$11,000 started to be interested, those with \$50k+ were very interested and those with \$100k + definitely wanted to talk to somebody – Those with \$89,900 felt neglected that they would be exempt until they reached the \$100k level – Again what needs to be promoted is the choice of whether or not to receive personalised or class advice at any level.</i></p>
16.	<p><i>I think these limits are irrelevant, I think strict requirements of review is what is necessary relative not only to algorithms but also to ever-changing global economics regardless of historical probabilities. The investment market has constantly changed and reinvented itself since The Common market effects in the early 1970’s, Deregulation effects in 1987 and share market crash, Asian and tech crisis in the 90’s, GFC in 2007 and Centralised interest rate controls and commodity volatility’s since then and now global infrastructure investment at present – Algorithms have to constantly be rewritten to take account of these unforeseen changes and therefore may cause unforeseen risks with the proposed</i></p>

	exemptions.
17.	Yes, most definitely, this should be highlighted in bold at the beginning of any offer of service and not hidden as a footnote – “available on request”
18.	For consistency, it should be a prescribed format that every provider should be subject to, otherwise it would allow for further what could be deemed to be “default exemption.”
19.	Yes, without question and also that the consumer has had the opportunity to consider and/or recommendation to receive personalised advice
20.	Yes, as a minimum standard, Providers could also promote a higher conduct obligations on themselves similar to how the IFA promotes higher standards of care on its own members than the code.
21.	While I do agree there is a gap for financial advice for the consumer, Number one should be to place the clients interest first – the entire request seems to be to the benefit of the providers -simply they could provide more personalised financial advice – their NZX announcements show they have the revenue to do so.
22.	<p>The Appendix should clearly state that providers state in any form of communication</p> <p>This is Robo advice by a computer or algorithm not a natural person and you will receive recommendations that direct you to invest or insure and/or take services with a group of clients and not as an individual, if you are comfortable with this please proceed or contact the provider for individualised, personalised options</p> <p>Anything else could be misleading in that a consumer may think that they are dealing with a natural person and treated as an individual and not a group.</p>
23.	No, the same provisions should be applied to all regardless of size for consistencies
24.	Just complete full disclosure, transparency, and non-ambiguity, without exception.
25.	Yes, and this should be fully prescribed by the authority, once consultation and consideration has been given and not left up to providers to create.
26.	Most definitely, transparent, and fully disclosed and also made fully public
27.	The world appears to be globally using robo-advice and therefore, for consistency, this should continue – but under no circumstances should it be known as Personalised robo advice as it is blatantly not in any sense of the word personalised. It is algorithmically – “Class Advice”
28.	<p>Again, the entire Consultation Paper should start with the words on page 11 of the document – “The Provider must place the Clients interests first”</p> <p>The recent dodging of this debate has been nothing but duck shoving by participants...</p> <p>In using other forms of robo-advice myself from particularly international companies, any consumer could be led to believe that they are talking to a natural person in that typically the computer will say...</p> <p>“Hello Alistair, how are you today...”</p> <p>And finish with</p>

	<p><i>"thankyou Alistair, if you need any more help just contact us</i></p> <p><i>Rgds, Jenny"</i></p> <p><i>Jenny is normally a computer and not a natural person</i></p> <p><i>New Zealand should ensure that if Jenny is a computer then the provider should say so.</i></p>
<p>Feedback summary – if you wish to highlight anything in particular</p>	
<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>	
<p>Thank you for your feedback – we appreciate your time and input.</p>	



AMP Financial Services

Submission on:

Consultation paper: Proposed exemption to facilitate personalised robo-advice

19 July 2017

About AMP Financial Services ("AMP")

AMP comprises all of the AMP Limited New Zealand-based financial services businesses (excluding AMP Capital). AMP Limited is listed on the Australia and New Zealand stock exchanges. AMP Financial Services includes:

AMP Life Limited - a licensed insurer and provider of life, trauma, total and permanent disability, and income protection policies in New Zealand and Australia. AMP Life operates in New Zealand as a branch of an overseas insurer. It has around 20% of the contemporary life insurance market, the majority of the conventional life insurance market.

AMP Services (NZ) Limited – in addition to providing administrative services to the New Zealand business of AMP Life, AMP Services is a qualifying financial entity and operates a financial advice business with more than 150 Authorised Financial Advisers, the largest assemblage in the New Zealand market, and has a similar number of QFE Advisers. Through this adviser network, it distributes both AMP Life and third party life insurance products, 'AMP general insurance' underwritten by Vero, and Southern Cross health insurance. AMP Services is also a Discretionary Investment Management Services licensee.

AMP Wealth Management New Zealand Limited is a Managed Investment Schemes licensee whose products include the AMP KiwiSaver Scheme and New Zealand's largest superannuation master trust, the New Zealand Retirement Trust.

The class exemption generally

AMP supports the objective of improving consumer access to financial advice. The Financial Advisers Act review process is the ideal delivery vehicle for that change as it involves extensive consultation, consideration and legislative development checks, balances and controls. Notwithstanding that, expediting change sooner than legislative change can deliver, providing sufficient checks and balances are in place, would provide financial advice firms with a means to deliver consumer access to advice from digital sources, rather than by natural persons. This may help to alleviate the concerns around access to financial advice in some market sectors.

Market integrity

As with all financial advice, robo-advice carries a risk of poor consumer outcomes. Any class exemption needs to address the associated reputational risk to the industry from failure to sufficiently regulate and monitor robo-advice providers. As the *Consultation Paper* (“*Paper*”) notes, failures could deliver a “chilling effect on the development of this sector”.

As such, AMP considers that there is a need to proceed with due caution to ensure that any class exemption put in place is not a vehicle for ill-prepared participants to enter the financial advice market, consequently putting consumers and the integrity and perception of the market at risk.

We understand the FMA will not want to unduly pre-empt any decisions about the future regulatory requirements for financial advice by granting this exemption. We also appreciate that it does not want to develop an extensive or complex system of regulation that may be inconsistent with the future state, and therefore duplicates initial compliance costs for robo-advice providers. However, we consider the risks associated with designing the exemption as a stop-gap solution or a stepping stone into regulation are significant, and any exemption needs to ensure that robo-advice providers are subject to appropriate regulation and supervision from the outset.

Benefits and risks

The *Paper* notes the main consumer benefit as creating “opportunities for those who may not otherwise have access to it, a low-cost option to gain financial advice.” (p. 5) It is also correct that financial service providers cannot “develop online advice channels fully under the current law which creates a barrier to advice, especially for consumers investing smaller sums of money.” (p. 4)

Any robo-advice class exemption should focus on such benefits whilst ensuring risks are minimised. Risks that require mitigation (further to those listed on p. 7) include:

- Inadequate provider vetting/assessment/licensing
- Unproven digital models potentially delivering unexpected suboptimal consumer outcomes, and
- The FMA’s preparedness to adequately monitor, assess, and regulate robo-advice, noting that any initial assessment and ongoing monitoring of a software algorithm (or at least its outputs via sufficient sampling) will require additional skillsets to, and likely be more complex than, assessing a traditional personalised advice service.

Exemption limits on scope of service

Most of the robo-advice development globally has been in investment selection and lower complexity investment planning. Limiting the Class Exemption to such product/advice may be a suitable means, at least initially, of reducing the risks noted above. Such solutions are likely to be sourced from overseas financial advice providers and require less New Zealand-specific modification. It seems sensible to, at least initially/provisionally, also limit the exemption to financial advice only.

The *Paper* proposes a limited product set of in scope for the exemption. Key considerations in determining the limitations should be the complexity of advice that would potentially be provided. Overseas development has heavily focused on funds, securities and savings products. Consequently, if a measured approach is desired, limiting to that product suite would help to ensure that relatively well-tested/mature models are implemented during the interim phase.

Excluding personal insurance and other product types at this point in time may be prudent – there is little in the way of proven models for such product types.

Consumer demand is another factor worth considering. The FMA may have researched such demand, which we suspect is stronger in areas where human advisers are less willing to operate today (e.g. providing advice on low value investments).

Applying caps is also worth bearing in mind, though AMP considers that these should be driven by:

- likely/perceived material risks to individual consumers, and
- levels at which attractiveness to human advisers mean that the need of the consumer is likely to be met already.

In terms of the former point, consideration could be given to a bright line test of potential impact to the consumer – e.g. a percentage of total assets test limiting the downside to the consumer may be a suitable limit, rather than a fixed threshold/figure.

Regarding the latter point, a consumer with \$500,000 to invest is going to be attractive to most AFAs whereas one with only \$5,000 is not likely to be attractive to many/any. While we appreciate that there may not be a precise level at which all advice providers agree this threshold is met, we would be supportive of the FMA setting caps at levels where human-delivered personalised advice is commonly available to consumers.

Regardless of limits at the individual level, AMP does not consider “total investment amount” caps should apply as those may have unintended consequences such as limiting KiwiSaver providers from providing robo-advice due to having provided ‘too much’ advice overall to their customers.

Exemption conditions

In addition to the conditions listed on pp. 9-12, all of which appear to be prudent requirements, we consider there should be a requirement for the provider who wishes to provide robo-advice to either have an existing applicable licence or demonstrate it meets equivalent standards to existing licensees. The requirements of licensing, especially for QFEs, MIS and DIMS licensees are stringent and go a long way to providing confidence that processes and systems are at a suitable level of maturity. Further, it is clear that the proposed legislative changes will introduce licensing for financial advice providers that provide advice through digital platforms, and it is reasonable to assume that maintaining capability to effectively provide financial advice services will be central to that licensing framework. Consequently, AMP proposes limiting the exemption to robo-advice providers who have demonstrated (through prior licensing) or can demonstrate the capability to provide financial advice or related services and an adequate governance and control environment to protect customers.

FMA readiness, capability and resourcing

The FMA’s monitoring role and actions will be critical to the success of the class exemption. The scope and limitations of the class exemption, and the timing of it coming into force, should be framed to support the FMA’s capability to monitor robo-advice providers meaningfully and adequately, including if necessary providing time for the FMA to develop its systems and processes for supervising this sub-sector of the financial advice industry. For such reasons, and as articulated in this submission, limiting the scope, plus ensuring entrants are well resourced

and have strong compliance frameworks in place (or demonstrate the capability to build such frameworks), would provide a much greater likelihood of success and mitigate risks.

Other

- Guidance in the form of information sheets or other supplementary resources is invariably helpful.
- The term “robo-advice” conjures up images of robots, which is neither necessarily helpful nor accurate. Submitters may propose more elegant and accurate terms, though it may be worth aligning with the term used in Australia by ASIC (“digital advice”).
- Consideration should be had of Trans-Tasman experience. ASIC’s Regulatory Guide 255¹ *Providing digital financial product advice to retail clients* may be a useful starting point for formulating transitional (pre-FAAR changes) guidance in terms of resources, risk management, and other aspects.

¹ <http://download.asic.gov.au/media/3994496/rg255-published-30-august-2016.pdf>

21 July 2017



Financial Markets Authority
1 Gray Street
Wellington 6012

By email: consultation@fma.govt.nz

To whom it may concern

ANZ submission on the consultation: Proposed exemption to facilitate personalised robo-advice

Thank you for the opportunity to respond to the Financial Markets Authority (**FMA**) on the FMA's consultation on a proposed exemption to facilitate personalised robo-advice advice (**Consultation**).

ANZ Bank New Zealand Limited (**ANZ**) commends the FMA for its proactive stance on this issue, and supports the general approach to the proposed exemption outlined in the Consultation Paper. ANZ considers that the proposed exemption could lead to considerable consumer benefits by making advice more affordable and convenient.

We would like to specifically draw your attention to our key messages set out below. We provide further detail on those key messages in Appendix I. Our responses to the specific questions in the Consultation are set out in Appendix II.

Key Messages

- 1. The proposed exemption should allow personalised robo-advice to be provided on a wider range of products, including mortgages and personal insurance products.**
- 2. Limits on the amount of client investments and/or the total amount of investments that a robo-advice service can advise on are likely to be unworkable and to prevent the benefits of the proposed exemption from being realised.**
- 3. The proposed exemption should be drafted so as to accommodate a range of personalised robo-advice services. It is difficult to predict how technology will develop, and the proposed exemption should not be tied to a particular method of delivery.**

About ANZ

ANZ is the largest financial institution in New Zealand. The ANZ group comprises brands such as ANZ, UDC Finance, ANZ New Zealand Investments, OnePath Life, ANZ New Zealand Securities and Bonus Bonds.

ANZ offers a full range of financial products and services including a significant range of financial advisory services, personal banking, institutional banking and wealth management products and services.

Publication of submission

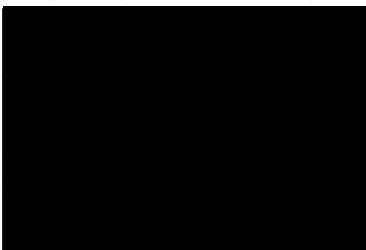
ANZ requests that its response to Q8 is kept confidential by the FMA on the grounds of commercial sensitivity.

Contact for submission



Once again, we thank FMA for the opportunity to provide feedback on the Consultation.

Yours sincerely



Appendix I – More detail on ANZ’s Key Messages

1. The proposed exemption should allow personalised robo-advice to be provided on a wider range of products, including mortgages and personal insurance products.

In our view the list of eligible products should include a wider range of products, including mortgages and personal insurance products. Mortgage decisions are very significant for most consumers, while adequate personal insurance is of great importance in protecting consumers’ lifestyles and financial security. We think that allowing personalised robo-advice will increase the availability and take-up of personalised financial advice on these products, benefitting consumers by allowing them to make better financial decisions.

Mortgages

The policy rationale for including other credit contracts but excluding mortgages is not apparent to us, as an inappropriately structured mortgage can easily be unwound (i.e. by refinancing with another provider on different terms, or restructuring with the same provider).

Any concerns in respect of the potential harm that may arise from customers entering into unaffordable mortgages on the basis of robo-advice are, in our view, misplaced, given that this issue is addressed under the responsible lending provisions of the Credit Contracts and Consumer Finance Act.

Finally, we note that we have reviewed the position in other jurisdictions, and are unable to identify any examples of equivalent exclusions.

Personal insurance

ANZ recommends that the proposed limits for personal insurance should be reconsidered.

According to a Massey University study¹ on underinsurance in New Zealand, there is strong evidence that levels of life insurance cover in New Zealand are often poorly chosen, indicating household considerations about insurance cover levels are inadequate. The study also found severe underinsurance for non-life personal risk relating to the inability to work. In respect of life insurance cover levels, the study indicated that the main issue is lack of periodic review of the cover levels.

Given this background, our view is that enabling the use of robo-advice would benefit consumers, by allowing them to access high quality and convenient personalised financial advice on these types of product. The proposed duration and value limits for personal insurance would severely restrict the ability to provide robo-advice on these products, limiting the consumer benefits which might otherwise arise from the proposed exemption.

General

The Consultation proposes that eligible products will be limited to those which are easy to exit. We question whether this is the best method to use to determine eligibility. While the ability to easily redeem or transfer a product may have the potential to minimise harm in some cases, it will not do so in every case, particularly where the relevant product has significantly declined in value. In our view, the risk of customer harm from poor or inappropriate advice is best minimised by ensuring that providers have sufficient substance to adequately compensate customers, for example, by requiring an adequate level of professional indemnity insurance to be held.

¹ The Extent of Underinsurance: New Zealand evidence, October 2014, Michael J. Naylor, Claire Matthews and Stuart Birks. Available at <http://econfin.massey.ac.nz/school/documents/seminarseries/manawatu/Underinsurance%20in%20New%20Zealand%20v1-2.pdf>

2. Limits on the amount of client investments and/or the total amount of investments that a robo-advice service can advise on are likely to be unworkable and to prevent the benefits of the proposed exemption from being realised.

ANZ's strong view is that these limits are likely to be unworkable in practice and/or to limit the availability of robo-advice to consumers, for the following reasons:

- An individual client investment limit would be difficult to design effectively, with a number of issues to be considered, including how to calculate the investment amount for ongoing investments. It also has the potential to be unnecessarily restrictive, particularly for KiwiSaver, where sums invested are likely to exceed the proposed \$100,000 limit, especially over time.
- A total investment limit is likely to be difficult for providers to track, and seems to be premised on a particular form of robo-advice service - i.e. an integrated robo-advice and investment execution platform, where the entity providing the robo-advice service has full visibility and control of the entire advice and investment implementation process. In our view, the proposed exemption should be more flexible and enable a range of different robo-advice models.
- Unless set at a very high level, a total investments limit is likely to prevent larger providers from making use of the exemption. Again, for KiwiSaver, where the low take up of personalised advice is a particular issue, a limit of this nature is likely to be unworkable, given the amount of funds invested in the larger KiwiSaver schemes.

3. The proposed exemption should be drafted so as to accommodate a range of personalised robo-advice services. It is difficult to predict how technology will develop, and the proposed exemption should not be tied to a particular method of delivery.

As is noted in our Key Message 2 above, the design of the proposed exemption seems to assume that personalised robo-advice services will take a particular form – that is, a stand-alone, clearly defined robo-advice service, which includes integrated investment implementation.

In our view, other forms of personalised robo-advice are likely to develop and to be of value to consumers. For example, as large providers develop their data and analytics capabilities, they may wish to proactively offer personalised robo-advice to their customers. Alternatively, providers may wish to provide calculators and other tools on websites or mobile devices, which can provide personalised advice to prospective customers, without a formal agreement or defined customer/adviser relationship being in place.

ANZ's view is that, so long as there are appropriate safeguards on the quality of the advice provided, these types of service should be enabled, resulting in wider availability of personalised financial advice. However, some of the proposed conditions for the exemption, including the record keeping requirements and the potential requirement to obtain the customer's express agreement to receive personalised robo-advice, are likely to prevent these types of service from being provided.

Appendix II – Responses to questions in the Consultation Paper

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?

ANZ supports the proposed exemption, provided this is subject to appropriate limits and conditions to safeguard consumers. In general, we consider that the proposed limits and conditions are appropriate to provide consumer protection, although we submit that some changes should be made, as further described in our responses to Questions 9 to 16 below.

ANZ considers that the exemption will benefit consumers, by increasing access to financial advice for those who are not currently well served by the financial adviser market, as well as allowing consumers to receive financial advice in the way they want it. As such, ANZ considers that the proposed exemption is consistent with the purpose of the Financial Advisers Act 2008 (FAA) to promote the efficient delivery of financial adviser services. Appropriate safeguards can ensure that the soundness of financial adviser services is not undermined by the granting of the proposed exemption.

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.

We agree that it is appropriate to consider implementing the proposed exemption before the law reform. Technology and consumer expectations are evolving rapidly, and delaying the proposed exemption would risk disadvantaging the New Zealand financial services industry, as well as needlessly preventing consumers from accessing the financial advice they want.

However, so far as possible, it will be important to ensure alignment of the limits and conditions under the proposed exemption with those which will be applied under the new financial advice laws. It will also be important to consider ways in which a degree of certainty as to the continuity of requirements can be provided to the market. If this does not occur, it is likely to inhibit the development of services which make use of the proposed exemption. Development of new robo-advice tools may be expensive, and providers will be unwilling to invest if they are at risk of having to fundamentally alter the parameters of new services under the new law.

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.

We consider that the costs for robo-advice providers to comply with the natural person requirement would be unreasonable. As the Consultation notes, it is unlikely to be possible to comply with the natural person requirement without using individual financial advisers to review and approve each piece of advice generated by an automated advice tool before the consumer receives it. This will clearly add significant costs.

Numerous studies have demonstrated that automated systems for making judgements and decisions perform as well or better than humans in a variety of contexts.² Given that an appropriately designed

² See, for example "Clinical versus mechanical prediction: a meta analysis" Psychological Assessment, 200, Vol 12, No.1, 19-30. This study considered the relative efficacy of human and "mechanical" procedures for predicting human behaviour, making psychological or medical diagnoses or prognoses, or assessing human states and traits. On average, mechanical predictions were about 10% more accurate than clinical predictions. Depending on the specific analysis, mechanical prediction substantially outperformed clinical prediction in 33%-47% of studies examined. Although clinical predictions were often as accurate as mechanical predictions, in only a few studies (6%-16%) were they substantially more accurate. Superiority for mechanical-

automated advice tool should be capable of producing results which are as good, or better than, human advisers, the additional costs of requiring review by human advisers would in our view be unreasonable and not justified by the benefit of compliance.

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.

ANZ supports the proposed approach of granting a class exemption. This will provide greater regulatory certainty and efficiency. Appropriate limits and conditions can ensure consumers are adequately protected, without requiring the FMA to individually exempt each provider.

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).

ANZ considers that impacts on consumers are likely to include access to a wider range of more affordable advice. In addition, consumers will be able to access advice in a form that is more convenient for them, and aligns with consumer preferences regarding the delivery of products and services. Risks for consumers are that they may receive inappropriate or low quality advice. However, this risk can be mitigated by imposing appropriate limits and controls, and ensuring that adequate redress is available for customers in these cases.

The impact on providers could include disruption of existing business models as a result of less demand for personalised financial advice. However, in our view, much of the existing “advice gap” arises as a result of consumer unwillingness to take up financial advice, and a plausible scenario is that the introduction of personalised robo-advice services will lead to increased take up of advice by those who currently do not receive any advice, rather than substitution away from advice provided by individual financial advisers.

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.

If an exemption is not granted the current “advice gap” (as described further in Q7 below) will continue until the introduction of the legislative reform. In addition, New Zealand financial services providers may be disadvantaged compared to offshore providers, as they will not be able to develop automated advice tools for the New Zealand market. When the law reform permits automated advice, offshore providers who have been able to develop tools in their home markets may therefore be better placed to roll-out their propositions in New Zealand.

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?

ANZ agrees that there is an advice gap. However, in ANZ’s experience, the primary driver for the advice gap is a lack of demand for advice, particularly among KiwiSaver members. Research suggests that this is due to a number of factors, including “DIY” attitudes to financial advice among New Zealanders, and the unavailability of affordable advice.³ In our view, the introduction of automated personalised advice could help solve these issues both by making affordable advice more widely available, and by making it easier to access financial advice in a convenient form. In summary,

prediction techniques was consistent, regardless of the judgement task, type of judges, judges' amounts of experience, or the types of data being combined. Clinical predictions performed relatively less well when predictors included clinical interview data. Study available here: <http://zaldlab.psy.vanderbilt.edu/resources/wmg00pa.pdf>

³ See, for example, the 2015 FMA, Commission for Financial Capability, and Colmar Brunton survey on attitudes to financial advice of New Zealanders aged 50 years plus.

permitting automated personalised advice will enable services which are “easy, attractive, social, and timely”, which should increase take up of these services.⁴

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.

In general, ANZ considers the limits and conditions strike an appropriate balance. The approach taken in the proposed exemption of focusing on appropriate systems, processes and controls (including disclosure), without detailed prescription in respect of the requirements, should ensure that consumers are protected whilst allowing providers to be flexible and innovative in delivering automated advice.

However, we consider that:

- the client investment / total investment amount limits are inappropriate;
- the record keeping requirements, and requirements to obtain active confirmation of agreement to receive advice, could inhibit the development of automated advice services which could benefit consumers;
- the proposed list of eligible products is too narrow; and
- additional conditions could help to ensure that consumers are able to secure appropriate redress in cases where they suffer loss as a result of receiving poor or negligent automated advice.

We address these further in our responses to Questions 10 to 16.

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.

As is noted in our Key Message 3, our view is that the conditions in respect of record keeping may prevent the development of certain types of personalised robo-advice service. In particular, they could prevent the use of open-access tools hosted on providers’ websites. Because of the way customers interact with these types of tools it may be difficult to retain complete records of the advice provided to each client. For example, clients may return to a tool several times over as they explore different options for their investments, insurance or mortgage. They may only complete part of the tool at some visits and might make use of other alternative tools which are available to them (for example, a combination of a provider’s KiwiSaver calculator and the Sorted website). To maintain complete records of the advice generated would probably require customers to provide their personal details, which would be a disincentive to use of the tool.

In our view, use of online open-access tools can help consumers make better financial decisions and so should be encouraged, and the conditions should be flexible enough to accommodate these types of service. The conditions should focus on ensuring that high quality advice is provided, and that

⁴ See, for example, the FMA’s April 2016 White Paper on “Using behavioural insights to improve financial capability”.

providers are able to demonstrate appropriate controls and oversight for the output of advice tools, rather than record keeping requirements which will only enable certain types of service to be provided.

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.

ANZ's view is that the exemption should be available for investment planning services and financial advice generally. We do not see any reason why an appropriately designed automated advice service could not provide a full investment planning service to a standard equivalent to a human.

ANZ agrees that DIMS should not be covered by the exemption, given that a provider that wanted to provide DIMS using automated tools could do so by obtaining a DIMS licence under the Financial Markets Conduct Act, where the requirement for the involvement of a natural person in provision of the DIMS does not apply.

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.

In our view the list of eligible products should include mortgages. Please see our Key Message 1 for further detail.

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.

We consider that the proposed limits for personal insurance should be reconsidered. Please see our Key Message 1 for further detail.

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.

ANZ does not support adding a value cap and/or duration limit on the other proposed eligible products. Inclusion of a product specific value cap or duration limit is likely to create the same workability problems as apply for general value caps, as further described in our Key Message 2.

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.

ANZ does not support an individual client investment limit. Please see our Key Message 2 for more details.

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.

ANZ does not support a total investment amount limit. Please see our Key Message 2 for further detail.

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?

We would prefer that the form of the status disclosure statement is not prescribed, as this will provide greater flexibility and enable providers to convey the relevant information in the way that it is most appropriate for each particular digital advice tool.

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?

ANZ's view is that providers should have flexibility to decide how to comply with the disclosure condition. Methods of delivering automated advice will evolve rapidly, meaning that prescribed methods of disclosure may quickly become unworkable for the new technologies.

We also note that prescribing the form and method of disclosure would be contrary to the approach taken by other regulators in this area, where the trend is towards providing flexibility and enabling innovative and engaging ways of providing financial product and service disclosures (see, for example, ASIC's Regulatory Guide 22: Facilitating digital financial services disclosures).

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.

ANZ's view is that this condition may be unduly restrictive. In particular, it may prevent providers from pro-actively providing personalised robo-advice to their customers, which providers may be positioned to do as they continue to develop their data and analytics capabilities. We note that if ANZ were to proactively provide personalised robo-advice, it would likely be only to existing customers, with consent built into standard terms and conditions, along with appropriate opt-out provisions.

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.

ANZ agrees with the proposed conduct obligations.

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.

ANZ does not think there any other conduct obligations that should apply.

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.

ANZ does not have any feedback on this table.

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.

ANZ does not support the conditions being applied in a manner that is proportionate to the size and scale of the robo-advice service offered.

From the point of view of an individual consumer, the size and scale of the service is irrelevant. What matters to an individual consumer is that they receive appropriate advice for their situation, and consumers should be able to have confidence that all financial advice provided in New Zealand is

subject to appropriate safeguards, regardless of the size of the provider's business. Ultimately, a loss suffered by an individual consumer as a result of inappropriate advice may be very significant for that consumer, regardless of whether or not a large number of others have also suffered loss.

Q24. Are there any other limits or conditions you think would be appropriate to put in place?

ANZ's view is that it would be appropriate to put in place conditions that ensure that, if consumers receive poor or unsuitable advice, they are able to obtain a remedy for this in the form of compensation. While appropriate conditions in the exemption can help to minimise the risk of poor or unsuitable advice being provided, ultimate recourse against the provider is, in our view, still necessary.

While the Consultation refers to consumers having recourse through a provider's dispute resolution scheme, this will be of little use if the provider lacks the financial resources to provide adequate compensation. Our view is that this problem could be particularly acute in the case of robo-advice, as robo-advice tools could enable relatively small firms to quickly provide advice to a very large number of consumers, with potentially very large losses.

We suggest that, to mitigate this risk, the exemption should include a condition requiring providers to maintain an appropriate level of professional indemnity insurance to cover risks related to the service, and sufficient financial resources to meet any policy excess, similar to the minimum standards for market services licensees under the Financial Markets Conduct Act.

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?

ANZ would find an information sheet helpful, although it will be important that the information sheet is consistent with the exemption and does not create uncertainty by expanding on the conditions described in the exemption. ANZ considers that it would also be useful if this information sheet covered the FMA's approach to existing automated advice tools which are used to provide class advice.

Q26. Would you like to see a list of providers relying on the exemption, if granted, on our website? If not, why not?

ANZ would like to see a list of providers relying on the exemption.

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'?

ANZ prefers these alternative terms to 'robo-advice.'

Q28. Do you have any other feedback or comments?

The Consultation Paper states that providers of personalised robo-advice services will still be required to comply with the disclosure obligations under part 2 of the FAA, and QFE providers will need to comply with the standard QFE conditions and other obligations. In this respect, ANZ has the following comments:

- It is not clear how the disclosure requirements under the FAA and the Financial Advisers (Disclosure) Regulations 2010 (**Regulations**) will apply where personalised robo-advice is provided under the proposed exemption, as the prescribed disclosure requirements in this case (Regulation 7 of the Regulations, which prescribes disclosure for financial advisers other than AFAs and QFE advisers) seem to assume that the "financial adviser" is an individual (i.e. an RFA); and
- Some of the disclosure requirements for QFEs could be confusing if applied to personalised robo-advice. ANZ assumes that these requirements will not apply as, under section 25 of the FAA, these requirements apply where a QFE "acting through a QFE adviser, provides a personalised service to a retail client." However, ANZ considers that this should be clarified by the FMA if the proposed exemption is introduced.



PO Box 35
Shortland Street
Auckland 1140, New Zealand
Telephone (09) 306 3000
Freephone 0800 803 804
CX10087 Auckland DX Sort
asb.co.nz

19 July 2017

CONSULTATION PAPER: PROPOSED EXEMPTION TO FACILITATE PERSONALISED ROBO-ADVICE

ASB Bank Limited (ASB) welcomes the opportunity to provide feedback on the Financial Market Authority's (FMA) consultation paper: *Proposed exemption to facilitate personalised robo-advice* (the Consultation Paper).

ASB is a subsidiary of Commonwealth Bank of Australia and a related company of Sovereign Assurance Company Limited.

This submission makes general comments on the exemption, and addresses the conditions proposed in the Consultation Paper.

We have contributed to the submission on this matter being made by the New Zealand Bankers' Association and we support the points made in that submission.

We acknowledge that ASB's submission may be made publically available by way of publication on the FMA website, and may be released in response to a request under the Official Information Act. ASB does not seek confidentiality for any aspect of this submission.

If you require any further information in relation to this submission, please do not hesitate to contact me.

Yours sincerely

A large black rectangular box redacts the signature and contact information of the sender. Below this box, there are four horizontal black bars of varying lengths, also redacting additional information.

General Feedback

ASB is supportive of the FMA issuing an exemption in this space. We commend the FMA's willingness to enable innovation and progress robo-advice as a means to help to address the "advice gap" in New Zealand.

ASB currently provides class robo-advice services, and will continue to do so in the future. It is important that the proposed personalised robo-advice exemption does not cut across existing class robo-advice services – i.e., class robo-advice needs to continue to follow the current rules (and can continue even if a provider is operating under the exemption for another personalised advice service). The exemption should only apply for personalised robo-advice.

We support the proposal for a class (rather than individual) exemption. It is important that providers would be able to continue to use the exemption during the transitional period of the new regime. It is also important that the new requirements largely follow what is proposed under the new regime. While robo-advice tools will be subject to ongoing refinements and improvements, providers would not want to commit a large amount of time and resource to creating new advice tools only to have to change them substantially two years later when the revised financial advice regime is implemented. This could also lead to confusion for consumers and without some sort of understanding that regime will continue largely the same, may mean providers are not as willing to develop tools ahead of 2019.

Scope

We consider that a robo-advice tool that is held to the high standards of the AFA Code should be able to provide advice on all products that an AFA could advise on. We favour a channel-neutral exemption that incentivises advice providers to develop tools to advise on any product there is a commercial case to do so, provided it meets the requirements of the exemption.

We query why mortgages are excluded from the scope of the exemption when all other consumer credit contracts are included. In particular, the market for online advice on mortgage products is already well developed, with sophisticated tools and calculators available. Extending the exemption for robo-advice to include mortgage products would improve the quality of advice that New Zealanders are already seeking online, from providers whom they already trust. QFEs have strong institutional control systems and processes already in place to help mitigate any risks arising from the provision of robo-advice on mortgage products, in addition to a comprehensive regulatory overlay (e.g. the responsible lending provisions of the Credit Contracts and Consumer Finance Act 2003).

If there is a policy basis for this exclusion, we consider that it should have been outlined in the Consultation Paper. At a minimum, robo-advice should be able to be provided on aspects of mortgages, such as term, fixed vs. floating mortgage rates. Mortgages themselves, but in particular these aspects of mortgages, are no more complex than a number of other products that are within the scope of the proposed exemption.

We also submit that personal insurance products should be in scope for personalised robo-advice. The approach to personal insurance should follow the other proposed in-scope products, i.e. products should be included where they are easy to exit. As you have noted, the ability to unwind an investment decision easily reduces the potential harm if a consumer has

received poor or unsuitable robo-advice. In respect of the proposed limitations on personal insurance:

- We disagree with including a limitation on the sum insured. The sum insured for these types of products is often over \$100k, especially when considering that repayment of a mortgage is often covered.
- Often personal insurance products do not have a fixed duration at the outset so it would be difficult to limit cover to contracts to one year or less.
- We agree with the limitation that personal insurance products should be easily cancelled (and submit this should be the only limitation in line with the other products).

Disclosures

We consider that QFE robo-advice tools should be required to make the same disclosures as those that QFE advisers currently make. A blanket rule requiring the robo-advice tool to disclose details of any 'material interests, incentives, relationships or arrangements that may influence the service the client receives' is very board and does not align with Code Standard 3 which is merely a requirement on an AFA not to state they are independent if they are not. While a broad blanket rule may be appropriate for non-QFE provider robo tools that have the potential to represent an inappropriate level of independence, QFEs should be required to make their existing QFE disclosures. If a customer goes onto ASB's website and uses the personalised robo-advice tool, it would be clear that they are only going to receive a recommendation in relation to ASB's products.

We support that the FMA are not proposing to prescribe the form of disclosure in relation to personalised robo-advice tools. This allows providers to consider whether disclosure could occur in different forms (such as pop-ups throughout the process, graphics etc.) that could vary from platform to platform. It is positive that the exemption is not proposing a mandatory 'tick box' approach to confirming disclosure or an express client confirmation condition and is open to considering different ways in which providers can get comfortable on this point. This appropriately reflects the breadth of opportunity that a personalised robo-advice tool presents, and we consider will be helpful in moving providers into thinking about disclosure in novel ways, with ease of consumer understanding at the forefront.

Restrictions

ASB does not support a value cap or duration limits on other proposed eligible products. This is particularly inappropriate for large QFEs, where the suggested \$5m total cap would be reached very quickly, and would make this tool available to only a fraction of the QFE's customers.

Further, we do not support limits on an individual client investment amount or on the total investment amount of products that the robo-advice service can advise on. As noted in the Consultation Paper, 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. Furthermore, if the goal is to improve access to advice, setting an arbitrary investment amount may mean there is a gap for customers in terms of the advice they can access digitally and in person.

Exemption conditions

Condition (a): Pre-notification procedure

To take advantage of the exemption, the Consultation Paper suggests a provider would be required to provide a 'good character' declaration for all directors and senior managers of the advice provider. This is what is required of an AFA and could be appropriate for smaller providers (who prior to post-FAA reform would not be required to be licensed as a financial advice provider). Existing QFEs however, should be entitled to rely on the detailed 'fit and proper' declarations provided under both the FMCA market service licenses and in the case of QFEs that are also registered banks, the Reserve Bank of New Zealand's prudential supervision regime. These declarations appear more detailed than the 'good character' declaration in any event.

Condition (b): Status disclosure

While we understand the rationale for prescribing wording that the digital tool is providing personalised advice in reliance on the exemption, we suggest that this should be stated in plain English. Due to the technical terms used in this area, it is important that any prescribed wording is as clear as possible such that customers can readily understand it.

Condition (g): Monitoring and testing

We consider that the appropriate time to conduct rigorous monitoring and testing would be prior to launch of any tool. We do not consider it either necessary or appropriate that in the initial stages or following a change to the algorithms (i.e., in a live environment) that every piece of advice (or a high proportion) must be reviewed by appropriately qualified individuals. This review should have happened before the personalised robo-advice tool is made available to customers. This monitoring should continue to some degree once a tool goes live, but not of all or most advice given.

Condition (j): Record keeping

The conditions to the exemption require that adequate information about advice provided to our customers be retained.

Consumers may use the tool in different way, for example by exploring the tool through using different financial options (e.g. including different investment amounts and risk profiles) and becoming familiar with the terminology and process before they commit to any decisions.

They could complete only part of the tool at some visits and may visit several providers' tools, if these are readily available. This behaviour supports good decision-making. Customers could see provision of their personal identifying information (e.g. name, address, date of birth) as a barrier to use of the tool. To encourage customers to explore tools, providers should be able to leave provision of identifying information (which is a pre-cursor to record retention) until later in a process, and should not be required to retain records of each visit or part completed visits.

19 July 2017

Email: consultation@fma.govt.nz

Dear Sir/Madam

Submission on proposed exemption to facilitate personalised robo-advice

Thank you for the opportunity to comment on this proposal. Our view is that many New Zealanders cannot afford professional, personalised financial advice, and that robo-advice would give more people access to financial advice. We therefore support the proposal, provided appropriate checks and balances are in place.

You have sought feedback on a range of questions in the consultation paper. We have responded to those questions most relevant to our work.

Question 1

As outlined above, we support the introduction of robo-advice subject to the proposed limits and conditions. Robo-advice would be a more cost-effective option for many consumers who might not ordinarily seek personalised financial advice. Low-cost robo-advice options would particularly encourage young, internet-savvy consumers to seek financial advice.

Robo-advice has especially promising potential to fill a gap in the market for advice about KiwiSaver. In the past two years, 44 per cent of the complaints and disputes we received about KiwiSaver fell into the category of "service issues". The most common sub-categories were "delay" and "failure to act as instructed". Another 20 per cent of KiwiSaver complaints and disputes were about advice and information. This includes incorrect or misleading information, poor or unsuitable advisory processes and unsuitable product recommendations.

We recognise that robo-advice is not immune to error, and that there are limits to what a digital platform can achieve compared to interaction with a person. However, KiwiSaver-related robo-advice has the potential to rectify many of these service issues, which result from human error.

Question 2

We consider it is appropriate for the FMA to use its exemption powers to facilitate personalised robo-advice in advance of the law reform. Providers already face strong demand for robo-advice. In Australia and other countries, the growth of robo-advice is improving access to advice. The proposed exemption would give providers and consumers time to adjust before the law reform comes into effect. It would also allow the FMA to monitor and address any issues in advance of those reforms.

Question 5

The proposed exemption, if granted, would have a primarily positive impact: it would close a gap in financial advice to those less well off, and it would minimise the risk of poor consumer

outcomes. However, any new technology also has the potential to create new channels for cybercrime and fraud. It is important consumers are made aware of this risk and also where liability lies if they suffer loss. This issue has the potential to undermine trust and confidence in robo-advice, and banking generally, and would need to be thoroughly considered as part of developing the conditions to the proposed exemption.

Question 17

We support the proposal that the FMA draft the status disclosure statement used by providers. If left to providers, such statements might imply the FMA has endorsed, approved or reviewed their robo-advice service. The statement is likely to be a key piece of information consumers consider when weighing up whether to use a robo-advice service. A statement written by the FMA for use by providers would ensure clarity and certainty for consumers.

Question 18

We consider providers should have the flexibility to decide how to comply with the disclosure condition, provided they meet all of the guidelines. This would enable providers to tailor their communication material to different audiences and platforms. Otherwise, there is a risk providers might not sufficiently draw key information to consumers' attention. Requiring providers to actively confirm that customers have read the disclosure and agree to receiving robo-advice would minimise that risk.

Question 19

For the reasons just outlined, the FMA should impose a condition that requires providers to actively confirm that customers have read the disclosure and agree to receiving robo-advice. Many complainants we deal with deny receiving disclosure information. Making this condition mandatory would eliminate the question of whether a customer received the necessary information. It would also give further assurance to customers when seeking robo-advice.

Question 21

We consider that the NZBA Code of Banking Practice applies to all banking practices, and we agree that the code would also cover robo-advice.

Question 25

We consider that an information sheet explaining the exemption and giving guidance on how to comply with it would be helpful and would promote consistent application of the exemption by providers.

Question 26

We would find it helpful to see a list of providers relying on the exemption on the FMA website.

Conclusion

We support the proposed exemption to facilitate personalised robo-advice, subject to the proposed limits and conditions. We consider it will give more customers access to financial advice and enable them to make more informed decisions.



Banking Ombudsman Scheme

Freepost 218 002, PO Box 25 327, Featherston Street, Wellington 6146

Telephone 04 915 0400 Freephone 0800 805 950

Email help@bankomb.org.nz Website www.bankomb.org.nz

Facebook www.facebook.com/bankombnz



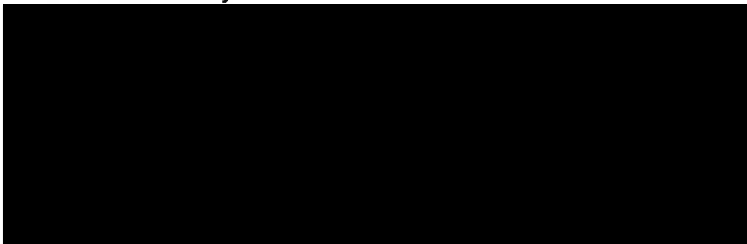
We would welcome the opportunity to discuss any further proposals with you. If you would like more information or clarification regarding this submission, please feel free to contact [REDACTED]

About us

We are an approved dispute resolution scheme under the Financial Service Providers (Registration and Dispute Resolution) Act 2008. Our participants are registered banks and their subsidiaries and related companies, and non-bank deposit takers that meet certain criteria. These criteria, regulated by the Reserve Bank, include the ability to demonstrate high-quality complaints-handling procedures.

Our aim is to improve the banking experience for customers and banks, as well to help resolve disputes between banks and their customers. We work with other agencies to increase customers' knowledge of how banking works and to empower bank customers to manage their banking affairs better.

Yours sincerely



Proposed exemption to facilitate personalised robo-advice

Submission by Bell Gully

Dated 19 July 2017

This submission has been prepared by Bell Gully in response to the Financial Market Authority's Consultation Paper: Proposed exemption to facilitate personalised robo-advice.

Our submissions are set out in the table below. We have not answered all of the proposed questions, as we have focussed our comments on those questions which we consider particularly relevant to our areas of expertise and have limited our submissions to matters which we believe require further consideration.

[REDACTED]

[REDACTED]

Submission form

Question	Response
<p>1. 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</p>	<p>Yes, we support the proposed exemption from the requirement for personalised advice to retail clients to be provided by a natural person.</p> <p>We commend the FMA for fast-tracking this ahead of the law reform and thereby supporting innovation.</p> <p>In relation to the proposed limits and conditions of the exemption, please see our responses to the specific questions canvassing these below.</p>
<p>2. 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.</p>	<p>We agree that it is appropriate for the FMA to use its exemption powers to facilitate the provision of personalised robo-advice in advance of the anticipated law reform.</p> <p>We believe it is important to make every effort to keep pace with the rapid technological changes the market is experiencing and facilitate greater access to advice through digital channels.</p> <p>However, assuming the exemption is granted, it will be important to ensure that:</p> <ul style="list-style-type: none"> • the exemption requirements are mirrored in the new financial adviser laws; and • entities can continue to offer personalised robo-advice during the transitional period for the new law without disruption, <p>to ensure that providers have the requisite certainty to invest in and deploy the new technology for the benefit of consumers. We note that the FMA is in discussions with MBIE in this regard.</p>
<p>3. Do you think the costs for robo-advice providers to comply with the 'natural person' requirement (if no exemption is granted):</p> <ul style="list-style-type: none"> • Would be unreasonable? or • Would not be justified by the benefit of compliance? Please give reasons for your answer. 	<p>We submit that the costs associated with incorporating a natural person into the robo-advice process would directly hinder the development of personalised robo-advice in New Zealand and is not justified by compliance benefits.</p> <p>Intermediating the generated advice with, for example, an individual AFA reviewing and approving the advice before it is provided to consumers, would completely undercut a robo-advice service provider's ability to deliver advice in a cost efficient and timely manner.</p> <p>However, we also recognise the value of hybrid models which have an adviser-assisted component, such as those which enable a consumer to opt in to speaking to an adviser during the automated process or allow providers to identify and follow up on any</p>

		<p>inconsistencies in the information provided by clients.</p> <p>In our view, the regime should accommodate – but not require – individual advisers to be involved in robo-advice offerings.</p>
4.	<p>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.</p>	<p>We support the proposed approach of granting a class exemption as it provides a uniform approach and reduces the providers' time and costs associated with seeking an individual exemption. If every provider that wished to provide robo-advice was required to apply for an individual exemption this would effectively create a roadblock to fast-tracking the change ahead of the law reform.</p> <p>In addition to the proposed class exemption, we believe there would also be merit in granting more tailored individual exemptions, on a case by case basis, where the class exemption is unworkable for a provider for a particular reason.</p>
5.	<p>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).</p>	<p>The exemption should:</p> <ul style="list-style-type: none"> • facilitate the provision of financial advice to a wider population than is currently the case; • enable providers to go live with personalised robo-advice tools earlier than would be otherwise be the case; • result in investment in tools designed to provide effective personalised robo-advice; and • result in increased engagement by persons who are largely accustomed to, and prefer, online channels. <p>Whilst we accept that there are risks associated with robo-advice such as:</p> <ul style="list-style-type: none"> • the risk of data being entered incorrectly; • the possibility of errors in the underlying algorithms; • consumers' understanding of the limitations of robo-advice; and • the less personalised/flexible nature of the robo-advice system (e.g. no or limited ability to ask questions, seek clarification or build customer relationships), <p>we believe that some of these risks also exist in a person to person advice context, that the risks are manageable and the benefits of permitting robo-advice outweigh the risks.</p>
6.	<p>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</p>	<p>If no exemption is granted, there is unlikely to be any material developments in the provision of robo-advice in New Zealand. The impact of this is that:</p> <p>(a) New Zealand's development and provision of robo-advice services will continue to</p>

	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.	<p>be delayed until the law reform scheduled for 2019;</p> <p>(b) the section of public that is not currently accessing advice will continue to be under-advised which will be compounded by another two years lost opportunity;</p> <p>(c) New Zealand will be markedly behind the development of robo-advice services and regulation in other jurisdictions; and</p> <p>(d) offshore providers in jurisdictions that are, or will be by the time of New Zealand's anticipated law reform, well progressed in the development and regulation of robo-advice services, will have a competitive advantage to domestic providers.</p> <p>In the absence of an exemption for personalised robo-advice services, providers will have little incentive to invest in class robo-advice platforms. We also anticipate that consumers would look to access offshore robo-advice solutions in the absence of domestically-available alternatives.</p>
7.	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?	On the basis of the industry statistics reported, we agree that there appears to be a financial advice gap such that a section of the public that needs advice is not able to access financial advice because they cannot afford it and/or advisers are reluctant to take on lower value portfolios.
9.	Do the proposed limits and conditions strike an appropriate balance between consumer protection and promoting innovation? Please give reasons for your view.	<p><i>Proposed limits</i></p> <p>We do not support the proposed limits generally as we understand from market participants that they will be unworkable in practice and we do not believe they strike an appropriate balance between consumer protection and promoting innovation.</p> <p>We believe the more pertinent matter to address will be to ensure that providers can demonstrate the integrity of their service, from the expertise, algorithms and data protection systems in place behind the system through to the monitoring and testing of the advice output from the system. Please see our responses to questions 12-16 below for our detailed comments.</p> <p><i>Proposed conditions</i></p> <p>Generally speaking we believe the conditions strike an appropriate balance between consumer protection and promoting innovation. Please see our responses to questions 18-24 below for our detailed comments.</p>

10.	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.	Please refer to our response to question 9 above.
11.	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	We agree that the exemption should be available for financial advice and investment planning services.
12.	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.	We submit that mortgages and personal insurance should also be included in the list of eligible products for personalised robo-advice. Please see our response to 13 below for our specific comments in relation to personal insurance.
13.	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.	We submit that personal insurance products should be included in the eligible product list. We believe the concern that these are not easy to exit is misguided. Personal insurance can be easily exited by simply ceasing to pay premiums. We recognise that there are risks associated with replacement insurance but submit that these can be dealt with in the design of the service. We think it would be difficult to appropriately cap robo-advice on personal insurance products at a certain value or duration limit. We understand from market participants that life insurance of \$100,000, for example, is very low and means that robo-advice would not be available for the majority of life insurance consumers. We also believe that imposing a value cap could be somewhat counterproductive in that robo-advice would not be available to those seeking advice on larger product/investment values, thereby protecting those that typically need the least amount of protection.

14.	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.	For the reasons set out in our response to question 13 above, we do not think it would be appropriate to cap any of the proposed eligible products at a certain value or duration limit.
15.	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.	For the reasons set out in our response to question 13 above, we do not think it would be appropriate to impose an individual client investment limit.
16.	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.	<p>We do not agree with imposing a limit on the total investment amount of products advised through the robo-advice service.</p> <p>We believe such a limit would be a deterrent to providers relying on the exemption as it will be unviable to invest the time and money in developing quality robo-advice services with such a restriction in place.</p> <p>We also submit that the regulation should be technology neutral; robo-advice is simply another distribution channel and the mode of distribution shouldn't change the requirements.</p>
17.	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?	If a status disclosure is required, we would support a concise prescribed form. We would submit that there should be flexibility as to the required location and timing of that prescribed wording and flexibility as to the form, location and timing of the product disclosure.

18.	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?	We appreciate that there are limitations to this style of advice but that those limitations may vary greatly between robo-advice services. Accordingly, we would support flexibility to decide how to comply with the disclosure condition rather than a prescribed form. This would also allow robo-advice services to be innovative about delivering the disclosure.
19.	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.	We believe there is value in taking steps to ensure a client understands the basis of the robo-advice service but it is not clear that requiring an active confirmation necessarily means the client has actually processed and understood the basis of the service. However, if such a condition is imposed, we submit that there should be flexibility as to the form and timing of this.
20.	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.	We agree with the proposed conduct obligations. Please see our response to question 21 below for our views as to further conduct obligations that should apply.
21.	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.	As a starting point, we believe the application of the standards should be technology neutral; that is, the mode of distribution should not change the requirements. In addition to those identified as applicable in the Consultation Paper, we submit that there would be consumer protection value in including modified versions of the following Code Standards (or components of those standards, as applicable) as conduct obligations: (a) Code Standard 1 – a requirement for the robo-advice service provider to act with integrity in their system design process; (b) Code Standard 6 – a requirement for clear, concise and effective disclosure; and (c) Code Standard 15 – a requirement for the robo-advice service provider to have knowledge of the relevant legal obligations.
22.	Do you have any feedback on the table set out in the Appendix which maps the proposed exemption conditions to the Code Standards, Standard	Please see our response to question 21 above.

	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.	
23.	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.	We submit that the conditions should be applied proportionately to the complexity of the service offered rather than to the size and scale of the service. We submit that there should be a minimum standard which all providers must comply with and more complex systems should be subject to more complex testing.
24.	Are there any other limits or conditions you think would be appropriate to put in place?	We believe it will be important for robo-advice service providers to regularly review the system design to ensure it remains “current” in respect of the products it relates to, the market conditions and the assumptions underlying the algorithms. We assume the FMA’s current monitoring and surveillance of financial adviser services will extend to robo-advice services.
25.	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?	Yes, particularly given the gravity of the consequences and liability for a breach of the exemption conditions.
26.	Would you like to see a list of providers relying on the exemption, if granted, on our website? If not, why not?	Yes, we would support listing the providers relying on the exemption on the FMA website. We also suggest that a link to this page should be included on the regulated disclosure on robo-advice platforms stating that they are relying on the exemption notice. We also support the proposed requirement for robo-advice providers to register on the Financial Service Providers Register.
28.	Do you have any other feedback or comments?	We note that the Consultation Paper states that providers of personalised robo-advice services would also need to comply with the disclosure obligations in Part 2 of the Financial Advisers Act. Where the robo-advice service provider is not a QFE, it is unclear how the disclosure form will work in practice. We would be grateful if this could be clarified.

Response to the

Financial Markets Authority

on the

**Consultation Paper: Proposed
exemption to facilitate
personalised robo-advice**

19 July 2017

1.0 INTRODUCTION

- 1.1 This submission has been prepared by Bank of New Zealand (BNZ) in response to the Financial Markets Authority (FMA) consultation paper on Proposed exemption to facilitate personalised robo-advice released June 2017
- 1.2 BNZ welcomes this opportunity to provide a response to FMA's Consultation Paper and acknowledges the industry consultation undertaken on this matter.

2.0 EXECUTIVE SUMMARY

- 2.1 BNZ would like to commend the FMA for the pro-active steps it is taking to enable robo-advice to be introduced ahead of the proposed changes to the Financial Markets Conduct Act 2013 (FMCA). Robo-advice is a service that we are keen to be able to offer our one million plus customers. They will be able to access expert advice remotely, at times convenient to them. It will enable us to satisfy the increasing demand for banking services to be available "anytime, anywhere".
- 2.2 BNZ believes that robo-advice will be a quantum leap forward in making affordable expert personalised advice available to customers who otherwise would be put off taking advice because of perceived or real barriers. It is consistent with our aim to "help our customers be good with money".
- 2.3 BNZ considers that the Consultation Paper is of very high standard. It provides a fair summary of the risks and benefits of robo-advice. We are in general agreement with the exemption solution being proposed by the FMA. Our response to the Questions in the Consultation Paper are set out below.
- 2.4 Our responses have been compiled with the help of our subject matter experts as well as having reference to the work done by

regulators in other jurisdictions, which have introduced robo-advice or are considering doing so.¹

3.0 BNZ'S SUBMISSION

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.

BNZ believes that the current advice regime does not meet the needs of nearly enough our customers. Providing personalised advice by natural persons is the most expensive option for customers, it also requires customers to make themselves available to talk to an adviser at times when it may not be convenient to them. In many cases, they would prefer to use technology and control how they access information and advice. Therefore, BNZ is keen to offer robo-advice as soon as we are able to do so, without being constrained by artificial time constraints or legislative programmes. If the technology is available, New Zealand customers should be able to get the benefit of it. We congratulate the FMA for being proactive in this regard. Therefore, BNZ supports the FMA granting an exemption.

We support there being robust consumer protection requirements. We consider that there is no case to limit the amount that can be advised on or invested through robo-advice channels (as this could infer that robo-advice is inferior or less reliable than advice given by a natural person) – the channel used should not make a difference to the suitability of advice for an individual.

BNZ also disagrees with the proposal to limit the use of robo-advice to products which are “easy to exit”. This infers that robo-advice is an inferior or unreliable channel. We do not accept that this is the case. The most important requirement is that the

¹ ASIC – Providing digital financial product advice to retail clients – August 2016; SFC - Consultation on Proposed Guidelines on Online Distribution and Advisory Platforms – March 2017; and MAS – Provision of Digital Advisory Services

algorithms produce advice that is suitable for the customer. This requires extensive development work, and pre-release and ongoing testing. The tool needs to be able to screen customers, so that advice on complex investment products is only given to sophisticated customers. The necessary restrictions can be achieved by having an appropriate “suitability” test without restricting eligible products. A restriction on eligible products would probably reduce the incentive for ongoing development in robo-advice.

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.

Yes, we agree it is appropriate for FMA to use its exemption powers to facilitate personalised robo-advice. The only other alternative is for MBIE to amend the relevant provisions of the existing Financial Advisers Act 2008 (FA Act) to facilitate robo-advice. This would cause unnecessary and possibly lengthy delays, as there is far less control over the legislative process and the process is by its very nature longer. Also, MBIE is already well down the path of working on the changes necessary to include the new financial advisers' regime in the FMCA. Giving current workloads with that process, it would be unproductive to divert its attention to address one specific area of reform (i.e. passing appropriate legislation enabling robo-advice). Therefore, it seems sensible to BNZ that the FMA is the appropriate party, to consider, address and implement a temporary robo-advice exemption.

BNZ favours an exemption being introduced shortly because the current timing for changes to the FA Act regime only envisages robo-advice services becoming available in 2019 (at the earliest). The exemption is necessary for New Zealand providers to be able to offer robo-advice services of a nature similar to those already available in other jurisdictions currently. We think this is crucial in order to fill a huge void in the availability of personalised investment advice to customers of New Zealand's financial services industry on affordable terms. If the technology

and expertise is now available in New Zealand to provide this service, there is no justification for delaying customers from having access to robo-advice services for 2-3 years just because that is the length of time it takes to prepare and implement the changes to the new financial adviser's regime under the FMCA.

The challenge is, however, to ensure that the implementation of robo-advice under any exemption is done in a way that is not unduly rushed (and may therefore be prone to unforeseen problems which puts at risk positive customer outcomes) and is hopefully not materially inconsistent with robo-advice licence requirements and law that will apply under the proposed new financial adviser regime under the FMCA.

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?*

For BNZ, intelligent automation, such as artificial intelligence (AI) and robo-advice, are seen as critical enablers to solve key pain-points for our customers and a way to more effectively deliver our key aim, which is to help New Zealanders be good with money. This is a key guiding principle for us when developing our automation strategy. The opportunities we are looking to fulfil are:

- To provide advice, at scale which is easily accessible, neutral and available 24/7; and
- To provide advice in a way that is a great customer experience, is consistent, safe and relevant.

From our current research, there is growing evidence to show there is a large the knowledge gap surrounding basic products such as KiwiSaver, which highlights the need for customers to have access to advice on the basics of financial literacy and investing, as well as, in the case of KiwiSaver, fund selection – for example it appears that many of our current KiwiSaver customers remain invested in their default 'conservative' fund, when this may not be their best option.

There is a shortage of AFAs and there are perceived barriers to accessing advice from them. Robo-advice is the ultimate solution that will enable customers to access expert advice on an affordable basis, at times and locations that are convenient for the customer.

With this in mind, to try and comply with the 'natural personal

requirement² to provide 100% quality assurance and check each piece of advice, would defeat the objective, which is to provide affordable quality advice service at scale which is not currently possible due to lack of current AFA capacity. No business case would stand up to a requirement to have natural person involvement.

The key to the successful introduction of new technologies, such as robo-advice, is to ensure they involve a large degree of checking and quality assurance during the proof of concept and piloting phases. This to ensure the quality of the advice and the customer experience, including the appropriateness of the questions, the responsiveness of the customer's interaction with the tool and the accuracy of the answers and advice being provided.

We agree there is a need to retain 'natural person' oversight over the performance of the robo-advice tool as it looks to 'grow smarter' over a period of time. A strong oversight function required, where exceptions and defects are managed with a view to improving the number and quality of the tool and to sustain and enhance ongoing performance once it is put into production. Machine learning and knowledge base build should remain a critical function, which should be managed by the team responsible for the tool.

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:

We appreciate the reasons for FMA's preferred approach of granting a class exemption for robo-advice – subject to:

- pre-notification and receipt of non-objection by the FMA. This process needs to be consistent with the anticipated requirements under the prospective licensing regime under the FMCA. The FMA considerations should not be limited to "good character" but should have regard to capability, quality, governance, risk management and internal controls;
- verification by an independent expert of the algorithms to be used by the robo-advice provider;
- non-objection by the FMA to the outsourcing of any material element of the robo-advice service;
- the FMA being able to impose appropriate conditions as part of the non-objection process; and

- there being on-going confirmation of compliance provided to the FMA.

In our view, the positive aspects of a class exemption are that:

- 1. it is transparent;*
- 2. parties wishing to meet the requirements for exemption are governed by the same upfront rules;*
- 3. it is easier to monitor and enforce; and*
- 4. it is quicker to implement.*

The principal disadvantage of a class exemption is the risk that “one size does not fit all”. In other words, with the varying degree of expertise, resources and competency of providers in the market, a class exemption may not be appropriate for all providers. It is likely that providers will want to take markedly different approaches to the provision of robo-advice services. We see the provision of robo-advice as complex. There must be a high degree of confidence that a provider has the requisite investment and technology skills and that the algorithms have been extensively tested, so that there is an assurance that the tool will consistently provide suitable advice to a range of customers. Security of customer data is essential. We believe that some providers may require closer scrutiny than others, particularly if the goal of positive customer outcomes is to be met.

Our expectation is that any exemption granted by FMA would only be a short-term solution to enable robo-advice to become available to the market as soon as possible, and that the exemption would lapse and be replaced by appropriate requirements under the revised FMCA in due course. Therefore, while a requirement for individual exemptions is potentially time-consuming and costly for all parties involved (including FMA), we think that it will provide better protection of customers.

On balance, we think that an individual exemption approach is more appropriate than a class exemption regime. The individual exemption regime should mimic the proposed licensing regime under the revised FMCA as closely as possible.

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).

The positive impact for our customers in granting the proposed exemption, is that they will get access to personalised advice through technology sooner than when the proposed legislative changes are implemented.

The risks for customers in granting this exemption are:

- further change to the advice framework, as a result of the financial advisers' review, will create uncertainty for customers and providers and could lead to reputation risk for providers and the FMA; and
- inconsistent approach among providers – could lead to customers receiving different advice outcomes from different providers based on the same information.

Risks for providers in granting this exemption are:

- A change to the advice framework, as a result of the financial advisers' review, may require changes to robo-advice tools and systems. This is likely to incur additional costs and possibly create uncertainty for customers and reputation risk for providers.

It is difficult for BNZ to estimate the establishment costs at this point in time, but they will be significant.

BNZ believes it is important that any exemption should be sustainable (i.e. consistent with the proposed licensing regime under the revised FMCA) to allow providers and customers time to adapt to the new regime.

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.

On the assumption that the FMCA will be amended to enable the provision of robo-advice under a licence regime that would come into force in 2019, the failure to introduce an exemption regime at this point of time would mean that some customers, who would otherwise be able to benefit from personalised robo-advice, will miss out on that opportunity. It is not possible to estimate the number of customers who may be impacted, but we believe that there would be significant demand for the service and our customers tend to be early adopters, so the number missing out could be significant. It is noted that other jurisdictions are currently enabling the provision of robo-advice, so there is a reputational risk that New Zealand could be seen as a bit of a “backwater”.

BNZ is already doing some work that could involve the provision of class robo advice.

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?

BNZ firmly agrees that there is an “advice gap”. Customers do not currently seek financial advice for a number of reasons:

- they are unaware of the benefits;*
- it is not readily accessible;*
- it is not available at convenient times;*
- it is perceived to be expensive;*
- they may fear being confronted and overwhelmed.*

As a result, customers are not seeking or taking advice at relevant stages in their lives. Robo-advice offers an opportunity for a

quantum leap forward in terms of access to affordable, expert personalised advice at times and locations that are convenient to the customer. As a result of using the tool, there should be an improvement in the financial literacy of customers, and an improvement in the quality and timeliness of decision making if the advice can be coupled with ready means of execution.

We believe BNZ's robo-advice proposition will be very affordable and access will not be constrained by the amount a customer has available to invest. We see the benefit as "helping our customers be good with money", which is our core value proposition.

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.

BNZ notes that the timing of the introduction of the robo-advice regime under the revised FMCA regime is uncertain because it is subject to the legislative process. BNZ would want to be able to offer robo-advice as soon as it is in a position to do so by taking advantage of the proposed exemption. BNZ currently has relevant proof of concepts (PoCs) underway to understand the business and customer value that can be delivered using artificial intelligence (AI), as well as the maturity of the technology and how we might adopt appropriate tools and platforms to improve services for our customers and provide services more efficiently.

BNZ is also looking at natural language processing, and assessing whether the customer experience is acceptable. We need to determine that the technology being trialled can respond with the right information for the customers as per their requirements. If this proves successful, we would want to use the technology to provide more targeted, proactive and personalised advice on a range of products. Any service would not be introduced until we have

proven (with a high level of confidence) the accuracy of the advice and that our trail customers are satisfied with the experience. It is key for us to understand and address any barriers to customers using robo-advice as a channel.

BNZ wants to ensure that we deliver a meaningful customer experiences – i.e. what the customer wants.

Q9. Do the proposed limits and conditions strike an appropriate balance between consumer protection and promoting innovation? Please give reasons for your view.

BNZ does not believe that the proposed exemption, as it is presented in the consultation document, provides an appropriate balance between consumer protection and promoting innovation.

BNZ see the following risks with granting a class exemption:

- robo-advice is a complex proposition. Many risks arise that do not apply to providing face to face advice to a natural person. For example, the robustness and comprehensiveness of the algorithms required to consistently provide suitable advice to a range of customers and the security of systems to protect sensitive personal information. It is not clear to BNZ how the FMA intends to satisfy itself that providers can meet their obligations under a class exemption. The credibility of robo-advice could easily be undermined by a rogue provider whose controls are not up to standard. BNZ is not convinced that self-assessment by a provider that it will comply with the exemption conditions would provide sufficient protections; and
- the FMA must have the capability to satisfy itself that a provider's robo-advice tools will provide suitable advice in accordance with the standards and conduct requirements under the proposed exemption.

Overseas regimes include provision for regulators' oversight of

governance, oversight of customer information collection and confirmation of robustness of algorithms. This includes:

- disclosure of information for customers;
- customer profiling – ensuring that robo advice tools collect sufficient information to ensure that recommendations/advice is suitable. Includes allowing customers to add supplementary information and, with automated prompts, to deal with information that might be inconsistent;
- system design and development
 - effective design, development and deployment of tool;
 - appropriate and consistent algorithms which are subject to extensive pre-release testing – it must be possible to demonstrate that the algorithms use customer information and objective criteria to generate suitable advice/recommendations;
 - compliance with standards and conduct requirements;
- ongoing supervision and testing of algorithms
 - supervise and test, prior to deployment of any change. Review to ensure that recommendations and advice continue to produce suitable outcomes;
 - maintain operating manuals – scope and strategy for testing algorithms;
 - maintain records of testing;
 - adequate resources available to rectify problems and to suspend service if required;
 - appropriate selection and controls over outsourcing arrangements, if third party providers are used;
- customer data security; and
- auditable records of advice and changes to algorithms.

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.

BNZ does not believe that any of the limits or conditions proposed by the FMA will make the provision of robo-advice unworkable or prohibitively expensive to introduce or provide. It is essential that there be no financial barriers to use of the service by our customers. The cost of providing the service may be cross subsidised from revenues from the products available on the platform.

BNZ believes that it is essential that there should be tight controls on the provision of robo-advice in order to maintain high standards of quality and customer confidence. BNZ would not like to see standards lowered in order to reduce compliance costs.

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.

Providing advice only (not an investment planning service) would be easier for providers to implement and would provide customer with a simpler and possibly easier solution to deal with.

BNZ does not think that DIMS is compatible with robo-advice at this point in time. BNZ believes that DIMS is more appropriate for a customer where there is a relationship with an AFA.

BNZ submits that robo-advice should be allowed to include an online process for on boarding customers and for customers to be able to implement financial advice from the same system.

The simple option would be to allow an exemption for personalised advice only, not investment planning services or DIMS. Customers should be able to act on the personalised advice they receive using the same system (i.e. they should not have to switch to a different

system to implement the advice), or be able to seek further advice and services from an AFA. It is important that the customer retain control over any decision to implement the advice. This would encourage the customer to pause and think before implementing the advice.

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.

No. BNZ disagrees with the proposal to limit the use of robo-advice to products which are “easy to exit”. This proposed restriction infers that robo-advice is an inferior or unreliable channel. We do not accept that this is the case. The important criteria should be that the algorithms produce advice that is suitable for the customer. This requires extensive development work and proof by pre-release and ongoing testing. A better control is to require that the tool needs to be able to screen customers, so that only sophisticated customers are able to implement advice on complex investment products. The necessary restrictions can be achieved by having an appropriate “suitability” test without restricting eligible products. A restriction on eligible products would be likely to reduce the incentive for ongoing development in robo-advice. This would be an undesirable outcome.

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.

Yes. BNZ does not see any logical reason to exclude personal insurance products from being eligible products under robo-

advice. Personal insurance is a key element of holistic financial advice and it would be doing customers a major disservice to exclude it from the robo-advice value proposition. Nor can we see any justification for limiting the amount or duration of cover on which advice can be given.

Q.14 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.

No. BNZ does not see that imposing limits at the product, customer or provider level will lower the risks, increase customer protection or improve the customer experience. Limits may result in poorer customer experience for those who cannot access advice and could provide a disincentive for providers to invest in the development of the tool. There is no case for a value cap or duration limit on eligible products. Robo-advice should provide the same recommendations as an AFA. The customer should not be disadvantaged by relying on robo-advice. Use of a robo-advice service should be up to the customer. The question of choice (advantages and disadvantages) between robo-advice and an AFA can be adequately covered in the disclosures without introducing a cap.

Q.15 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.

There should not be a limit on individual investments. A cap is more likely to create a barrier to a customer with larger sums to invest from obtaining any financial advice as they may choose not to take personalised financial advice from an AFA for the reasons set out in our response to Q 7. Using a

robo-advice service or an AFA should be seen as substitutable services. The advice should be the same if the questions and algorithms are right and this should be able to be demonstrated by testing.

Q.16 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.

BNZ does not support there being a limit on the total amount that an individual can be advised on through a robo-advice service. This suggests a lack of confidence in robo-advice that BNZ considers is not warranted.

Rather than have a two-tier limit (i.e. one for QFEs and one for other providers), BNZ submits that there should be a requirement for providers to hold PI cover for an amount which reflects the amount of investments they have advised on. Registered banks should have the ability to self-insure.

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?

No, we don't think it is necessary for the FMA to prescribe the form that the status disclosure statement should take.

The status disclosure, if it is to be solely as described in the consultation paper, is a relatively straight forward and simple message, and there are likely to be only a small number of ways that a provider could word that disclosure in plain English.

Relevantly, we think that the real focus here should be on where the status disclosure is placed within the relevant disclosure tools (so as to be clear and prominent). Our view is that the status disclosure should be one of the first messages that a user of the robo-advice tool comes across.

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?

While BNZ agrees that requiring disclosure of key information about a robo-advice service is of crucial importance, BNZ doesn't believe that it is necessary to have a prescribed form and method of disclosure, given there is bound to be diverse approaches taken by providers to the provision of robo-advice. A provider should be allowed some flexibility in respect of the form of disclosures, provided the content is set out in a clear, concise and effective manner.

General disclosures always have the potential to touch on a number of different topics (many of which are subjective to the provider making that disclosure), and as we have seen historically in the context of disclosures in a securities offering context, this can lead to varying quality and length/quantity of disclosures by providers.

To safeguard the interests of customers, we think FMA should set out the parameters of what needs to be disclosed, and give examples of the disclosures envisaged – much like what is set out in the consultation document. In addition, we think a requirement must be that any disclosure is clear, concise and effective, and relatively brief – so as not to discourage the customer from reading it.

We do not favour prescribed wording. We favour prescribed subjects, with appropriate limits on content and length.

We also think that disclosure should be subject to a measure of materiality, again much like that used in the context of offerings of financial products under the FMCA. “Materiality” should be determined by reference to information that would reasonably cause a customer to re-evaluate or change his or her decision as to whether to use the robo-advice service.

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.

Yes.

The ultimate concern, when implementing this exemption, is on achieving positive customer outcomes. As noted in the consultation paper, robo-advice could very easily lead to poor outcomes for customers. As a result, we think it is imperative that providers take all appropriate and reasonable steps to obtain active confirmation from a customer that they have read the disclosures required by the terms of the exemption, and agree to receiving advice through the robo-advice service. In this way, providers can go some way to ensuring that the customer is aware of the service, and ensuring that the customer appreciates the limits of robo-advice and whether the robo-advice is appropriate or not to him/her.

Such confirmation is not the only safeguard that should be employed when dealing with robo-advice customers. There are other activities or courses of action that the provider should undertake (some of which are mentioned in the consultation document, and commented on above).

The focus should not be on whether the active confirmation is necessary – it is; rather the focus should be on how to obtain “active confirmation”. What form will this take? A check-box? And should there be “a mandatory pause” between the time

the customer first accesses the robo-advice service, and the time that he or she can confirm receipt and understanding of the disclosures?

Q.20 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

BNZ does not agree with all the proposed conduct obligations:

- (i) BNZ considers that a requirement to put the interests of the client first is highly problematic for a provider such as a bank, which fulfils many roles in meeting the needs of its customers.² For example, it is banker, manufacturer and provider as well as an adviser. It legitimately makes a profit or charges fees for these products and services. It is probable that the costs of providing robo-advice will be cross-subsidised by revenues from sales of these products and services (whether arising from the robo-advice channel or otherwise). Also, the robo-advice will be limited to bank products or services or white label products distributed by the bank. If the putting the “interests of the client first” were to create a fiduciary duty on the part of the bank, it cannot, at law, retain that income. This distinguishes robo-advice provided by a bank from advice provided by an AFA. The test should be – do the algorithms produce appropriate advice for the customer?
- (ii) BNZ agrees that a provider must take reasonable steps to ensure that the advice given is suitable for the customer. Suitability for the customer should not be dependent on the channel used to provide the advice. It is important to emphasise that a product or service is not unsuitable for a customer just because a more suitable product may be offered or recommended by another provider. However, it is paramount that robo-advice does not

² While BNZ can appreciate what the proposed “putting the interests of the client first” test is trying to achieve, we see many issues with its application in practice. This is probably something that is best covered in the consultation on the proposed revision of the FMCA. However, BNZ is happy to discuss our concerns with the FMA at any time.

recommend products or services that are unsuitable for the customer. The limitations on what products a robo-advice platform can provide advice on (e.g. only on the provider's products) need to be clearly and effectively disclosed to customers before they start using the tool. Customers should be required to acknowledge that they have read and accept the disclosure.

- (iii) BNZ strongly agrees that a provider must not do anything or make any omission that would bring the provision of robo-advice into disrepute. We think the requirement should include a specific reference to robo-advice and not just relate to financial advice generally. It is paramount that customer confidence in robo-advice not be undermined, particularly in the early stages of its introduction.

Q.21 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

In many ways, the supply of personalised financial advice through a robo-advice service is much more complex than traditional face to face advice through an AFA. There is a lot more that can potentially go wrong and a single error (e.g. in an algorithm) could have much wider impact. A provider needs to have appropriate internal controls and a comprehensive risk management plan to mitigate these risks.

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.

Code Standards

1 - See BNZ's response to Q 20. In addition to the governance and oversight of the algorithms, it would be necessary for a provider to give customers sufficient information and disclaimers about robo-advice, to make clear the nature and scope of the advice being offered.

2 - BNZ thinks that it is important that providers are under a duty not to bring the robo-advice proposition into disrepute. At an embryonic stage in the development of robo-advice, it is even more important that users have a positive experience and that people are not put off using the service through bad experiences, such as poor advice on unsecure systems. We think it will be necessary to screen potential providers accordingly, before allowing them to take advantage of the proposed exemption.

3 - BNZ supports disclosure of material interests, incentives, relationships or arrangements that may influence the advice provided. At the retail level, BNZ would only give advice on its own products or white-labelled products it distributes. A different proposition might apply to BNZ Private Bank customers.

4 - BNZ agrees that the prohibition on borrowing from or lending to customers should not apply to banks or other providers who provide such financial services in the ordinary course of their business. However, if the provider is not in the business of providing banking services (or similar) the prohibition on borrowing or lending should still apply.

5 - BNZ supports requiring disclosure of material interests. Our views on the workability (or lack thereof) of the placing the interests of the customer first are set out above. We would support a requirement that algorithms should prevent the system making a recommendation that is not appropriate for the customer and that no recommendation should be made if the provider is not able to fulfil the recommendation (i.e. the tool should not recommend the "next best" available product offered

by the provider if that product is not suitable for the customer).

6 - Providing disclosures and ensuring that questions are asked, and advice provided, in a clear unambiguous way, so that the customer clearly understands what the service can provide, what information is required and what advice is being given, is essential if robo-advice is to work as intended. Therefore, BNZ would support a requirement that communications through the robo-advice tool must be clear and effective (if not concise).

7 - As mentioned in our response to Q 28 below, there needs to be robust pre-release and ongoing testing of the questions and algorithms. As noted above BNZ intends to use robo-advice to provide its retail customers with advice on its own products and those it distributes under white-label.

8 - BNZ agrees that a customer must be given relevant information about robo-advice, and its benefits, risks and limitations, before the customer accesses the service. The customer should be required to acknowledge that he or she has read and accepts the disclosures.

9 - BNZ agrees with the proposed conduct condition that that a robo-advice provider must take reasonable steps to ensure that the advice given is suitable for the customer, having regard to the nature and scope of the service (as disclosed to the customer).

10 - BNZ agrees that the information given to a customer should include a description of how the robo-advice tool works. The customer must be provided with the relevant information necessary to enable the customer to make an informed decision about whether to use the robo-advice service.

11 - BNZ agrees that robo-advice providers should have an appropriate process for resolving complaints. This should include being able to talk to a natural person and not just lodge a complaint by electronic message or email. BNZ intends to

follow its existing complaints process.

12 - BNZ agrees that accurate up-to-date records must be kept of the advice provided to customer and the algorithms that were used to provide this advice. There needs to be an auditable trail of the advice and changes made to the algorithms. This information needs to be kept securely, so that it is not at risk of unauthorised access or alteration. AML/CFT requirements will need to be satisfied if the tool has functionality that enables the customer to implement the advice.

13 - BNZ considers that providers must be required to keep an auditable trail of all advice provided to a customer, and the algorithms on which it is based, for at least 7 years from the last activity by the customer in relation to the robo-advice tool.

14 - BNZ submits that a provider must, at all times, have the requisite collective experience in financial advice and technology. This includes in respect of the design, testing and monitoring of the algorithms. The algorithms must be subject to supervision by a natural person. The standard should apply to the providers of any material outsourced function.

15 - BNZ consider the provider (or at least those officers and employees who are directly responsible for the provision of a robo-advice service) should have knowledge of relevant legal obligations.

16 - BNZ agrees that 16 of the Code is not relevant to robo-advice services.

17 - BNZ agrees that 17 of the Code is not relevant to robo-advice services.

18 - BNZ agrees that 16 of the Code is not relevant to robo-advice services.

Summary of Standard Conditions

- 1 BNZ agrees that it should not be necessary for a robo-advice provider to have and maintain an Adviser Business Statement.
- 2 BNZ notes the limitation on the FMA's powers to require regular reporting by robo-advice providers. We see this as a potential serious weakness in the supervisory regime until a full licensing regime comes into force. While an exemption can make it a condition that a provider have appropriate internal controls and that compliance be audited, there needs to be regulatory oversight to ensure this is being done properly. It is important that providers "get it right from the start" in order to avoid compromising the value proposition offered by robo-advice.
- 3 We agree that there should be mandatory reporting of non-compliance with the conditions of exemption.
- 4 BNZ agrees that a provider should be required to make its records available for inspection by the FMA on reasonable notice.
- 5 BNZ agrees that Part 3A of the FA Act should not apply (at least where the provider is a registered bank).
- 6 BNZ agrees that Condition 7 (supervising trainee advisers) is not applicable to a robo-advice service.
- 7 BNZ submits that a provider of robo-advice must publish that it operates the service under an exemption granted by the FMA.

Financial Advisers Act requirements

- 1 BNZ agrees that the FMA should not prescribe the form of disclosure. However, it is important that disclosure be of a high standard as it is fundamental to the confidence customers should be able to have in the robo-advice service proposition and the value it can provide. Please see our responses to Q 17 and Q 18.
- 2 BNZ submits that exemptions (such as under section 22(2) of the FA Act) that apply to QFEs (e.g. from having a disclosure statement), should extend to robo-advice.

Q.23 *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.

No. BNZ disagrees with conditions being applied in a differential manner which would apply a lesser standard to smaller providers. There is no logic that supports such a difference. Through the internet and social media smaller providers have access to potentially very large markets. A smaller provider, who is not being held to account with the same standards as providers with larger resources, poses a greater risk of ruining the robo-advice proposition for all providers.

Q.24 Are there any other limits or conditions you think would be appropriate to put in place?

[No.]

Q.25 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?

BNZ strongly supports the FMA issuing appropriate guidance explaining the exemption and providing guidance, particularly if the guidance is prepared in consultation with industry. Robo-advice is a new mechanism for providing financial advice, not just in New Zealand but elsewhere as well. Other comparable regulators, e.g. ASIC, MSA and SFA, are coming to grips with how to make sure that robo-advice can be introduced without compromising the quality and appropriateness of financial advice provided to customers. Developing guidance through consultation will help work issues through and provide a resource that is accessible to providers and customers.

Q26. Would you like to see a list of providers relying on the exemption, if granted, on our website? If not, why not?

Yes, we would like to see a list of providers relying on the exemption on the FMA website.

We think this is consistent with the approach taken by FMA to list other licensed providers on its website, by way of example, parties who are licensed supervisors, licensed market operators, licensed derivative issuers and licensed managed investment scheme managers.

We appreciate that there is a distinction here, in that the groups mentioned above have been vetted and appraised by FMA before being granted the relevant licence, whereas parties relying on a robo-advice exemption may not be individually vetted or appraised by FMA. However, we think that listing of parties relying on any robo-advice exemption is necessary:

- for transparency in the market, and*
- to give comfort to market participants that the parties listed have complied with the exemption conditions referred to in this consultation paper, and are aware of their ongoing obligations under the exemption.*

We cannot envisage any downside to listing such providers on your website (provided the list is maintained and kept up-to-date).

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'?

We think that the term "robo-advice" is a term sufficiently recognised in the New Zealand market to warrant (and enable) continued use. It also seems to be the term that is used internationally. We would only recommend stopping the use of that term if it had the potential to mislead or confuse market participants. However, we do not think the term is misleading or confusing.

Q.28 Do you have any other feedback or comments?

BNZ believes that robo-advice is a highly desirable innovation. It will enable customers to receive affordable expert personalised advice and act on it at times that are convenient to them. It will undoubtedly remove constraints that are currently preventing customers from accessing advice, in particular cost, inconvenience and inertia.

It is acknowledged that robo-advice will introduce a new set of challenges. It is vital that there is control over the provision of robo-advice to ensure quality and integrity is maintained. We believe that a licensing regime will best achieve this in the longer term. As mentioned earlier in this submission, we appreciate the proactive moves by the FMA to facilitate the introduction of robo-advice ahead of the proposed financial adviser legislation reform. We think that this requires an exemption regime that mimics the prospective licensing regime. This will require that a provider be able to satisfy a broader range of competencies beyond just good character and professional knowledge, for example:

- requisite experience in financial advice and technology;
- governance and supervision of algorithms, including pre-release and on-going regular testing;
- testing of suitability of questions and advice;
- risk management controls – supervision by natural persons;
- disclosure;
- conflicts of interest;
- identification of customers for whom robo-advice may not be suitable
- protections of personal information and cybersecurity;
- outsourcing of material functions;
- execution of investment transactions; and
- audit trails.

While BNZ can see the arguments favouring a class exemption, this may, on full assessment of the best way to manage unfamiliar risks, prove too aspirational. In our response to Q 4 we set out some of the arguments against using a class exemption. On balance, we

would support individual exemptions, with priority of consideration of applications being based on existing customer reach. We feel that is safer and more conservative approach that better protects the interests of customers.

4.0 CONCLUSION

- 4.1 BNZ is pleased to provide this submission and the information it contains. BNZ is available to discuss any issues raised.
- 4.2 It makes a welcome change to have an opportunity to provide a submission on such a proactive initiative by a regulator to facilitate the introduction of a new service which will have massive benefits for our customers and to find ourselves arguing the case for the adoption of a cautious (but not slow) approach to its introduction. Robo-advice is not as straight forward as it may first appear. The interests of customers need to be protected. A high standard must be required of providers to ensure advice is robust and suitable for customers and that the credibility of the proposition is kept free from reputational harm.
- 4.3 Should FMA have any questions in relation to this submission, please contact:

[REDACTED]

[REDACTED]

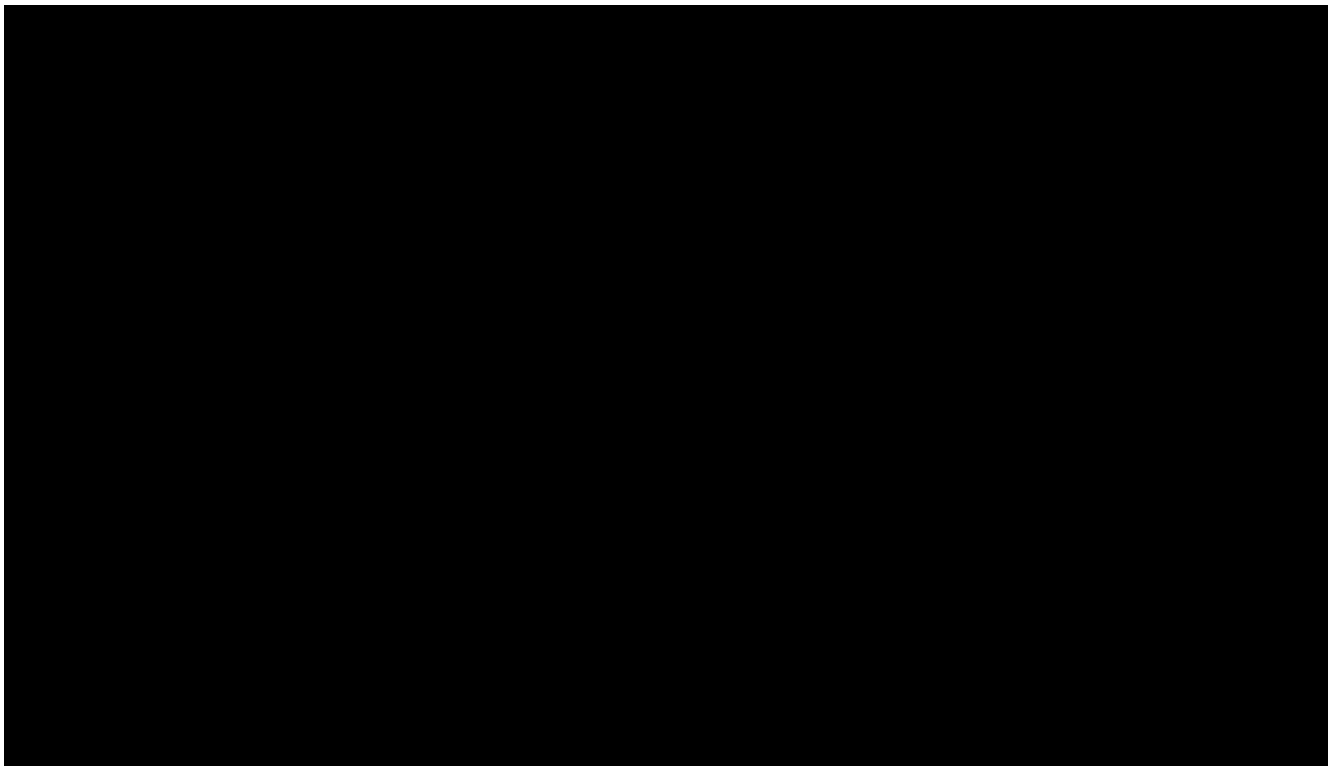
TO: THE FINANCIAL MARKETS AUTHORITY
SUBMISSION ON CONSULTATION PAPER:
PROPOSED EXEMPTION TO FACILITATE
PERSONALISED ROBO-ADVICE

19 JULY 2017



INTRODUCTION

- 1 The Financial Markets Authority (*FMA*) has sought input on the issues raised in its Consultation Paper: Proposed exemption to facilitate personalised Robo-Advice (*Consultation Paper*).
- 2 Our submission follows the structure of the Consultation Paper. We have no objection to our submission being published on the FMA's website.
- 3 This submission reflects the views of the following specialists in our financial services regulation team:



ABOUT CHAPMAN TRIPP

- 4 We frequently advise on the Financial Advisers Act 2008 (*FAA*) and the Financial Markets Conduct Act 2013 (*FMCA*).
- 5 Our clients include major banks, fund managers, insurers, brokers, advisers and other financial product providers.
- 6 We have advised our clients in relation to the full spectrum of *FAA* and *FMCA* compliance issues and understand the issues and challenges the industry has faced.
- 7 We have summarised the key themes from our submission below, before turning to answer the questions in the Consultation Paper in the **Schedule** that follows.

ROBO-ADVICE

- 8 **Robo-advice** involves the provision of advice on products using fully or partially automated, algorithm based tools. There are two types of robo-advisor tools:
 - (a) *adviser facing tools* that financial advisers use to help them service their clients; and
 - (b) *client facing tools* that users can use directly with limited or no human adviser interaction.
- 9 Different types of robo-advice can be offered, including:
 - (a) *fully-automated advice* via an online platform with no human intervention; or
 - (b) *hybrid advice* models where the online platform provides an option for client's to contact an advisor.¹
- 10 Robo-advice business models range from recommendation only advice platforms to end-to-end investment platforms that carry out customer risk profiling, portfolio selection, order processing, custody.
- 11 The robo-advisor process typically begins with the client inputting an investment amount and answering a series of questions on risk tolerance, financial objectives and investment time horizon.²
- 12 The robo-advisor then analyses the client's responses using algorithms and generates a recommendation to the investor to acquire products or services which that process has identified as being suited to the client's needs.
- 13 Robo-advice tools can adopt passive or active management investment approaches. For example, several overseas robo-advice tools are based on Model Portfolio Theory and use a passive, index-based approach based on the risk tolerance of the client. Others incorporate active management of underlying investment portfolios.³
- 14 The majority of robo-advice platforms recommend and invest in managed investment schemes and exchange

¹ A hybrid or combined advice model incorporates elements of both robo and non-robo advice. For example, a client may start by using a digital advice tool, and later be contacted by a human adviser to complete the advice process, or may pay higher fees to gain access to a human advisor.

² Monetary Authority of Singapore (MAS) *Consultation Paper on Provision of Digital Advisory Services* (June 2017) at 5.

³ Financial Industry Regulatory Authority (FINRA) *Report on Digital Investment Advice* (March 2016) at 3.

traded funds (*ETFs*). Some invest directly in shares and bonds. Relatively few offer more complex products, such as OTC derivatives, commodity *ETFs* or cryptocurrencies.

- 15 Robo-advice platforms ordinarily offer rebalancing of client portfolios to maintain a target asset allocation consistent with the advice provided to the investor and to address portfolio drift over time.
- 16 Robo-advice platforms also assist clients in the acquisition and execution of recommended portfolios - generally by acquiring units in managed investment schemes linked to the robo-advice tool or by passing client orders to brokerage firms for trade order execution.⁴

KEY POINTS

We support the FMA's proposed class exemption

- 17 The proposed exemption is needed to allow providers to achieve better consumer outcomes through the provision of personalised robo-advice, such as:⁵
 - (a) greater accessibility to low cost advice for previously underserved segments of the market;
 - (b) easier comparability of investment options, costs, fees and investment returns;
 - (c) greater investor choice and diversification; and
 - (d) greater financial inclusion and literacy.

The proposed limits are overly restrictive and may stifle the development of robo-advice in New Zealand

- 18 We do not support the proposed product, value and duration limits, because they are:
 - (a) **unnecessarily restrictive** – as any limits would quickly be reached, particularly for robo-advice on KiwiSaver products, where demand is most acute;
 - (b) **counterproductive** – where larger providers, who are more likely to invest in platforms, may soon reach the set limits, creating a counterproductive and artificial restriction on access to robo-advice;

⁴ MAS Consultation Paper on Provision of Digital Advisory Services (June 2017) at 17.

⁵ See the International Organization of Securities Commissions (*IOSCO*) Research Report on Financial Technologies (*FinTech*) (February 2017).

- (c) ***difficult to implement*** – providers may find it hard to track whether advice given by the robo-advice platform led to the acquisition of a financial product;
- (d) ***easily circumvented*** – because clients might seek advice on amounts falling below the limits, and then use that advice to acquire more products elsewhere;
- (e) ***an anomaly internationally*** – because, to our knowledge, no other jurisdiction has set equivalent limits for robo-advice services.

We broadly agree with the proposed conduct obligations

- 19 We support the FMA’s approach to aligning the conditions with the Code Standards for AFAs. We have set out some proposed amendments in our submissions below.
- 20 The FMA should ensure that any conduct conditions set out in the proposed exemption align, to the extent possible, with MBIE’s proposed FAA reforms.

Providers should have flexibility in meeting the Disclosure Condition

- 21 Robo-advice providers should be given flexibility to decide how they wish to meet the Disclosure Condition. Disclosure requirements should not restrict innovation, and a flexible standard would ensure that robo-advice providers are able to deploy innovative platforms and disclosure solutions.

SCHEDULE

CONTENTS

General Questions	7
Exemption Limits and Conditions	13
Other Topics	25

SUMMARY OF RESPONSES

Question	Response
Q1	Yes – We support the proposed class exemption to allow personalised robo-advice
Q2	Yes – The FMA should ensure that any exemption aligns with the approach to robo-advice in the FAA law reforms
Q3	Yes – The cost of human advisers reviewing the outputs of any personalised robo-advice platform would be prohibitive
Q4	Yes – We support the FMA’s approach of granting a class exemption
Q5	The Proposed Exemption will in our view improve access to and lower the cost of advice. Risks are inherent in any advisory channel and those that are specific to robo-advisors can be mitigated through adequate controls
Q6	If no exemption is granted robo-advice will not be offered in New Zealand until the FAA reforms are introduced. Class based robo-advice platforms have not been developed to date and would not be worth developing between now and the FAA reforms.
Q7	Yes – There is a significant personalised advice gap in New Zealand
Q8	No submission
Q9	No – The proposed limits should be removed. The proposed conditions could be better calibrated
Q10	Yes – The Proposed limits are overly restrictive and may stifle the development of robo-advice in New Zealand
Q11	Yes – The exemption should be available for Investment Planning Services and the FMA should clarify in its Guidance that automatic portfolio rebalancing would not ordinarily involve the provision of DIMS
Q12	No – Eligible product limits are not the norm internationally and imposing such limits would not be ‘technology neutral’. Liquidity should not be used as a proxy for potential investor harm; complexity should be used instead

Question	Response
Q13	Yes – Personal insurance products should be included, but there should be no value caps or duration limits
Q14	No – Value caps or duration limits would impose an unnecessary restriction and would be complex and difficult to monitor
Q15	No – The Exemption should not impose a Client Investment Limit
Q16	No – The Exemption should not impose a Total Investment Amount Limit
Q17	Yes – The FMA should prescribe the Status Disclosure Statement to state that the provider is relying on the Exemption
Q18	Yes – Providers should have flexibility in meeting the Disclosure Condition. The FMA could include a disclosure condition regarding rebalancing
Q19	No – A confirmation obligation would not provide meaningful assurance
Q20	Yes – We broadly agree with the proposed conduct obligations
Q21	No – There are no further conduct obligations that should apply
Q22	Yes – We recommend the FMA makes minor adjustments to the proposed conditions to better reflect the Code Standards
Q23	No – The conditions should not be applied proportionately to the size and scale of the robo-advice service offered
Q24	Yes – The FMA could consider imposing an annual reporting condition
Q25	Yes – The FMA could provide guidance with recommendations
Q26	Yes – The FMA could list providers relying on the exemption on its website and providers should include a hyperlink to this list in their disclosure
Q27	Yes – Robo-advice is the most commonly used term. The FMA could adopt whichever term will be used by MBIE in the FAA reforms
Q28	We support the establishment of an 'Innovation Group' within the FMA. The FMA could consider leading a dedicated FinTech advisory unit with a dedicated section on its website for information and contact information

DETAILED SUBMISSIONS

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?

Yes – We support the class exemption to allow personalised robo-advice

- 1 It is important that the FMA strike the right balance between appropriate consumer safeguards and limits that may restrict the development of robo-advice platforms. For this reason:
 - 1.1 we do not support the proposed limits on robo-advice providers; but
 - 1.2 we do support most of the conditions that robo-advice providers will need to comply with before they can rely on the exemption.
- 2 The FMA should align the exemption with the 'technology neutral' goal of the FAA reforms. The exemption should not impose a significantly greater regulatory burden on robo-advice platforms than the burden currently imposed on human advisors.

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?

Yes – The FMA should ensure that any exemption aligns with the approach to robo-advice in the FAA law reforms

- 3 The FMA can and should use its exemption powers now to facilitate the provision of personalised robo-advice in advance of the FAA reforms.
- 4 Chapman Tripp has [submitted](#) that we would "support a move by the FMA to grant targeted exemptions from existing FAA requirements allowing robo advice to be provided even ahead of the new regime."
- 5 The proposed class exemption would ensure New Zealand keeps pace with other jurisdictions that have permitted and facilitated greater provision of robo-advice.
- 6 Some have argued that an exemption is not possible because section 148 permits the FMA to grant exemptions from compliance only with any *obligation* under the Act, and the relevant provision (section 17 of the FAA) is a *prohibition* on personalised advice being provided by non-natural persons, not an obligation.
- 7 We agree with the FMA's position that it is able to grant the proposed exemption because its section 148 exemption power extends to exemptions from *negative obligations* (i.e. obligations to comply with prohibitions). Support for the FMA's

position is found in the regulations disallowance provisions of the Legislation Act 2012 where obligations include “*obligations to comply with prohibitions*”.⁶

Q3 Do you think the costs for robo-advice providers to comply with the ‘natural person’ requirement (if no exemption is granted): (i) would be unreasonable? or (ii) would not be justified by the benefit of compliance?

Yes – The cost of human advisers reviewing the outputs of any personalised robo-advice platform would be prohibitive

- 8 Adviser businesses already have the ability to have a natural person adviser “adopt” the advice of a robo adviser and deliver it through an online platform. No provider has, to our knowledge, done so.
- 9 The proposed exemption, in our view, meets the statutory threshold criteria under section 148(2)(A) of the FAA, because it will:
 - 9.1 lower the costs of personalised advice once robo-advice platforms achieve scale;
 - 9.2 facilitate greater access to low cost financial advice for clients; and
 - 9.3 ensure that New Zealand keeps pace with international developments, where low cost robo-advice solutions are common and are increasingly capable.
- 10 The FMA would impose a significant cost burden if it were to require a human advisor to review the advice outputs of a robo-advice platform. Providers should be given the choice as to whether they wish to establish a ‘fully automated’, ‘hybrid’ or ‘advisor reviewed’ robo-advice solution.

Q4 Do you support the proposed approach of granting a class exemption, or do you consider that individual exemptions would be more appropriate – in either case subject to limits and conditions?

Yes – We support the FMA’s approach of granting a class exemption

- 11 We support the class exemption option because:
 - 11.1 a class exemption is the only way to achieve a level playing field for providers;
 - 11.2 individual exemptions would be costly for providers to apply for and costly for the FMA to review and monitor.
- 12 We appreciate that there is a counter-view that individual exemptions would allow tailoring to reflect an applicant’s individual circumstances and provide specific conditions directed at the applicant’s algorithm or compliance assurance processes – similar to a licensing regime. However, for the reasons given above we favour a class approach, particularly given the temporary nature of the exemption.

⁶ Section 37 of the Legislation Act 2012.

- 13 The class exemption should be subject to conditions, although we believe some of the proposed conditions require amendment. We do not support the limits proposed. We explain why below.
- 14 The FMA should ensure that the proposed exemption aligns, as far as practicable, with the transitional and full licensing regime under the FAA reforms.

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).

The Proposed Exemption will in our view improve access to and lower the cost of advice. Risks are inherent in any advisory channel and those that are specific to robo-advisors can be mitigated through adequate controls

- 15 Robo-advice platforms will create opportunities for providers to achieve better consumer outcomes, such as:⁷
 - 15.1 improving access to advice at lower cost;
 - 15.2 easier comparability of investment options, costs, fees and investment returns;
 - 15.3 greater investor choice and diversification; and
 - 15.4 greater financial inclusion and literacy.
- 16 Robo-advice platforms are not without risk. But many of the risks apply equally in the context of traditional advisor models or are unique only to the extent that robo-advisors place greater emphasis on technology.
- 17 Robo-advice business models may create the following risks for **clients** (many of which are not unique to robo-advice platforms):⁸
 - 17.1 **limited interaction**: the limited interaction with the robo advisor means that consumers may not be able to fully understand the nature and risks of an investment product prior to making an investment decision;
 - 17.2 **conflicts of interest**: there may be biases or conflicts in the algorithm about which clients may not be aware, for example the tool may favour proprietary products, or products for which the provider would receive higher commissions;⁹
 - 17.3 **suitability concerns**: some individuals may not be appropriate clients for robo-advice services, including for example, those with more complex needs, or

⁷ See the International Organization of Securities Commissions (IOSCO) *Research Report on Financial Technologies (FinTech)* (February 2017).

⁸ International Organisation of Securities Commissions (IOSCO) *Final Report on Automated Advice Tools Survey* (December 2016) ([Link](#)) at 10-13.

⁹ See e.g. MAS Consultation Paper on Provision of Digital Advisory Services (June 2017) ([Link](#)) at 9.

that are heavily indebted, as robo-advice platforms may not be able to take account of all of the client's financial needs or understand their debt levels;

- 17.4 ***misunderstanding capability***: clients may lack awareness of, or may not understand, the limitations of robo-advice tools. Clients may also not understand the service offered; for example that the robo-advice tool may not consider their full financial and personal circumstances;
 - 17.5 ***misunderstanding algorithms***: clients may not understand how the algorithm works or how their specific inputs influence the results of recommendations generated by the robo-advice platform;
 - 17.6 ***algorithm errors***: if an algorithm is poorly designed for its task or not correctly coded, it may produce results that deviate from the intended output, which may adversely affect many investors;¹⁰
 - 17.7 ***rebalancing risks***: robo-advisors often use predefined model portfolios and use algorithms to automatically rebalance the portfolio in order to maintain a target asset allocation over time. Automated rebalancing may impose extra costs and create additional risks, such as automatic rebalancing occurring regardless of market conditions;¹¹
 - 17.8 ***cost transparency***: a key selling feature of robo-advice platforms is cost transparency and comparability. There is a risk, however, that providers may not disclose the total up-front costs, commissions and underlying fees of financial products acquired via the robo-advice platform.
- 18 Robo-advice business models may create the following risks for **providers** (again, many of which are not unique to robo-advice platforms):¹²
- 18.1 ***filtering risks***: robo-advice providers may not apply adequate threshold questions to effectively filter out unsuitable clients (e.g. those who are unwilling to accept losses on their investments or those who do not wish to receive advice about a limited pool of products);
 - 18.2 ***outsourcing risks***: providers may acquire or use third-party automated advice tools and may not have the capability or contractual arrangements in place to monitor outsourced providers' platforms. Outsourcing may also create ambiguity as to which entity is liable if the platform produces bad customer outcomes;
 - 18.3 ***cybersecurity risks***: robo-advisors operate in an online environment where cybersecurity and data-protection risks are heightened, and providers must ensure that their robo-advice platforms are secure against manipulation;

¹⁰ Financial Industry Regulatory Authority (FINRA) *Report on Digital Investment Advice* (March 2016).

¹¹ Hong Kong Securities and Futures Commission (SFC) *Consultation Paper on the Proposed Guidelines on Online Distribution and Advisory Platforms* (May 2017) ([Link](#)) at 16.

¹² IOSCO *Final Report on Automated Advice Tools Survey* (December 2016) ([Link](#)) at 10-13 and 20.

18.4 **litigation and reputational risk:** faulty automation and systemic errors in any algorithm can impact a large number of clients and increase provider exposure to consequential compensation liability.

- 19 Supervisory risks exist as well – the FMA must ensure that its supervisory techniques evolve to keep pace with advancing technology. As part of its monitoring role the FMA will need to carefully consider its technical and regulatory capacity to examine the data inputs (client information captured) and the outputs (portfolios and algorithm generated advice) to ensure clients are treated fairly.
- 20 The FMA should also remain alive to the risk that the exemption may be used by (generally offshore) providers seeking to offer robo-advice through trading platforms where clients are encouraged to mirror the trades of so-called ‘expert’ traders.¹³

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.

If no exemption is granted robo-advice will not be offered in New Zealand until the FAA reforms are introduced. Class based robo-advice platforms have not been developed to date and would not be worth developing between now and the FAA reforms

- 21 If the FMA does not grant the proposed exemption existing financial advice providers would remain prohibited from delivering personalised robo-advice until they are fully licensed under the new FAA regime, sometime between 2019 and 2020. Many providers wish to deliver robo-advice services now.
- 22 Given the pace of technology, a delay even to 2019 or 2020 risks New Zealand falling a long way behind other jurisdictions, as evidenced by:
 - 22.1 the fact that securities regulators in Australia, the United Kingdom, Singapore, Hong Kong, the United States and Europe have developed or are developing guidance and exemptions on robo-advice (as we noted in our [Brief Counsel on the FMA’s Robo-Advice Consultation Paper](#));¹⁴ and
 - 22.2 the [recent survey](#) conducted by the International Organisation of Securities Commissions (IOSCO), which found that 14 of 17 jurisdictions reported growth in the use of automated investment advice tools, and 11 jurisdictions reported the operation of at least one firm delivering solely online advice.¹⁵

¹³ The products sold on these platforms are complex and highly speculative (e.g. binary options), which would make them suitable for only a small number of sophisticated clients. Often, however, they are marketed to unsophisticated retail investors using aggressive marketing tactics.

¹⁴ We referred to guidance and exemptions delivered by the Australian Securities and Investments Commission (ASIC) in [August 2016](#); the UK Financial Conduct Authority (FCA) in [June 2016](#); the Monetary Authority of Singapore (MAS) in [June 2017](#); the Hong Kong Securities and Futures Commission (SFC) in [May 2017](#); the US Financial Industry Regulatory Authority (FINRA) in [March 2016](#); and the Joint Committee of European Supervisory Authorities (ESAS) in [December 2016](#).

¹⁵ IOSCO *Final Report on Automated Advice Tools Survey* (December 2016) ([Link](#)) at 3.

- 23 Class based robo-advice services are unlikely to be developed in the near-term in New Zealand because:
- 23.1 providers have historically adopted a risk-averse approach to the personalised / class advice boundary, where the regulatory risk of straying into personalised advice has inhibited the development of useful class based robo-advice tools;
 - 23.2 providers may perceive that a tool that is capable of providing only class based advice is unlikely to deliver meaningful or useful advice to their customers; and
 - 23.3 the FAA reforms will soon abandon the distinction between personalised and class advice entirely, leading to wasted costs in developing a 'class only' tool.
- 24 If the market saw value in creating class based robo-advice platforms, then we would expect one to have been developed by now. The market has instead filled the advice gap with relatively simple class based risk-profile questionnaires.

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?

Yes – There is a significant personalised advice gap in New Zealand

- 25 New Zealand has approximately 1,800 Authorised Financial Advisors (AFAs) and 6,000 Registered Financial Advisors (RFAs) to service an investing public of approximately 2.7 million. It is little wonder that few have access to quality financial advice. Robo-advice may go some way to bridging this gap.
- 26 The FMA's 2016 AFA Report indicates that most people who receive personalised financial advice have between \$200,000 and \$500,000 in investable assets.¹⁶ This suggests that a significant number of New Zealanders do not have adequate access to financial advice when they make investment decisions.¹⁷

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.

No submission

¹⁶ FMA 2016 Report on Authorised Financial Advisors in New Zealand (27 March 2017) ([Link](#)).

¹⁷ Australian research conducted in 2010 suggests that between 20% and 40% of the Australian adult population have used a financial adviser. Australian Securities and Investments Commission Access to Financial Advice in Australia (December 2010) ([Report 224](#)) at [40] and Appendix 1.

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.

No – The proposed limits should be removed. The proposed conditions could be better calibrated

- 27 The proposed limits are unduly conservative and may serve to undermine the FMA's goal of improving New Zealanders' access to financial advice by stifling innovation and removing the incentive for potential robo advice providers to invest in the necessary platform. Similar restrictions are not (to our knowledge) found in other jurisdictions.¹⁸
- 28 We consider that the proposed conditions are sufficient and appropriate and will serve to protect consumers by ensuring they receive adequate disclosure and proper investor protection.
- 29 We have suggested ways in which the conditions could be better calibrated in our answers to questions 10-15 below.

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.

Yes – The proposed limits are overly restrictive and may stifle the development of robo-advice in New Zealand

- 30 The FMA should avoid setting overly restrictive limits for personalised robo-advice services because this may stifle the development of the service in New Zealand, which we believe would ultimately be to the detriment of consumers.
- 31 The FMA should instead take a technologically neutral approach to the delivery channel used for advice on financial products or services.
- 32 The FMA should focus on conditions that ensure clients receive appropriate disclosure about the products or services on offer; the limitations of the advice provided through the delivery channel (human or robo-advisor), and the conduct obligations and Code Standards that advice providers should meet.

Proposed conditions

- 33 We proposed the following conditions in answer to specific questions below that the FMA should consider (for the reasons set out in answer to those questions):

¹⁸ See our answers to questions 10-15 below for more information.

- 33.1 a **rebalancing disclosure condition** (similar to that proposed by the Monetary Authority of Singapore). This would require robo-advice providers to obtain their client's acceptance of any fees and of the frequency, scope and methodology of any automated portfolio rebalancing service (see our answer to Question 11 below); and
- 33.2 an **annual reporting condition** requiring providers to provide the FMA with a limited and confidential report on the total assets under advice (to the extent that is known to the advisor business), number of clients receiving advice, and product types advised on, via their robo-advice platform (see question 28 below).

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?

Yes – The exemption should be available for Investment Planning Services and the FMA could clarify in its Guidance that automatic portfolio rebalancing would not ordinarily involve the provision of DIMS

The Exemption should include Investment Planning Services

- 34 The Exemption should not establish an artificial prohibition on robo-advice platforms that provide both financial advice and investment planning.
- 35 To date, most international robo-advice tools provide financial advice and portfolio management, as opposed to overall investment/financial planning.¹⁹ However, there is evidence that platforms are being developed to provide holistic investment planning services.²⁰
- 36 The FMA should not limit the types of advice that can be delivered by a robo-advice platform at this early stage. The boundary between financial advice and investment planning is often so blurred in practice that it is difficult for most financial advisers to separate the two concepts adequately, let alone for a robo-advice tool to do so.
- 37 Accordingly, we do not consider the FMA should limit this capability unless it has a good reason to do so (where none has been put forward in the Consultation Paper).

¹⁹ IOSCO *Final Report on Automated Advice Tools Survey* (December 2016) ([Link](#)) at 19.

²⁰ See for example, the IOSCO Report above at 8 – which notes that the Ontario Securities Commission (OSC) responded that “a few online advisors in Canada are providing financial planning and tax-loss harvesting services to their clients”, and ASIC had indicated that “there were firms in the process of developing these capabilities” in Australia.

The FMA could clarify in its Guidance that automated portfolio rebalancing would not ordinarily involve the provision of DIMS

- 38 Robo-advice platforms commonly generate pre-defined model portfolios and use algorithms to automatically rebalance the portfolio in order to maintain a target asset allocation and address portfolio drift over time.²¹
- 39 Automated portfolio rebalancing is an incidental and necessary service provided as part of most globally successful investment-linked robo-advice platforms.²² Any such rebalancing service would be offered on the basis of standing instructions to rebalance their clients' portfolios to ensure they remain within a specified range.
- 40 The FMA should ensure that its Guidance clarifies that where a client has issued a standing instruction to the robo-advice provider to undertake a pre-set rebalancing strategy, any such service would not be characterised as a DIMS – as the robo-advice provider/platform would not be deciding which financial products to acquire or dispose of on behalf of the investor.²³

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.

No – Eligible product limits are not the norm internationally and imposing such limits would not be 'technology neutral'. Liquidity should not be used as a proxy for potential investor harm; complexity should be used instead

Eligible Product limits are not the norm internationally and imposing such limits would not be 'technology neutral'

- 41 We are not aware of any other jurisdiction that has imposed eligible product limits on robo-advice platforms. New Zealand would be an outlier if limits were introduced.
- 42 Imposing an eligible product limit on robo-advice platforms would also run against the 'technology neutral' goal of the FAA reforms, where robo-advice platforms should be seen as another channel through which advice can be provided.²⁴

²¹ The majority of robo-advice platforms recommend and invest client funds into managed investment schemes and exchange traded funds (*ETFs*). Some also recommend and invest into listed shares and bonds. Some invest in higher risk products such as commodity *ETFs*, OTC Derivatives and Bitcoin. See: IOSCO *Final Report on Automated Advice Tools Survey* (December 2016) ([Link](#)) at 9.

²² Including every one of the Robo-Advice providers we have listed in the table in **Question 16** below.

²³ Section 392 of the FMCA provides that a person (**A**) provides a **DIMS** if:

(a) A—

(i) decides which financial products to acquire or dispose of on behalf of an investor (**B**); and
(ii) in doing so, is acting under an authority granted to A to manage some or all of B's holdings of financial products; or

(b) A provides financial advice in the ordinary course of, and incidentally to, providing a DIMS under paragraph (a) (for example, as to the appropriate scope of an investment authority).

²⁴ MBIE *Consultation Paper – New Financial Advice Regime* (February 2016) ([Link](#)) at page 19.

- 43 The FMA should, in our view, adopt an exclusionary approach that focuses on products it considers are plainly unsuitable for personalised robo-advice solutions (such as derivatives or mortgage credit contracts), or unusually complex or high risk products.
- 44 This approach would avoid unintentionally limiting the products robo-advice providers might wish to offer in New Zealand. The FMA could add products to the excluded list at a later date, once the market has matured and the FMA has time to collect more information on which to justify its exclusion decisions.

Complexity, not liquidity, should be used as a proxy for potential investor harm

- 45 If the FMA Exemption does include an eligible product list, then liquidity should not be used as a proxy for potential investor harm. **Complexity** should be used instead.
- 46 The Consultation Paper states that the eligible product limit includes products that are easy to exit, for example those that are highly liquid or readily transferable and goes on to state that *"The ability to easily unwind an investment decision reduces potential harm if a consumer has received poor or unsuitable robo-advice"*.
- 47 In our view, the FMA should base its eligible product inclusions on the complexity of each product type. Complex products have terms, features and risks that are not likely to be understood by retail clients and the complexity of which cannot be adequately conveyed through a robo advice tool.²⁵
- 48 Personalised robo-advice platforms are inherently unlikely to be capable of providing the advice necessary to ensure that an investor is fully apprised of the risks of investing in or acquiring complex products. Complexity is a better measure of risk and potential consumer harm than liquidity because even highly liquid products can produce large negative consumer outcomes if poor advice is given by a robo-advice tool.
- 49 We also note that the split between category 1 (more complex) and category 2 (less complex) products in the FAA does not in each case provide an accurate proxy for the complexity of the product. For example, certain category 1 products such as KiwiSaver schemes are well understood, while some insurance products can be complex.
- 50 We submit that the most appropriate way to address this is for providers to assess the complexity of the products which they advise on and then make an assessment as to whether they are able to satisfy their baseline duties under the FAA when advising on them through a robo advice tool.
- 51 This is the same filter which operates in the FAA now to prevent advisers from advising on products on which they are unable to provide appropriate advice.

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

²⁵ See: Hong Kong SFC Consultation Paper on the Proposed Guidelines on Online Distribution and Advisory Platforms (May 2017) ([Link](#)) at 5.

where the duration is one year or less? If you consider a different value cap or duration limit would be appropriate, please specify what this should be.

Yes – Personal insurance products should be included, but there should be no value caps or duration limits

- 52 Robo-advice platforms should be able to offer personalised advice to clients on all types of personal insurance, including life, health, trauma, total personal disablement and income protection insurance.²⁶
- 53 Value limits for such products should not be imposed because it is impossible to set a universal value limit across each type of insurance product as they are all very different and their relative risk levels cannot be easily compared. Life insurance, for example, is relatively low risk and less complicated when compared to income protection insurance, but may have a higher dollar value associated with it.
- 54 We would instead expect underwriting and risk management concerns to drive the use of robo-advice platforms for these types of personal insurance products. Robo-advice providers might be more likely to require human interaction with an advisor (via a hybrid platform) for more complex products (e.g. medical insurance, where health exclusions or loadings require more human interaction with a client in order for the robo-advice provider to meet their duties under the FAA).
- 55 The FMA should permit providers to develop advice platforms to advise on personal insurance products but should apply a more stringent supervisory approach to ensure that clients are triaged appropriately and referred to human advisors where needed.

Q14 Should we also apply a value cap and/or duration limit on some or all of the other proposed eligible products? If you consider a value cap and/or duration limit would be appropriate, please specify what this should be.

No – Value caps or duration limits would impose an unnecessary restriction and would be complex and difficult to monitor

- 56 The imposition of value caps or duration limits on eligible financial products would ultimately be disadvantageous and overly-restrictive for consumers. In addition, it would impose an unworkable, unfair and confusing regulatory burden on providers, because:
 - 56.1 providers may find it difficult to track individual gains or losses, or the durations' point of expiry, for financial products acquired via a robo-advice platform (if not impossible where the product(s) are provided by a third party); and
 - 56.2 imposing different value caps or duration limits for different financial products may create confusion for clients and be difficult to explain for providers.

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

²⁶ It is worth noting that insurance is a relatively undeveloped robo-advice segment globally. Most robo-advice platforms are directed toward investment product advice.

think there are any practical difficulties or unintended consequences that may arise from this? If you consider a monetary limit would be appropriate, please specify what this should be.

No – The Exemption should not impose a Client Investment Limit

- 57 Imposing a restriction on the total amount of client investments on which a robo-advice service could advise would be:
- 57.1 **unnecessarily restrictive** because any such limit would quickly be reached, particularly for advice on KiwiSaver products which have a large number of members and significant amounts invested, and would in turn undermine the FMA's objective of increasing access to financial advice on such products;
 - 57.2 **difficult to implement** because robo-advice platforms may not provide advice on an investment-linked product (e.g. for insurance products), or may not track the total amount each client has invested (e.g., where the robo-advice platform recommends a portfolio, but acquisition/execution is handled by another service provider or where the client makes significant follow on investments based on the initial advice);
 - 57.3 **easily circumvented**: because clients might simply confirm that they are seeking advice on an amount that falls below the client investment limit and then use the advice provided by the platform to acquire a larger portfolio; and
 - 57.4 **an anomaly internationally**: because, to our knowledge, no other jurisdiction has set a limit on client investment amounts for robo-advice services.
- 58 We think the FMA should focus instead on ensuring that the conditions imposed on those who wish to rely on the exemption are robust and sufficient to give investors a baseline level of confidence in the provider and to ensure that investors have all the necessary material information when using robo-advice tools.

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? If you consider a monetary limit would be appropriate, please specify what this should be.

No – The Exemption should not impose a Total Investment Amount Limit

- 59 Imposing a restriction on the total investment amount of products that a robo-advice service could advise on would be:²⁷
- 59.1 **counterproductive** because larger providers, who are more likely to make the large capital investment required to bring a robo-advice platform to market, may quickly reach this limit, creating a counterproductive and artificial restriction on their client's access to robo-advice;

²⁷ Some robo-advice platforms may not advise on products that contain an investment component (such as insurance).

59.2 **difficult to implement** because robo-advice platforms may be unable to track whether the advice they provide ultimately results in the client investing in products, or the amounts invested/withdrawn from those products;²⁸ and

59.3 **not technologically neutral** because it would impose an artificial restriction on the level of investment that robo-advice providers can receive through this advice channel (where advice delivered by human advisors would not be subject to any such limit).

60 We do not agree with setting a different total investment amount limit for QFEs as against non-QFE providers. Not all firms that wish to implement robo-advice platforms will be QFEs (particularly those who are based offshore).

61 We also expect that the proposed exemption will impose the same duties for QFE providers and non-QFE providers. Imposing more restrictive conditions on non-QFE providers would place them at a commercial disadvantage which is not reflective of the standards they are being held to. Creating different limits for QFE and non-QFE firms would also create an inconsistency with the FAA reforms, under which all licensed financial advice providers will be treated equally.

Comparable jurisdictions do not impose Total Investment Amount Limits

62 We are not aware of any comparable jurisdictions in which a total investment limit has been imposed on a robo-advice platform. New Zealand would be an anomaly globally if it imposed such a restriction.

63 Even accounting for the relative scale of the economies, leading robo-advice platforms hold significant Assets Under Management as of February 2017:²⁹

Company	Robo-Platform	Country	AUM (\$US Millions)
Vanguard	Personal Advisor	United States	\$47,000
Charles Schwab	Intelligent Portfolios	United States	\$10,200
Betterment	Betterment	United States	\$7,360
Wealthfront	Wealthfront	United States	\$5,010
Personal Capital	Personal Capital	United States	\$3,600
Blackrock	FutureAdvisor	United States	\$808
Nutmeg	Nutmeg	Great Britain	\$751
AssetBuilder	AssetBuilder	United States	\$671
Wealthsimple	Wealthsimple	Canada	\$574
Financial Guard	Financial Guard	United States	\$454
Rebalance IRA	Rebalance IRA	United States	\$403
Scalable Capital	Scalable Capital	Germany	\$123

²⁸ Providers may find it particularly difficult to determine the *total net amount* invested as a result of advice provided by the robo-advice platform. Clients may withdraw for any number of reasons, and investments or withdrawals from a particular portfolio of financial products may be very difficult to link to advice provided by the robo-advice platform (as distinct from any other reason for investing).

²⁹ Statistica *America is the Realm of the Robo-Advisor* Niall McCarthy (February 2017) ([Link](#)).

64 Successful robo-advice providers could expect proportionately similar levels of investment through robo-advice platforms if personalised advice is permitted in New Zealand. Other jurisdictions have not imposed such limits, and regulators appear to be comfortable with permitting providers to operate with significant total assets under management.

65 New Zealand would be an outlier internationally if it began by imposing limits on the total investment amount connected with a robo-advice platform.

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?

Yes – The FMA could prescribe the Status Disclosure Statement to state that the provider is relying on the Exemption

66 The FMA should set the wording of the Status Disclosure Statement and require that the statement is featured prominently on the robo-advice platform.

67 We also recommend that the FMA require providers to include a hyperlink to the FMA website list of providers who are relying on the exemption to allow customers to verify that the provider is in fact registered with the FMA under the exemption.

68 We note that unlike the FMCA, the FAA does not permit minor changes to prescribed wording. We would recommend that the FMCA provision be incorporated into the proposed exemption. This would allow providers to tailor prescribed wording slightly should that prove necessary to avoid misleading clients.

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?

Yes – Providers should have flexibility in meeting the Disclosure Condition. The FMA could include a disclosure condition regarding rebalancing

69 Robo-advice providers should be given flexibility in deciding how to comply with the disclosure condition to allow them to develop innovative disclosure solutions.

70 Robo-advice platforms are largely based online and providers may wish to separate disclosure across web-pages, rather than in one “monolithic” disclosure statement. They may adapt disclosure and use it as an opportunity to educate their clients about the products on offer, through graphs, pop-up boxes or other methods.

71 The FMA should avoid prescription and instead set minimum content and adequacy rules for disclosure. We broadly agree with the disclosure criteria that the FMA has identified in the Consultation Paper.

The FMA could include a Rebalancing Disclosure Condition

- 72 Where a robo-advice platform uses algorithms to rebalance a predefined model portfolio automatically to maintain a target asset allocation over time (and provided that the exemption (or Guidance) means that such practices do not amount to the provision of a DIMS service), the robo-advice provider should be obliged to disclose information about the rebalancing mechanism to clients.
- 73 The FMA could impose a rebalancing disclosure condition that requires providers to inform clients at the outset (where applicable) that automatic portfolio rebalancing may occur, along with information on the frequency, fees, methodology and risks associated with rebalancing (for example, that automatic rebalancing may occur regardless of market conditions).³⁰
- 74 The FMA could also consider whether providers should disclose how their rebalancing mechanisms would handle major market events, or should disclose any significant changes to their rebalancing methods that may materially impact client portfolios.

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?

No – A confirmation obligation would not provide meaningful assurance

- 75 There is a risk that imposing an 'active confirmation' requirement would deliver little more than a 'check box' assurance that the investor had read the disclosure. This would offer no guarantee that clients have actually done so.
- 76 Providers are likely to build such confirmations into their system design in any event and there is a risk that such requirements could inhibit more innovative approaches.
- 77 One method of disclosure confirmation might be through active confirmations but alternatives might require clients to answer questions to actively communicate that they have read and understood the disclosure, and accept that the advice provided by the robo-advice tool may be limited in some way.

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.

Yes – We broadly agree with the proposed conduct obligations

- 78 We particularly agree with aligning these conduct obligations with the obligations for financial advice providers in the Financial Services Legislation Amendment Bill.

³⁰ A rebalancing disclosure condition would reflect recommendations made by the Monetary Authority of Singapore (MAS), which has recognised the need for automated portfolio rebalancing in a robo-advice context and is developing its own exemption and conditions to avoid these rebalancing services being caught by provisions of its regulatory regime. See: MAS Consultation Paper on Provision of Digital Advisory Services (June 2017) ([Link](#)) at 14.

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.

No – There are no further conduct obligations that should apply

79 Our answer to Question 22 below contains our suggested amendments to some of the conduct obligations to better align with the Code Standards. We agree with the FMA’s current principles-based approach to the conduct conditions, and we would not support an overly prescriptive approach to conduct conditions.

80 The FMA could improve outcomes for consumers and assist providers if it provided Guidance on recommended ways to meet the conduct conditions in the exemption. As this is a new and developing area, we recommend that the FMA provides an adequate period of consultation prior to finalising any Guidance it produces.

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.

Yes – We recommend the FMA makes minor adjustments to the proposed conditions to better reflect the Code Standards

81 We generally agree with the FMA’s approach to mapping and aligning the conditions with the Code Standards in the table at the end of the Consultation Paper. We have made some minor suggestions below that could be reflected either in the conditions or identified as recommendations in Guidance produced alongside the Exemption.

81.1 **Conduct:** the FMA should clarify how the following conduct obligations could be met, either through guidance or more detailed descriptions/examples in the conditions:

- (a) **client interests first:** robo-advice providers should be encouraged to develop algorithms that produce advice that matches the clients’ personal circumstances in a manner that is not biased. This may include disclosing where product recommendations may result in the robo-advice provider receiving higher commissions or other forms of compensation;³¹
- (b) **client suitability:** robo-advice providers could meet this obligation by ensuring that client profiling tools or questionnaires are properly designed so that sufficient information is obtained to enable the platform to provide

³¹ The exemption should explicitly acknowledge that the client interest first duty does not require the provider to provide advice on products that are outside the scope of the robo-advice service (as we understand is intended).

advice that is suitable based on the client's personal circumstances.³²
Robo-advice providers may also need to design mechanisms to identify and reconcile any inconsistencies in the information provided by a client.

81.2 **Reporting:** providers should be required to keep records about the robo-advice service for a minimum of **7 years** to better align with Code Standard 13.

81.3 **Monitoring:** we agree that the FMA should adopt a flexible approach to monitoring and testing requirements. We suggest the FMA provides guidance on what monitoring and testing processes would be 'appropriate', such as:³³

- (a) providers could produce a documented testing plan with details on the scope and strategy for the monitoring and testing of algorithms (including the design and implementation of test plans, selection of test cases, treatment of test results, and error rectification processes);
- (b) providers could conduct regular monitoring and testing of the robo-advice platform and the advice produced for clients (e.g. through regular and random sampling of advice provided by a suitably qualified person); and
- (c) providers could implement processes when selecting and monitoring any outsourced service provider used to develop the algorithms or platform.

Robo-advice providers should also be required to maintain appropriate documentation on the design and development (including any modifications) of the robo-advice platform/algorithms.

82 Overall, we agree with the FMA's approach of adopting high level conditions that are not overly prescriptive. We think this preserves the best balance between consumer protection and allowing adequate flexibility for providers.

Q23 Should the conditions be applied in a manner that is proportionate to the size and scale of the robo-advice service offered?

No – The conditions should not be applied proportionately to the size and scale of the robo-advice service offered

83 The FMA should not apply different conditions to different providers. The proposed conditions should set *minimum standards* that apply equally to all robo-advice providers of any size and scale.

84 Consumers may be harmed if smaller platform providers are able to access the market with a non-compliant robo-advice platform, or with insufficient governance or capability to operate the platform and manage complaints. Equally, larger platform providers should not be hampered by being held to more stringent application of the conditions.

³² See for example the client profiling obligations in the SFC *Consultation Paper on the Proposed Guidelines on Online Distribution and Advisory Platforms* (May 2017) ([Link](#)) at 15.

³³ While we disagree with the level of prescription used, a useful list of monitoring and testing processes can be found in the SFC *Consultation Paper on the Proposed Guidelines on Online Distribution and Advisory Platforms* (May 2017) ([Link](#)) at 16.

- 85 The FMA should consider the potential market risk posed by the robo-advice provider, regardless of its size or scale, in determining whether it has met the conditions of the exemption. Robo-advice providers may require closer scrutiny, regardless of the size or scale, if they target high risk or low financial literacy market segments, or offer advice on particularly complex products.

Q24 Are there any other limits or conditions you think would be appropriate to put in place?

Yes – The FMA could consider imposing an annual reporting condition

- 86 All providers relying on the exemption could be required to confidentially report their total assets under advice, number of clients, and range of financial products advised on via their robo-advice platforms to the FMA on an annual basis.
- 87 IOSCO has signalled that regulators generally have very limited direct data on, or knowledge about, the users of robo-advice tools, the number of tool providers, and the assets managed through such tools.³⁴
- 88 While an exemption condition may not be the best way for the FMA to collect such data, we recommend that the FMA give some thought to obtaining relevant market intelligence in order to adequately regulate the sector as it emerges.

³⁴ IOSCO *Final Report on Automated Advice Tools Survey* (December 2016) ([Link](#)) at 19.

OTHER TOPICS

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 – The FMA could provide guidance with recommendations

- 89 The FMA should issue guidance that explains what providers *must do* to comply with the exemption notice and recommendations on what providers *should do* to provide personalised robo-advice services to New Zealand clients.³⁵
- 90 The FMA should ensure that any regulatory guidance that would apply to a hybrid robo-advice model incorporate elements of both robo and human advice.
- 91 We recommend that the FMA provides clear examples of best practices, similar to those found in the ASIC Regulatory Guide on *Providing Digital Financial Product Advice to Retail Clients* (with appropriate modifications for New Zealand law).³⁶
- 92 Any guidance issued by the FMA on robo-advice should allow for a period of industry consultation to ensure the recommendations align with the industry's understanding of best practices.³⁷

Q26 Would you like to see a list of providers relying on the exemption, if granted, on our website?

Yes – The FMA could list providers relying on the exemption on its website and providers should include a hyperlink to this list in their disclosure

- 93 The FMA should require that the disclosure statement include a hyperlink to the list on the FMA website of robo-advice providers who are reliant on the exemption.
- 94 This would increase consumer confidence and provide a means by which consumers could double check those providers purporting to be registered for the exemption.

³⁵ See, for example, the statement in the ASIC Regulatory Guide 255 on *Providing Digital Financial Product Advice to Retail Clients* (August 2016) ([Link](#)) at 6, which distinguishes between what robo-advice providers 'must' do, and what they 'should' do.

³⁶ See, for example, the examples in the ASIC Regulatory Guide 255 on *Providing Digital Financial Product Advice to Retail Clients* (August 2016) ([Link](#)) at 10, 20, 21, 28, 30 and 31.

³⁷ ASIC received 38 industry submissions on its Regulatory Guidance Note above and produced Feedback Report 490 prior to finalising its guidance ([Link](#)).

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'?

Yes – Robo-advice is the most commonly used term. The FMA could adopt whichever term will be used by MBIE in the FAA reforms

- 95 Robo-advice is the term most often used in jurisdictions such as the United States, United Kingdom, Singapore and Hong Kong. ASIC prefers the term 'digital advice'. IOSCO prefers the term 'automated advice'. As there is no generally accepted term, the FMA should adopt whichever term will be used by MBIE in the FAA reforms so as to avoid confusing consumers.

Q28 Do you have any other feedback or comments?

The FMA could consider leading a dedicated FinTech advisory unit with a dedicated section on its website for information and contact information

- 96 We support the FMA's move to establish an "Innovation Group" within the FMA. We would also encourage the FMA to consider leading a broader FinTech advisory unit or innovation hub which could:³⁸
- 96.1 provide a website and forum for regular industry engagement through conferences, events, guidance and consultation papers;³⁹
 - 96.2 provide clear guidance and informal steers on regulatory requirements, including tailored exemptions and advice from partnered advisory firms;⁴⁰
 - 96.3 co-ordinate regulators, export bodies and private sector innovation hubs;⁴¹ and
 - 96.4 facilitate cross-border investment through co-operation agreements with regulators in other jurisdictions.⁴²
- 97 IOSCO's recent survey notes that 12 regulators of the 17 surveyed have established an organisational unit or team to focus specifically on monitoring and facilitating the development of FinTech companies, which include those offering robo-advice.⁴³

³⁸ For example, the [FCA](#) and [HKMA](#) have set out the purposes of their Innovation Hubs on their websites.

³⁹ The best example of a dedicated website is [Ontario](#). Good website examples include: [Australia](#), [the UK](#). Examples of successful papers and conferences produced by Innovation Hubs include the: UK FCA Innovation Hub papers on [RegTech](#) and [Cloud based Outsourcing](#); the Singapore MAS Hub [FinTech Festival](#), and the HKMA paper on [Blockchain](#). Good examples of conferences include those co-ordinated by [Australia's](#), [Singapore's](#), and [Ontario's](#) hubs.

⁴⁰ Examples of guidance provided by Innovation Hubs exist in the [UK](#), [Australia](#), and [Singapore](#). The [UK](#) FCA also offers informal regulatory steers (although this is subject to a substantial [disclaimer](#)).

⁴¹ [Singapore](#) provides the best example of partnership between Regulators and Trade and Export bodies.

⁴² Examples of Co-operation Agreements include those between: [UK-Singapore](#), [UK-Australia](#), [UK-Korea](#), [UK-Hong Kong](#), [Australia-Singapore](#), [Australia-Kenya](#), [Australia-Ontario](#), [Singapore-Switzerland](#), and [Singapore-Korea](#).

⁴³ IOSCO *Final Report on Automated Advice Tools Survey* (December 2016) ([Link](#)) at 18.

AUCKLAND

23 Albert Street
PO Box 2206, Auckland 1140
New Zealand

T: +64 9 357 9000
F: +64 9 357 9099

WELLINGTON

10 Customhouse Quay
PO Box 993, Wellington 6140
New Zealand

T: +64 4 499 5999
F: +64 4 472 7111

CHRISTCHURCH

60 Cashel Street
PO Box 2510, Christchurch 8140
New Zealand

T: +64 3 353 4130
F: +64 3 365 4587

Feedback form: Proposed exemption to facilitate personalised robo-advice

Please submit this feedback form electronically in both PDF and MS Word formats and email it to us at consultation@fma.govt.nz with 'Proposed exemption to facilitate personalised robo-advice: [your organisation's name]' in the subject line. Thank you.

Submissions close on 19 July 2017.

Date:	19 July 2017	Number of pages:	7
Name of submitter:	[REDACTED]		
Company or entity:	Cigna Life Insurance NZ Ltd		
Organisation type:	Life insurer		
Contact name (if different):	(as above)		
Contact email and phone:	[REDACTED]		

Question or paragraph number	Response
------------------------------	----------

Please see the attached pages.

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 SUMMARY

We support the FMA's proposed exemption to the FAA's "natural person" requirement to allow for financial services providers to offer robo-advice. However, it is our view that the proposed product restrictions mean the exemption would fail to deliver the benefits it aims to provide. Permitting robo-advice means extending the benefits of advice to a wider range of consumers in a convenient and cost-effective way. Many purchases of personal insurance at present occur with limited or no advice and a modified version of this exemption would be an excellent opportunity to enhance the quality of these purchases and to increase consumer confidence in the products and services insurers provide.

Specific feedback on the consultation paper (given the nature of our business, this is all focussed on personal insurance):

- We are keen to see life, critical illness, health, and income protection insurances included in the exemption.
- We do not consider the consequences of failing to disclose material information to be any greater via a robo-advised process than they are currently via other non-advised channels (e.g. telemarketing, direct online application, tickbox on a mortgage application, most bank teller sales) or even via an adviser. In fact, enhanced digital application processes (incorporating components of advice) provide an opportunity to better-explain the consequences of non-disclosure and to mitigate some of the associated risk. We consider that the proposed conduct obligations (together with existing regulations) would hold providers to a high standard on this account and we suggest that the exemption insists on active confirmation from consumers that they have understood providers' disclosures and their own disclosure responsibilities (although we think that this active confirmation should be flexible to fit the relevant medium of the robo-advice/application).
- We do not consider life insurance to be materially more complicated than e.g. home insurance to enter into or to exit from. However, we think that the exemption should make specific mention of the issue of replacement business and set clear guidelines around how providers of robo-advice should warn consumers against replacing existing personal insurance policies without seeking more detailed advice (and provide an "escape route" for such customers – and other customers with more complicated needs – to do so). This would be a much more effective "limit" than the proposed sum insured / duration limits.
- We consider the limits proposed on personal insurance policies suitable for robo-advice to be inappropriate. The limits are very narrow, given average life insurance purchases are around \$300,000 and recommending a maximum cover on health insurance is unlikely to be in a would-be-applicant's best interests. Nor is the proposed one-year term limit consumer-friendly, as it would make it difficult to compare yearly-renewable term cover to level term cover. Such limits would be counterproductive and could lead to providers offering robo-advice that ends up underinsuring their customers (in quantity or quality) simply for the sake of meeting the requirements of the exemption.

Note that we have provided more detailed commentary on the issues highlighted above throughout our answers below, particularly in our answer to Q9.

RESPONSES TO THE SPECIFIC QUESTIONS IN THE CONSULTATION PAPER

Q1. We support the FMA's approach to issue an exemption to existing regulation to allow for robo-advice, given technological solutions are available to extend the services that financial services providers offer and to enhance advice offerings. However, we think that excluding personal insurance from this exemption (or placing heavy product/benefit/term restrictions on personal insurance) misses an opportunity to extend the benefits of advice to insurance consumers transacting through direct and digital channels.

Q2. Given the law reform is still some time away from taking effect, it is reasonable that robo-advice will be permitted in the shorter term. Any delays in permitting robo-advice could have negative consequences for consumers who prefer to seek out information about financial services products online. However, we would like to be given reasonable assurance that compliance with the terms of the exemption will be in line with licencing requirements once the new law takes effect.

Q3. The costs associated with compliance with the "natural person" requirement certainly seem unjustified, as the primary purpose of allowing robo-advice will be to extend the coverage of advice and introduce an advisory component to currently advice-free/limited advice channels. Such costs would be reasonable if robo-advice was attempting to replace the existing scope of AFAs providing detailed personalised advice on insurance. However, we see the role of robo-advice as adding to existing sales channels, especially those where advice is limited (eg digital). Requiring the involvement of a "natural person" in the production of robo-advice would remove the ability of providers to extend their advice delivery in a low-cost and scalable way. We expect that appropriately-qualified humans would be involved in building, maintaining, and evaluating any robo-advice tools.

Q4. A class exemption is welcome, given it provides a clear and unambiguous (minimum) standard for all providers to engage with. However, this should not preclude individual exemptions. If there are situations where the FMA is uncomfortable with removing the "natural person" requirement, these should be allowed for with such limits and conditions as to alleviate that discomfort – but applications for individual exemptions (with a view to a more permanent licence under the new regime) should be expected.

Q5. The proposed exemption would allow existing providers to potentially offer better quality services, especially in digital channels. This would not replace the existing advice market. It will however offer consumers more choice and make it easier for providers to give consumers confidence in their purchases. We submit that this will lead to better outcomes for consumers.

Q6. If the status quo continues, it is likely that many providers who would consider applying for individual exemptions may wait until the law has passed before proceeding towards robo-advice licencing. Class robo-advice services are unappealing for products like life insurance and the clarity given by a class exemption would be far preferable.

Q7. We think that there is a potential advice gap, partly drawn along socioeconomic lines due to the cost and time commitment of accessing financial advice, but also along cultural and generational lines with the existing adviser force often looking quite different from those who stand to benefit the most from personalised financial advice. Particularly the research on younger consumers suggests that it is not just the cost of financial advice that puts them off dealing with advisers, but inconvenience and a lack of trust of advice

professionals (particularly in the shadow of the GFC). There are also consumers whose need for financial advice is minimal but still present – such consumers are unlikely to be serviced by financial advisers but could benefit from robo-advice. We note the opinion of ASIC in their guidelines on digital financial product advice:

“In an environment where only around 20% of adult Australians seek personal advice, we think that digital advice has the potential to be a convenient and low-cost option for retail clients who may not otherwise seek advice.”

<http://download.asic.gov.au/media/3994496/rg255-published-30-august-2016.pdf>

We agree with this perspective, where robo-advice in insurance products can add value to existing advice-free sales channels.

Q8. We see robo-advice as a natural extension for those with a direct business model and an opportunity to improve customer engagement and outcomes. However, the exemption in its proposed format would limit this. With personal insurances included in the exemption and no arbitrary limits on product type, sum insured, and benefit term, this exemption may lead us to explore ways we could incorporate robo-advice (or elements thereof) into our existing business model. We see robo-advice as an opportunity not just to offer insurance to a wider group of potential customers, but also for checking in on our existing customers and helping them reassess their (changing) insurance opportunities in light of their (changing) needs. This could greatly enhance the service provided to customers.

Q9. We see the proposed limits and conditions as a missed opportunity. We accept that robo-advice comes with risks, particularly as any “mistakes” offered digitally are likely to be systematic and therefore have the potential to disadvantage more consumers than a human adviser’s mistake. However, there are better ways to deal with these risks than to limit products – much better to regulate conduct and require providers to commit to providing a high standard of quality advice.

We note that many sales of personal insurance products occur at present without advice. These aren’t limited by product type, sum insured, or benefit term. It is, for example, quite possible at present to apply for and be issued with far more than \$100,000 of life insurance online without obtaining advice. Including personal insurances in the exemption permitting robo-advice would allow us to enhance this process, promoting the most appropriate product for a given consumer at appropriate cover levels. For other personal insurances, the proposed \$100,000 cap makes little sense – for example income protection where a proportion of monthly income is insured or health insurance where coverage caps are clearly unfavourable for consumers. From this point of view, we advocate for removing sum insured caps from the exemption: they are unsuitable for consumers buying personal insurance and could make robo-advice worse than the status quo.

We take a similar view towards applying a maximum benefit term for personal insurance products. Typical yearly-renewable term products (like most life insurance policies) are assessed at point of sale and entering into the contract is at the insurer’s discretion. Each year after that, it is the insurer’s obligation to renew cover regardless of any changes to the health of the insured. This is clearly in the customer’s favour compared with requiring the customer to apply for a new contract each year (where the insurer would likely be taking into account any health changes in the intervening period). Additionally, this restriction would prevent robo-advice providers from recommending level term cover, which for many consumers would be more cost-effective cover in the long term than yearly-renewable term cover. This proposed term restriction is inappropriate for life insurance and could stifle the development of any robo-advice that is valuable to consumers or insurers.

The consultation paper makes reference to including products that are “easy to exit”.

Personal insurance contracts are very easy (for the policyholder) to exit, particularly when

compared with the proposed eligible products like KiwiSaver schemes where exit requirements are stringent. In almost all cases, the policyholder can exit an insurance contract at any time simply by ceasing to pay premiums. We accept that such policies may be difficult to replace, particularly where the customer has aged or suffered a change in health status. However, there is nothing to suggest that robo-advice adds to this difficulty or the risk of a situation where a policyholder exits a contract only to find they cannot reinstate it or find adequate replacement cover. Indeed, the different structure of the provision of robo-advice would mean that robo-advice platforms have little incentive to promote replacement cover that would disadvantage policyholders.

Based on the above issues, we suggest that personal insurance is included in the exemption and limits on product type, value, or duration are not applied. We expect that the proposed exemption conditions, particularly around disclosure, conduct and capability, would address any such risks by requiring robo-advice providers to act in the best interests of the client. (We have concentrated here on the proposed limits and conditions that might apply to personal insurance products and have no specific comment on how these relate to robo-advice for investment.)

Q10. If we were to rely on the class exemption, it would be to enhance our existing business model; i.e., providing personal insurance through direct-to-consumer channels. The proposed exclusion of personal insurance (or inclusion with limits) would mean we would need to apply for an individual exemption in order to add robo-advice to our existing application processes. For us, this would negate the benefits nascent in the possibility of a class exemption and we would instead face the costs, complexity, and uncertainty of applying for an individual exemption. We believe that the FMA's concerns about offering personal insurance via robo-advice can be mitigated through conduct requirements at least as strong as those AFAs currently face.

Q11. We are open to robo-advice being available for all financial products and see product restrictions as a limitation that may have adverse unintended consequences. We advocate instead for strong conduct requirements as a more effective way to manage advice risk. See also our answer to Q9.

Q12. As discussed in our answer to Q9, we think the proposed list of eligible products is inappropriate and would not help us introduce advice into our existing channels. We are also concerned that the exemption in its proposed format would mean providers who offer investment services alongside insurance would have the advantage of developing robo-advice platforms before specialist (particularly direct) insurers could attempt such innovation.

Q13. Yes, as discussed in Q9. We consider that robo-advice could have a positive impact on consumers if applied in channels where advice is currently unavailable. Restrictions and limits should be based on capability and conduct, not on arbitrary product restrictions.

Q14. We submit that value caps and duration limits are inappropriate restrictions for robo-advice on personal insurance products as they could have negative consequences for consumers. Consumers can currently obtain personal insurance outside these limits without any form of advice or human interaction. Insurance providers (particularly QFEs) are already subject to high expectations of conduct and we expect these to apply should insurance providers offer their products through a robo-advised channel. This would be an improvement on the status quo and would make poor consumer outcomes in non-advised channels less likely. See also our answer to Q9.

Q15. We consider such limits to be arbitrary and unenforceable for products other than insurance and may lead to unforeseen negative consequences for consumers. Restrictions and limits should be based on capability and conduct, not on arbitrary product restrictions.

Q16. We consider that this would be inappropriate as it dis-incentivises providers from achieving scale.

Q17. We would prefer that such a status disclosure statement was mandatory and that interested consumers were invited to follow a link to a fact page maintained by the FMA which includes a list of providers operating under the terms of the exemption. This would add credibility to all providers' use of robo-advice.

Q18. Given the speed of technological development, providers should have flexibility of disclosure so that they are free to make appropriate disclosure in the most effective way for the medium by which they are engaging with consumers and the context in which advice is provided. Robo-advice tools may be used by a human "non-adviser" to assist consumers as well as directly by the consumer. We therefore recommend caution in stipulating the exact format of disclosure. The FMA should assess providers' compliance with disclosure requirements based on the *effect* of the disclosure, not based on its form. We could (for example) be interested in using visual, dynamic, and interactive methods of meeting disclosure requirements – for example, animation, video, audio, quizzes and so on. Tools such as these could assist customers to better understand the decisions they're making and feel confident in both the processes and products.

Q19. We suspect that distinctions around what constitutes advice may not be overly meaningful for consumers. However, we agree that providers should make the scope and limitations of their process transparent to consumers and that consumers should have the choice whether or not to accept robo-advice on this basis. Disclosure here should be meaningful and its quality should be judged based on its effect, not based on its precise form. We do think that the FMA could provide clear guidance around what consumers should be able to expect which would ensure that providers are on a level playing field and understand the standard of disclosure expected of them.

Q20. Yes – this should be aligned across legislative/regulatory frameworks so as not to be onerous and to be helpful for consumers. We consider that there is a fine distinction between robo-assisted sale processes (that don't include the provision of advice), class robo-advice, and personalised robo-advice and the steps moving between these should not be too steep for providers. The conduct obligations should be proportionate to the degree of advice risk associated with the specific robo-advice solution. However, in general we think clear conduct expectations are appropriate. Errors from a robo-advice platform are more likely to be systematic than errors from a human adviser; such errors could have a more widespread negative effect on consumers. Robo-advice platforms are also likely to lack emotional intelligence and contextual information that helps human advisers give good quality advice. Therefore, we think that robo-advice (and robo-advice providers) should be held to the same degree of conduct expectations as human advisers. We see the Code Standards as being largely appropriate for this purpose.

Q21. See Q20 above – we think all the Code Standards should apply to robo-advice platforms just as they do to human advisers.

Q22. See Q20 above – we think all the Code Standards should apply to robo-advice platforms just as they do to human advisers.

Q23. No – we do not think the size and scale of robo-advice providers should be taken into account when considering their conduct risk. However, as outlined in Q20, we do think the level of advice risk should be taken into account. Some insurers may approach the robo-opportunity using iterative / test-and-learn approaches which gradually introduce robo-advice (or elements thereof) into their existing processes. Disclosure requirements should be proportional to the level of advice risk, but the conduct standards should apply across the board. We also submit that the FMA should be considering the possibility of robo-advice being provided through various forms of AI solutions (including those that interpret other sources of personal information such as social feeds), rather than just algorithms. Both the degree of advice risk and the complexity of the advice model should be taken into account when considering conduct obligations. We submit that the “technology-neutral” approach of ASIC is appropriate here, where AI-delivered advice would be subject to the same level of scrutiny as human-delivered advice.

Q24. No. As discussed above, we consider strong conduct obligations to be the most appropriate way to mitigate the risks associated with robo-advice and we recommend avoiding restrictions based on product type, benefit level, or policy duration. We further submit that the spirit of the final exemption matches the intention with regard to licencing under the new law to provide continuity of service for customers.

Q25. Yes, we anticipate this being very helpful – particularly if it is written with consumers in mind so we can direct them to it if they need reassurance about a given robo-advice platform or more detailed information about digital advice.

Q26. Yes, we think such a public list is necessary. This would add to the credibility of all providers relying on the exemption and (as in Q25) providers could refer customers to it to provide reassurance and background information.

Q27. We have no feedback about specific terminology, but request that clear definitions are provided for whatever terms are used – we should be particularly clear about what constitutes “advice” (whether delivered by a natural person or otherwise). As mentioned in Q20, there is a fine line between non-advised digital sale processes and advised digital sale processes and the industry needs to agree on a productive way to talk about this with consumers in mind.

Q28. No.

11 July 2017

Financial Markets Authority
Level 5, Ernst & Young Building
2 Takutai Square
Britomart
PO Box 106 672
Auckland 1143

Also by email: consultation@fma.govt.nz

Proposed exemption to facilitate personalised robo-advice – Code Committee Submission

- 1 This submission is made on behalf of the Code Committee established under the Financial Advisers Act 2008 ('**FAA**') to develop and maintain a code of professional conduct for authorised financial advisers ('**Code**').

Background – the FAA and the Code

- 2 The statutory framework under the FAA includes a requirement that personalised services in respect of Category 1 Products and Investment Planning Services can only be provided by an Authorised Financial Adviser ('**AFA**'). AFAs are required to comply with the Code, which provides for minimum standards of competence, knowledge, and skills, of ethical behaviour, and of client care. The Code also provides for continuing professional training for AFAs, including specifying requirements that an AFA must meet for the purpose of continuing professional training. The Code is a key mechanism for achieving the overarching purpose of the FAA to 'promote the sound and efficient delivery of financial adviser and broking services, and to encourage public confidence in the professionalism and integrity of financial advisers and brokers'.

Principal submission

- 3 Given its statutory functions, the Code Committee does not consider it appropriate to express a view as to the merits or otherwise of the Financial Markets Authority ('**FMA**') granting an exemption to permit the provision of personalised robo-advice services as described in its *Consultation Paper: Proposed Exemption to Facilitate Personalised Robo-advice* ('**Consultation Paper**'). Nor do we consider it appropriate for us to express a view as to the FMA's power to grant such an exemption. Rather, the Code Committee's position is that if an exemption is to be granted to facilitate personalised robo-advice then the terms on which any such exemption is granted must be consistent with the terms on which AFAs must operate and the purposes of the FAA consistent with the objectives of the exemption stated at page 13 of the Consultation Paper. This means exemption conditions must ensure that:
 - any personalised service provided through a robo-advice platform is subject to no less a set of minimum standards than would apply to an AFA providing a similar service;
 - permitting robo-advice is consistent with promoting the sound and efficient delivery of financial adviser services; and

- public confidence in the professionalism and integrity of personalised robo-advice services and their providers is encouraged.
- 4 In our view, the above requirements are an absolute minimum. In granting an exemption to facilitate personalised robo-advice, the FMA must be confident that the level of consumer protection involved is no less than that which would be involved had the personalised service been provided by AFA. As a consequence, as level a playing field as is possible is created for the mode of delivery of personalised services. Our primary concern is to ensure that the integrity and effectiveness of the Code is not undermined through the grant of the exemption contemplated in the Consultation Paper.

Principles and considerations underpinning an exemption

- 5 The Code Committee is conscious that a number of overseas jurisdictions have already established regulatory frameworks for the delivery of personalised robo-advice. The Consultation Paper does not provide any evidence that the FMA has taken any learnings from the experiences of those overseas jurisdictions into account in formulating its thinking. Given the likelihood that many of the personalised robo-advice platforms that will be made available to the New Zealand public are likely to comprise New Zealand applications of overseas platforms, we believe it would be helpful for the FMA to document its observations of those overseas experiences. In particular, if the exemption contemplated is to be granted, we believe it would assist public confidence in the outcome if the FMA were to document the consumer protections mechanisms it had considered from overseas jurisdictions, and their perceived effectiveness, and how they translate to the New Zealand regulatory environment.
- 6 The consultation discusses possible limits that might be imposed on the provision of personalised robo-advice if an exemption is to be granted. The limits discussed include limits on the possible scope of any personalised robo-advice service that might be permitted, and financial limits. The Code Committee believes this is an inappropriate approach to take in the granting of any exemption. Either the provision of personalised robo-advice is consistent with the purposes of the FAA and is able to be delivered subject to the same minimum standards as apply under the Code, or it is not. In particular:
- a Limiting the scope of a robo-advice service in the manner proposed at pages 7 and 8 of the Consultation Paper is an approach we have not observed in any overseas jurisdiction that currently provides for the regulation of robo-advice.
 - b The only limits placed on AFAs in providing personalised services are those driven by the AFA's competency and abilities, as provided by the Code. A similar approach should apply to personalised robo-advice.
 - c The proposal that the exemption 'would be limited to personalised robo-advice on products which are easy to exit' is hard to reconcile with a product list that includes KiwiSaver and credit contracts. Even if limits on the possible scope of a robo-advice service were to be imposed, we believe that basing the filter mechanism on such a concept is ill-conceived.
 - d Imposing limits on the scope of permitted robo-advice services is likely to undermine the efficacy of those services. In particular, by limiting the products on which personalised robo-advice services might be provided, it seems unlikely that robo-advice could ever be seen as a suitable option for the provision of investment planning services. Imposing any of the limits discussed would result in consumers accessing a more limited range of

outcomes through robo-advice than would be the access if receiving services from an AFA, which would be a negative regulatory outcome.

- e Placing any financial limit on either the value of a product or on the aggregate investments that might be advised on through a robo-advice service, would discourage investment in the system necessary to deliver robo-advice services. Imposing such limits is likely to compromise the ability of a robo-advice service to reliably deliver suitable outcomes on a standalone basis, requiring human advisers (or self-help solutions) to plug the gaps, undermining the objectives of the exemption.
- 7 The Consultation Paper includes as an exemption objective the delivery of personalised robo-advice in a manner consistent with the principles of the Code and other requirements for AFAs. We agree with this objective. Page 13 of the Consultation Paper goes on to express a need to strike an appropriate balance between protecting consumers and 'promoting innovation'. The Committee believes the focus should instead be on promoting innovation that improves consumer access to personalised services, without compromising the level of assurance provided by the Code.

Response to specific consultation questions – Conduct and Code Mapping

- 8 Attached is an appendix setting out the Committee's views as to the applicability of each of the Code Standards to the provision of personalised robo-advice, responding to the equivalent commentary provided by the FMA in the Appendix to the Consultation Paper. This is directed at Question 22 of the Consultation Paper, incorporating some of the themes discussed above.
- 9 Question 23 of the Consultation Paper asks if the exemption conditions should be applied in a manner that is proportionate to the size and scale of the robo-advice service offered. Provided the conditions are expressed on a principled basis, consistent with the Code, the Committee does not see any benefit in incorporating such a prescribed approach in the conditions. Doing so would inevitably constrain the flexibility that would otherwise be available for robo-advice providers to demonstrate that they have placed the interests of the client first and otherwise acted in a manner consistent with the Code, and in turn would constrain the basis on which the FMA might monitor robo-advice services, increasing the risk of a black letter law approach being taken to satisfying exemption conditions.
- 10 Question 24 asks if there are any other limits or conditions we think would be appropriate to put in place. The Committee's view is that imposing an equivalent requirement to the Adviser Business Statement ('ABS') requirement that is imposed on AFAs would be an appropriate approach to take. Not only would this place personalised robo-advice providers on a more equal footing with AFAs, it would provide a useful tool for the FMA to monitor and test the systems that have been put in place, and assist the FMA to hold robo-advice providers accountable for the services they provide.
- 11 Qualifying Financial Entities who move into the personalised robo-advice space will automatically be subject to the requirement to reflect their robo-advice services within their QFE ABS. For the sake of consistency, we do not believe it would be appropriate for the exemption conditions to leave a gap for non-QFE robo-advice providers. Among other things, this would ensure that FMA is able to take a similar approach with such providers as is taken under the QFE regime for vetting, monitoring, and surveillance of qualifying financial entities, with the processes applied there providing a useful benchmark. As a consequence, we disagree with the comment made in the Appendix to the Consultation Paper that the requirement to have and

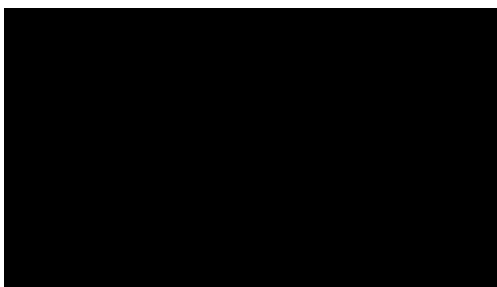
maintain an ABS is not directly applicable to a robo-advice service. In the Code Committee's view it is absolutely applicable – it just needs to be in a slightly different form.

- 12 Question 25 asks if an information sheet explaining the exemption and providing guidance on how to comply would be helpful. In our view, assuming a relatively principled approach is taken to the formulation of the conditions, the provision of such guidance will be essential, providing transparency as to the FMA's expectations and approach. This will not only promote confident participation by the personalised robo-advice service providers in improving access to personalised financial advice, it should also provide confidence to AFAs and other financial advice sector participants – as well as consumers – as to the robustness of the approach taken.
- 13 As for question 26, the Committee supports the publishing of a list of providers relying on the exemption on the FMA's website. A list of AFAs is maintained on FMA's website. We see no reason why a list of those relying on the exemption should not also be provided, ensuring consistency and transparency.

Conclusion

- 14 Thank you for the opportunity to contribute to the informed development of the conditions that will underpin the exemption, if granted. We would be happy to meet with representatives of the FMA to discuss any of the issues we have raised, and test the eventual conditions that are developed against the Code Standards in due course.

Yours faithfully



Appendix A Mapping of exemption conditions to Code Standards

Code Standard	Code Committee's views on incorporating as an exemption condition
1 - An Authorised Financial Adviser must place the interests of the client first, and must act with integrity. These obligations are paramount.	Requiring personalised robo-advice services to place the interests of the client first is essential. We disagree with the FMA's comment that requiring personalised robo-advice to be provided with integrity is not directly applicable. The concept of acting with integrity is at the heart of the Code, and should be incorporated as part of the conditions. In practice, we believe that evidence of complying with such a condition would be evidenced in the negative, with helpful guidance provided in the recent decision of the Financial Advisers Disciplinary Committee decision 2016 FADC 006.
2 - An Authorised Financial Adviser must not do anything or make an omission that would or would be likely to bring the financial advisory industry into disrepute.	We support the FMA's proposal to include this requirement in the exemption conditions. We could not envisage any circumstances in which it would not be appropriate to apply such a condition.
3 - An Authorised Financial Adviser must not state or imply that the Authorised Financial Adviser is independent, or that any financial adviser services provided are independent, if a reasonable person in the position of a client would consider that the Authorised Financial Adviser or the services provided are not independent.	We do not believe that Code Standard 3 is adequately addressed in the proposed disclosure condition. The constraint on AFAs from stating or implying that they are independent or that their financial adviser services are independent, when this is not the case, is absolute. We see no reason to place a lesser standard on providers of personalised robo-advice services.
4 - An Authorised Financial Adviser must not borrow from or lend to a retail client.	We agree that it would not be appropriate to impose this condition on providers of personalised robo-advice services.
5 - An Authorised Financial Adviser must effectively manage any conflicts of interest that may arise when providing a financial adviser service.	We disagree with the comment that the principle is reflected in the proposed disclosure condition. The Code Standard of effective management of conflicts of interest goes beyond merely disclosing conflicts, which is simply the minimum that must be done. We see no reason why a personalised robo-advice service provider should not be required to incorporate mechanisms within their services to manage any conflicts of interest that might arise, and believe they should be placed on an identical footing with AFAs in this regard.

6 - An Authorised Financial Adviser must behave professionally in all dealings with a client, and communicate clearly, concisely and effectively.	While we accept that imposing the high level Code Standard obligation to behave professionally might not seem directly applicable to a robo-advice service, we see no reason why a condition could not be imposed along the lines of requiring a personalised robo-advice service provider to act consistently with the requirements of Code Standard 6. In particular, we believe it would be appropriate to include a condition that requires any recommendation made in relation to financial products to have been assessed or reviewed by the provider to a level that provides a reasonable basis for any such recommendation. The recent 2016 FADC 006 decision provides a good illustration of the application of such a condition in practice.
7 - An Authorised Financial Adviser must ensure each retail client has sufficient information to enable the client to make an informed decision about whether to use the Authorised Financial Adviser's financial adviser services.	We agree that this Code Standard appears to have been adequately picked up in the proposed disclosure condition, and submit that the eventual wording of the condition should mirror Code Standard 7 as far as possible to ensure that consumers are able to base financial product decisions on at least the same quality of information when using a robo-advice service as they would have done had they used the services of an AFA.
8 - When providing a financial adviser service to a retail client, an Authorised Financial Adviser must agree with the client the nature and scope of the service to be provided.	We support the proposed condition for robo-advice service providers requiring to disclose the nature and scope of the robo-advice service provided, including any limitations. Clear disclosure of those limitations will be a key condition to cover off. We agree with the approach taken to not require active confirmation from a client that they agree to receiving advice through the robo-advice service on the basis described. We are comfortable that the mere act of engagement with a robo-advice service can be treated as agreement without requiring anything further.
9 - When providing a personalised service to a retail client an Authorised Financial Adviser 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.	We agree with the proposed conduct condition for robo-advice service providers 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.
10 - Where an Authorised Financial Adviser provides a personalised service to a retail client	While we agree that the principle underpinning Code Standard 10 is largely addressed through

that is an investment planning service or that relates to a category 1 product, the Authorised Financial Adviser 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.	the proposed disclosure condition for providers to ensure clients are given sufficient information so as to be able to make an informed decision, we believe it would be helpful to expressly require providers to give clients a clear explanation of how the digital tool works.
11 - An Authorised Financial Adviser must ensure there is an appropriate internal process in place for resolving client complaints in relation to the Authorised Financial Adviser's financial adviser services.	We agree with the proposed complaints condition outlined in the consultation paper.
12 - An Authorised Financial Adviser must record in writing adequate information about any personalised services provided to a retail client.	We agree with the proposed record keeping requirement condition outlined in the consultation paper.
13 - An Authorised Financial Adviser must ensure that records of all information and documents required under this Code are kept for a minimum of 7 years.	We agree with the proposed record keeping requirement condition outlined in the consultation paper.
14 - Before providing a financial adviser service, an Authorised Financial Adviser must have the competence, knowledge, and skills to provide that service.	The imposition of a condition to mirror Code Standard 14, tailored to the robo-advice context, is a critical element. The proposed capability condition must ensure that there can be confidence that personalised services provided through a robo-advice platform will be formulated with a level of competence, knowledge, and skills that is no less than would be expected of an AFA.
15 - An Authorised Financial Adviser must have a knowledge of the Act, the Code, and other legal obligations relevant to the operation of the Authorised Financial Adviser's practice as a financial adviser (including relevant consumer protection laws), that is adequate for the proper operation of that practice.	We agree that Code Standard 15 is not directly applicable to a robo-advice service.
16 - To be an Authorised Financial Adviser, 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 provided by the AFA. For the purposes of the Code, an Authorised Financial Adviser is deemed to have attained a particular Component of the New Zealand Certificate in Financial Services (Level 5) where the Authorised Financial Adviser has attained an alternative qualification or designation to that	We agree that Code Standard 16 is not directly applicable to a robo-advice service, although expect the FMA to have regard to this Code Standard in formulating the detail of the proposed capability condition.

Component as specified in the Code's Competence Alternatives Schedule.	
17 - An Authorised Financial Adviser must maintain and keep current a professional development plan for each CPD period.	While we agree that the requirement to maintain and keep current a professional development plan is not directly applicable to a robo-advice service, we would expect robo-advice service providers to maintain a plan to ensure that their service and the systems employed are kept up to date. We believe a condition along these lines should be imposed, to reduce the risk of a 'set and forget' approach being taken.
18 - An Authorised Financial Adviser must undertake sufficient continuing professional training to maintain the Authorised Financial Adviser's competence at a level appropriate for the financial adviser services the Authorised Financial Adviser provides or intends to provide, and keep up to date with developments relevant to the Authorised Financial Adviser's practice.	Again, while we believe that a requirement to undertake continuing professional training is not directly applicable to a robo-advice service, we would like to see a condition imposed that requires robo-advice service providers to demonstrate that their systems have been reviewed to ensure they remain up to date, and have been maintained. Such a condition would link in with our recommended condition that providers be required to keep a maintenance plan, discussed in relation to Code Standard 17.

19 July 2017

Financial Markets Authority

Level 2, 1 Grey Street
Wellington 6140

By email: consultation@fma.govt.nz



T: +64 9 390 3228
M: +64 22 644 7193
E: simon@cygnuslaw.nz

Cygnus Law Ltd
Level 8
West Plaza Building
3 Albert Street
Auckland 1010

PO Box 8142
Symonds Street
Auckland 1150

cygnuslaw.nz

Cygnus Law's Submissions on FMA's consultation on proposed exemption to facilitate personalised roboadvice

Thank you for the opportunity to provide feedback on the FMA's consultation on a proposed exemption to facilitate provision of personalised roboadvice to retail clients (**Proposal**). These submissions comprise a summary of Cygnus Law's key submissions followed by:

- Schedule 1: Detailed Submissions
- Schedule 2: Current & Proposed Regulatory Regime (under exemption)
- Schedule 3: Examples of online financial product information, guidance, sales & advice services (current & proposed)

Cygnus Law's Preferred Option

Cygnus Law is highly supportive of an exemption to permit personalised roboadvice in the interim and commends the FMA for taking the initiative to propose an exemption. However, Cygnus Law considers that the option presented for an exemption is not appropriate and that a better option is available. In particular, the Proposal will allow personalised roboadvice with very little regulatory oversight (including no prior checks on the providers except in relation to "good character"), which is likely to lead to non-compliant services and poor customer outcomes. In Cygnus Law's view the limitations and caps in the Proposal would not mitigate the risks presented by the proposed "light touch" approach and would tend to strongly favour services provided by product providers.

Cygnus Law submits that the exemption should require, as the key condition, that anyone seeking to rely on the exemption obtain QFE status (or update an existing status to meet roboadvice service requirements). The QFE Adviser Business Statement Guide should be updated to include minimum standards for a roboadviser service provided under the exemption. There would be no mandatory service limits or value caps. This approach has a number of benefits:

- It will give FMA and consumers greater confidence in the quality of roboadvice services provided pursuant to the exemption (so helping to meet the purposes of the Financial Advisers Act).
- It will allow service limits and value caps to be assessed on a case-by-case basis by reference to the adviser business statement.
- It is consistent with the existing financial markets regulatory framework, which requires licensing as a pre-condition to provide most financial services to retail clients.

- It is consistent with the requirement in the draft legislation that all roboadviser services obtain a financial advice firm licence, so allowing roboadvice service providers to more easily transition to the new regime, once in place.
- FMA recovers the cost of the licensing via the QFE application and variation fees.

Regulatory Sandbox

The Proposal has a number of the attributes of a “regulatory sandbox”. Regulatory sandboxes have been implemented in other countries (including in Australia, Singapore and the UK) to support the development of new and innovative financial services businesses. However, the Proposal lacks key controls and support mechanisms that mitigate the risks arising where a regulatory sandbox is implemented.

Cygnus Law supports the development of a regulatory sandbox but only for start-up companies and only after a regulatory sandbox policy has been adopted by FMA. Cygnus Law does not consider that a regulatory sandbox approach is the best way to facilitate provision of personalised roboadvice services generally in New Zealand pending implementation of the new regime. As it is, the sandbox approach reflected in the Proposal lacks a number of key additional attributes of sandbox regimes outside New Zealand (including that in Australia). In particular, the Australian regime (as set out in ASIC’s Regulation Guide 257 *Testing fintech products and services without holding an AFS or credit licence*), which the FMA appears to have referred to in developing the Proposal, has a number of additional attributes that mitigate the risks arising from the sandbox approach:

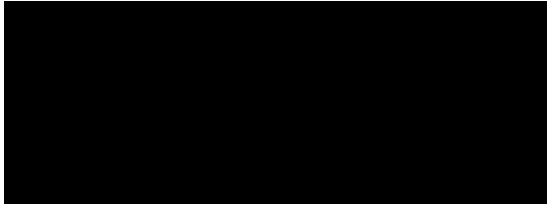
- It limits who can use the sandbox, for example existing licence holders cannot use it (this restriction does not apply in all countries that have a formal sandbox).
- ASIC assesses all applicants for the sandbox.
- It restricts the number of clients a sandbox participant can have to 100 retail clients and imposes a 12 month time limit (either of which may be extended by ASIC in exceptional circumstances).
- ASIC has a formal “Innovation Hub” that co-ordinates the sandbox process and helps to support the businesses making use of the sandbox and to apply for a licence. While the FMA does in fact provide such support this is not clearly promoted.
- ASIC has the right to revoke the right to use the sandbox.
- It has other customer protection measures, including an obligation to hold appropriate professional indemnity insurance (with cover of at least \$1m).

Investment Management

When considering roboadvice in relation to investments discretionary investment management services (**DIMS**) are highly relevant. The term “roboadvice” originated in the USA, where (like NZ until 2014 for class DIMS and currently for FAA “personalised DIMS”) DIMS is regulated as a financial “advice” service. However, investment management does not, in itself, involve “advice” (in terms of making a recommendation or giving an opinion on a financial product). So many roboadvisers in the USA and elsewhere are in fact providing what is essentially an investment management service with limited front-end advice (and in some cases this may not be personalised advice).

DIMS are permitted in New Zealand and are fully regulated. In some cases a roboadvice service may not involve DIMS (in NZ terms) because, to the extent the service involves investment management, the service is limited to managing pre-approved portfolios of Exchange Traded Funds (**ETFs**), with automatic rebalancing of the portfolios from time-to-time back to pre-approved asset class allocations. So the exemption itself does not need to address DIMS.

Yours sincerely
Cygnus Law Ltd



Schedule 1- Cygnus Law's Detailed Submissions

General Questions

Question or paragraph number	Response
<p>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.</p>	<p>I support the proposed exemption but, as outlined in the introduction above, I do not support the mandatory limits and caps proposed by FMA or the proposed “light-touch” regulatory regime under the exemption. Under the Proposal no form of licence would be required to provide a roboadvice service and the standards imposed would be permissive (including lowering or removing a number of applicable Code Standards). And the roboadvice service providers would not be subject to any pre-vetting or approval other than in relation to “good character”. Under the Proposal the barrier to providing roboadvice services on some category 1 and 2 products will be lower than if the advice is provided by a person (see Schedule 2). That approach is inconsistent with some purposes of the Financial Advisers Act (including those incorporated from the FMC Act), including to:</p> <ul style="list-style-type: none"> • Encourage public confidence in the professionalism and integrity of financial advisers and brokers. • Promote the confident and informed participation of businesses, investors, and consumers in the financial markets. <p>While the Proposal supports the purpose of promoting innovation and flexibility in the financial markets, this does not in my view outweigh giving effect to the other purposes.</p> <p>Licensing has become the default regulatory tool under New Zealand’s financial markets law in recent years, to try to ensure that consumers are provided with compliant services. Licensing is required for most types of financial service providers servicing retail clients, including existing business types (e.g. fund managers, DIMS providers) and new business types (equity crowdfunding and P2P lending service providers). An exception is brokers/custodians- the IMF recently raised concerns about the lack of a licensing regime in that area. A licence is required to provide roboadvice in other countries, including Australia, Singapore and the UK (and as a general policy the NZ government favours harmonisation with Australian business Law). I can see no principled basis for departing from a licensing approach in the proposed roboadvice exemption. In any case, a licence will be required to provide personalised roboadvice under the new regime. The issue that arises if a licence is not required under the exemption is confirmed in the Proposal itself- “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.”</p> <p>I think it’s likely that, in the absence of licensing, non-compliant services will be delivered by roboadvisers. I don’t see how restricting the scope of their services or the value of products advised on mitigates that outcome. By comparison, new service types such as crowdfunding and P2P lending services (also intermediaries), which involve relatively simple services (particularly crowdfunding), are subject to a comprehensive licensing regime. However, delivering even relatively simple financial advice on-line is likely to be a more</p>

Schedule 1- Cygnus Law's Detailed Submissions

	<p>complex technological exercise and the compliance obligations are higher. In the case of financial advice there is a ready-made licensing regime that already exists and can be used for roboadvice, the QFE status.</p> <p>FMA has used licensing as a key requirement under other exemptions, including in relation to financial advice. For example, a key requirement for Australian financial advisers who wish to rely on the Financial Advisers (Australian Licensees) Exemption Notice 2011 is that they hold current Australian financial services licences granted by ASIC.</p> <p>I've set out in Schedule 2 a landscape showing the current regime for regulating financial advice, with the addition of the Proposal outcomes for roboadvice and Cygnus Law's proposed outcomes as set out in this submission. The Proposal would result in QFEs (and others) being subject to lower standards for services they deliver using roboadvice than using human advisers. I can see no principled reason for that outcome.</p> <p>The QFE licensing regime, as reflected in the Securities Commission's QFE Adviser Business Statement Guide ("the Guide") that is still in use, is already very flexible and could easily be updated to include roboadvice requirements. The Exemption Conditions set out in pages 9 to 12 of the Proposal could be used to update the Guide to provide for roboadvice services (to the extent not already covered in the Guide). Also, other countries have well-established licensing criteria for roboadvice services that can support updating the Guide. For example, ASIC's Regulatory Guide 255 <i>Providing digital financial product advice to retail clients</i>. Updating the Guide will not be waste of time - it can form the basis for updated minimum licence standards for roboadvice services that will be required once the new law is in force.</p> <p>The Guide embeds some key requirements set out in the exemption Proposal, stating that "You should ensure that your ABS conveys your business culture, particularly how you ensure professionalism and consumer protection are embedded in governance and adviser activities". The Guide also provides for flexibility in business model, with the section covering "delivery channels for products and services" requiring the ABS to state "how advice or services are provided - whether face-to-face, by telephone, post or <i>internet</i>." (emphasis added) The Guide addresses application of the Code of Professional Conduct for AFAs, requiring that "Part 2 of your ABS must include a comparison of your business's conduct and competence requirements with those in the Code and the Act. If they are not the same, it should fully explain the differences, any compensating controls and why you believe that a similar standard of protection is achieved.". However, for the purposes of the roboadvice exemption, I consider it would be preferable to set out the Code requirements as they apply to a roboadvice service and only permit deviation from them by exception.</p>
Q2. Do you agree it is appropriate for us to consider using our	I consider it is appropriate to use FMA's exemption powers to facilitate the provision of personalised roboadvice, and that the exemption power is sufficiently wide to permit FMA to grant an exemption to permit personalised roboadvice.

Schedule 1- Cygnus Law's Detailed Submissions

<p>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.</p>	<p>Reasons why I consider it is appropriate are:</p> <ul style="list-style-type: none"> • It's likely to be another 2 years before new legislation will permit this type of roboadvice (in circumstances where New Zealand is already several years behind other comparable countries). • Roboadvice is already able to be provided (and is provided) in relation to class advice. There are a number of non-advice (information and guidance), class advice sales services on-line. I've included examples of providers (current and upcoming) in Schedule 3. Also, FMA has applied a broad interpretation to class advice, see for example its 7 March 2017 <i>KiwiSaver advice</i> guidance. So permitting personalised roboadvice does not represent a fundamental change to existing law and there are potential providers who can make use of the exemption. • With respect to class advice, there's a real risk that consumers either don't understand the limitations of the advice provided (including because there are no on-line personalised advice services to compare them with) or they are forced to use limited on-line services, in the absence of alternatives (and with human advisers being more difficult and time-consuming to access). So extending roboadvice to personalised advice will benefit consumers by giving them greater choice and allowing them to better understand the limitations of existing services. • There is clear consumer interest in accessing such services on-line. An April 2017 Deloitte report in the UK on automated financial advice¹ found that at least 35% of consumers were willing to pay for automated financial advice, the highest proportion being in relation to life insurance (45%). Minter Ellison NZ in its February 2016 submissions² on financial advice law reform sought views of its millennial generation staff and noted that "from the Millennial Professional's perspective, personalised financial advice provided by natural persons are not only not seen as better than an automated online platform, but are seen by them as less reliable and more susceptible to human error and misunderstanding of an individual's mentality and motivation." The Deloitte study also found that there was high interest in automated advice from consumers in their early 40s. NZ has traditionally had a high and early uptake of new technologies so there's no reason to think that results in NZ would be significantly different. • Until July 2011 (when the Financial Advisers Act came into force) there were no restrictions on providing roboadvice (reflecting that there were very few legislative requirements that applied to financial advice services). Roboadvice services were first established in the United States in 2008 (after the policy work had been completed on the Financial Advisers Act).
--	--

¹ *The next frontier: The future of automated financial advice in the UK*: <http://www2.deloitte.com/content/dam/Deloitte/uk/Documents/financial-services/deloitte-uk-updated-robo-advice-new-horizons-layout-mww8.pdf>.

² www.mbie.govt.nz/info-services/business/business-law/financial-advisers/review-of-financial-advisers-act-2008/options-paper/options-paper-submissions/Minter-Ellison-Rudd-Watts.pdf.

Schedule 1- Cygnus Law's Detailed Submissions

	<ul style="list-style-type: none"> • I don't consider there are any compelling reasons why roboadvisers cannot deliver good and compliant advice services, provided the service is well-designed and the nature of the service (and its limitations) is clearly explained to customers, and that the service ensures it excludes customers who are not appropriate for the service. While I accept that humans can address matters that computers can't, including non-verbal cues, I don't think this is a compelling reason to prevent personalised roboadvice (and there is no way currently to identify advisers who may be poor at picking up non-verbal cues). With respect to services on category 2 products, my personal experience is that the quality of service varies significantly among advisers. I want and expect better and I'm keen to see what on-line services can offer in terms of improved and more consistent service delivery. • In any case, humans do not need to be removed from the service. They can play an active role, including in supporting customers to access and understand the service. It's just that those people don't need to be trained in all aspects of the advice process and don't need to hold particular qualifications or status. As I note below, advisers in relation to personal insurance already outsource parts of the advice process, including suitability analysis. So again, roboadvice is already happening and it's important that the law catches up to better regulate it and to give customers better service options. • Many other countries that NZ compares itself to already permit personalised roboadvice services to operate. In all cases this has led to a wide variety of services. NZ risks falling behind other countries with respect to its own industry, with the risk that the services ultimately deployed in NZ are provided by overseas companies.
<p>Q3. Do you think the costs for robo-advice providers to comply with the 'natural person' requirement (if no exemption is granted):</p> <ul style="list-style-type: none"> • Would be unreasonable? or • Would not be justified by the benefit of compliance? <p>Please give reasons for your answer.</p>	<p>I think that the costs of complying with the "natural person" requirement are high. In theory that type of service could be offered now (personalised robo with human support) but no such services have arisen. That's in a context where there are otherwise numerous fintech businesses in NZ, indicating that the costs are in fact a big issue. However, human advisers already rely on a range of technology to assist them to deliver advice services. In the case of personal insurance the majority of advisers in New Zealand advising on more than one provider's products use QuoteMonster to determine suitability. Advisers rely on similar services overseas. QuoteMonster assesses and rates insurance products from a wide range of insurers and ranks them according to objective criteria. Advisers input their customer's data and QuoteMonster confirms the most suitable policies in the circumstances and provides initial quotes.</p>

Schedule 1- Cygnus Law's Detailed Submissions

<p>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.</p>	<p>I support a class exemption to permit roboadvice. The costs of obtaining an individual exemption are likely to be high. Even a large business may find the resource and capability required to apply for and obtain an individual exemption are too high. Given the absence of individual exemptions to date that permit roboadvice (in an environment where FinTech businesses are otherwise numerous) it's unlikely that there will be significant development in roboadvice until the law changes or a class exemption is issued.</p> <p>Obtaining an individual exemption is usually expensive, including because it often requires obtaining legal advice. While the application fee for an exemption is low at \$115 incl. GST, the hourly fee of \$166 for staff and \$230 for members is likely to lead to a significant fee, especially for what is likely to be a complex exemption in a new area. The proposed class exemption will allow much of the key policy work to be completed and embedded in the class exemption without direct cost to market participants. If Cygnus Law's proposed approach was adopted there will still be a significant cost for participants, being the cost of applying for and obtaining QFE status (\$4,886.22 incl. GST) or updating QFE status (the same fees as for an exemption application noted above). However, those costs will likely be lower than for an individual exemption, the timeframe shorter and the applicant will have greater certainty about the likelihood of obtaining permission to provide roboadvice.</p>
<p>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).</p>	<p>I've noted impacts in response to previous questions. Overall, I think the impact will be very positive, provided the approach I've proposed (based on QFE licensing) is adopted. Not only are roboadvisers capable of providing more reliable and consistent advice services, they can do so at lower cost and in more user-friendly ways, so helping to resolve the advice gap that currently exists. In terms of specific risks I note that:</p> <ul style="list-style-type: none"> • A few human advisers offering little more than just a sales process and implementation (help completing the application form) may suffer from competition from roboadvice services. Although this segment is probably small. I therefore think that risks to the market are outweighed by the opportunity. Otherwise, I don't consider that roboadvice will significantly impact existing advice businesses, particularly in the short to medium term. It's more likely early services will focus on the "advice gap", that is consumers who currently can't access or find it difficult to access affordable personalised financial advice. • The Proposal would likely favour product providers over independent advice services. In particular, the caps on value and limits on services proposed would likely make it difficult for independent roboadvice services to establish themselves under the exemption. Product providers have more resources and benefit from existing client bases and so will have a built-in advantage. The head start this would provide may be difficult to overcome for independent services. This would drive the roboadvice market (that fills the advice gap) to one of relatively low utility limited services, focused on the product suite of one provider. While I don't think FMA should favour one channel over another, I think it's appropriate that FMA gives weight to the importance of independent advice channels, and innovative new businesses, so that consumers have the opportunity in time to use roboadvice services that search the market for the best available products in the circumstances. While requiring licensing will increase barriers to entry for new entrants to some extent, I don't think that's a sufficient argument to favour low standards

Schedule 1- Cygnus Law's Detailed Submissions

	<p>(and the proposed limits will make it difficult for those entrants to operate in any case). The existence of an exemption itself, which sets out approved requirements to provide roboadvice, will provide certainty and in doing so significantly lower costs overall for licence applicants. Also, this is the same barrier faced by providers of equity crowdfunding and P2P lending services but numerous services have obtained licences. My proposal to also support a regulatory sandbox would help true start-ups, who need extra support early on before stepping up to obtain QFE status (or the future financial advice firm licence).</p> <ul style="list-style-type: none"> FMA identifies in its Proposal "Potential harm to consumers from unsuitable roboadvice or from the failure of one of the first roboadvice 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." With respect to failure, given the nature of the service (advice only, likely one-off, and any funds paid by customers direct to product providers), the failure of a roboadvice offering appears to present relatively low risk to consumers and reputation. While consumers would not have recourse to the provider for any inappropriate advice in the event of failure, it's likely that would only become evident a long while after a business had shut down (not an uncommon occurrence under the current model).
<p>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.</p>	<p>There would be a number of impacts if no exemption is granted:</p> <ul style="list-style-type: none"> There will be an on-going advice gap, with many consumers unable to obtain personalised advice on key products at reasonable cost, including on KiwiSaver. It will delay the efficiency gains (and fee reductions) roboadvice should provide to consumers for several years- costs of delivering financial advice services will remain high. As a rule of thumb I understand that, with respect to investment planning services/DIMS, advisers will not typically provide services for investment amounts of much below \$200,000, reflecting the relatively high costs of such services. Melville Jessup Weaver in their November 2015 <i>Review of Retail Life Insurance Advice</i> report noted with respect to personal insurance that "Commission can be two times the first year's premium, volume bonuses can add 30% of premium or more and soft dollar incentives can include overseas trips to attractive locations." The report also identified concerns about insurance "churn". The value of commissions paid to personal insurance advisers (excluding those working for product providers) is approximately NZ\$270m annually. For life insurance around 45% to 50% of all insurance business is transacted by financial advisers that are also actually giving personalised financial advice. The balance of cover is sold through group schemes (no individual advice), by no-advice sales people supervised in a QFE, or via direct sales. I understand that average premiums of \$800 per annum are typical in direct and vertical channels, and average premiums of \$2,000+ are common for advised channels. Product providers have taken larger shares of the personal insurance market over time, at the expense of advisers. While direct sales can help to bring the cost of delivering services down, consumers find it difficult to access independent advice services that advise on a wider range of potentially more appropriate products.

Schedule 1- Cygnus Law's Detailed Submissions

	<ul style="list-style-type: none"> • With respect to advice on personal insurance, the small scale of most personal insurance advice businesses focused on retail clients leads to high costs of service delivery, reflected in the approximate \$270m commission figure noted above. No firm of RFAs specialising in retail client insurance advice has ever attained QFE status. The business model is partly driven by the requirement that advice is delivered by humans- independent advisers typically closely hold their client book rather than the business, hampering the development of more efficient corporate models. So most such advice businesses are relatively small scale with services delivered by individuals and with most marketing being very direct, relying on networks, some local advertising, with clients otherwise obtained via paid acquisition or paid referrals from product providers. The impact of this business model, together with the market power advisers hold over insurers (via dealer groups and other arrangements), and the fact that the true costs of service are not disclosed to customers in most cases, means that costs of delivery are high. • The ability to deliver personalised financial advice using roboadvice provides the potential for new and more efficient business models to develop. In particular, it will support the development of larger scale businesses that can operate more efficiently and so lower costs of delivery. It also creates the real potential for larger businesses to effectively promote independent advice services (and their value) to a wide audience. Currently financial advisers as a business segment are almost invisible to consumers. So roboadvice will help to overcome the insurance "is sold not bought" sentiment, which in my view is in part a result of the inability of small firms to promote advice as a product to consumers.
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?	I agree that there is an advice gap. There is numerous data from NZ and overseas identifying this as an issue. As regulatory requirements on advisers are increased under the law reform proposals that gap will only increase. It's difficult to see how that gap can be remedied in a meaningful way without personalised roboadvice as an option.
Q8. (For providers) Do you intend to rely on the proposed	I've spoken to a number of people who are planning to set up roboadvice services once the law changes. While not all will set up those businesses, there is clearly a high level of interest in roboadvice amongst existing advisers and others.

Schedule 1- Cygnus Law's Detailed Submissions

<p>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.</p>	
--	--

Schedule 1- Cygnus Law's Detailed Submissions

Exemption limits and conditions

<p>Q9. Do the proposed limits and conditions strike an appropriate balance between consumer protection and promoting innovation? Please give reasons for your view.</p>	<p>Please see my answers to question 2 above- I don't consider that a balance is struck. I think that the option presented does not allow, by design, for an appropriate balance. It appears to assume that the risk faced by consumers when using an essentially unregulated service is mitigated by the (relatively) low loss they will suffer when some unregulated services fail to provide services to an appropriate standard.</p> <p>In relation to personal insurance, the breakdown below shows the impact of a \$100,000 policy limit in each case compared to average quotes (in the adviser market, not direct- where the value of policies are lower so the relative proportions will be higher):</p> <table border="1" data-bbox="683 638 1610 898"> <tr> <th>Product Type</th><th>Proportion of Quotes below \$100,000 Sum Insured</th></tr> <tr> <td>Life cover</td><td>6.2%</td></tr> <tr> <td>TPD</td><td>10.2%</td></tr> <tr> <td>Trauma</td><td>37.5%</td></tr> <tr> <td>Income Protection</td><td>47.1%</td></tr> <tr> <td>Mortgage Protection</td><td>91.6%</td></tr> </table> <p>This highlights that the limits are likely to be unworkable in practice and run a high risk of advised services that are limited to low value products that may be inappropriate for some people. This would at best favour product providers operating through direct channels.</p>	Product Type	Proportion of Quotes below \$100,000 Sum Insured	Life cover	6.2%	TPD	10.2%	Trauma	37.5%	Income Protection	47.1%	Mortgage Protection	91.6%
Product Type	Proportion of Quotes below \$100,000 Sum Insured												
Life cover	6.2%												
TPD	10.2%												
Trauma	37.5%												
Income Protection	47.1%												
Mortgage Protection	91.6%												
<p>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</p>	<p>It's unlikely that a pure-play FinTech start-up could build a business case based on the proposed exemption. If we cannot draft rules which would permit that kind of innovation, we are likely to end up with consumers using overseas services, in some cases, none in others, and eventually becoming mere customers of services perfected in other markets – inevitably making legal and regulatory compromises in the face of the fait accompli- like the situation with the Taxi / Ride-sharing service Uber.</p>												

Schedule 1- Cygnus Law's Detailed Submissions

<p>costs or impracticalities are. Please also propose alternative conditions that would provide a similar level of protection, if possible.</p>	
<p>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.</p>	<p>I think the exemption should be available for investment planning services in addition to financial advice services. This is possible under a QFE licensing model where the capability of the provider to provide investment planning services can be assessed. I don't think it should be available for DIMS.</p> <p>I think there are a number of issues associated with limiting roboadvice to financial advice only:</p> <ul style="list-style-type: none"> • There is not a clear boundary between "financial advice" and "investment planning"- FMA does not provide guidance on the distinction (though there is high-level Securities Commission guidance from March 2010). To safely avoid "investment planning" roboadvice services may have to focus on the client's current financial situation only and only advise on specific products. This seems unduly restrictive and would prevent the development of services that may be of more value to consumers. The nature and scope of services can be explained to clients as part of initial disclosure. The capability of the service to deliver those services can be determined as part of the QFE assessment. • The bigger issue for consumers is, in my view, not the absence of access to financial advice; it's that such advice is often limited advice. There are examples of on-line advice services that provide class advice. Large financial institutions already provide face-to-face class advice in many circumstances. There are also comparison sites that offer information on relative merits of financial products (primarily personal insurance). By only allowing financial advice to be provided the exemption would exacerbate a key problem with the current regime, which is that for many consumers more comprehensive financial advice is often difficult or impossible to obtain. So while financial advice-only services might serve a specific transactional need (particularly in relation to KiwiSaver) in many cases it will not respond to particular consumer needs. • Limiting roboadvice to transactional matters also makes it more likely that consumers will not access independent advice, particularly with respect to KiwiSaver. That is because the KiwiSaver providers themselves, with their large resources and existing networks, are likely to dominate in the roboadvice space and make it more difficult for independent providers of advice to get started and to thrive. It's likely that a key strategic advantage possessed by independent providers will be the ability to take a more holistic view of their customers and to provide independent recommendations. Limiting roboadvice to financial advice will not allow them to do that.

Schedule 1- Cygnus Law's Detailed Submissions

	<ul style="list-style-type: none"> • Many roboadvice services outside of New Zealand go beyond transactional decisions and assist clients to plan for future needs. • This limitation makes sense with respect to a regulatory sandbox, where lower regulatory obligations are imposed on the providers. • FMA states that “The roboadvice tools available today also cannot do everything that a human adviser can, such as complex financial planning services”. I don’t think that is a reason to remove that as an option- the market should be the arbiter of what services are provided, with licensing as the “filter”. <p>I agree that the exemption should not extend to DIMS. The exemption power FMA proposes to use could only apply to personalised DIMS under the FAA in any case. However, it wouldn’t be appropriate to exempt one category of DIMS (personalised under the FAA) and not another (personalised and class under the FMC Act). As I noted in the introduction, the term “roboadvice” originated in the USA. In the USA (like NZ until 2014 for class DIMS and currently for FAA “personalised DIMS”) DIMS is regulated as a financial “advice” service. However, investment management does not, in itself, involve “advice” (in terms of making a recommendation or giving an opinion on a financial product). So many roboadvisers in the USA and elsewhere are in fact providing what is essentially an investment management service with limited front-end advice (and in some cases this may not be personalised advice). In some cases a roboadvice service may not involve DIMS (in NZ terms) because, to the extent the service involves investment management, the service is limited to managing set (and pre-approved) portfolios of ETFs, with automatic rebalancing of the portfolios from time-to-time back to approved asset class allocations. So the exemption itself does not need to address DIMS.</p>
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.	<p>FMA states that “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 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.” I don’t think the advice process is inherently more or less complex because of the product- it is the scope of the service and the client’s needs that will determine the level of complexity. I think that FMA’s statement may be mixing advice with investment management. Investment management is a core part of most investment roboadvice services but it is not “advice”. I assume what FMA means is that portfolio management using ETFs is relatively simple compared to managing a portfolio of individual securities. However, I don’t think that is necessarily the case. There are licensed DIMS providers who specialise in providing those types of services so it should be relatively simple, in theory, to bundle such DIMS (or simple non-DIMS) with a front end advice process to provide a roboadvice service.</p>

Schedule 1- Cygnus Law's Detailed Submissions

	<p>I don't agree with the proposed list of eligible products for other reasons. That list is appropriate for a regulatory sandbox with lowered barriers to entry. As was the case with limiting the scope of service, limiting the scope of product exacerbates a key problem- consumers often find it difficult to access more comprehensive financial advice services. Not only will the product restrictions reduce the potential for successful roboadvice business to develop (and so will likely allow established institutions to dominate by providing non-independent advice on their own products), it will actually make it more likely that consumers will be offered limited services.</p> <p>I think that roboadvisers should be permitted to advise on personal insurance products (life, health, income protection etc). The service limitations are potentially appropriate for the regulatory sandbox but not otherwise.</p> <p>Mortgages are also excluded. Again, I can see no reason in principle for that limitation– any limitations can be addressed as part of the QFE licensing/licence amendment process, where the QFE is required to set out its business model, including how it will ensure consumers are protected.</p>
<p>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.</p>	<p>The proposed restricted products represent an area where fees are often the highest and most opaque. As noted in answer to question 6, NZ consumers are paying adviser fees annually of approximately \$270m to access financial advice on protection products (life, health, income protection etc) (excluding payments by providers to their own personnel and nominated representatives). Fees are high for a number of reasons:</p> <ul style="list-style-type: none"> • Entry costs to the industry are low- there are currently no minimum qualification or other entry requirements (outside of a criminal record check when registering on the FSPR). The result is that there are a large number of advisers all chasing clients so the costs of client acquisition are a significant proportion of costs. • The personal nature of financial advice (necessitated by the requirement that personalised advice be delivered by a human) means that individual advisers have close control of their client base. This drives a small business approach- there are no examples of true corporate scale organisations that advise on personal insurance for retail clients (compare that with business insurance with large brokers like Crombie Lockwood, Rothbury). The absence of scale means that costs remain high (exacerbated by lack of price transparency that makes it difficult for consumers to compare on price or to factor in the cost of advice). <p>The nature of personal insurance means that the proposed caps may not meet the needs of many consumers. That approach creates a risk that they will access services only offering advice at a capped level and won't understand that a higher value or longer term policy may be the better option- see also the answer to question 9.</p>

Schedule 1- Cygnus Law's Detailed Submissions

	I think that the same analysis applies to mortgage brokers. There are examples overseas of successful roboadvisers advising on personal insurance (PolicyGenius in the US) and mortgages (Trussle in the UK). By placing restrictions on personal insurance advice the exemption will not permit the true benefit of roboadvice to be realised, which is access to good advice services at lower cost.
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.	A value cap would be appropriate for the regulatory sandbox or for certain QFE services, where the limits are validated by reference to the nature of the service, the provider's capability and the relevant market segment. What evidence is there that value caps and duration limits improve advice? What rationale can be applied to reducing standards for small products aimed at the most vulnerable of consumers? I think that advice standards should be maintained and that there should be no cap to the amounts of cover allowed.
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.	As above, for the regulatory sandbox but no otherwise.
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	As noted, I think the better approach is to require all roboadvisers to be licensed as QFEs (with exceptions only for regulatory sandbox participants), with no pre-set limitations. Having different limits for QFEs and non-QFEs implies different standards. Given the intention of the new draft law to ensure that all adviser types operate to the same standard, having different limits is inconsistent with the policy settings that were developed to allow personalised roboadvice.

Schedule 1- Cygnus Law's Detailed Submissions

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?	I don't consider status disclosure is appropriate, except in relation to a regulatory sandbox. As already noted, I don't see a case for allowing largely unregulated services to be deployed, with consumers expected to take risks on those services. Disclosure of that fact won't enhance confidence in the regulatory system or in FMA. While it's accepted that products come with inherent risk embedded in them, the regulatory regime in relation to financial services assumes that services should only operate if there's a high degree of confidence they will be compliant.
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?	<p>No. In NZ's financial markets regulatory regime, outside of licensing, disclosure is the key mechanism for ensuring that investors are protected and can also take responsibility for their decisions, by ensuring they get information on key elements of the relevant financial product or service. Accordingly, disclosure is highly regulated. I can see no basis for allowing disclosure in the case of roboadvice to be essentially unregulated- ensuring that customers understand the nature (and limitations) of the services is critical.</p> <p>I don't consider it is appropriate that the disclosure sets out risks of the services, "such as errors in the algorithm or technical difficulties resulting in algorithm failure". The service should only be permitted on the basis it will be able to deliver appropriate customer outcomes and will be compliant.</p> <p>A recent RBNZ paper³ described the different ways insurers aimed to meet their duty of disclosure of a simpler requirement – disclosing the financial stability ratings required under the Insurance (Prudential Supervision) Act 2010. That paper showed that in allowing flexibility a wide range of outcomes can occur, many of them poor.</p>

³ *Thematic Review – Insurer Disclosures*, June 2017- <http://www.rbnz.govt.nz/-/media/ReserveBank/Files/regulation-and-supervision/insurers/publications/Insurance-oversight-thematic-review.pdf?la=en>

Schedule 1- Cygnus Law's Detailed Submissions

	Any wide discretion will likely favour product providers. My experience is that it's often difficult for smaller businesses to develop appropriate and compliant disclosure documents without significant guidance. By way of example, PDSs produced by large fund managers are often used as a key reference by smaller managers. If a discretionary regime is developed, the likely outcome is that FMA will be heavily involved regardless, with <i>de facto</i> market standards developed based on FMA feedback. This has the real potential to create inequities between providers, with some having better access to FMA and understanding of the requirements than others, with first movers being disadvantaged as the "guinea pigs" for development of disclosure.
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.	Yes, albeit with some flexibility on the method of collection to allow for innovation.
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.	I don't agree with FMA's narrow set of applicable code standards. I consider that the full set out of code standards should apply to all roboadvice services, except where clearly not applicable, and whether advice relates to category 1 or category 2 products. In that regard I agree with the Code Committee's 11 July 2017 submissions.
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.	Please refer to the answer to question 20 above.
Q22. Do you have any feedback on the table set out in the Appendix which maps the proposed exemption	Please refer to the answer to question 20 above.

Schedule 1- Cygnus Law's Detailed Submissions

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.	Please refer to the answers above generally.
Q24. Are there any other limits or conditions you think would be appropriate to put in place? Other	Please refer to the answers above generally.
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?	Yes, provided that all key matters are clearly set out in the exemption notice itself.
Q26. Would you like to see a list of providers relying on the exemption, if granted, on our website? If not, why not?	Yes.
Q27. Do you think we should continue to use the term 'robo-advice', or should we use a different	"Roboadvice" is a well-established term- I can see little benefit in swimming against the tide.

Schedule 1- Cygnus Law's Detailed Submissions

term such as 'digital advice' or 'automated advice'?	
Q28. Do you have any other feedback or comments?	

Standard Condition for AFAs

1. Requirement to have and maintain an Adviser Business Statement.	As noted above, I think this is relevant on the basis that all roboadvisers should be QFEs (except if operating out of a sandbox).
2. Reporting – The AFA must report in accordance with the periodic and other reporting, accounting and notification requirements contained in the Regulatory Reporting Guide for AFAs.	Again, this is workable if all roboadvisers are QFEs.
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.	Agree that this be included to the extent relevant to roboadvice services.
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.	
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	This is applicable but the law requires this in any case. I recommend that capability with respect receipt, holding, payment or transfer of client funds be considered under the QFE application, in the same way it is for crowdfunding and P2P lending licensees. This reflects the additional risk arising from providing the service and also handling client funds, particularly given the absence of a licensing regime currently for brokers and custodians.

Schedule 1- Cygnus Law's Detailed Submissions

the brokers' conduct and trust accounting obligations in Part 3A of the FA Act.	
6. Supervising trainee advisers	Agree.
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.	Not applicable.

Schedule 2- Current & Proposed Regulatory Regime (under exemption)

Status	Type of Financial Advice Permitted (provided to retail clients)							
	Personalised - Category 1 Products (roboadvice not currently permitted)	Personalised - Category 2 Products ¹ (roboadvice not currently permitted)	Class - all products (roboadvice possible)	Personalised- Investment Planning Services (roboadvice not currently permitted)	Personalised- Discretionary Investment Management Services (DIMS) ² (roboadvice possible) ³	Non- Discretionary Investment Management Service (roboadvice possible) ³		
Licence required to provide service?	YES	NO⁴	NO⁴	YES	YES	NO		
AFA (individual)				Where specifically authorised			CURRENT REGIME	ROBOADVICE EXEMPTION
RFA (individual)								
QFE (via individual QFE adviser – provider's products only)								
QFE (via individual QFE adviser- products other than provider's)								
Individual/entity on the FSPR (including QFEs)								
Individual/entity on the FSPR (including QFE) (roboadvice only)		Advice on loans (excl. mortgages) & some insurance permitted		FMA seeking feedback on investment planning			FMA PROP.	
Individual/entity on the FSPR (excluding QFE) (roboadvice only)							CYGNUS LAW SUBMISSION	
QFE (all products) (with specific roboadvice approval)								

KEY

	Permitted
	Not permitted
	Partially permitted/unclear

1. Category 2 products include insurance (except where investment-linked) & credit contracts (lending). The provision of credit contracts to consumers is subject to significant regulation under the CCCFA. The CCCFA permits on-line provision of services.
2. Class DIMS cannot be provided by an AFA- they must be provided under an FMC Act licence.
3. Roboadvice in this sense is limited to investment management services. The provider will need to comply with broker/custodian obligations under part 3A of the FAA- licence not required but annual assurance engagement required.
4. While the service can be provided by licensed person (AFA) or entity (QFE), it can be provided by anyone who is registered on the FSPR- registration involves very little regulatory oversight.

Schedule 3- Examples of online financial product information, guidance, sales and advice services (current & proposed)

Sorted: <https://sorted.org.nz>

Invest Now: <https://investnow.co.nz>

Smart Shares: <http://smartshares.co.nz>

Savvy Kiwi: www.savvykiwi.co.nz

Volo: <https://volo.nz/>

Pinnacle Life: www.pinnaclelife.co.nz

Rate Booker: <https://ratebroker.co.nz>

Life Direct: www.lifedirect.co.nz

AA Life: www.aa.co.nz/insurance/life-insurance

Illumony: www.grafts.nz

Teddy: www.heyteddy.co.nz

19 July 2017

Financial Markets Authority
Level 5
Ernst & Young Building
2 Takutai Square, Britomart
Auckland
New Zealand

By email only: consultation@fma.govt.nz

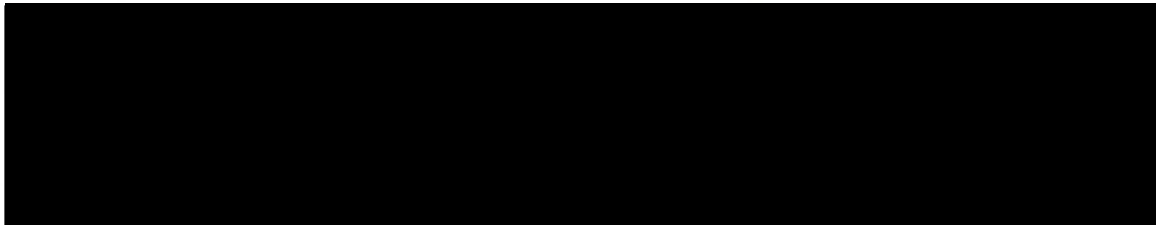
Dear Sir,

Proposed exemption to facilitate personalised robo-advice: Delta Insurance NZ Limited

Introduction

1. This submission is from Delta Insurance New Zealand Limited (**Delta Insurance**).
2. Delta Insurance thank you for the opportunity to submit on the proposed exemption in relation to allowing personalised robo-advice.
3. Delta Insurance is an underwriting agency and currently provides commercial insurance products within the general insurance space. We have a keen interest in utilising technology to provide more effective insurance solutions and are a founding member of FintechNZ. In addition to our commercial insurance we are considering offering some niche insurance products in the personal general insurance space for which personalised robo-advice could have some application. For more information on Delta Insurance please see our website: www.deltainsurance.co.nz.
4. Delta Insurance has reviewed the Consultation paper on the above and broadly supports the proposed exemption.

5.



Delta Insurance Feedback on Consultation Paper Questions

Delta Insurance feedback is provided in the order of the questions posed in the Consultation Paper:

1. We support the proposed exemption and generally agree with the rationale outlined in the consultation paper.
2. We agree that it is appropriate for the FMA to use its powers of exemption to facilitate personalised robo-advice. We believe that NZ customers and the NZ financial services industry would be disadvantaged relative to international peers should we wait until the proposed policy reforms come into effect in 2019.
3. We believe that the requirement for a natural person would add unnecessary cost that would not be commensurate with the benefit accruing. This expense would invariably be passed to the consumer. We believe that an appropriately designed and tested robo-advice model would provide greater consistency and quality of advice than a human adviser for certain products and segments.
4. We broadly support the proposed approach of granting a class exemption as it will reduce the regulatory and administrative burden of assessing individual applications and will provide greater certainty to potential robo-advice providers, thus supporting greater innovation. However, we do believe that the FMA should be open to approving additional exemptions on an individual application basis eg. if a provider has a certain financial product that is out of scope of the exemption but otherwise complies with all requirements.
5. If the exemption is granted it will result in increased availability of financial products and advice for customers. This will promote competition and thus provide lower cost alternatives for customers. We believe that the introduction of robo-advice alternatives should also result in a greater quality of advice and service through increased consistency of advice processes and increased availability of digital customer service without being hampered by human working hours. The exemption will also encourage innovation within the financial services sector that will in turn enable NZ companies to compete on the international stage with overseas competitors.
6. We believe that if the exemption is not granted it will result in the reverse of the benefits outlined in paragraph 5 – reduced competition, higher prices for customers, lower quality advice, lower service availability, reduced innovation and financial service providers that are comparably less competitive relative to international peers.
7. Yes, I believe that there is an advice gap. Delta Insurance operates within the commercial general insurance space and we comment specifically from this perspective. In general terms, we believe that smaller clients have less ability to access appropriate, quality advice as advisers are less incentivised to prioritise these clients due to lower potential income to the adviser. Further, there are a huge number of different insurance products that can be complex in nature, and can vary considerably by insurance provider. In many cases customers are not getting appropriately advised on these products. This is because of the complexity of the products and, in some cases, the lack of training and knowledge of the adviser. We believe that technology can be used to more effectively provide clear, consistent, higher quality and faster outcomes for customers.
8. It is possible that we will rely on the proposed exemption. With our current model we are reliant on independent insurance brokers to distribute our products however we see an opportunity to offer our products directly to customers. We are already working on a digital distribution platform and we

would look to include a robo-advice component within our platform to improve the quality of our offering to customers. As well as our existing commercial insurance products we may also offer “niche” personal general insurance products. An example of this could be a personal cyber security insurance product that we are currently working on.

9. We generally agree with the approach however believe that there is some uncertainty with the proposed exemptions and further believe that they are unnecessarily restrictive.
10. We provide feedback on the proposed limits and conditions below:

a. Product Limits

Our interpretation is that the general insurance products exemption is being limited to home, contents and vehicle. We believe that this is too restrictive for the reasons outlined below:

1. **Domestic General Insurance:** There are many other general insurance products in the domestic segment that we believe should also be exempt eg. travel insurance, pet insurance, boat insurance, bicycle insurance.
2. **Commercial General Insurance:** We believe that commercial insurance products should also be included within the exemption. These products, at least for SME's who would be the likely recipients of any robo-advice, are generally not substantially more complex than domestic products and to a large degree can be algorithm driven. All products are cancellable by the customer therefore there seems to be no reason to exclude them.
3. **Life Insurance:** Delta Insurance does not provide life insurance products however I see no particular reason why these products should not be included within the exemption. There are free-look periods and cancellation clauses within the majority of these products.

The primary concerns of the FMA seems to be the length of contract and the ability for customers to exit the product. Perhaps it is appropriate for general insurance products to be exempt provided they are no longer than 18 months in duration and are capable of cancellation by the customer. The reason I say 18 months rather than 12 months is that sometimes customers look to align renewal dates with other insurance resulting in policies that can be longer or shorter than 12 months; 18 months provides the flexibility to deal with these requirements.

b. Value Limits

I note that the proposed client limits of \$100,000 (and similarly total investment limit \$5m) relate to investment products only. This threshold has limited application to general insurance as insurance limits purchased can often be much higher than this. For example, house insurance limits will match the value of buildings being insured (can be well in excess of \$1m) and general liability limits for products such as public liability and professional indemnity regularly exceed \$5m. I believe that it would be impractical to specify a limit threshold for insurance products.

[REDACTED]

11. As Delta Insurance is a general insurance provider we will not comment on this.

12. Please see comments outlined in point 10 above.

13. As above, we believe that personal insurance products such as life insurance should be included within the exemption. As noted above, most life insurance policies have a free-look period which should provide further comfort to the regulator.

14. As above, we believe that the primary criteria for insurance products is that the exemption provided should apply to contracts that are less than 18 months in duration and are capable of cancellation by the customer.

15. As Delta Insurance is a general insurance provider we will not comment on this.

16. As Delta Insurance is a general insurance provider we will not comment on this.

17. I believe that a template would be useful however flexibility should be provided to allow adjustment to suit the specific situation.

[REDACTED]

19. Yes, I believe that this makes sense.

20. Yes, we agree with the proposed conduct obligations.

21. No.

[REDACTED]

23. No. Business should be conducted in a proper and ethical manner regardless of the size of operation.

24. No.

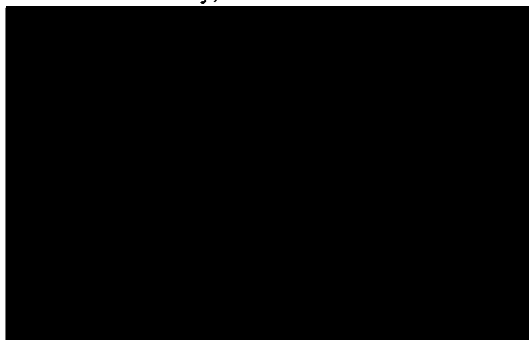
25. Yes, this would be helpful.

26. Yes, this would be useful to ensure visibility and monitoring of robo-advice providers.

27. We prefer the term "digital advice".

28. No other feedback.

Yours sincerely,



Feedback form: Proposed exemption to facilitate personalised robo-advice

Please submit this feedback form electronically in both PDF and MS Word formats and email it to us at consultation@fma.govt.nz with 'Proposed exemption to facilitate personalised robo-advice: [your organisation's name]' in the subject line. Thank you.

Submissions close on 19 July 2017.

Date: 19 July 2017 Number of pages: 5

Name of submitter:

[REDACTED]

Company or entity: DLA Piper New Zealand

Organisation type: Barristers and Solicitors

Contact name (if different):

Contact email and phone:

[REDACTED]

**Question or
paragraph number**

Response

You don't need to quote from the consultation document if you note the paragraph or question number.

Q1.	Yes, we support the proposed exemption.
Q2.	<p>Yes, we agree that it is appropriate for the FMA to use its exemption powers in advance of the law reform.</p> <p>The law reform will not be in place until 2019 at the earliest and, in its present form, the draft bill does little more than remove the current barrier to the provision of personalised robo-advice. Even when the law reform is in place, it will fall to the FMA to set out the detail as to the licensing requirements for robo-advice providers.</p> <p>By using its exemption powers now, the FMA will be in a position to:</p> <ul style="list-style-type: none"> - allow an automated advisory industry to develop in NZ and keep pace with overseas providers; - benefit consumers by enabling access to right-sized advice and bridging the advice gap; - set the regulatory tone and expectations for licensing in advance of the FAA law reform; and - avoid further delays to the introduction of advice platforms permitted in similar overseas jurisdictions.
Q3.	<p>Yes, we think the costs of complying with the 'natural person' requirement in the absence of an exemption would be unreasonable and unjustified.</p> <p>The biggest attraction for robo-advice providers (and their biggest challenge) is the ability to scale. Requiring each piece of automated advice to be reviewed and provided by a natural person will limit the ability of providers to achieve scale and, as a result, provide a service to smaller investors and fill the advice gap.</p>
Q4.	Yes, pending the law reform of the FAA, we agree that a class exemption is preferable to individual exemptions. A class exemption will assist with creating a level playing field for robo-advice providers and will remove any idiosyncrasies that may arise from individual exemptions before all robo-advice providers are required to comply with the same licensing requirements post-law reform.
Q5.	The key risk for consumers and providers arising out of any advisory service (whether automated or not) is that inappropriate advice is provided. For the consumer, the risk is that an investment is made in a financial

	<p>product that is not best suited to the consumer's needs or goals. For the provider, the risk is an exposure to liability and reputational damage.</p> <p>The key difference in this risk between an individual adviser and a robo-adviser is that the robo-adviser's goal is to provide its advice at scale - if a robo-adviser provides inappropriate advice then it is likely that the advice will have been inappropriate not just for one consumer but for a number of consumers.</p> <p>At the robo-adviser level, this risk is mitigated by the conditions requiring that the provider maintains expertise to monitor both the technology and the advice outputs and requiring adequate risk management systems.</p> <p>For the consumer, we suggest that it will be helpful for guidance to be published as to what consumers should look for and the questions that should be asked when deciding to take advice from a robo-advice provider (see, for example, the US SEC's Investor Alert: Automated Investment Tools dated 8 May 2015).</p> <p>The FMA has noted in its consultation paper that robo-advice could cause disruption to existing financial advisers with traditional business models. We suggest that robo-advice also provides an opportunity for existing financial advisers to reach previously untapped and non-advised sources of business - which is one of the areas of focus for the FMA in 2017 and beyond.</p>
Q6.	<p>If the status quo is maintained then the existing negative effects that currently flow from requiring all personalised advice to be given by an individual will remain for both consumers and providers pending the FAA law reform:</p> <ul style="list-style-type: none"> - <u>Consumers</u>: Those investors with small balances will continue to have difficulties obtaining advice that is personalised and right-sized to their investment needs. - <u>Providers</u>: New business models will be unable to develop in New Zealand and we will fail to keep pace with overseas providers when law reform does arrive.
Q7.	<p>Yes, we agree that there is an advice gap.</p> <p>This is not a New Zealand specific problem and has been identified as an issue in a number of jurisdictions including Australia and the United Kingdom.</p>
Q9.	<p>The proposed class exemption is an interim measure pending the implementation of a licensing regime for all financial advisers and the removal of the distinction between categories of financial product under the FAA law reform.</p> <p>While the limits and conditions are suitable for a class exemption that is aimed at providing a workable solution pending the law reform, we do not see that the proposed limits on product type should have any place in the post-law reform licensing regime. Under the licensing regime, each licence application should stand on its own merits irrespective of the proposed licensee's business model.</p>
Q11.	<p>Yes, we agree that the exemption should cover both financial advice and an investment planning service.</p> <p>The overseas experience is that robo-advice providers operate under a variety of business models. These can range from merely providing an automated recommendation about whether or not to acquire or dispose of a financial product to providing a full service that involves financial product recommendations based on an individual's goals, the acquisition or disposal of those products and the on-going management of those holdings.</p> <p>To exclude investment planning services from the exemption would unnecessarily limit the business models available to providers and consumers in New Zealand.</p> <p>There is no need to include DIMS in the exemption as there is nothing in the Financial Markets Conduct Act</p>

	<p>2013 (FMCA) that currently prevents an FMCA DIMS licensee from providing an automated service. If a robo-advice provider wishes to provide a DIMS then it can already seek a licence to do so under the FMCA.</p> <p>We suggest that, alongside any guidance issued as a result of the proposed exemption, the FMA also considers issuing guidance as to any additional licensing criteria and/or conditions that would apply to an automated DIMS provider under the FMCA.</p>
Q12.	<p>Yes, overall and pending the FAA law reforms and the establishment of a licensing regime for all financial advisers, we agree with the proposed list of eligible products for the class exemption.</p> <p>Aside from the Monetary Authority of Singapore's June 2017 Consultation Paper on the Provision of Digital Advisory Services, we are unaware of any other jurisdictions that have imposed or are looking to impose any limits on the financial products that are eligible for inclusion in a robo-advisory service.</p> <p>However, we do note IOSCO's December 2016 Update to the Report on the IOSCO Automated Advice Tools Survey which stated that while ETFs and investment funds remain the most common investment products covered by robo-advice providers some jurisdictions are seeing the emergence of higher risk products and strategies and that additional regulatory measures may be required to protect investors.</p> <p>While we agree that product limits are suitable for an interim class exemption that is aimed at covering a wide range of business models, we suggest that the licensing regime for robo-advisers under the FAA reforms should not include any product limits. To limit the product pool available to robo-advisers on an ongoing basis would potentially increase the procyclicality risk associated with robo-advisers exhibiting greater herding behaviour and increasing the amplitude of swings in asset prices.</p>
Q13.	<p>Yes, personal insurance products should be included in the list of eligible products.</p> <p>We do not agree that sum insured limits should be imposed. There can only be a small number of situations where a sum insured of \$100,000 per product is sufficient in relation to life, health or income protection insurance. Such a limit would unnecessarily inhibit the availability of this service for individuals.</p>
Q14.	<p>No, a value cap and/or duration limit should not be applied on the eligible products.</p> <p>These limits do not exist in other jurisdictions and would unnecessarily limit the growth of robo-advice providers and the investment options available to consumers.</p> <p>The risks around poor advice outcomes and the scalability of robo-advice are better addressed through appropriate disclosures and filtering questions.</p>
Q15.	<p>No, you should not impose any caps on the amounts that an individual may have under advice with a robo-advice provider.</p> <p>We are not aware of any overseas jurisdictions that impose similar caps on investors.</p> <p>The goal behind any proposed cap would be to limit the risk of poor customer outcomes by limiting the amounts that any given customer has exposed to those outcomes. We suggest that a greater focus on the disclosure and filtering question requirements for robo-advisers will do more to mitigate such risks.</p>
Q16.	<p>No, a monetary limit on the total amount of products advised on by a provider should not be imposed.</p> <p>As discussed in our response to Question 3, the biggest attraction for robo-advice providers (and their biggest challenge) is the ability to scale. To impose a cap on the total investment amount that a provider can have under advice would unnecessarily limit the provider's ability to grow its business and achieve scale.</p> <p>The risks associated with poor customer outcomes from a provider that has achieved scale are better</p>

	addressed through appropriate disclosures and filtering questions.
Q17.	Yes, we agree that the FMA should prescribe the form of status disclosure statement.
Q18.	<p>Yes, subject to there being a requirement that disclosures are clear, concise and effective, we agree that providers should have flexibility around how they meet their disclosure obligations under the proposed class exemption.</p> <p>This is an area where the FMA may wish to consider issuing a guidance note for providers as to the principles for clear, concise and effective disclosure of the nature of the robo-advisory service.</p>
Q19.	<p>No, we do not consider that a requirement to obtain an express confirmation from the client that they have read the disclosures is necessary.</p> <p>We suggest that the requirement for the provider to make clear, concise and effective disclosure of the nature of the service is sufficient. The provider will need to be able to show that it has complied with the disclosure requirements and it may be that this is built into the systems design by the provider. However, we do not agree that an express client confirmation will always be the best way to establish compliance with the disclosure obligation - it may be that including the disclosures as to the nature of the service as part of the filtering questions will be a better means of ensuring that the advice sought by the client is within the scope of the automated service.</p>
Q20.	We have seen the Code Committee's submissions on the consultation paper and particularly on the interaction between the proposed class exemption and the code of professional conduct for authorised financial advisers. We have nothing to add to those submissions.
Q21.	See our response to Question 20.
Q22.	See our response to Question 20.
Q23.	<p>Yes, as is the case with the licensing regime for managed investment scheme managers under the FMCA, it is important that the requirements with which each provider must comply are sufficiently flexible to accommodate the nature and size of the business (for example, a bank v. a start-up robo-adviser), while at the same time ensuring that investor interests are appropriately protected.</p> <p>The proposed class exemption is an interim measure pending the FAA law reform and, with an eye on the licensing regime that will follow those reforms, the conditions should be right-sized to the size and scale of the service that is offered.</p>
Q24.	With a view to the licensing regime that will follow the FAA law reform, the FMA may wish to include a condition that providers maintain an appropriate level of professional indemnity insurance cover for their business.
Q25.	<p>Yes, in our view information sheets for both consumers and providers would be helpful in explaining the exemption and providing guidance on compliance.</p> <p>The filtering questions will be particularly important to mitigate the risks associated with inappropriate advice and we suggest that some guidance is provided in this regard (see, for example, the draft guidance on filtering questions for streamlined advice in the UK FCA's guidance consultation GC17/4: Financial Advice Market Review (FAMR): implementation part I published on 11 April 2017).</p>
Q26.	Yes, we think it will be helpful to both providers and consumers for a list of those entities that the FMA has determined are of good character and who are relying on the class exemption to be publicly available.

Q27.	<p>While we note that some overseas regulators have adopted the use of the terms 'Digital Advice' and 'Automated Advice' we also note that other international bodies have recently used the 'Robo-Advisor' phraseology (see the FSB's 27 June 2017 report on Financial Stability Implications from FinTech).</p> <p>We do not think that it makes any great difference to providers or consumers provided that the terminology is clearly defined in the exemption notice.</p>
<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>	
<p>Thank you for your feedback – we appreciate your time and input.</p>	

Feedback form: Proposed exemption to facilitate personalised robo-advice

Please submit this feedback form electronically in both PDF and MS Word formats and email it to us at consultation@fma.govt.nz with 'Proposed exemption to facilitate personalised robo-advice: [your organisation's name]' in the subject line. Thank you.

Submissions close on 19 July 2017.

Date: 26th June 2017

Number of pages:

Name of submitter: [REDACTED]

Company or entity: Dynamique (UK & NZ)

Organisation type: Risk Management: Technical financial CPD: Performance Analytics : Introduction of expert funds

Client segmentation: Wholesale/ Institutional/Expert Investor (UK and NZ)

Contact name (if different):

Contact email and phone: [REDACTED] [REDACTED]

Question or
paragraph number

Response

You don't need to quote from the consultation document if you note the paragraph or question number.

General comment on Rush to Robo

Fascinated by the Rush to Robo. Having spoken to quite a few people about this there is an element of concern that firms "Rushing to Robo" may not have the expertise to fully understand the intricate workings of the algo before signing - up to algo platforms. There is a risk of poor outcomes for less smart investors as increased commoditization of the all-important client risk assessment and subsequent asset allocation end up with a "one -size fits all" resulting in many being put into unsuitable investment instruments and funds.

Robo advice algo, like all models are built on probability, past assumptions, and retrospective matrices. Its more than just a god APP and API protocol.

The past, as we know, may not even be a guide to the future, in its minimalist form in times of extreme market volatility, market stress (neo Black Swan events) etc.

When talking to professional investors about this "*plus ca change mais plus c'est la meme chose*" the need to run parallel portfolio simulation systems is critical in case deals and AI decisions have to be unravelled.

A race to the bottom can be a race to extinction for KiwiSavers and Mom and Pop investors.

Personally, managing a small private fund (own assets managed), we would not recommend using AI fund managers, life style switching funds and other systems as all are an abrogation of the manager's fiduciary duty to act in the best interest of the client unless tightly monitored.

The FMA perhaps ought to hold back on this, wait until the hype has died down a bit.

The industry is well known for its fad funds, many of which end up

	<p>underperforming, dropping off indices resulting in survivor bias. Fads come and go - CDO ² in 2007 and 2008 came and imploded with spectacular ferocity leaving many an "ignorant", in the nicest possible way, pensioner, financially naked. Many pension fund trustees signed up for these toxic instruments, failing to acknowledge and not wanting to appear ignorant to swish investment bankers, that they did not have a clue how these "black boxes" work.</p> <p>NZ's regulation is currently performing satisfactorily. The market cannot afford another "blow-up" – especially if it is an imported one i.e. robo-adviser based on off-shore systems. It may be worth noting that a leading investment firm that introduced "robo-services" found that a number of key experienced staff left the firm as they were concerned about the erosion of advisory standards.</p>
Feedback summary – <i>if you wish to highlight anything in particular</i>	
<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.	

To: consultation@fma.govt.nz

Subject: Feedback on proposed exemption to facilitate personalised robo-advice

Company: Fidelity Life Assurance Company Limited

Date: 19 July 2017

Number of pages: 8

Fidelity Life Assurance Company Limited (Fidelity Life) welcomes the opportunity to provide feedback on the proposed exemption to permit the provision of robo-advice as a temporary measure until the financial adviser law reforms come into effect.

Fidelity Life's purpose is to protect New Zealanders' way of life. Our industry is facing significant regulatory and technology change. Fidelity Life is transforming too – we're a progressive company and believe Kiwi consumers' interest should come first – that people should be able to get independent financial advice easily through competent financial advisers who are held to high standards of ethical behaviour so that more people are protected by life insurance. We believe the Kiwi way of life is worth protecting.

One issue of particular concern to Fidelity Life is underinsurance in New Zealand. This means people's biggest asset – their ability to earn income – isn't protected when circumstances change, and this can place huge financial pressure on families.

Fidelity Life supports a regulatory regime that is technology neutral. Robo-advice has the potential to help bridge the under-insurance gap and should be permitted and encouraged where it provides consumers with more choice and access to good quality advice. While we believe that robo-advice cannot deliver the same value as a long term relationship with a professional human financial adviser, it may allow consumers - who would otherwise remain under-insured – to have easier access to advice and insurance protection; empowering consumers with choice is beneficial for the whole market.

Any regulation around the provision of financial advice should be customer-centric. In order to ensure consumers receive quality advice the exemption must be constructed from a customer-centric perspective, with appropriate entry requirements and ongoing obligations to minimise the risks of poor customer outcomes. There should be an upfront assessment of each entity's ability to comply with the ongoing obligations of the class exemption.

In addition, the proposed exemption should be structured, as far as practicable, to enable a smooth transition to a full licensing regime under the eventual law reforms. It would be a poor outcome if a provider was able to utilise the proposed exemption but then failed to obtain a licence.

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?

Yes. The regulation of providers of financial advice should be technology-neutral.

Fidelity Life believes consumers should be readily able to obtain independent financial advice through competent financial advisers who are held to a high standard of ethical behaviour. Easy access to financial advice – whether through humans or robo-advice – will help address New Zealand’s under-insurance problem. Enabling robo-advice is a significant change and it is imperative that it is enabled in a way which minimises the risk of adversely affecting the reputation of the financial services industry. The exemption must be constructed from a customer-centric perspective, with appropriate controls to minimise the risks of poor customer outcomes.

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?

Yes. We support the exemption and the enabling of innovation in the financial services industry.

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?*

If no exemption is provided, we think the costs to comply with the natural person requirement would be unreasonable.

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?

Fidelity Life supports a class exemption with robust pre-notification procedures before a provider is able to offer a personalised robo-advice service. While we support enabling innovation, there needs to be sufficient controls in place to ensure robo-advice providers are properly regulated. The exemption must be constructed from a customer-centric perspective, with appropriate entry requirements and ongoing obligations to minimise the risks of poor customer outcomes

The robust pre-notification procedures should be aligned to the licensing requirements under the law reform. The FMA must undertake robust checks on robo-advice providers (and the robo-advice platforms) to ensure providers are capable of providing a quality service before the service is made available to consumers. There should be an upfront assessment of the entity’s ability to comply with the ongoing obligations of the class exemption.

In addition, the proposed exemption should be structured, as far as practicable, to enable a smooth transition to full licensing regime under the eventual law reforms. It would be a poor outcome if a provider was able to utilise the proposed exemption but then failed to obtain a licence.

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).

The introduction of robo-advice in the market is another avenue for the provision of financial advice in New Zealand. This is a positive impact as it would increase availability and choice of advice to consumers.

We consider the following are risks associated with robo-advice in general:

1. Not building a relationship with a customer and providing ongoing support, such as helping at claims time. Without regular human interactions the robo-advice may quickly become out-of-date.
2. The robo-advice system will not correct any details entered incorrectly.
3. The advice will be limited to the data entered or made available to the robo-advice systems.
4. Consumers may not be able to ask questions about the financial advice or the process.
5. Robo-advice systems may be narrowly focussed and consumers may not understand the advice limitations.
6. Possibility of errors in underlying algorithms systematically leading to poor customer outcomes.
7. Robo-advice systems may be vulnerable to data breach and cyber-attacks, which raises privacy concerns.
8. In the context of life insurance, there may be a heightened risk of customers not meeting their disclosure obligations.

The above risks are material and may lead to poor customer outcomes if not managed appropriately. Robust pre-notification procedures and on-going controls, including regular reviews of the advice delivered, should be utilised to manage these risks. These should apply uniformly to any provider wishing to rely on the exemption.

So consumers can access redress if the risks are realised, there should be appropriate capital requirements and/or insurance to cover the risks.

The International Association of Insurance Supervisors recognises in its report *FinTech Developments in the Insurance Industry* that supervisors of insurance “need to arrange proper technical resources, knowledge and skills to be able to deal with FinTech in the future”. The report recognises a challenge is “to balance the risks of innovations against the benefits for policyholders and the insurance sector as a whole”. It is imperative that the FMA has the technical resources, knowledge and skills to be able to effectively supervise the proposed exemption.

There is also a risk that the proposed exemption would result in a poor customer outcome if it differs materially from the proposed law reforms. Too much change in a short period of time is confusing for consumers and onerous on both providers of advice and the regulator to ensure compliance. This should be avoided and the proposed exemption should implement structures and processes that can be easily transitioned into the permanent law reforms.

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.

Technological advances move quickly and it would be a lost opportunity for the financial services industry to stay abreast of customer expectations. Additionally, some consumers will prefer advice delivered via robo-advice systems, and these consumers will not be able to access advice that suits their preferences, which would be a poor customer outcome. In the context of the insurance industry, robo-advice may allow consumers - who would otherwise remain under-insured – to have easier access to advice and insurance protection, thus helping address New Zealand's under-insurance problem.

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?

We believe there is an underinsurance issue in New Zealand, and easy access to financial advice is critical to solving this problem. The proposed exemption should provide an additional avenue for New Zealanders to access financial advice, empowering consumers to access services to meet their needs.

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.

The proposal currently excludes life insurance from the eligible product list. The scope of the proposed exemption should be further reviewed and life insurance products should be included.

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.

As currently presented we do not think the proposed limits and conditions strike an appropriate balance. We are moving to a regime which is about financial advice. The scope of the proposed exemption should be further reviewed and life insurance products should be included. The inclusion of life insurance products must be explored from a customer-centric perspective with appropriate controls to minimise the risks of poor customer outcomes.

There is a risk that waiting for the law reforms would stifle innovation and leave the personal insurance industry lagging behind consumer expectations. That outcome would not be good for consumers, particularly as New Zealand has an under-insurance problem.

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.

No submission made.

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.

No submission made.

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.

No. The scope of the proposed exemption should be further reviewed and life insurance products should be included. Please see our response to Q9 for further information.

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.

Yes, life insurance products should be included in the eligible product list.

In relation to life insurance, we are in favour of value caps as a concept for the proposed exemption. Allowing robo-advice to operate under a certain threshold will encourage providers to utilise robo-advice capabilities. Robo-advice provides access to financial advice to consumers who might otherwise not engage with the financial services industry, and who would not otherwise have taken out insurance.

However, the proposed sum insured value cap of \$100,000 for life insurance is too low. It is appropriate to impose a value cap where from a customer interest perspective a human adviser is best placed to provide advice on the risk, such as complex or high-value insurance policies. Value caps may differ for different product types. We think the FMA is best placed with its knowledge of the industry to work with relevant parties to set an appropriate value cap/duration limit for each product type.

We note that the value caps will need to be generous enough to make the business decision to invest in robo-advice platforms viable to providers. A too narrow limit will not encourage growth in this area.

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.

Refer to our submission on Q9 and Q13.

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.

Refer to our submission on Q9 and Q13.

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.

No submission made.

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?

Fidelity Life's view is that a standardised status disclosure statement is not essential but should be used if it gives customers a better outcome than the alternative.

Additionally, we consider it essential that the FMA reviews and approves the use of new robo-advice technology (through robust pre-notification procedures) before providers make it available to consumers under the proposed exemption.

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?

Fidelity Life is in favour of encouraging providers to better utilise technology in communicating with customers. Flexibility should allow providers to utilise more engaging methods of disclosure. Effective disclosure is preferable to uniform disclosure.

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.

We do not think this is necessary. Substance over form should be valued and disclosure requirements should be designed from a customer-centric perspective. Active confirmation alone may add little value to customers and providers may have more effective ways of measuring customer awareness if this condition is not imposed. Providers should be free to utilise technology to the best of their ability, provided that disclosure obligations are able to be met.

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.

We think it is logical to base the conduct obligations on the requirements of the Code of Professional Conduct and that the suggested conduct obligations are appropriate. Further thought by the FMA into how compliance with these obligations will be enforced is required.

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.

We found the comparison of the Code standards to the proposed conditions for the proposed exemptions useful, however we think relevant aspects of the Code Standard requirements have been omitted from the proposed conditions.

The knowledge, skill and ongoing training requirements found in Code Standards 15 to 18 are important to maintain consumer confidence in the industry and the quality of advice provided. As a robo-advice service itself is not capable of the same type of compliance with these as a person, these requirements (or similar manifestations) should be imposed on the design of the robo-advice system.

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.

Refer to our submission on question 21.

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.

It may be appropriate to impose different requirements on robo-advice providers seeking to use simply algorithms, than those seeking to use more sophisticated robo-advice tools, such as artificial intelligence. The conditions should be sufficient to ensure quality advice is provided and more sophisticated robo-advice will logically require different monitoring.

The oversight and monitoring of robo-advice platforms should be fit for purpose and in depth enough to cope with the developing sophistication of technologies. This will both encourage innovation and protect consumer interests.

Q24. Are there any other limits or conditions you think would be appropriate to put in place?

To ensure consumers can access redress if the risks articulated in question five are realised, there should be minimum capital requirements and/or a requirement hold appropriate insurance to cover the risks.

Thought should be given to whether including a requirement to have a New Zealand presence to ensure consumer's ability to seek redress is protected.

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?

Yes. As this is a transitory framework it is important for market participants to know the precise scope of the exemption and how to implement it. It would also help educate providers on how the proposed exemption differs from the requirements of the law reform so they are best placed to transition when the full law reform comes into effect. This awareness and clarity in the market will support good customer outcomes.

Q26. Would you like to see a list of providers relying on the exemption, if granted, on our website? If not, why not?

Yes.

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'?

We are comfortable with the term "robo-advice" but it needs to be clearly defined. It is currently unclear whether the term is intended to encompass all or only some of algorithms, machine-learning and artificial intelligence. The definition should also be drafted with thought to future technological changes.

Q28. Do you have any other feedback or comments?

No submission made.

17 July 2017

Financial Markets Authority

Email: consultation@fma.govt.nz

Submissions on proposed exemption to facilitate personalised robo-advice

Our submission comes from a background of investigating complaints across a broad spectrum of financial products and services.

We formally investigated 24 complaints (out of a total 216 complaints investigated) about financial advisers in the year ended 30 June 2017. While complaint numbers are relatively small, the 24 complaints represented a 70% increase on complaints investigated about advisers in the previous twelve months.

We have not answered all the consultation paper questions, and have instead focussed our submissions by answering questions particularly relevant to FSCL's role as an independent financial dispute resolution scheme.

We summarise our principal submissions below, and then provide more detail in answering the consultation paper questions.

1. Principal submissions

Complaints

It is essential a robo-adviser has a robust internal complaints process and, where providing services to retail clients, is a member of an approved financial dispute resolution scheme (DRS). Details of the robo-adviser's complaints process, including how to access its DRS, should be clearly disclosed and easy to find.

Same standards and limits for robo-advisers as natural person advisers

We consider that if an exemption is to be granted for personalised robo-advice, then the terms of the exemption should be consistent with the terms on which AFAs must operate. This includes subjecting the robo-advice platform to no less than a set of minimum standards than would apply to an AFA providing a similar service.

In due course, the requirement will be that all financial advisers will need to meet minimum standards, akin to those AFAs currently need to meet. For this reason, we consider there should be no financial caps or time limits imposed on the advice able to be provided by a robo-adviser. Consumers should be provided with the same standard of advice from a robo-adviser that they would receive from a natural person adviser.

Limit robo-advice for the time being

We do not support robo-advice being extended to personal insurance products and an investment planning service, at this stage.

Risk mitigation

Rather than limits being imposed on robo-advisers (both financial and scope of advice limits), we suggest robo-advisers providing services to retail clients should have sufficient professional indemnity insurance (PI insurance) in place. This would allow for compensation to be paid to clients for loss they suffer as a result of an act or omission by the robo-adviser, including negligence, a flawed algorithm, or a breach of minimum standards (as set out in the new Code of Professional Conduct for Financial Advisers).

We would also welcome a requirement that financial service providers that provide robo-advisers must be resident in New Zealand, to assist with risk mitigation.

Robo-advice testing

We also consider it crucial for financial service providers wanting to rely on the exemption to have adequately tested their robo-advice product to ensure the advice provided is sound. In the same vein, it will be crucial for the robo-advice product to be continually monitored to ensure the advice it provides remains sound, and is in line with standard industry practice.

Disclosure

It is particularly important that robo-advisers disclose to consumers that advice is being provided using the robo-advice model, so consumers can make an informed choice about whether to seek advice from a robo-adviser or a natural person adviser. We consider robo-advice platforms should also have an adequate filtering system to filter out consumers for whom the advice is not suitable.

2. Consultation paper 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.

- 1.1. We do not express a view as to the merits or otherwise of the proposed exemption. However, we consider that the ability for financial service providers to provide robo-advice is likely to result in increased consumer accessibility to financial advice, which is a positive step.
- 1.2. Although there are risks associated with robo-advice (as there are existing risks associated with natural person advice), a key benefit of robo-advice is that all advice provided, information sought by the adviser, and the information provided by the consumer, will be recorded electronically by the robo-adviser.
- 1.3. In many of financial adviser complaints investigated by FSCL, advice is provided by telephone and in person, and often without adequate note-taking, or the advice being recorded in writing. This gives rise to the 'he said, she said' situation which presents a challenge to any decision-making body in making a definitive decision about what was or was not discussed. To some extent, we consider robo-advice could assist in alleviating this problem.

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.

- 2.1. We consider the use of robo-advice for personalised financial advice is inevitable and there is no reason to delay consultation on the issue (which would have needed to take place during the general law reform consultation period in any event).

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.

No comment.

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.

- 4.1. It is difficult to comment on whether a class exemption or individual exemptions are more appropriate, without knowing the number of businesses wanting to take advantage of the exemption.
- 4.2. If there were only a handful of businesses looking to rely on the exemption, it may be better from the consumer's perspective (in terms of having confidence in robo-advice) for there to be individual exemptions granted. We assume the FMA would carry out more in-depth investigation into the businesses seeking to rely on the exemption, if individual exemptions are granted.
- 4.3. However, we appreciate there may be a large number of businesses wishing to rely on the exemption meaning the more efficient option is a class exemption. In our view, a class exemption may also result in consistency which is advantageous.

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).

Suitability tools

- 5.1. We expect the ability to check that a product is truly suitable for an individual customer will be more limited when advice is provided by a robo-adviser.

Scale risk

- 5.2. We see a risk to the consumer in terms of scale. At present, if one adviser makes a mistake, it may not affect many people, particularly in 'human error' situations. However, if a mistake was made in a robot's algorithm there is potential for a large number of consumers to be affected before the mistake is identified. Algorithms and the 'back end' of the robot will need to be regularly reviewed and updated.
- 5.3. A way to minimise scale risk is to require businesses providing robo-advice to have adequate PI insurance in place in the event there is a wide-spread issue arising from a robo-adviser's error. We are unsure of the extent of robo-advice insurance available in the market.

Consumer-specific risk

- 5.4. The risk for the consumer is that advice provided by the robo-advice model has not been subject to adequate testing, potentially resulting in the consumer receiving inferior advice than would or could have been provided by a natural person adviser.

Lack of nuanced advice risk

- 5.5. In our view, there is a risk a robo-adviser will be unable to provide ad-hoc advice to a consumer at the time they are applying for insurance (for example) to the same extent a natural person adviser would. We anticipate the robo-adviser will have certain scope to provide 'click here functions' where the consumer could seek jargon definitions or further clarification. It is arguable the robo-adviser would do a better job of this than the natural person adviser.
- 5.6. However, there is the risk the robo-adviser will be less agile than a natural person adviser when issues or questions arise outside the robo-adviser's algorithmic scope. It is anticipated that in those circumstances there may be scope for the robo-adviser to refer the consumer to a natural person adviser.
- 5.7. Lack of nuanced advice risks include:
- a) The robo-adviser may have difficulty in picking up on consumers' reactions clearly indicating a specific product is not suitable. A natural person adviser has increased ability to do this. For example, a consumer meeting an adviser face-to-face may display clear mobility issues, which a robo-adviser would be unable to identify.
 - b) The robo-adviser will require different methods to check the understanding of a consumer about the product being purchased, and the implications of purchasing the product. A natural person adviser may more easily identify when a consumer does not actually understand the advice, even though the consumer may say they do.
 - c) It is common in complaints we investigate (not only in financial adviser complaints), that people simply 'tick the box' that they understand terms and conditions. For example, we often find people do not understand the extent of the duty of disclosure when applying for insurance.
 - d) We see a number of complaints where people have not disclosed their full medical history. In our view, this is a particular risk with robo-advice. A natural person adviser may be more likely to pick up on a consumer's uncertainty about whether there is a pre-existing medical condition or not, whereas a robo-adviser would have reduced capacity to do this.
 - e) There may be reduced opportunity in the robo-advice setting for the consumer to explain their situation in more detail. By speaking to a natural person adviser, the consumer may be more inclined to explain their situation in more detail, and this in turn may lead to the natural person adviser asking further

questions, or more in-depth questions (for example about a person's medical history).

Privacy breach risk

- 5.8. We consider there is a greater privacy breach risk with robo-advice. If the robo-adviser is 'hacked' a greater number of people could have their privacy breached than in the natural person advice model.

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.

No comment.

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?

No comment.

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.

No comment.

Q9. Do the proposed limits and conditions strike an appropriate balance between consumer protection and promoting innovation? Please give reasons for your view.

- 9.1. We consider more could be done to ensure consumer protection than businesses simply needing to meet the 'good character' test to rely on the exemption.
- 9.2. We consider such businesses should be required to provide a report to the FMA detailing the way the robo-advice is being provided. This should include a summary of the product testing conducted to ensure the robo-advice product is sound.
- 9.3. Problems with robo-advice (as with existing natural person advice), are likely to surface some time in the future (for example, when the consumer has a claim).

Ensuring the advice being provided by robo-advisers is sound from the outset, is in consumers' best interests.

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.

No comment.

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.

DIMS

11.1. We understand that with DIMS there is existing reliance on algorithms to a certain extent. However, we also understand that ultimately there is human oversight in the DIMS space, with the natural person adviser applying their **discretion** to make ultimate investment decisions.

11.2. At a fundamental level, it appears contrary to general consumer expectation that if a consumer is giving their DIMS adviser the ability to manage a significant sum of money at the DIMS adviser's discretion, that the human element of discretion be given to a robot.

Financial advice and/or investment planning services?

11.3. We consider the exemption should be limited to financial advice only, excluding investment planning. With investment planning services, the adviser is not only looking at an individual or family's overall financial needs at the time the advice is provided, but also at the consumer's future financial needs. In our view, investment planning services involve a significant degree of the natural person adviser's personal judgment and may not be suitable for robo-advice.

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.

12.1. Yes. However, we consider that the robo-advice model should not be limited to initial point of sale advice. We consider the robo-advice model could easily provide for reminders to be sent to consumers regularly to ensure they are reviewing

whether their financial products continue to meet their requirements. The robo-advice model could also prompt consumers on a regular basis (at least annually) to contact their adviser should they seek further advice on the products they hold.

Consumer credit contracts

- 12.2. We comment that with consumer credit contracts, the robo-adviser needs to ensure the lender is meeting its responsible lending obligations under section 9(C) of the Credit Contract and Consumer Finance Act 2003, the Responsible Lending Code, and the Responsible Credit-Related Insurance Code (issued by the Financial Services Federation).
- 12.3. This includes (but is not limited to) ensuring the consumer credit contract meets the borrower's requirements and objectives, and that borrowers and guarantors can afford the loan/to provide the guarantee without suffering substantial hardship.
- 12.4. We consider it inappropriate for a robo-adviser to address lending complaints (for example about repossession), or to address unforeseen hardship applications.

General insurance

- 12.5. We consider it crucial that the robo-advice model ensures the client understands the need for full disclosure, for example, ensuring any criminal convictions are disclosed, for home, contents, and vehicle insurance applications, and the consequences of non-disclosure. The robo-advice model also needs to ensure all Fair Insurance Code obligations are met.

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.

- 13.1. Overall, we do not support an extension to the eligible product list to include personal insurance advice (at least not at the present time).

Disclosure

- 13.2. Moreover if, in the future, personal insurance advice is added to the list, we do not consider the robo-advice model to be appropriate where consumers are **replacing** their personal insurance. In the replacement advice setting there would, in our view, be too much reliance on the consumer accurately disclosing to the robo-adviser what their existing cover is and what pre-existing medical conditions they have, to ensure

the robo-adviser can compare and contrast the existing insurance and proposed replacement options, in any meaningful way.

- 13.3. If robo-advice is extended to personal insurance, there is a high risk consumers will not meet their duty of disclosure obligations. We have discussed some of the robo-adviser limitations in relation to disclosure above. A possible way to counter those risks would be to require the robo-adviser to access the consumer's full medical records.

The statement of advice

- 13.4. Our understanding of the robo-advice model in the personal insurance space would be that after the consumer has completed all the questions asked by the robo-adviser the issuing of a statement of advice would be almost immediate. However, in our experience a natural person adviser will reflect on the information provided by the consumer and apply a certain amount of judgment based on their experience before producing and issuing a statement of advice.
- 13.5. We also wonder whether the consumer would have the ability to correct any information in the statement of advice generated by the robo-adviser, or ask the robo-adviser to expand on advice or provide some further options upon the consumer reviewing the statement of advice.

Setting the parameters of advice

- 13.6. For the products already in the proposed eligible list, there is a limited scope in the variation of answers / information provided by the consumer at the time the product is being purchased. However, we are unsure whether a robo-adviser's algorithms would allow for sufficient scope to deal with the huge variety of information provided by consumers when applying for personal insurance.

Caps

- 13.7. We consider any consideration of a financial cap of \$100,000 to be impractical for any business seeking to provide personal insurance robo-advice. The majority of consumers will likely have a number of products (life, trauma, income protection, health), which in the aggregate are most likely to exceed \$100,000.

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.

- 14.1. The cap of \$100,000 could be a good risk-minimisation mechanism for most of the products already on the proposed eligible products list. However, home policy sums

insured (and to a certain extent contents policy sums insured) are likely to exceed the \$100,000 cap.

- 14.2. If there were a cap, this could be increased to \$200,000 to align with the dispute resolution schemes' financial limits. That is, any consumer complaint about robo-advice would likely be able to be investigated by the financial DRSs (subject to any other jurisdictional considerations).
- 14.3. However, referring to our principal submission above, we consider that if an exemption is granted for robo-advice, the robo-advice provided must meet the same standards that would apply to an AFA.
- 14.4. We also note that products in the proposed eligible products list are considered appropriate for that list because the products are perceived as being easy to exit. However, exiting a managed fund at the wrong time could result in crystallisation of a loss and, in the case of a credit contract, a high break fee.

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.

- 15.1. As above.

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.

- 16.1. No, we consider there should be consistency across the board. Smaller non-QFEs should not be disadvantaged by having to limit the value of products advised on.

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?

- 17.1. Yes. This promotes consistency and ensures provider confidence that they have adequately disclosed their status.

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?

- 18.1. No, we consider disclosure should be prescribed to promote consistency. Model disclosure statements exist in the Financial Adviser (Disclosure) Regulations 2010, which could be amended to include robo-advice prescribed disclosure.
- 18.2. We consider the prescribed disclosure should include statements to the effect that the robo-adviser will not provide advice at the time of claim or when a consumer wants to apply for variation of a credit contract on the grounds of unforeseen hardship.
- 18.3. The disclosure should outline how the consumer can contact a natural person adviser to discuss their complaint (details of the financial service provider's internal complaints process), and how the consumer can contact the financial service provider's DRS.

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.

- 19.1. Yes, we see real opportunity in the robo-advice service for meaningful testing of consumer understanding. We strongly agree that more than a tick box approach is required.
- 19.2. However, we consider there should always be the option for a consumer to ask to speak to a natural person adviser should they wish.

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.

- 20.1. We strongly encourage the requirement that any complaints about robo-advice would be dealt with by a natural person adviser at the very earliest opportunity following the consumer's complaint.

20.2. We are interested to know how the financial service provider using the robo-advice model will ensure it is not conflicted in providing financial advice. Would this require the natural person adviser with control of the robo-adviser to check all consumers the robo-adviser advises?

20.3. In the same vein, it is difficult to see how a robo-adviser would identify any conflict between say, husband and wife clients, where one spouse may be exerting undue influence over the other.

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.

No comment.

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.

No comment.

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.

No comment.

Q24. Are there any other limits or conditions you think would be appropriate to put in place?

No comment.

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?

25.1. Yes, we consider additional guidance will assist providers and consumers alike. Such guidance will be essential in ensuring consistent standards are met by robo-advisers, which will encourage consumer confidence in robo-advice.

Q26. Would you like to see a list of providers relying on the exemption, if granted, on our website? If not, why not?

26.1. Yes, this promotes transparency and clarity. This will also assist the financial dispute resolution schemes because we will be able to easily identify which businesses are using a robo-advice model which will be important to know when investigating complaints.

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'?

27.1. Yes, 'robo-advice' should be retained. The term appears to be commonly understood across the world.

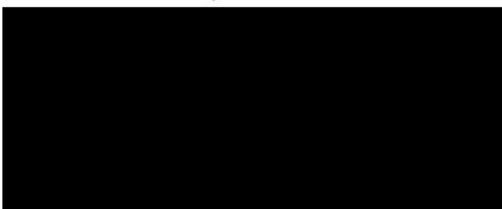
Q28. Do you have any other feedback or comments?

27.2. We assume there is a typographic error in the consultation paper at page 14 in sentence 4 in that the sentence should that the usual range of enforcement tools **would** be available.

27.3. We would expect that if any robo-adviser complaint went to the FADC, any individual consumers potentially affected by a breach would be referred to the financial services provider's DRS.

We thank the FMA for the opportunity to present our submissions on the proposed exemption to facilitate personalised robo-advice. Please contact me should you wish to discuss our submissions in any further detail. FSCL is happy for these submissions to be made public.

Yours sincerely



Wednesday, 19 July 2017

Financial Markets Authority

By email: consultation@fma.govt.nz

Consultation Paper on the proposed exemption to facilitate personalised robo-advice: Financial Services Council response

The Financial Services Council of New Zealand Incorporated (FSC) thanks the Financial Markets Authority (FMA) for this opportunity to make a submission in relation to the Consultation Paper on the proposed exemption to facilitate personalised robo-advice. Our response addresses the material themes we recommend the FMA should consider, together with providing detailed responses to the specific questions from the Consultation Paper.

The FSC represents New Zealand's financial services industry having 16 member companies and 14 associate members at 30 June 2017. Companies represented in the FSC include the major insurers in life, disability, income, and trauma insurance, and some fund managers and KiwiSaver providers. Law firms, audit firms, and other providers to the financial services sector are represented among the associate members.

This submission provides our view of the key issues and gives voice to the recommendations of our members.

Please contact me on [REDACTED]

Yours sincerely

[REDACTED]
[REDACTED]

Who we are:

The Financial Services Council of New Zealand Incorporated (FSC) has 16 member companies and 14 associate members at 30 June 2017. Companies represented in the FSC include the major insurers in life, disability, income, and trauma insurance, and some fund managers and KiwiSaver providers. Law firms, audit firms, and other providers to the financial services sector are represented among the associate members.

The FSC's vision is to be the voice of New Zealand's financial services industry, with three areas of strategic intent:

1. Strong and sustainable consumer outcomes
2. Sustainability of the financial services sector
3. Increasing professionalism and trust of the industry through the FSC Code of Conduct.

Our purpose is to:

- be recognised as an organisation that represents the interests of the New Zealand financial services industry, including to regulators and Government
- promote best practice and integrity in the financial services industry, including through the institution of codes of conduct, standards and the publication of guidance for industry participants
- promote the financial services industry for the economic benefit of New Zealand and to enhance the sustainability of the industry, whilst recognising the primacy of the interests of consumers
- develop and promote evidence-based policies and practices designed to assist New Zealanders to build and protect their wealth
- promote the financial services industry as a medium for investment and protection for consumers
- promote, assist and generally advance the interests of members.

To deliver on our vision and purpose, FSC activity centres on five strategic pillars:



POLICY AND ADVOCACY

Aim: To be the trusted voice of the financial services sector in New Zealand



INDUSTRY LEADERSHIP & INSIGHT

Aim: Bringing the industry together with knowledge and insight for the benefit of all New Zealanders



INDUSTRY BEST PRACTICE

Aim: Showcasing industry excellence in understanding, growing and protecting New Zealanders' wealth



COMMUNITY OF PROFESSIONALS

Aim: A community developing itself to better understand and serve the needs of New Zealanders



DEVELOP THE FSC

Aim: A sustainable business model delivering an effective and efficient industry body

Responding to the Consultation Paper - our approach

This submission is the result of an extensive consultation process across our member-base and represents the views of our members and our industry.

The FSC's guiding vision is to be the voice of New Zealand's financial services industry. Given the different business models, diversity and expertise of our members, there are times when there are a range of insights and views. Where this has been the case in relation to this submission, we have adopted the FSC's standard approach to managing significant issues:

- **Principles-based:** keeping the conversation focussed on the big issues while acknowledging the detail
- **Best practice:** ensuring the recommendations and solutions are aspiring to high standards of service for clients and driving consistency within the industry
- **Market competition:** believing a free market will find the balance that works best for the consumer and the industry

Specific Responses - our approach

For depth, there are instances in the 'Specific Responses' section where we have included the range of member views. Our intent in doing this is to highlight the material concerns of our members and open the door for continued conversation with the Financial Markets Authority.

We acknowledge the time and input of all our members in contributing to this submission.

Key Themes

Theme One – we support the class exemption

We support the FMA's goal of improving consumer access to financial advice through alternative sources earlier than the change in legislation will allow. Globally financial technology is moving rapidly, and our current law restricting advice provision to natural persons is restricting provider innovation and consumer access to advice.

Ensuring consumer access balanced with consumer protection is a key issue to manage as technological change drives consumer preferences and changes.

We understand that many entities intend to offer robo-advice, both incumbents and start-ups. Limited resources at the FMA mean individual exemptions cannot be issued to all interested parties simultaneously and quickly. This is unfair to providers, contrary to the FMA's objective of "fair, efficient, and transparent financial markets", and slower for consumers.

Therefore, a class exemption is a pragmatic solution, and we support it. As well as allowing access to many providers simultaneously, it facilitates a consistent framework for all parties relying on the exemption, and it minimises the FMA's workload.

Some members support the class exemption only if those who rely on the exemption are vetted by the FMA. If entities are allowed to rely on the exemption after notifying the FMA only, there is a significant risk that entities without experience or competency in financial services or financial advice will enter the market and offer robo-advice solutions that deliver poor outcomes to consumers. These members submit that the FMA should also monitor all entities permitted to rely on the class exemption.

Theme Two – the exemption should promote market integrity

Since the Financial Advisers Act was implemented in 2010, and the FMA was established in 2011, the integrity of New Zealand's financial markets has strengthened. A risk-based, harm-focussed conduct regulator, the status of QFEs, authorisation of financial advisers, and licensing of other financial entities all have contributed to this improvement.

We support the class exemption for robo-advice to the extent that it aims to maintain market integrity. We are confident that the conditions proposed in the Consultation Paper, together with monitoring by the FMA, will achieve this objective.

We submit that the FMA require the capability to effectively regulate robo-advice providers who rely on the exemption. This may require additional resources who specialise in automated decision engines, and specialists in products such as fire and general insurance, life insurance, and mortgages.

Theme Three – the exemption should align with licensing

All entities who offer robo-advice relying on this exemption will require a financial advice provider licence when proposed law reform is passed and implemented.

We submit that it is most efficient and effective for all parties if the exemption is aligned with the forthcoming licensing requirements:

- Providers can prepare for one set of requirements for both processes, rather than different requirements for each.
- Consumers benefit from providers meeting all standards of the forthcoming regime, standards which are designed to maximise benefits and minimise risks to consumers.
- The FMA benefits by designing and monitoring for one set of standards, based on the draft legislation and the existing Financial Markets Conduct Act licence requirements, rather than one set for the exemption and another for the legislation.
- This reduces the risk to market reputation that could occur if entities rely on the exemption and declare that they meet the conditions, and then fail to obtain licences.

The existing Financial Markets Conduct Act licence types are very consistent, and the FMA has experience issuing these licences and monitoring these licensees, so they are already positioned to determine most requirements for financial advice provider licences.

Theme Four – generally we disagree with the proposed limitations

Our members generally submit that the proposed product, value and duration limitations are not appropriate and will have unintended consequences. We submit that consumers and the market will be better served through conditions and monitoring.

Personal insurance should not be excluded from the exemption. Personal insurance is a valuable product: many New Zealanders suffer a significant health event before they reach retirement, and these events can destroy families financially – unless they have personal insurance. Access to financial advice is a problem for personal insurance at least as much as it is for other financial products, and the reason suggested for excluding personal insurance is not correct (policyholders can exit personal insurance policies quickly and easily). Online purchases of personal insurance are growing, without advice, and we submit that these consumers will be better protected with advice.

Generally, we submit that value limits are unworkable and do not protect consumers adequately. All members disagree with product limitations, entity value limits and duration limits. Total limits ask providers to innovate and invest in platforms and marketing, and then stop collecting revenue when they become successful. Most members also disagree with individual limits.

In relation to life insurance the proposed sum insured limit is too low. Our members have a range of views as to whether individual limits (if any) should apply for life insurance products. The FSC offers to work with the FMA to determine appropriate limits for life insurance products if they are included. Duration limits have unintended consequences. For investment products, they achieve the stated objective of limiting robo-advice to products that can be exited easily. For insurance products, they take certainty away from the consumer. Consumers have the right, but not the obligation, to renew insurance products on their policy anniversary. Duration limits effectively remove the insurer's obligation to continue the policy on the same terms, which is detrimental to consumers compared with existing insurance policies.

These limits reduce fairness in the market, allowing some robo-advice providers to enter the market while excluding others. This is contrary to the FMA's objective of "fair, efficient, and transparent financial markets".

Rather than limiting products, values and durations, we submit that the FMA's objectives will be met if they can be confident that those relying on the exemption are adhering to its conditions, such as through reporting and monitoring.

Theme Five – we support flexible disclosure requirements

Robo-advice enables creative approaches to customer education that improve the likelihood of customer understanding. Therefore, we agree that the exemption should allow a flexible approach to disclosure.

Disclosure requirements should not restrict innovation. For example, some entities have detailed customer data, and may be able to offer their clients personalised financial advice proactively. If clients must confirm disclosure before personalised financial advice is provided, these opportunities to help consumers cannot be utilised effectively.

Flexible disclosure is most effective if it has the principle objective of aiding customer understanding, rather than being a tick-box approach.

Specific Questions

Question 1: 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.

Generally, we support a class exemption to allow personalised robo-advice. A class exemption of this kind will:

- provide greater access to personalised financial advice for consumers.
- improve the consistency of personalised financial advice for consumers.
- provide a level playing field for providers.

Generally we support the proposed conditions. However, we do not support the proposed limits. See responses to questions 9 to 16.

Some members support a class exemption only if the FMA vets entities that rely on the exemption. This minimises the risk that entities without financial services or financial advice experience warrant that they meet the exemption conditions, while not meeting them to the level expected by the FMA.

Question 2: 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.

We support the FMA using its powers to issue a class exemption in this case.

This will provide greater access to personalised financial advice for consumers. There are consumers of financial products in New Zealand that currently do not have access to personalised financial advice, either due to their perceived “low” value or personal preference to obtain personalised financial advice through digital channels. An exemption will permit New Zealand providers to deploy personalised robo-advice solutions ahead of waiting for any law reform. This should lead to better outcomes for consumers earlier.

There is a global trend towards the provision of robo-advice and an exemption will enable New Zealand companies to start innovating in this space, locally and overseas.

Question 3: 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.

Yes, we think the costs to comply with the ‘natural person’ requirement are unreasonable and unjustified by compliance benefits.

A key benefit of robo-advice is the ability to provide a low cost and scalable service.

A requirement to have a ‘natural person’ involved in the personalised robo-advice process would remove this benefit. However, at least at the outset, natural person(s) have a place in developing and maintaining robo-advice solutions, as well as monitoring and providing assurance that the advice provided leads to good outcomes for consumers.

Question 4: 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.

Yes, we support the FMA's approach of granting a class exemption as this would create compliance efficiencies and a level playing field (providers will be able to implement robo-advice solutions simultaneously without advantage). As noted in the Consultation Paper, this will not limit the FMA's ability to grant individual exemptions should that be appropriate in particular circumstances.

Generally we support the proposed conditions. However, we do not support the proposed limits. See responses to questions 9 to 16.

In addition, the proposed exemption should be structured, as far as practicable, in a way that enables a smooth transition to the full licensing regime under the eventual law reforms. It would be a poor outcome for the integrity of the financial services industry if a provider was able to utilise the proposed exemption but then failed to obtain a licence.

Use of an appropriate class exemption means those providers in a position to comply with the exemption will be able to do so without the additional cost of going through the process of obtaining an individual exemption.

Question 5: 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).

Generally, we don't believe that providing a class exemption on robo-advice will create any increased risk to consumers, or at least no more than they are currently exposed to. We believe that robo-advice will allow consumers to be more informed, and have increased access to quality financial advice, at a lower cost than currently incurred.

Some members submit that this is only true if the FMA vets entities that rely on the class exemption.

Impacts on consumers of providing the class exemption:

- Lower cost of advice. Robo-advice tools generally have large development costs, and very low marginal costs, so once these providers reach scale, the cost to serve each customer can be very low.
- More convenient advice, because consumers can usually access online tools at any time and any place.
- There is a risk that a provider may give low quality advice, although this risk exists with existing providers of financial advice.
- Where product providers are already required to be licensed (managers of MIS require FMCA licences, insurers require RBNZ licences, etc), there is no additional product risk. (This excludes providers of wholesale managed funds, credit contracts, and other unlicensed product providers.)
- For robo-advisers who are not vertically integrated, there will be financial risk as money passes from the client, through the robo-provider to the product provider – therefore robo-advisers may also be brokers who must comply with broking requirements of the Financial Advisers Act.
- Once money passes to the product provider, there is little financial risk to the consumer in respect of a failure of the robo-advice provider. If the robo-advice provider gets into financial difficulty, the client's money and/or products are held by the product provider. However, failure of the robo-advice provider could lead to consumers being left without any effective redress for any inappropriate advice

provided. For this reason, we consider it to be important to impose conditions relating to the financial standing of the robo-advice provider (see question 10 below for further detail).

Impacts on providers of providing the class exemption:

- Some capital investment is required, and operating costs are small, so once providers reach scale, the cost to serve is low.
- There are risks for providers who do not reach scale and cease operating, which may impact the reputation of the industry as well as the provider; however, there should be little financial risk to consumers.
- A lower cost distribution model may put downward pressure on adviser commission.

There are risks associated with robo-advisers who advise clients to replace existing business – these risks can be mitigated through process design that considers these risks.

Risks associated with robo-advice in general:

1. Building a relationship with a customer and providing ongoing support, consumers may be limited to ask questions about the financial advice or the process.
2. Robo-advice platforms can be less flexible than a natural person. For example, the consumer may be unable to ask questions or seek clarification outside the platform's programming.
3. The robo-advice system will not correct any details entered incorrectly.
4. The advice will only be as good as the data entered by the user.
5. It is more difficult to ensure that the consumer understands the advice limitations.
6. There is a possibility of errors in underlying algorithms systematically leading to poor customer outcomes, which may have a widespread negative impact on the industry.
7. Data security and privacy are essential, and may be difficult to assure under a class exemption.
8. With insurance products, there is a risk that customers will not meet their disclosure obligations, although this risk exists with human advisers.
9. Product providers may not have the expertise to manage an online solution.
10. This may lead to attrition of advisers and therefore reduced availability of advisers.

It is important that FMA has the technical resources, knowledge and skills to be able to effectively supervise the proposed exemption. The FSC is concerned to ensure that the FMA has the resources and capacity to regulate robo-advice.

There are risks for different types of providers. Non-bank, non-insurer, non-QFE providers may create additional risks for the industry. These providers may have little experience in financial services, financial advice, and financial markets law and regulation.

Question 6: 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.

If no exemption is granted, impacts on consumers include:

- Those who are not currently served by advice and who could be served by advice through robo-advice have their access to advice delayed by about two years; the delay will have significant opportunity costs (such as lost revenue, lack of cover and risk of health deteriorating).

- A timing advantage to offshore providers, so consumers are less likely to be served by companies with local representatives (to whom it may be easier to complain if there are problems).

If no exemption is granted, impacts on providers include

- Offshore robo-advisers have about two years to hone their services in their own countries, so they have a significant advantage over local entities when robo-advice becomes legal.
- Providers could seek individual exemptions, but this is more difficult than complying with the clear standards a class exemption could provide.
- Some providers would not provide class robo-advice if no exemption is granted.

Providers who are interested in providing class robo-advice could be doing so now – they would not be waiting for this class exemption.

Question 7: 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?

Yes, we agree that there is an advice gap.

There are consumers of financial products in New Zealand that currently do not access personalised financial advice. There are a number of potential reasons for this, including that they may:

- not meet a monetary threshold to be serviced by a human adviser
- not want to pay any fees to a human adviser
- not have the time to obtain advice from a human adviser
- prefer to use technology as an enabler.

The level at which an adviser is willing to provide advice to a consumer will vary between providers and the service or product offering provided.

Question 8: (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.

We expect that the exemption will be utilised by a number of members. However, the timing will vary, with at least some likely to be in a position to provide a simple level of personalised robo-advice in the short term. Members will respond to this question in their own submissions.

Question 9: Do the proposed limits and conditions strike an appropriate balance between consumer protection and promoting innovation? Please give reasons for your view.

We do not support the proposed product, entity and duration limits as they will hinder the success of innovative providers without protecting consumers effectively.

Most members do not support individual client limits, and submit that this is not the most effective way to protect consumers.

In relation to life insurance the proposed sum insured limit is too low. Our members have a range of views as to whether individual limits (if any) should apply for life insurance products. Different life insurance products are not equivalent. The FSC offers to work with the FMA to determine appropriate limits for life insurance products if they are included.

Generally we support the proposed conditions as they are reasonable and will help protect consumers. See responses to questions 10 - 16.

Question 10: 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.

We do not support the exclusion of personal insurance and mortgage products from the proposed list of eligible products. See response to questions 12 and 13.

We also think that the value and duration limits are unworkable, and not in the best interests of consumers. See responses to questions 13 - 16.

Most members submit that individual client limits are unsuitable. Our members have a range of views as to whether individual limits (if any) should apply for life insurance products. See our response to question 9.

Generally we support the proposed conditions. To support future licensing, and to ensure that consumers are able to obtain adequate redress if inappropriate advice is provided, the FMA should include a condition around appropriate financial resources or a requirement to hold appropriate insurance cover.

Our members have a range of views as to whether the conditions in respect of record keeping may prevent the development of certain types of personalised robo-advice service. In particular, it may prevent the use of open-access tools hosted on providers' websites. In these circumstances it may be difficult to retain complete records of the advice provided to each client.

Some members suggest that entities that rely on the class exemption should be vetted by the FMA. Otherwise entities without appropriate systems and processes may harm consumers by providing poor advice.

Question 11: 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.

We agree that the exemption should be available for the provision of financial advice and investment planning services.

We understand the provision of a DIMS is governed by separate requirements under the Financial Advisers Act or Financial Markets Conduct Act and therefore we consider that it is appropriate that the exemption does not cover the provision of a DIMS. However, we do not consider that providers should be precluded from using robo-advice as a means of providing a personalised recommendation in relation to whether or not to invest in a DIMS portfolio.

Question 12: 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.

We do not support excluding personal insurance and mortgage products from the proposed list of eligible products. We do not understand the FMA's position regarding these products being difficult to exit, particularly personal insurances.

Products, such as life insurance, are increasingly available through direct means without the need for consumers to obtain financial advice. Greater accessibility to advice through personalised robo-advice should lead to better outcomes for consumers.

While the consequences of consumers failing to disclose material information in the case of personal insurances can be high, we do not consider that robo-advice will necessarily increase this risk as that still exists when consumers deal with human advisers.

Conditions will apply equally to providing personalised robo-advice across products. Therefore providers will need to be comfortable that advice given on these products will be provided in a way that leads to good outcomes for consumers, including replacement business.

Also see response to question 13.

Question 13: 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.

Personal insurance products should be included in the eligible product list.

Generally most members do not think that any value limits are appropriate for personal insurance products and imposing limits would likely lead to poor outcomes for consumers by reducing access to financial advice. Feedback from members indicates that a smaller proportion of life insurance policies are below the proposed limit, which means that robo-advice would not be available for most these consumers.

A value cap will also not mitigate the consumer risk that they take out a personal insurance product which was not best suited for their needs, and health developments over time then make them ineligible for more appropriate products. We do not consider that robo-advice will necessarily increase this risk as that still exists when consumers deal with human advisers.

This is likely to have the unintended consequence that many consumers will purchase the maximum amount when their requirements are higher, leaving them underinsured.

Our members have a range of views as to whether individual limits (if any) should apply for life insurance products.. See our response to question 9 above.

Duration limits have unintended consequences in insurance products. Life insurance policies are usually longer than one year duration. During the policy term, the insured has the right but not the obligation to continue the policy on the same terms. To limit robo-advice to one year durations has no benefit to the insured.

To ensure consumers receive good outcomes, providers would need to develop robo-advice solutions that factor in various aspects in a consistent way, like health changes and aging.

Also see response to question 12.

Question 14: 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.

Generally, we do not support any value cap or duration limits because they would have unintended consequences. See responses to questions 13,15 and 16.

Our members have a range of views as to whether individual limits (if any) should apply for life insurance products. See our response to question 9, above.

Question 15: 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.

Generally, most members do not support limits of this nature as they seem arbitrary.

There could be unintended consequences if upper limits were reached, that would have the potential to lead to poor outcomes for consumers. For instance, where an existing user wants to get further advice when their circumstances change. There may also be difficulty monitoring these sorts of limits to ensure compliance. For instance, would limits be based on the initial product value or amount invested, and how would fluctuation in returns or value of the product over time be treated?

We are also not clear what the intention is around non-investment products i.e. general insurance products. Imposing these sorts of limits simply would not make sense in most cases e.g. home insurance.

Our members have a range of views as to whether individual limits (if any) should apply for life insurance products.. See our response to question 9.

Question 16: 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.

We do not support limits of this nature as there will be unintended consequences if upper limits are reached. It would limit the growth of innovative providers and impact the provision of advice to consumers.

Question 17: 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?

The FMA should be clear on the purpose of a status disclosure in terms of consumer benefit. If a status disclosure is required, it should be meaningful to consumers and not detract from the consumer experience. There should also be flexibility in the timing and manner of provision so as not to stifle innovation or preclude the proactive provision of personalised robo-advice.

Although not essential, there could be benefit in a standard form of status disclosure, if that is required. A reference or hyperlink to FMA's website where the list of robo-advice providers relying on the exemption is displayed could be included. See response to question 26.

Question 18: 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?

Providers should have flexibility to decide how to comply with the disclosure condition, assuming they are required to disclose in a manner that is clear, concise and effective. This will enable innovation and wider implementation of personalised robo-advice.

Rather than have one long disclosure for clients to read, providers should have flexibility to separate disclosure into smaller parts, and disclose each part at a point in their process that is most relevant. They may be able to rely on other disclosures that have been made, if applicable e.g. Qualifying Financial Entity disclosure statements.

Creative providers may use this as an opportunity to educate their clients about the products. They may use video, diagrams, gamification, or other methods that will enhance customer understanding.

Question 19: 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.

Members have differing views regarding whether active confirmation should be obtained or not and this will largely depend on the robo-advice solution implemented.

Some members argue requiring active confirmation will stifle innovation. For example, providers who have access to detailed client data may offer personalised robo-advice proactively and requiring active confirmation will restrict this solution.

Other members envisage solutions that can easily accommodate active confirmation as part of the solution. However, we note that this is not currently required to provide other forms of advice. We question imposing this higher standard when the general consensus is that regulation should be technology neutral.

Question 20: 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.

We generally support the proposed conduct obligations.

In addition, the proposed exemption should be structured, as far as practicable, in a way that enables a smooth transition to the full licensing regime under the eventual law reforms.

Question 21: 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.

We would support the following Code Standards being reflected in the conditions:

- **Code Standard 1**
We would support inclusion of a requirement to act with integrity as this supports the professionalism of the wider financial services industry. For robo-advice, this applies to designing tools and algorithms.
- **Code Standard 6**
Depending on where the disclosure condition lands, it may be useful to include a “clear, concise and effective” requirement in relation to wider communications.
- **Code Standard 13**
The proposed record-keeping condition does not achieve the same thing as the requirement to keep records for a minimum of 7 years.
- **Code Standard 15**
Robo-advice providers must have a knowledge of the Act, the class exemption, and other legal obligations relevant to operating the robo-advice platform.
- **Code Standard 17**
Just as an AFA must continue his or her education to provide appropriate advice, robo-advice platforms should be regularly reviewed to ensure that they remain fit-for-purpose as products and client needs change.
- **Standard Condition 2**
We submit that the FMA should require providers who rely on the exemption to report specific data periodically. The FMA can use these data for risk-based monitoring.

Question 22: 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.

See response to question 21.

Question 23: 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.

No, we generally do not support conditions based on proportionality of size and scale. We submit the conditions should be applied proportionate to the risk and complexity of the advice provided.

Question 24: Are there any other limits or conditions you think would be appropriate to put in place?

Yes.

The FMA should have a mechanism to test the integrity of any robo-advice system at any time. If the robo-advice solution has a consumer log-on, providers should be required to provide a free test login to the FMA.
FSC - Review of the FMA’s Consultation Paper: Proposed exemption to facilitate personalised robo-advice. July 2017

The FMA could use the tool and determine whether it meets the other conditions of the class exemption appropriately.

The FMA could also consider self-audits as a necessary requirement to ensure the on-going integrity of each robo-advice system.

Question 25: 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?

Yes, we would find it helpful if the FMA provided an information sheet explaining the exemption notice and providing guidance on how to comply with it.

We also believe that other members of the industry, including the advisers who advise on our products, would find the information sheet helpful.

Question 26: Would you like to see a list of providers relying on the exemption, if granted, on our website? If not, why not?

Yes, we would support a list of providers who rely on the exemption on the FMA website.

The FMA should also require robo-advice providers to register on the FSPR.

Question 27: 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'?

We are ambivalent on this point and have no comment. The definition of any term used should be sufficiently flexible to accommodate further technological change.

Question 28: Do you have any other feedback or comments?

We have no further comments.



FINANCIAL SERVICES FEDERATION

19 July 2017

By email: consultation@fma.govt.nz

Consultation Paper: Proposed exemption to facilitate personalised robo-advice

Thank you for the opportunity to comment on the Consultation Paper. By way of background, the Financial Services Federation (“FSF”) is the industry body for the responsible and ethical finance and leasing providers of New Zealand. We have over fifty five members and associates providing financing, leasing, and credit-related insurance products to more than 2 million New Zealanders. Our affiliate members include internationally recognised legal and consulting partners. A list of our members is attached as Appendix A.

The FSF’s comments in relation to the Consultation Paper are made on the basis of our strong belief that consumer credit and credit-related insurance providers should be exempted from the scope of the new financial advice legislation. This is because any “advice” provided to consumers by such providers is regulated by the provisions of the Credit Contracts and Consumer Finance Act (“CCCFA”) and in particular the Lender Responsibility Principles contained within that Act and the further guidance provided to consumer credit and credit-related insurance providers as to how to meet their obligations under these Principles that is contained in the Responsible Lending Code.

You will be aware that under the current Financial Advisers Act (“FAA”), consumer credit contracts are included as a Category 2 financial services product. The FSF contends that this may well have been appropriate at the time the FAA was enacted but since the amendments to the CCCFA and the introduction of the Lender Responsibility Principles which came into force in June 2015, the FSF believes that consumer credit contract and credit-related insurance providers are effectively double-regulated.

This has created an anomaly for responsible consumer credit contract and credit-related insurance providers in that they have voluntarily accepted that they may be providing “advice” to clients around these products and have therefore complied with the requirements of the FAA (either by becoming a QFE or registering individual customer-facing staff). Many other providers of such products have deemed that they just present their products to consumers but do not provide “advice” as to their suitability or otherwise and have therefore chosen not to do anything to comply with the provisions of the FAA.

To the FSF’s best knowledge no consumer credit contract or credit-related insurance provider has faced any penalty for failing to comply with the provisions of the FAA.

The FSF is therefore sincerely hoping that when the Financial Services Legislation Amendment Bill (referred to below as “the Bill”) is introduced to the House, commonsense will have prevailed and it will be made clear the provision of consumer credit contracts and credit-related insurances will be exempted from its scope. All further comment with regard to the Consultation Paper is predicated on that basis.

In the meantime however, the FSF would like to congratulate the Financial Markets Authority for considering the implications of providing financial advice through digital channels and to the extent that FSF members are currently within the scope of the FAA and for so long as they are, the proposal to provide this exemption to allow them to “advise” digitally is very welcome. This is an issue that FSF members have been grappling with to ensure that they meet their Lender Responsibility Principle obligations to consumers and it is pleasing to see that a regulator is prepared to assist providers with this by understanding the rapid growth in demand from consumers to be able to access financial products by digital means.

1. 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.

The FSF absolutely supports the proposed exemption from the requirement for personalised advice to retail clients to be provided by a natural person, particularly for the provision of any “advice” associated with the provision of consumer credit contracts and credit-related insurance products. In the experience of FSF members demand for digital access to consumer credit contracts and credit-related insurance products, whether this be via PCs, tablets or mobile apps, is increasing exponentially and it is essential that the law keeps up with this demand to ensure adequate consumer protection (without stifling innovation).

In the FSF’s opinion, the key areas where advice is provided to consumers in the provision of consumer credit contracts and credit-related insurance products relate to the obligations arising out of the following Lender Responsibility Principles of the CCCFA:

- Ensuring the credit or finance provided under the agreement will meet the borrower’s requirements and objectives (LRP 3);
- Ensuring the borrower will make the payments under the agreement without suffering substantial hardship (LRP 3);
- Ensuring the borrower is assisted to reach an informed decision as to whether or not to enter into the agreement and to be reasonably aware of the full implications of entering into the agreement (LRP 3);
- Ensuring the borrower is assisted to reach informed decisions in all subsequent dealings in relation to the agreement (LRP 3);
- Ensuring all Lender Responsibility Principles are met in relation to any guarantor of the loan (LRP 4);

- Ensuring that the insurance provided under the contract will meet the borrower's requirements and objectives (LRP 5);
- Ensuring the borrower will make the payments under the insurance contract without suffering substantial hardship (LRP 5); and
- Ensuring the borrower is assisted to reach an informed decision as to whether or not to enter into the insurance contract and that they are reasonably aware of the full implications of entering into the contract (LRP 5).

The FSF believes it is possible for responsible lenders and credit-related insurance providers to meet most of these Lender Responsibility Principles in a digital environment. The most problematic issue in the opinion of FSF members is in ensuring the consumer has reached an informed decision as to whether or not to enter into either the consumer credit contract or the credit-related insurance contract and that they are reasonably aware of the full implications of doing so.

However that is a matter that must necessarily be addressed in the context of the CCCFA by those responsible for its administration, rather than by the FMA, and to the extent that its members are subject to the FAA the FSF is broadly comfortable with the proposed Exemption and its likely scope, except where explicitly stated otherwise below.

2. 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.

The FSF believes it is entirely appropriate for the FMA to use their exemption powers to facilitate the provision of personalised robo-advice in advance of the law reform. As the Consultation Paper rightly points out the FAA did not contemplate robo-advice at the time it was passed but the reality is that demand from the public to be able to access financial advice and products digitally is growing more and more strongly. The Consultation Paper also notes that the proposed reforms will not come into effect until 2019 assuming that the new law is passed in the expected timeframes.

It should be noted that, at the time of writing, this submission, the Bill has not yet had its first reading in the House and that the longer this is delayed the less likely it is that this will occur before the House rises for the General Election in September – this will only further delay the process. In the meantime, providers and advisers are looking to innovate and meet public demand.

Further the FSF points out that it is already possible for consumers to access financial services products and advice through on-line channels. Most notably for some general and personal insurance products and credit contracts. These are more often than not being provided by companies who would wish to be compliant and apply appropriate consumer protections but, because no guidance exists as to how they might achieve this, might inadvertently not meet

their obligations. It would seem better for an exemption to be put in place with appropriate limits and conditions rather than having nothing as is currently the case.

3. 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.

For the reasons the FSF has already outlined in the answers to questions 1 and 2 above, not allowing for the provision of robo-advice is not really an option. The need is for advisers, product providers and regulators to move with the times and facilitate the provision of access to financial products and advice in an on-line environment now with the appropriate consumer protections in place.

However the FSF does recognize that under section 148(2) the FMA must be satisfied of those 2 points, and in that regard the FSF submits –

- The FMA can readily conclude that the costs involved for robo-advice providers to comply fully with the “natural person” requirement of the FAA would be unreasonable; and
- The FMA can also readily form the view that those costs would not be justified by the benefit of compliance with that “natural person” requirement.

There are also other benefits to consumers of having access to robo-advice. These include increased competition and convenience.

4. 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.

The FSF supports the proposed approach of granting a class exemption. This would seem the most sensible approach given the limits of time and the need for regulation to keep pace with the ways in which consumers are demanding to have access to financial advice and products. The key to ensuring this works in a consumer protection sense would be in the limits and conditions placed on the provision of such a service.

5. 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).

The FSF believes that this exemption if granted would most importantly facilitate the provision of advice and products through digital channels to meet consumer demand whilst also

providing the necessary consumer protections. The FSF also suggests that the provision of advice in such a way may well make it easier for consumers to access advice efficiently, in that the cost to deliver in this way should be less than through a human-to-human interaction (as already noted at Q3 above).

There is of course still a cost to providers in developing the appropriate systems and channels to be able to provide advice digitally and this development cost would, over time, be passed on to consumers, but as just noted in this context that cost is justifiable in the interests of efficiency, as it is likely to be less than what might be involved in complying with the “natural person” requirement of the FAA.

6. 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.

The FSF believes there would be two significant impacts if no exemption is granted. The first of these would be that there might be providers who would not proceed with a digital offering until the Bill has been enacted, thereby delaying consumer access to digital advice and services. This could then have the potential for consumers to not access any advice which is likely to be harmful to them achieving their financial goals.

The second impact would be that providers will continue to offer services and advice via on-line channels but without the consumer protections that would be built into the limits and conditions that are proposed for the Exemption. This is not to say that providers who currently have an on-line offering for their products and services are presently trying to avoid any related compliance obligations towards consumers, but rather that these have never been articulated as clearly as is now proposed, and the FSF sees the proposed exemption as one very good way to remedy that by making those matters more clear.

7. 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?

The FSF believes that there have been sufficient studies of the way in which consumers in New Zealand access financial advice and/or the uptake of accessing such advice to suggest that there is indeed an advice gap where consumers are not able to access financial advice. The studies into the levels of New Zealanders’ under-insurance would be an example. It is also true that there are insufficient “natural person” advisers available to meet all the needs of New Zealand consumers.

A further point is that the cost of accessing financial advice through an AFA or other human adviser makes such access unaffordable for many New Zealanders. This means that people

who access advice on a person-to-person basis tend to be those with lump sum amounts of money to invest rather than those people starting out to build their nest eggs.

The FSF has not considered the approximate balance a consumer would need for a provider to be willing to provide advice to them, rather the FSF has always approached the question of whether advice or products could or should be provided digitally from the point of view of consumers accessing consumer credit contracts or credit-related insurances.

8. (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.

The FSF refers to the opening remarks made in this submission about its strongly-held belief that the provision of consumer credit contracts and credit-related insurances should not come within the scope of the FAA financial advisers' regime at all. If that became an outcome of the FAA law reforms begun by the Bill, such providers would not then come within the enforcement remit of the FMA. The regulator for consumer credit contracts and credit-related insurances is now the Commerce Commission and if the outcome of the Bill was that these products were removed from the scope of the FAA then it would be made entirely clear that there was no cross-regulation between the Commission and the FMA.

On the basis, however, that no guidance currently exists as to how consumer credit contract and credit-related insurance providers might meet their obligations under the FAA in an on-line setting, the FSF and its members support the proposed Exemption and believes that it can be as easily applied to consumer credit provision as to any other type of financial robo-advice.

It is likely therefore that FSF members would want to rely on the proposed exemptions. Even more so if the Bill ultimately does not deliver the sensible solution which we are seeking from it.

At this stage some FSF members already offer their customers the facility to interact with them and obtain their products digitally. Others are keen to be able to do so but have been put off from doing so by the fact that no clarification exists as to how they might meet their FAA obligations in an on-line setting. The proposed exemption with its proposed limits and conditions would provide such clarification and therefore the numbers of providers offering robo-advice in the consumer credit contract and credit-related insurance space could well increase.

9. Do the proposed limits and conditions strike an appropriate balance between consumer protection and promoting innovation? Please give reasons for your view.

The FSF generally agrees with the proposed limits and conditions of the Exemption as described in the Consultation Paper. However implementing dollar limits such as is suggested for the sum insured, an individual client investment limit or on total investment amount of product seems somewhat arbitrary and the FSF suggests that if the advice provided is fulfilling the customer's need and is appropriate advice with the correct disclosures being provided then such limits could be counter-productive (in that the customer might not receive advice adequate for their need).

10. 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?

The FSF does not believe the limits or conditions in the Consultation Paper are likely to make a personalised robo-advice service unworkable for consumer credit contract and credit-related insurance providers. On the contrary the limits and conditions seem entirely workable and the FMA is to be applauded for the work they have done on developing these so far.

One suggestion is that under proposed condition (i) "Complaints", mention should also be made that the provider should refer to the external disputes resolution service to which they belong as another means to resolve complaints.

11. 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.

Other than that the FSF fully supports the application of the exemption to the provision of personalised robo-advice in regard to consumer credit contracts and credit-related insurances, we have no further comment to make as investment planning services and DIMS are beyond the expertise of the FSF and its members.

12. 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.

The FSF refers to the answer provided to question 9 above with regard to this question.

13. 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.

The FSF is certainly of the view that personal insurance products should be included in the eligible product list so as to benefit from the Exemption. However the FSF is concerned that what is and isn't within the scope of "personal insurance products" lacks clarity, in particular in relation to credit-related insurances, such as payment protection insurances (or "PPI").

To explain, on page 7 the Consultation Paper says the Exemption might relate to "General insurance products" and gives as examples of such products "home, contents, vehicle". It is not clear that that would include credit-related insurances, but the FSF notes that on page 8 the Consultation Paper raises the question whether the Exemption should also apply to "personal insurance products - such as life, health, income protection". It is not clear to the FSF if the reference to "income protection" policies is intended to include PPI – the FSF expects so, as PPI can be seen as a type of income protection, but that should be clarified, and income protection and PPI policies should definitely benefit from an Exemption of the kind proposed – they are well understood products that are within the scope of the FAA and there is no reason to treat them differently from the other general or personal insurance products referred to.

In respect of these matters the FSF accordingly submits –

- It agrees that personal insurance products such as such as life, health, income protection should be included in the eligible product list so as to benefit from the Exemption;
- It should be made clear that the personal insurance products intended to benefit from the Exemption also include "consumer credit insurance" as defined in the CCCFA.

This question also raises whether the Exemption should be limited to products where the sum insured would not exceed \$100,000 per product, or where the duration is one year or less. In respect of the first of those matters, the FSF questions why such a limit would be placed on the sale of the relevant insurance products by digital means. Surely the question should be how much insurance individuals need to cover their risks. A limit of \$100,000 could be well short of the amount of insurance cover required to cover such risks, it is quite possible that a PPI policy in respect of say a luxury car loan for example might involve amounts greater than \$100,000 and such policies should be covered just like any other consumer credit insurance.

Similarly, many loans are generally for terms much longer than the one year maximum term mentioned in the question: a typical vehicle loan might be 36 months - or longer - for example. The FSF would accordingly submit that the scope of the Exemption should definitely not be limited to products having a duration of one year or less, and nor should it be limited to any greater term.

What should be most important in the provision of any kind of financial advice whether it be by digital means or face-to-face is that consumers receive advice appropriate to meet their needs.

In the case of personal insurance products, the provision of on-line calculators to assist consumers to consider the risks they face and how much cover they might need to mitigate would seem to be a simple matter for providers of such products, and it would be unwise to limit the scope of the Exemption to personal insurance products by reference to amount or duration, as doing so would in the FSF's opinion would actually limit the effectiveness of the Exemption as it would mean that some insurers' products would be subject to the Exemption but others might not, a situation which would clearly not be feasible for the relevant product providers.

14. 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.

The FSF does not support the Exemption placing a value cap and/or duration limit on some or all of the other proposed eligible products that are relevant to its members (being consumer credit and consumer credit insurances in particular) for the reasons that have just been given in response to Question 13, above.

The FSF submits that what is instead most important is the quality of the advice being provided to consumers and that this holds true whether the advice is being provided in an on-line context or by a face-to-face interview. Placing limits around the extent of the products available on-line could well be detrimental to the key goal which should surely be the meeting of consumer needs.

15. 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.

FSF members are either consumer credit contract or credit-related insurance providers and are therefore not providing investment advice to clients. A very small number of FSF members are Non-Bank Deposit Takers who are subject to a great deal of other legislation governing how they interact with their depositors apart from the FAA but who do not actually "advise" their customers as to whether or not to invest with them. On this basis, the FSF does not have an opinion on whether or not individual client investment limits should be imposed but would also refer to the answer provided to question 14 above.

16. 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.

The FSF refers you to the answer provided to question 15 above.

17. 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?

The FSF accepts that it might be appropriate for such a status disclosure statement to be prescribed by the FMA.

18. 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?

The FSF submits that some prescription around what should be included in a disclosure statement could be helpful to providers. The points covered in the Disclosure section of the Consultation Paper are a good start in providing some guidance to providers as to what should be covered by such disclosure.

However the FSF would suggest caution in respect of the extent of such prescribed disclosures, in case the amount of prescribed disclosure material in respect of consumer credit in particular becomes too great to be useful. Providers of consumer credit in particular are already subject to extensive disclosure obligations under both the CCCFA and the FAA, and in some cases meet both requirements in the same place, sometimes in documentation and sometimes on websites. Adding further mandatory words (in this case, most likely to websites) may actually serve to detract from clarity, by adding to the amount of disclosures already required.

The FSF agrees with the assertion in the Consultation Paper that providers need to think beyond a “tick box” approach but would welcome collaboration with other providers and regulators to define a more workable solution to this problem.

19. 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.

The FSF submits that it would seem reasonable to do so.

20. 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.

The FSF refers to the comments made in the introduction to this submission with regard to the current anomaly that exists for the providers of consumer credit contracts and credit-related insurance products with the lack of clarity as to whether or not they are actually providing “advice” to consumers and are therefore subject to the provisions of the current FAA. If, as the FSF believes is the sensible outcome, it is made clear in the Bill that providers of consumer credit contracts and credit-related insurance products are exempt from its scope by virtue of the fact that the “advice” they provide to consumers is regulated by the provisions of the CCCFA, then the proposed conduct obligations in the Consultation Paper would not apply to them.

It should be noted that, if such providers are currently subject to the provisions of the FAA, they are not just being double-regulated by two separate and competing pieces of legislation, they are also subject to two separate and competing Codes. The FSF is naturally very keen to see this anomaly dealt with by providing clarity that the Responsible Lending Code applies to these providers, not the FAA and any financial advisers’ code. The FSF accepts however that the appropriate place for that to be effected is in the Bill.

21. 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.

The FSF believes that for providers of consumer credit contracts and credit-related insurance products, the only conduct obligations that should apply are the Lender Responsibility Principles of the CCCFA as amplified by the Responsible Lending Code, and that they should apply in place of the FAA. As above, the FSF does however accept that the appropriate place for that to occur is in the Bill.

22. 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.

The FSF refers to the comments made in response to question 20 above with regard to the fact that providers of consumer credit contracts and credit-related insurance products are subject to the Lender Responsibility Principles of the CCCFA and the Responsible Lending Code when providing “advice” to their customers.

FSF members do not have any AFAs amongst their staff.

23. 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.

The FSF submits that the conditions should be applied in a manner that is proportionate to the size and scale of the robo-advice service offered provided that in so doing, appropriate consumer protections remain in place. It would seem reasonable for the conditions to be proportionate to the potential damage to the consumer of bad advice.

24. Are there any other limits or conditions you think would be appropriate to put in place?

The FSF cannot suggest any other limits or conditions that would be appropriate to put in place.

25. 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?

FSF members would find such an information sheet to be helpful.

26. Would you like to see a list of providers relying on the exemption, if granted, on our website? If not, why not?

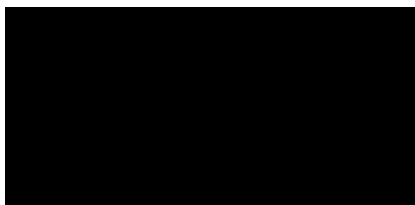
The FSF thinks it is not necessary to publish a list of providers relying on the Exemption on the FMA website. Amongst other things it would probably be a very long list, and it would not be necessary in any case if the disclosures already addressed above required providers to mention their reliance on the Exemption.

27. 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”?

The FSF does not have a strong opinion as to which term is used. “Robo-advice” has become the accepted term to describe the delivery of financial advice on-line amongst the adviser community but believes it is likely that other terms such as “digital advice” or “automated advice” might resonate more strongly with consumers.

28. Do you have any other feedback or comments?

Other than to say thank you once again to the FMA for the opinion to submit on the Consultation Paper and congratulations for having started the conversation and opened up the possibility of an exemption to allow for robo-advice, the FSF has nothing further to add to what has already been said in this submission. However please do not hesitate to contact the FSF if the opinion of the FSF or its members would be of any further value in this process.



Feedback form: Proposed exemption to facilitate personalised robo-advice

Please submit this feedback form electronically in both PDF and MS Word formats and email it to us at consultation@fma.govt.nz with 'Proposed exemption to facilitate personalised robo-advice: [your organisation's name]' in the subject line. Thank you.

Submissions close on 19 July 2017.

Date: 19 July 2017

Number of pages: 6

Name of submitter: [REDACTED]

Company or entity: Fisher Funds Management Ltd

Organisation type: Financial Services Provider, FSP38581

Contact name (if different):

Contact email and phone: [REDACTED] [REDACTED]

Question or
paragraph number

Response

You don't need to quote from the consultation document if you note the paragraph or question number.

See enclosed pages 2 to 6 for our answers.

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.

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.

Fisher Funds supports the proposed exemption from the requirement for personalised advice to retail clients to be provided by a natural person. Robo-advice has the potential to offer numerous benefits to both retail clients and providers:

- Clients will pay less for advice through automated tools, if anything at all, as most providers offer it as a low cost alternative to human advice
- A wider range of clients will have access to advice through automated tools than otherwise would be the case. For example, clients that may not normally contact a human adviser to obtain financial advice because they may feel that they are not wealthy enough to consult a financial adviser might feel more confident using digital advice tools
- Clients may find it more accessible than advice provided by a person because digital advice services are available online 24 hours a day, 7 days a week. For example, online tools may present information in a digestible way and it usually takes only a few moments after a client has submitted their information before the advice is obtained as a result of the underlying algorithms
- A well-developed algorithm may be more consistently accurate than the human brain at complex, repeatable and regular processes, and in making predictions. Digital advice tools could therefore reduce some elements of behavioural biases, human error or poor judgement that may exist when advice is provided by a human. A well-developed algorithm could ensure equal and similar advice to all investors with similar characteristics, which might improve the consistency of advice provided
- Digital advice tools may also enable clients to receive advice without feeling pressured or led as a result of personal relationships.

Providers should be able to use digital advice to make advice more accessible to their clients, lower the cost of providing advice and use automated advice tools to deliver a consistent client experience. Providers should also be able to more easily review and monitor their advice as well as maintain records of the advice process.

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.

Given the advancements of technology in recent years and the benefits of robo-advice offering, we support your proposal to enable robo-advice to take place ahead of the scheduled law reform in 2019.

The material benefits of robo-advice which are currently enjoyed by clients in other overseas jurisdictions would not be enabled in New Zealand until 2019 so we think it is appropriate for the FMA to consider using exemption powers to facilitate the provision of personalised robo-advice in advance of the law reform. An exemption of this nature is in the best interests of all New Zealanders.

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.

Fisher Funds thinks that costs for robo-advice providers to comply with the 'natural person' requirement would be unreasonable. This is supported by the current lack of personalised robo-advice offerings in the New Zealand market. If a provider designed a process that complied with the 'natural person' requirement, the costs to make this scalable would be uneconomical.

The costs would not be justified by the benefit of compliance since many of the checks conducted by a human adviser could just as easily be satisfied by digital means, arguably with more accuracy (notwithstanding more complex advice which required human input).

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.

Fisher Funds supports the proposed approach of granting a class exemption to ensure a consistent method of regulating the exemption and monitoring all providers who adopt it. A class exemption will also assist in advancing robo-advice offerings in New Zealand in the same direction, which should facilitate continuous improvement and innovation for the benefit of all New Zealanders.

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).

This exemption, if granted, would be the catalyst to launching personalised robo-advice offerings in New Zealand ahead of the law reform in 2019. While this presents numerous benefits to all stakeholders, the risk in doing so is that the regulatory regime for robo-advice providers may not be established in time or to the extent required to ensure consumer protection.

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.

If no exemption was granted, it would stifle innovation in the robo-advice space for the time being and set New Zealand back even further when compared with the rest of the world. In the meantime reduced access to advice would continue.

If the status quo remains, we are likely to deploy a class robo-advice model ahead of the law reform.

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?

We agree there is an advice gap and believe it exists for a couple of reasons:

- Clients are not engaged enough to seek advice (e.g. they're under-informed or simply not interested; don't understand the value of advice; balances aren't significant enough to warrant taking an active interest; their provider is not engaging them enough, which could be due to a lack of contact details, etc.); and
- Clients are not willing to pay for advice or advice is not offered free of charge.

While most providers offer non-personalised advice (class advice) free of charge to their clients to assist them in making their own decisions, they tend to charge or have thresholds for providing personalised advice.

Personalised advice is more time consuming (for both clients and providers) and resource intensive than non-personalised advice, which lends itself to being provided to clients with large existing balances or investment amounts in order for it to be economically viable. At the same time, clients with larger investment amounts tend to be more engaged and willing to pay for advice.

Advice provided by an AFA includes not just the initial engagement, but ongoing maintenance (e.g. rebalancing) and annual reviews. We believe the approximate amount a consumer would need for an AFA to provide advice to them is \$300,000.

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.

Fisher Funds intends to rely on the proposed exemption because it would open up an additional channel to engage with our clients and make our advice to them more accessible. We are currently in the planning stages and would expect to launch a personalised robo-advice service by mid to late 2018. The advice provided would be centred on KiwiSaver and managed funds clients.

Q9. Do the proposed limits and conditions strike an appropriate balance between consumer protection and promoting innovation? Please give reasons for your view.

Fisher Funds appreciates the need for consumer protection and is aligned with the notion of limits and conditions being imposed on providers during the exemption period, but not once the law reform eventually takes place. At the same time, we do not believe that the proposed limits strike an appropriate balance.

Individual client investment limit

We think an advice limit of \$100,000 is too low a threshold. What's more important is that the robo-advice service can filter out clients for whom the advice being offered is not appropriate, or who want advice on a topic outside of the scope of advice being offered. If imposing a limit is necessary as a condition to granting the exemption, we would support a limit of \$300,000.

Limit on total investment amount of products

Similarly, a limit of \$5m is too low in our opinion and would likely render the exemption ineffective as far as making advice more accessible. With an average KiwiSaver balance of \$15,000, a limit of \$5m would capture 333 clients. If we assume that all KiwiSaver providers would offer a robo-advice service, plus a number of new entrants (say 30 to 45 providers), we are looking at between 10,000 and 15,000 clients being able to receive such advice.

Not only would this restrict access to advice but such a limit would deter providers from launching a personalised robo-advice service given the set up and ongoing monitoring costs needed.

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.

See our answer to question 9 in relation to the limit on total investment amount of products.

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.

The regulatory regime for personalised robo-advice will require learnings on the part of the FMA and the temporary solution proposed here provides an opportunity for that to occur. With that in mind, Fisher Funds thinks it would be prudent to limit the exemption to financial advice only.

We agree that DIMS should not be covered by the exemption.

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.

Yes, we agree.

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.

N/A

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.

N/A

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.

See our answer to question 9.

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.

See our answer to question 9. If there is a limit to be provided, it should take into account a provider's existing client base and funds under management.

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?

We believe you should prescribe a short statement to this effect.

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?

While a prescribed form of disclosure ensures that key warnings can be conveyed effectively, prescribed statements are likely to need tailoring where they would otherwise be inaccurate or misleading. Clear guidance on what constitutes sufficient disclosure should be sufficient for providers 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.

Yes, it is important that a client can make an informed decision about whether to proceed with robo-advice.

Fisher Funds also believes that a provider should confirm with a client that all of their relevant circumstances are up to date and accurate and that the client is ready to proceed with receiving financial advice before finalising the advice and generating a recommendation.

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.

We agree with the proposed conduct obligations and that personalised robo-advice should be delivered in a manner that is consistent with the principles of the Code.

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.

N/A

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.

N/A

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.

There should be a minimum level of conditions imposed on all providers in order to ensure all consumers are protected. Over and above that, conditions should be applied in a manner that is related to the scope of the service provided. For example, a robo-advice service focusing on KiwiSaver is likely to require fewer conditions than a service which encapsulates KiwiSaver, other investments and insurance.

Q24. Are there any other limits or conditions you think would be appropriate to put in place?

We believe that inconsistent answers by clients should require providers to make further inquiries before allowing a client to continue to use the service. The provider can offer an opportunity for the client to change their input, contact the client to clarify their inconsistent responses or filter the client out of the service.

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?

Yes, we would find this helpful.

Q26. Would you like to see a list of providers relying on the exemption, if granted, on our website? If not, why not?

Yes, this keeps it consistent with existing registers of licensed providers of other services.

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'?

While robo-advice is a term that has garnered the most attention internationally, it does place a limitation on 'hybrid' offerings involving a human advisor. This is the model which has garnered most success internationally and the term 'robo-advice' may be considered misleading with 'robo' implying the opposite of a human. Fisher Funds supports the term 'digital advice'.

Q28. Do you have any other feedback or comments?

While diligent regulation of robo-advice will be critical to its success, Fisher Funds thinks it's important not to set a higher bar for automated advice than for human advisers. The standard against which robo-advice should be compared is that of humans, whom we know are not perfect. A large body of research in diverse fields demonstrates that even simple algorithms regularly outperform humans in the kinds of tasks that robo-advice would perform. Although it may be appropriate to hold robo-advice offerings to a super human standard someday, their market share is likely to be insignificant in the coming years meaning the risk of scale will take some time to be formed.

It's important that as regulators here and around the world are learning how to regulate robo-advice providers, that providers themselves are given an opportunity to learn and evolve their offerings. The FMA initiative to grant this exemption is a step in the right direction.

Feedback form: Proposed exemption to facilitate personalised robo-advice

Please submit this feedback form electronically in both PDF and MS Word formats and email it to us at consultation@fma.govt.nz with 'Proposed exemption to facilitate personalised robo-advice: [your organisation's name]' in the subject line. Thank you.

Submissions close on 19 July 2017.

Date: 19 July 2017

Number of pages: 5

Name of submitter: [REDACTED]

Company or entity: FNZ

Organisation type: Custodian

Contact name (if different):

Contact email and phone: [REDACTED] [REDACTED]

	Response
Q1-28	Comments attached

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.

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.

FNZ supports the proposed exemption to allow the implementation of personalised robo-advice. This is an important evolution for New Zealand financial services industry. Robo-advice will increase the channels of accessibility for potential participants of the New Zealand financial market.

FNZ has further comment on the appropriateness of the proposed limits and conditions set out in questions 9 to 24.

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.

FNZ supports the FMA using exemption powers to facilitate the provision of robo-advice in advance of law reform. This is a clear case of an important financial markets evolution occurring in a way and at a pace that is inconvenient from a legislation timetable perspective. FNZ sees FMAs powers of exemption as at least partly an acknowledgement that this type of situation may arise, and supports FMAs proposed use of them in this context.

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.

Complying with the natural person requirement in providing an automated advice setting is inefficient and unreasonable. The very nature of robo-advice is to remove points of human intervention and therefore decreasing the costs and barriers associated with the service delivery. Enforcing a 'natural person' requirement would not be justified in this context, and we further note that advice implemented via technology has compliance advantages over a natural person when considered in a general sense.

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.

FNZ supports the class exemption approach over numerous individual exemptions. The scope for unfairness and unintended consequences increases if individual exemptions are granted on a case by case basis and subject to specific conditions applicable only to the applicant. If a class exemption is granted with standard conditions, all market participants could choose whether to compete equally in this market, and business cases can be produced with greater accuracy and certainty.

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).

Should the exemption be granted there will be large impact on the accessibility of financial advice for participants in New Zealand's retail wealth markets.

Lower cost service channels will increase accessibility for consumers, particularly for those at the lower end of the customer economic continuum who are currently largely unserved by the advice industry.

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.

FNZ view is that without an exemption there is a gap in capability between NZ and other advanced financial markets who allow robo-advice. Without an exemption the speed of technological advancement will be slowed.

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?

Yes there is currently an advice gap for consumers which is driven by the lack of scalability of the existing personalised model.

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.

No Comment

Exception 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.

No FNZ's view is that the proposed limits do not strike the appropriate balance between consumer protection and innovation.

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.

No comment

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.

No comment

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.

See above.

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.

No comment

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.

No limits should be imposed. Any limits are only going to limit the scalability of any business so in turn costs will not decrease so accessibility not promoted.

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.

See question 14

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.

See question 14

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?

Yes – prescribed form will ensure better compliance by industry.

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?

Yes – prescribed form will ensure better compliance by industry.

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.

Yes FNZ supports this requirement.

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.

Yes FNZ agrees with proposed conduct obligations.

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.

No comment

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.

No comment

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.

No the conditions should be applied in a standard manner across those offering the service.

Q24. Are there any other limits or conditions you think would be appropriate to put in place?

No comment

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?

Yes guidance should be issued to aid better compliance.

Q26. Would you like to see a list of providers relying on the exemption, if granted, on our website? If not, why not?

Yes

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'?

No comment.

Q28. Do you have any other feedback or comments?

No



Submission to Financial Markets Authority on the consultation paper: Proposed exemption to facilitate personalised robo-advice

19 July 2017

Summary

- HFANZ supports the proposed exemption to facilitate personalised robo-advice;
- HFANZ supports the exemption applying to health insurance products as a class;
- HFANZ generally supports the proposed exemption conditions and conduct obligations.

Background

The Health Funds Association of NZ (HFANZ) appreciates the opportunity to make a submission on the consultation paper: Proposed exemption to facilitate personalised robo-advice.

HFANZ is the industry body representing health insurers. Members include friendly societies, mutual, and subsidiaries of public companies. HFANZ's eight members together account for over 80% of lives covered by PHI in New Zealand. It is noted that individual HFANZ members may be making their own submissions on the issues paper, and these may differ in some aspects from the general position in this submission.

A list of HFANZ full members is attached as an appendix to this submission.

HFANZ submission

This submission relates primarily to the issue of application of the proposed exemption to personal insurance products. HFANZ supports the exemption for advice relating to personal insurance products, including health insurance.

Specifying class and/or criteria

HFANZ agrees with the statement in the consultation paper that placing a value cap or duration limit may not be necessary as these products are easy to exit. Our preference is to simply specify the classes of personal insurance products to be included in the exemption, and that these should include health insurance.

The proposed criteria set out in the consultation paper are noted:

- 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.

By the use of the word 'or', the proposed criteria suggest personal insurance products need only meet one of the three. However the discussion suggests consideration is being given to either a value cap or duration limit.

In relation to the suggested criteria, it is considered that most health insurance products in the market today meet at least two legs of the three suggested criteria, with many meeting all three:

- Health insurance is typically an annual contract, renewable on the policy anniversary;
- Health insurance contracts can be easily cancelled;
- While some health insurance policies prescribe limits on maximum claims under \$100,000, it is more typical to find higher limits than this applying today – such as for surgical maximums, cancer treatments, and cover for high cost drugs not funded by Pharmac.

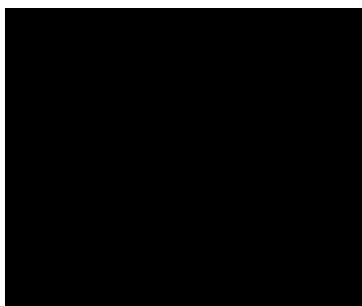
HFANZ would be concerned if an arbitrary dollar limit was adopted as a cut-off point *in addition to* the other criteria. Our interpretation of the proposed criteria – being an either or set of criteria – means health insurance products with maximum cover in excess of \$100,000 would still be exempted under the other criteria.

It would not be desirable to have a situation where some health insurance products were 'in' and other similar health insurance products were 'out' by virtue of whether the maximum claim falls either side of some specified dollar figure. This could influence the nature of any robo-advice, and might also unwittingly influence product design.

Other matters

HFANZ generally supports the proposed exemption conditions and conduct obligations, although we make no detailed comment on these.

Thank you for the opportunity to make a submission. I am happy to provide such further comment or clarification as may be required.



Appendix: HFANZ full members

The following insurers are full members of HFANZ:

- Health Service Welfare Society Limited
- AIA International Limited
- Education Benevolent Society Incorporated
- Manchester Unity Friendly Society
- Police Health Plan Limited
- Southern Cross Medical Care Society
- Sovereign Assurance Company Limited
- Union Medical Benefits Society Limited

Feedback form: Proposed exemption to facilitate personalised robo-advice

Please submit this feedback form electronically in both PDF and MS Word formats and email it to us at consultation@fma.govt.nz with 'Proposed exemption to facilitate personalised robo-advice: [your organisation's name]' in the subject line. Thank you.

Submissions close on 19 July 2017.

Date: 19 July 2017 Number of pages: 6

Name of submitter: [REDACTED]

Company or entity: Illumony Ltd

Organisation type: Company

Contact name (if different):

Contact email and phone: [REDACTED] [REDACTED]

Question or paragraph number	Response
<i>You don't need to quote from the consultation document if you note the paragraph or question number.</i>	
Q1	<i>Yes. We believe that global examples of robo-advice companies have shown that robo-advice can fulfill an important aspect in helping investors in lower value products obtain financial advice where they were previously not able to access such advice. Although class advice can be provided under current law, the nature of class advice is very restrictive and from our experience the real value to customers lies in personalized advice.</i>
Q2	<i>Yes we support using exemption powers to facilitate the provision of personalized financial advice. Global markets are adopting technology at a rapid pace, and customers globally are benefiting from the greater access and lower fees that this technology is enabling. Due to legislation New Zealand consumers have already missed out years or technological advances in financial markets. If New Zealand were to wait until the law reform, consumers here would be further disadvantaged for a longer period of time. It seems in the consumers best interest for the FMA to use their exemption powers to facilitate personalized financial advice, which should help to close the advice gap that has already been identified by the FMA.</i>
Q3	<i>Yes we believe the costs for robo-advice companies to comply with the natural person requirement would be un-reasonable if no exemption were provided. We are a robo-advice company that is currently in operation. We provide online class advice on KiwiSaver, and personalized advice is available via an AFA for clients who prefer this option. The customer is charged an additional fixed fee that reflects the time involvement of the adviser. The whole robo-model is built around a low fee structure, as the online model cuts out a significant proportion of the costs involved in the traditional financial adviser model. This lower cost allows those customers with low value products to obtain advice where they would not otherwise be able to obtain it. The low value nature of KiwiSaver (and other similar low value investment products) means that any margins are incredibly thin, there is no room built into the pricing model for the costs associated with complying with the natural person requirement, and these low value customers would not pay the necessary fees to allow us to comply with the natural person requirement. If this</i>

	<p>were to remain a requirement, then we would not be able to offer personalized financial advice to the majority of people as we would have to charge for it as we currently do. We have already been operating in this space providing online class advice and we have seen firsthand how price sensitive the majority of these lower investment value customers are, if we were required to charge a fee to adequately cover the cost of an AFA then these clients would not use our service.</p>
Q4	<p>We believe a class exemption is the most appropriate approach. This provides clarity and allows for ease of adoption within robo-advice companies, and is by far the most cost effective method for robo-companies. It is possible that if individual exemptions were required rather than a class exemption, that the cost involved of consulting with the FMA and various legal fees associated with this process would prevent smaller startup companies from obtaining an exemption. However, we also believe that individual exemptions should be possible should a company wish to offer services that fall outside of the class exemption.</p>
Q5	<p>If the exemption were provided there would be an element of increased risk at a consumer level, as the advice is not being provided by a person and due to the relatively newness of this technology here. However most of these risks can be mitigated through having appropriate experience internally within the robo-advice company, and by going through a robust development and testing process. Other impacts on consumers would be that a significant proportion of the population that has previously been unable to afford or obtain financial advice are now able to do so, and the cost to the consumer of receiving this advice will fall dramatically.</p> <p>As a robo-advice company, the key impact for us would be that we are able to move from providing purely class advice via our online platform, to providing more comprehensive personalized advice via the online channel. This will allow us to provide personalized advice at a significantly lower price than what we currently can.</p>
Q6	<p>If no exemption is granted, then the costs of obtaining personalized financial advice will remain high, restricting consumers access to such advice. We do currently provide online class advice and will continue to do so if no exemption is granted. However, the class advice is difficult to provide without crossing over the barrier into personalized advice, and puts significant restrictions on what we are able to do. While class advice is beneficial to a customer and is certainly better than no advice, personalized advice is so much more valuable to a customer.</p>
Q7	<p>Yes we believe there is an advice gap. As an AFA I can speak from experience, and would say that generally a minimum investment level would be \$100,000 for investment products (not KiwiSaver). However in saying this, while there may be the odd AFA who will work with a client at this level, most advisers that I have ever worked with will not be willing work with this level of money, and if they do then they are often charging the customer a fee for their time to compensate for the lower value customer, which in turn restricts the access to such advice as the fee is not worthwhile for lower value investments.</p> <p>The above-mentioned minimum is in relation to investment products, not KiwiSaver. We believe the KiwiSaver advice gap is even bigger, due the sheer numbers of KiwiSaver members, and the typically lower investment balances. While it may be difficult to find an adviser willing to give advice on an investment balance of \$100,000, it is even more</p>

	<p>difficult to find an adviser willing to provide KiwiSaver advice on any balance, let alone a \$20,000 or \$50,000 KiwiSaver balance, both of which are well above the average KiwiSaver member balance.</p>
Q8	<p>Yes we intend to rely on the proposed exemption. While we do already provide online class advice, the advice we provide is severely restricted when compared to what we would like to be able to do. We see that there are various levels of personalized advice. Some aspects of personalized advice would be quite quick for us to implement into our existing class model, other aspects would take a little longer to develop and integrate. The development process is not instant, it requires significant amounts of testing, and it is very costly. We are therefore reluctant to develop too much in the way of personalized advice ahead of time, as we need clarity around the exemption, what is included, exclusions and any limitations. It is difficult to give clarity around the timing of the launch of personalized advice, I would expect that some elements of personalized advice could be integrated in the months following an exemption. We currently provide advice on KiwiSaver, and will shortly be releasing investment portfolios outside of KiwiSaver. We also intend to integrate other aspects of a customer's personal financial lives, which may include budgeting, mortgages, and insurance.</p>
Q9	<p>We feel the proposed conditions and limits are still somewhat prohibitive to innovation within the sector, due to the prescriptive nature of specific what can and cannot be provided.</p>
Q10	<p>As shown in our answers to questions 15 and 16, some of these limits would place considerable extra cost on the business if providing online personalized advice. In particular, the limitation mentioned in Q15 may stop us from providing personalized advice if this was set too low. The proposed limits in Q16 would absolutely stop us from providing personalized financial advice, as outlined in our answers to that question. These limits would significantly hamper innovation from new providers in this sector.</p>
Q11	<p>We believe the exemption should be given for BOTH financial advice and investment planning service. The investment planning service seems a natural part of the robo-process, as a huge element of investment planning utilizes various calculators and tools, all of which are very easy to integrate into an online model. We believe it would be difficult to provide online personalized advice without incorporating some aspects of investment planning. We also believe that the investment planning service is incredibly valuable for clients, as we can very easily show them what their future financial life is looking like and provide them with advice and examples on how to improve that outlook. An investment planning service is typically incredibly expensive, preventing a huge portion of the population from receiving a financial plan. The cost also means that once a financial plan has been obtained, it's likely to remain a static document as the cost of having this updated would be prohibitive. The online model would allow customers to access a continually updated financial plan at very low (if any) cost.</p> <p>While the DIMS model is more complex, there are aspects of this that would ideally be incorporated into a robo-model. The robo-model is built for scale, and when providing financial advice to a large number of lower value investment customers, it becomes difficult to make changes to a model portfolio if any such changes require individual client authorization. I do not know the solution here, only that there should be some mechanism</p>

	<i>within robo-advice to be able to make changes to a model portfolio that has a large user base without requiring individual client sign off.</i>
Q12	<i>Generally, we agree with the list of proposed eligible products.</i>
Q15	<p><i>While the initial robo-advice model was set up to service lower value customers, as robo-capabilities develop the model is also appealing to High Net Worth Investors (HNWI's) due to the low-cost approach, the ease of access via the online model, and the usability. Research conducted by BI Intelligence (Global robo-advisor report 2016) shows that 49% of HNWI's would consider investing part of their wealth through a robo-advisor. We have also had interest in our online products from HHWI's. At the moment HNWI's can access online class advice products, they can also access online product distribution channels that provide no-advice but facilitate product distribution. We assume that this would remain the case after any exemptions were provided, meaning that HNWI's would be able to access online class advice, and access investment products online with no advice, but they would potentially not be able to access online personalized advice which seems in contrast to the other online options available to them. HNWI's would also be disadvantaged by this, due to the high cost structure of personalized advice via an AFA.</i></p> <p><i>If there were limitations around this and requirements for an AFA involvement, then one option that would seem appropriate may be a requirement for an AFA to review the client details and information submitted, review the advice given, discuss this with the client, and confirm (or otherwise) the appropriateness of the advice. So rather than the AFA being required to complete the whole advice process, rather it would be a review and confirmation that the advice is appropriate, that any customer questions have been answered, and then approval for the online advice to proceed. This may perhaps include an annual review where the AFA confirms the client situation, confirms the advice is still appropriate, and continues with the online advice. This model would seem a lot more appropriate and suitable in this instance, and is likely a more cost feasible option for both the customer and the robo-advice provider. If more AFA input is required over and above this outlined approach, then it is likely the robo-advice firm would need to charge the customer for the AFA involvement, which would prevent some customers from obtaining this advice.</i></p> <p><i>If a limit was required to be set, \$100,000 seems far too low a limit, due to the previously mentioned difficulty of finding an adviser willing to work with clients with this level of money. If any limit is required, then we feel \$250,000 would be the lowest level at which point this could be imposed.</i></p> <p><i>There are operational difficulties with having a limit in place. As previously mentioned, robo-advice operates on very small margins, and the involvement of an AFA at any level will likely mean the robo-company will have to charge for this service. Any such fee is a disadvantage to these customers, and is more likely to prevent some customers from using this service.</i></p> <p><i>Another practical difficulty is if the customer starts out with a balance less than the limit, and if they add to their investment account they are now suddenly faced with additional charges that they had not anticipated due to having reached a limit. If the customer is not willing to pay the additional fee, what then happens to their investment portfolio? They would face the same situation at any company if there was a limit imposed, and this may</i></p>

	<p>mean the customer then chooses to receive no advice or use an online class advice service instead, which is likely to be less appropriate than the online personalized advice.</p>
Q16	<p>We are very strongly against imposing any limit on the total value of investments of any robo-advice company. The robo-advice model is built for scale, with very small margins. Robo-advice companies will only be able to survive if they achieve a certain level of scale, and imposing any kind of limit on this will likely prevent robo-advice companies from achieving sustainable business levels. If a higher limit were to be allowed for QFE's, then the large established institutions would have an unfair competitive advantage in an industry where innovation is largely driven by smaller startup companies as opposed to the established financial institutions. If such limitations or tiered limitations were imposed, small startups would not succeed as they would not be able to achieve the level scale required, and funding channels would dry up to these small startups as investors would not invest into these companies knowing that the regulator has placed a cap on how quickly any such company can grow.</p> <p>For our business, if such limits were imposed it would likely drive us to continue providing class advice services where we are not limited to the amount we can grow, rather than sign up to a model that does not allow us to achieve our 2-year business financial forecasts.</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>
Q17	<p>A prescribed form of disclosure makes it easy and simple for companies to comply with the relevant disclosure requirements. This also helps to reduce legal costs for smaller startup companies as there is no reason to seek legal advice on this as the FMA has a prescribed format.</p>
Q18	<p>Within a robo-platform, there is a big focus on customer usability and design. This also includes the placing and design etc of any terms and conditions disclosure documents. There is a risk that if the FMA prescribes very specific requirements for these disclosures, that the form and method of disclosure may not fit within the online model of a particular robo-provider. Disclosure is a necessary requirement, however there should be some flexibility from the robo-advice provider in terms of how this is displayed within their platform.</p> <p>We have completed huge amounts of usability testing with our platform, and gained in depth client feedback on the look, design, and usability of each page a client sees, and we would like to be able to ensure that all terms & conditions and disclosure requirements are going to maintaining the same look and feel that we have developed, while complying the requirements. It would be helpful for the FMA to issue guidance notes or suggested template of inclusions for any such disclosure, but then allow the provider some flexibility to integrate this.</p>

Q19	<p><i>It is very easy to build in client confirmation requirement, and we currently have this in our platform where the client has to click on ACCEPT to the terms and conditions before receiving the advice. However, experience shows that simply clicking ACCEPT does not mean that each customer has read all of the terms and conditions.</i></p> <p><i>Within our current platform, we have Terms and Conditions that are easily displayed on our platform, the client has the ability to scroll through these to read them before agreeing to them, the customer also has the ability to download these and save a copy..</i></p> <p><i>It is also possible to include various informational or disclosure aspects throughout the client registration process. For example, throughout our current registration process we include various information buttons and disclosures at different points throughout the journey, helping to inform and educate the customer along the way. This would be the same for some aspects of disclosure.</i></p>
Q20	<p><i>When providing a robo-advice platform it should be expected that there will be conduct obligations, and we generally agree that the 3 code standards mentioned are appropriate for application to robo-advice.</i></p> <p><i>It is worth noting that within the AFA Code Standards there are several standards that relate to recording keeping and the provision of sufficient information related to the advice being given. We have given this much consideration as to how to provide the client with sufficient information about the advice, and our conclusion is that the form and method of this information would be quite different from a typical investment proposal or advice document would look like. This would likely include various links that the client can click on to read more information about different parts of the advice, so that the client can navigate through various parts of it rather than be presented with a big document as is often presented to a customer via a typical model.</i></p>
Q25	<i>Yes, any guidance sheets that help providers to understand and comply are very useful and helpful</i>
Q26	<i>Yes a list of all providers using the exemption notice seems appropriate, given that other types of financial service provider information is available.</i>
Q27	<i>I think that other terms such as digital advice or automate advice are more friendly and probably more appropriate and easily interpreted than robo-advice.</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.	

20 July 2017

Financial Markets Authority
Level 5, Ernst & Young Building
2 Takutai Square
Britomart
P O Box 106 672
Auckland 1143
Email to: consultation@fma.govt.nz

**Institute of Financial Advisers submission on:
Proposed exemption to facilitate personalised robo-advice**

Initial comments

The Institute has decided to form our submission as a letter to better enable us to explain our thinking, our apologies if this represents more work however it make it easier for us to give feedback on elements that may touch on a number of the questions offered.

Firstly, the proposal by FMA to use s148 of the FAA to provide an exemption for computer programmed advice is disturbing.

It appears to us that the exemption under s148 allows FMA to exempt a person from compliance under the Financial Advisers Act. Rather than enabling an entity to act as a person and comply with the Act. While we are not lawyers, our understanding is this would leave the entity able to act without regard for the requirements of the Act. While it may be possible to impose restrictions with agreement, in our experience this only gets tested at some time in the future when a consumer has suffered a loss and the legal position is tested in a court of law. Should this occur then such an event would not satisfy a fundamental object of the current Act - *“to promote the sound and efficient delivery of financial adviser and broking services, and to encourage public confidence in the professionalism and integrity of financial advisers and brokers”*.

We are also concerned with the rationale proposed for the introduction of Robo-advice. On page 3 of the consultation paper there is a sentence “In New Zealand, a review of Kiwi Saver sales in 2015 showed most consumers do not obtain personalised advice on Kiwi Saver. Personalised Robo-advice services could help address this advice gap.”

We offer that the government considered KiwiSaver a class advice product. By introducing it with automatic enrolment the government has implied that personalised advice was not required in the process of taking up Kiwi Saver. The process of licensing Kiwi Saver providers imposed a number of controls and monitoring requirements to support the consistency and quality of the product offered. Consumers who are automatically enrolled, would not expect they needed personalised advice.

While we support the introduction of automated-advice as a cost effective way to get simple advice to a large number of consumers and address the advice gap, we do not believe it will address KiwiSaver advice gap, as stated in the consultation document, because the outcome is a product of the automatic enrolment process therefore the majority of consumers do not expect they have a need for advice.

We suggest caution in the introduction of automated systems. We would prefer to see automated advice be enabled in the review of the FAA as it has already been proposed. However we see important aspects of the existing code would be applied to an entity, and it's directors, being held to the same standard as an individual adviser in relation of client interest first, requiring those who develop the automated advice to have appropriate qualification and to maintain competency if they are to service the platform. There also needs to be mandatory recording of advice by the system and instant fines where this found to be missing when a supervisor visits. Lastly there has to be complete transparency for the consumer on the extent and limitations of the service, we suggest this must be sent to the consumer in written form and be acknowledged by them.

We also believe there should be transparency of the approvals process, this allows all industry participants to identify when an entity is in breach of it's exemption.

We note on page 6 of the Consultation document you talk about a statutory test, which enables personalised advice to be generated by a tool without using a human adviser. To be clear we believe this advice will always have a human at the source of automated advice, on the basis that the tools are preconceived and built by humans and may be providing advice as an output that has been previously considered and modelled by a human.

We are concerned that the process of automating personalised advice will continue to muddy the waters for consumers between "advice" and "sales" by offering programmed sales as "advice". We see the latter as involving an element of *planning* whereas the former involves purely the buy, sell or hold of a product. Adviser bodies have not been able to get this important distinction recognised but we take this opportunity to raise this point again.

- Programmed advice/sales comes about through human efforts, the computer is just a means of delivery, computation and automated responses. The issuer of such programs must comply with all the same competency, disclosure and legal requirements as applies to advice delivered by a natural person, not to mention consumer avenues for remedy;
- We are concerned with placing value limits around people's savings, starting with the notion that anyone's money is important to them, irrespective of the amount. The idea that a lesser sum is of less important undermines the concept of risk capacity. For many people their KiwiSaver balance might represent their entire financial assets. In this respect for someone with only \$50,000 the risks of poor advice to them is high, when compared to someone with a \$50,000 KiwiSaver balance but who may have \$1m of assets elsewhere.

- We are further concerned that there is a proposed gap between the limit on the size of transactions \$100,000 and the limit on liability \$50,000 leaves a \$50,000 gap. If this were to affect one client's complete savings then this could be catastrophic for them, multiplied by a number of consumers and we end up with an event similar to the South Canterbury Finance Situation.
- Outside of investment the notion that programmed personal insurance sales be limited by value is not well thought through. We all know that there is chronic under-insurance in NZ and that those who most need cover can often not afford what they really need. It becomes even more critical for these people to receive good advice. We all know that to a large extent you get what you pay for when it comes to insurance and that the cheapest product often is only cheap because it lacks the cover features of more expensive cover. We saw the impact cheaper cover and conditions had on AMI and its collapse following the Christchurch earthquakes, we are sure many consumers would have paid a few more dollars for cover that extended beyond two events
- The development of any programmed advice/sales computer system will be done for commercial purposes. In the KiwiSaver context issuers will be keen to retain funds under management. Any computer system will, on the balance of probability, end up recommending the issuers position based on commercial bias. Any computer-based systems needs to be heavily disclaimed prior to its use as to what product outcomes the system can/will produce. Such systems need to produce written output as to the basis of its recommendations (as per the Code).
- While there may be an 'advice gap' there is no compelling evidence that availability of computer-distributed programmed advice/sales avenues will address this. Advisers get paid by the clients. Computer-based systems will be no different in that the client will pay in some way for the output of the system, it's just that the potential for such costs to be made more obscure is potentially made greater.

To summarise our thoughts on this we would recommend that the term “robo-advice” be changed.

We would suggest the terms – *computer programmed sales (CPS)* or *computer programmed advice (CPA)*, but we would settle for the offered term of automated advice because these terms represent the process behind the system. It is our understanding true artificial Intelligence does not exist at this time, therefore offering consumers a name that implies a machine has considered all aspects of a humans goals, needs aspirations and wants would be misleading. We further suggest that ‘advice’ as a process is evolving beyond product transactions and to anchor the term to sales of a product will not be the future of the advice profession.

While it has been stated in discussions that New Zealand is behind on the development of automated advice, we have also been behind on automated fraud, scams and inbuilt errors.

We strongly suggest the reviewers consider the recent publications from IOSCO Update on the Report on the IOSCO Automated Advice Tools Survey FR15/2016 December 2016 - <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD552.pdf> and the IOSCO Research report on Financial Technology FR02/17 February 2017 - <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD554.pdf>

We find these concerning guides on the growing understanding of consumer risks in relation to automated advice.

Comments on questions

Q1, 2, 3, 4

We do not support the use of an exemption to regulate, we believe it is premature to include personalised advice; models can effectively operate now in class advice and prove their processes so that when the review of the FAA is implemented entities have a proven track record of safeguards and compliance to client interest first.

Given the potential market for the consumption of “robo-advice” extends to just about everyone over 16 years of age in NZ we think development of this area of law should be subject to the parliamentary process, and not left to officials in the FMA and/or MBIE. Its introduction potentially takes a large number of consumers outside current law. We suggest the FMA submit their proposal to judicial or Cabinet review to determine if the exemption path really is in the public’s best interest.

The Financial Adviser Act Review is still in progress and the new Code Committee Working Group is yet to begin its work, which should include a code for automated advice. For the FMA to develop an amended regulatory regime and Code to apply to automated-advice could be perceived to pre-empt or influence in advance outcomes of these streams of work.

Q 5,6

We cannot see a need to rush into a solution for automated-advice. These systems and their regulatory framework are still in their infancy overseas. We should be prepared to wait, watch and take the best out of the overseas experience. Avenues for consumers to seek advice will remain.

While we are concerned that consumers will continue to lose value and literacy as a result of not getting cost effective advice, we believe the risk of automated churn and mis-selling in the early stages of development of the model require caution.

Q 7

There is no doubt that more consumers should take more advice, from suitably qualified people, about financial matters than they currently do. There is no problem for most consumers to get advice if they wish to do so. Their reluctance to pay for advice seems to be more the issue. While there may be an 'advice gap' there is no compelling evidence that the introduction and availability of automated-advice will address this. Automated advice will

allow many people to receive low or no cost advice, however we believe this is best suited to class advice at this time.

Real-person advisers get paid by their clients, either directly or through product providers. Computer-based systems will be no different in that the client will pay, in some way, for the output of the system. In this instance however there is greater potential for such costs to be made more obscure, transparency will be critical.

If there is to be an up-front payment for automated-advice then the introduction of these systems will not solve the perceived unwillingness of the public to pay for advice.

The “approximate balance” asked for is difficult to assess. Basically those people who cannot or do not want to access current financial advice could use a automated-advice service but need to understand that automated financial advice will not have the variability to reflect complex client situations.

Q8, 10, 11

No comment

Q 9, 12-16

Any regulation of automated-advice needs to cover the same types of products and advice as contemplated by the current review of the Financial Advisers Act.

No product value limits should apply.

As mentioned in our introduction we believe the justification to address the advice gap is not reflecting consumer expectation.

While we support the introduction of automated class advice to address the advice gap, we do not believe it will address KiwiSaver advice gap because the majority of consumers do not expect they have a need.

We all know that there is chronic under-insurance in NZ and that those who most need cover can often not afford what they really need. It therefore becomes even more critical for these people to receive good advice.

By having limits any solution proposed by automated-advice would likely only present part of what is potentially needed by the consumer. Would this be in the clients’ best interests (CS1)?

All advisers know that to a large extent you get what you pay for when it comes to insurance and that the cheapest product often is only cheaper because it mostly lacks the cover features of costlier policies. That such limits have been proposed seems to show a fundamental lack of understanding about important key issues. As mentioned earlier cheaper by few dollars in Earthquake cover resulted in Government intervention following the Christchurch earthquakes.

Q17, 18

We believe if the regulator pursued the exemption this would leave consumers vulnerable until the changes proposed closed the legislative gaps. Therefore we believe the answer to 18 is no. While good providers will act honourably, as was seen with the introduction of the FAA new providers entered the market and pushed the envelope resulting in consumer harm. The regulator had to act, after the fact, to alter the regulations and restore consumer protection. To our understanding a large number of consumers who were harmed were not put right.

Q 19, 20, 21, 22

In principle programmed advice/sales comes about only through human efforts, the computer is just a means of scaled delivery and computation. We believe there should be a competence requirement and ongoing review of the validity of the underlying automated advice programmer or writer similar to a CPD programme for an individual adviser. Records kept on all transactions and advice, for the period extending 7 years after the product has been closed, to be provided on supervisor inspections.

The issuers of such programs must comply with all the same competency, disclosure and legal requirements as applies to advice delivered by a natural person, not to mention consumer protection and consumer avenues for remedy.

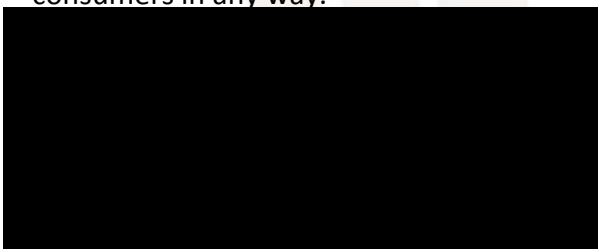
Q 23, 24

As noted in the Consultation document such systems have potential for significantly greater reach to consumers (scalability). Penalties that apply to issuers of these systems should be equal to those that might apply to an individual, natural person adviser and multiplied by the number of consumers affected. There have been numerous examples of business approaching fines for compliance breaches as an expense, when the benefit of the breach is much greater.

Q 25, 26, 27, 28

Full transparency to all participants is the only way to ensure providers stay within their terms of engagement, it allows the whole industry and consumers to act as monitoring entities.

We advocate that titles of all advisers should describe what they do for consumers, the advice output from financial technology is simply matching recommendations to pre-considered simple client situations. This should be clear in the title and not misleading to consumers in any way.



Feedback form: Proposed exemption to facilitate personalised robo-advice

Please submit this feedback form electronically in both PDF and MS Word formats and email it to us at consultation@fma.govt.nz with 'Proposed exemption to facilitate personalised robo-advice: [your organisation's name]' in the subject line. Thank you.

Submissions close on 19 July 2017.

Date: 19 July 2017 Number of pages: 5

Name of submitter: [REDACTED]

Company or entity: Insurance Council of New Zealand

Organisation type: General Insurance Industry Representative Organisation

Contact name (if different): [REDACTED]

Contact email and phone: [REDACTED] [REDACTED]

Question or paragraph number	Response
<i>You don't need to quote from the consultation document if you note the paragraph or question number.</i>	
(1)	<p>We are generally supportive of the exemption proposal. This is because we believe there are benefits for consumers and providers of advisory services such as access to more customer-friendly and convenient services, lower cost operations for providers, greater competition in the form of an additional channel for the delivery of advice as well as overall efficiency gains.</p> <p>We also believe that regulators should support innovations that have demonstrable benefits and not present barriers such as through inaction. The proposal places checks and balances by applying limits and conditions which seem generally to be appropriate to guard against the risks posed to consumer harm and reputational damage to the insurance sector.</p> <p>In general, public policy should endeavor to create technology-agnostic regulatory oversight that maintains a high level of consumer protection and that ensures market participants have the flexibility to react, adapt and innovate to improve products and services, and/or meet shifting consumer expectations.</p>
(2)	<p>Yes, we are operating in a world of fast-moving technological change which will require public policy and regulatory activity to be light on its feet. Legislative change is too slow to effect change. This has been recognised in many other areas by providing for regulatory instruments that do not require law change.</p>
(3)	<p>This is a commercial issue and we are not in the market, so our comment here has a caveat.</p> <p>However, we would observe that robo-advice will reduce costs for providers, so the medium and possibly even the short-term gain for providers would likely outweigh the regulatory costs. We agree with the FMA's analysis that having to incorporate a human AFA into the robo-advice process would defeat the purpose of these cost savings.</p>

	<p>We support the need for terms and conditions to be applied for the reasons given in (1) above, so provision should not be without cost.</p> <p>In terms of costs borne, we note FMA is largely funded through levies provided by entities and individual advisers registered with FMA. We believe that regulatory measures should be competitive-neutral. Unless we have misunderstood the proposal, it does appear to us that owners of robo-advice services would be able to enter the market without bearing any cost to fund the FMA. This would put them at a competitive advantage, so we would propose such entrants being required to contribute toward the FMAs costs or else be excluded from the exemption.</p>
(4)	We support the class exemption approach as proposed to lighten the regulatory burden.
(5)	<p>As noted earlier at point (3), we are concerned about the costs that new entrants not already registered as a financial service provider or licensed with the FMA do not have to carry.</p> <p>We also have a concern that new entrants and registered financial advisers ('RFAs') using the exemption to offer robo-advice services have a greater potential to cause consumer and industry reputational harm. Our reason is both cultural and standard-based. QFE advisers and AFAs have had minimum standards for years, and have had to develop a culture of adherence to those standards with close FMA oversight. New entrants and RFAs have not had to meet the same standards and develop that culture over the same period. Culture especially cannot be transplanted overnight and is far more important and effective as a regulator than passive standard setting and box ticking. We propose, to address this risk, that the class exemption only applies to existing QFE advisers and AFAs, and that any new entrants or RFAs must be individually authorized and exempted by FMA so that FMA can be directly satisfied, on application, that the risk posed by that new entrant or RFA is acceptable.</p>
(6)	If no exemption is granted, then there is a serious risk that consumers and the sector will not benefit from readily available technology. Insurer's role is to support consumers to manage their risks; regulators' role is to support an efficient, effective and robust insurance market that consumers have confidence in. Regulators can do just that by ensuring consumers receive the benefits and minimize the harms from the action of providers in the market.
(7)	Across many sectors, there is a generation of people who access most if not all their services through on-line platforms. This is largely due to the speed and convenience these platforms provide. Robo-advice an enhancement of service delivery to consumers. If this channel of advice is not open to consumers until legislation is passed, then it will effectively lock some people out of the advisory market because they do not seek services through other channels. This would seem to be counter to the thrust of what many government and private sector initiatives are currently attempting to do – raise levels of financial capability.

(8)	N/A. As an industry representative organization, we are not a financial advisory body.
(9)	<p>The limits and conditions seem appropriate. We are particularly supportive of having exemption conditions align with the Code Standard.</p> <p>However, we note some of the exemption conditions provide lower standards than are currently required for QFE advisers and AFAs. Aligning with point 5 above, in our view financial advisers adhering to existing standards should not be able to lower their standards by providing advice through a different distribution channel. We also appreciate the increase in standards for new entrants and RFAs that will likely not have been subject to those standards or that regulatory culture before. FMA will need to take greater care to ensure the risk of making this jump is not too great for new entrants and RFAs to ensure the standards and levels of compliance and protections offered to consumers do not differ between these adviser populations.</p> <p>With this in mind, we propose that QFE advisers and AFAs are subject to a class exemption, but that RFAs and new market entrants should have to individually apply for exemption to FMA. This way, FMA can be better satisfied as to the nature and extent of the risk posed to the customer through a more hands-on assessment. We believe there needs to be a proactive approach to fostering good industry standards, rather than a passive box-ticking exercise which could lead to poorer consumer outcomes. A proactive approach for those entities who have had less to do directly with FMA in the past (RFAs and new entrants) would lead to better consumer outcomes.</p> <p>We note the European Commission's core principles on regulatory approaches are technology-neutral (ensuring the same activity is regulated in the same way regardless of how it is delivered), proportional (reflecting business model, size, systemic significance, complexity and cross-border activity) and integrity- enhancing (promote market transparency for consumer benefit without creating unwarranted risk (e.g. market abuse)).</p>
(10)	N/A. We are not a business providing robo-advice.
(11)	N/A. We are only submitting with respect to general insurance advice as proposed by the FMA.
(12)	We support that all general insurance products should be considered for exemption.
(13)	N/A. We have no view on whether Personal Insurance products should be included as our submission focuses solely on general insurance products.
(14)	We disagree with a value cap or limit on duration to general Insurance products. On duration, general insurance products are almost always provided on an annual renewal basis with liberal cancellation provisions for the customer. This makes general insurance

	<p>unlike many of the investment and savings products that are being considered for exemption.</p> <p>We also note placing limits would unduly prohibit the provisions of advice to areas of the market that are already underserved and in need of greater accessibility at low cost for consumers, particularly house insurance and small-medium business insurance.</p>
(15)	N/A.
(16)	N/A to general insurance.
(17)	Yes. Standardization will lead to clearer guidance and better compliance which is important at this stage of development of this market. It will reduce the risk of misperception and misinterpretation by providers.
(18)	Yes. Aside of the basic disclosure statement above, providers should have flexibility to experiment with the most effective way to disclosure the required information to consumers. Effective disclosure has been a difficult topic for many years as we understand there are limitations on consumers reading and fully understanding what is disclosed to them by financial service providers. Allowing the market through enhanced technology to experiment and find the most effective way to disclose information for consumer to acknowledge and understand will lead to more informed consumers and better market outcomes.
(19)	Yes, and this could be a simple tick-box confirmation which does not place onerous conditions on provider nor a barrier to use for consumers.
(20)	The aspects where we have reservations are noted above at (5) and (9).
(21)	No.
(22)	See (5) and (9) above.
(23)	<p>The conditions should be applied consistently regardless of the size and scale of the advice offered. If this is not the case, then the applications of conduct requirements become subjective and this is not a desirable outcome.</p> <p>All consumers should expect the same standards of conduct regardless of the provider they are receiving advice from.</p>

(24)	Only as set out at (5) and (9) above.
(25)	Yes, any guidance on the application of a new product would be helpful to ensure compliance.
(26)	<p>Yes, that would be helpful for consumers to have an assurance about the products available to them. This is especially necessary because robo-advice can be provided across borders beyond the FMA's jurisdiction. New Zealand consumers need to know that they can have confidence that providers are regulated and accountable to authorities in New Zealand and this would be a means of ensuring that distinction occurs.</p> <p>We note that some of our members seek to protect the anonymity of the robo-advice platform for commercial reasons to maintain a competitive advantage. We suggest this could be handled by not publishing the list of providers active in the market until immediately after they have launched their product publicly.</p>
(27)	The term robo-advice is somewhat misleading and particularly so for the public given the stereotypical view of what a robot is. It connotes something like a cyborg with humanoid features. This may convey to members of the public capabilities enhanced by science fiction that far exceed what these digital or automated services can provide. So, alternative terminology would be more appropriate.
(28)	<p>The cross-border issues raised in (26) is one that the FMA needs to apply more thought to across all its activities as digitalised product offerings become increasingly prevalent. It suggests the need for regulators to engage with their counterparts as well as the industry to inform a path forward.</p> <p>Holistic and transparent regulatory changes need to occur across jurisdictions that will create environments that are conducive to innovation, and that are proportionate, minimally intrusive and applied evenly to all market participants to foster competition and collaboration.</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.

- 6.
-
- | Category | Bar 1 Length (%) | Bar 2 Length (%) |
|----------|------------------|------------------|
| 1 | 80 | 95 |
| 2 | 95 | |
| 3 | 10 | 15 |
| 4 | 40 | |
| 5 | 95 | 85 |
| 6 | 95 | |

[REDACTED]

[REDACTED]

[REDACTED]

7. [REDACTED]

8. [REDACTED]

9. [REDACTED]

10. [REDACTED]

11. [REDACTED]

12. [REDACTED]

13. [REDACTED]

[Redacted]

14. [Redacted]
[Redacted]
[Redacted]

15. [Redacted]

[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]

[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]

[Redacted]
[Redacted]
[Redacted]

[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]

16. [Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]

17. [REDACTED]

18. [REDACTED]

General submissions

19. Teddy strongly supports the FMA's proposed use of its exemption powers to facilitate provision of personalised robo-advice. We believe robo-advice can go a long way towards helping fill the significant advice gap at both retail and small to medium business level.
20. However, we appreciate that robo-advice carries a risk of poor consumer outcomes with resulting risk to the industry and to confidence in the regulatory system. We therefore strongly support the imposition of conditions focusing on the capacity, capability and conduct of the provider as well as on its disclosure and client management systems, processes and obligations, as outlined in the consultation paper.
21. We also support the FMA's proposal to limit the exemption to financial products that can be easily exited.
22. All the lines of products we distribute in both the fire and general and life lines of business insurance products can be easily exited if the customer chooses to do so. Fire and general insurance have a 30 day cool off period where the customer can cancel the policy and receive a full refund of all premium and any commission or fees charged. After the 30 day window the customer can get a refund of the remaining pro rata premium portion. For the life and health business insurance lines of products they can cancel anytime with no repercussions to the customer.
23. However, we want to encourage the FMA to think carefully about the insurance products that fall within the exemption, and any value limits placed on those products from both the insured's and the provider's point of view.
24. Insurance products that may fall within the exemption as currently contemplated are described in the consultation paper in terms of the retail and personal market ('home, contents, vehicle' and 'personal insurance – such as life, health, income protection') and the sums insured and individual investor limits are pitched by reference to the retail market.
25. Given the advice gap, and under insurance outlined in paragraph 6, we encourage the FMA:

- a) to include the product lines needed by small to medium businesses within the exemption. For example see below. All these products can be easily exited by customers in the way contemplated in the Consultation Paper, and
- b) to be careful around what sum insured or total product limits are put in place, that they are at levels that are appropriate to the needs of small to medium businesses.

Teddy's answers to your questions

No	Question	Our response
1	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?	<p>We strongly support the proposed exemption and the proposed conditions to provide consumer protection.</p> <p>We believe an appropriately conditioned exemption can make a significant contribution to filling the advice gap, and that conditions can help control the risk from a customer perspective.</p> <p>We also support the FMA's proposal to limit the exemption to financial products that can be easily exited.</p> <p>However, we want to encourage the FMA to think carefully about the insurance products that fall within the exemption, and any value limits placed on those products from both the insured's and the provider's point of view.</p> <p>Insurance products that may fall within the exemption are described in the consultation paper in terms of the retail and personal market ('home, contents, vehicle' and 'personal insurance – such as life, health, income protection') and the sums insured are pitched by reference to the retail market.</p> <p>Given the advice gap, and under insurance outlined in paragraph 6, Teddy strongly encourages the FMA to set the limits so that they meet the needs of small to medium businesses. Specifically so they:</p> <ol style="list-style-type: none"> 1. Include the insurance product lines needed by small to medium businesses within the exemption. For example: <ul style="list-style-type: none"> - Material Damage - asset replacement value or building rebuild costs (provided by asset registers in financials and building insurance valuations) - Motor - market values ('red book' vehicle values) - Business Interruption - loss of profit (provided by Xero profit & loss figures which are then transposed into insurer's profit calculators)

		<ul style="list-style-type: none"> - Key person insurance – providing a cash injection when a key person in the business suffers a major illness, becomes disabled or dies. - Income protection – providing customers with an income to enable them to meet their commitments and living expenses, and for the upkeep of dependants. - Contract works insurance - Covers loss of, or damage to, property that's being built or altered - Public & Products Liability - damage caused to third parties resulting from their business activities - Employers & Statutory Liabilities - employee civil actions & fines or penalties imposed by statute. - Management Liabilities (eg. Directors & Officers, Crime, Employment Disputes, Cyber etc) - protection for the business owner &/or their board members from allegations of misconduct. - Professional Indemnity & Technology Liability - cover advice or services causing financial loss to the end customer (providing defence costs and support for civil actions). - Marine Cargo - imports & exports plus local NZ transits (using annual freight figures) - Overseas Travel - covering employees & family (using number of travel days) <p>2. Set sums insured and indemnity limits at levels that are appropriate to the needs of small to medium businesses (eg. combined building, assets and profit values up to \$5,000,000 + Turnover up to \$5,000,000 is what we would recommend).</p> <p>We don't believe there needs to be a limit for life and health lines of business insurance products. Even when operated by an individual, the process is very rules based. Off the data customers provide we can take them through an accurate and personalised decision tree or rules based process. Boundaries are more appropriately set qualitatively than quantitatively. For example, if a customer requires shareholder protection insurance involving a buy/sell agreement with the shareholders. That would be a complex process that would need the help of a human adviser to walk them through the process. It would also involve a third party to organise the legal agreements for the shareholders.</p>
--	--	--

		We are strongly against any monetary boundaries put around life insurance type products.
2	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?	<p>We strongly support FMA's use of its exemption powers to facilitate the provision of personalised robo-advice ahead of the law reform.</p> <p>Full implementation of the new regime will take at least three years to accomplish, while in the meantime, small to medium businesses remain under advised and under insured. If we delay robo advice any longer it is a terrible outcome for kiwi businesses as the majority don't have everything they should have covered. In our view the exemption presents a very low risk to the customer.</p>
3	<p>Do you think the costs for robo-advice providers to comply with the 'natural person' requirement (if no exemption is granted):</p> <ul style="list-style-type: none"> • Would be unreasonable? or • Would not be justified by the benefit of compliance? 	<p>We think there are considerable disadvantages to both customers, and for providers in retaining the current restriction under which only natural persons can give personalised advice on general and life insurance products.</p> <p>For simple products that can be readily exited, the costs (both in dollar terms and in terms of the opportunities missed to ensure customers have the insurance they need) are significant.</p>
4	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?	<p>We strongly support the proposed approach of granting a class exemption subject to appropriate limits and conditions.</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>
5	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).	<p>Subject to establishing appropriate limits for the service, we expect the exemption to rapidly:</p> <ul style="list-style-type: none"> • improve the competence and systems of robo-advice providers • improve availability of right sized advice to an under advised sector of the market • make it faster and more efficient for a time poor business market to obtain appropriate insurance • appropriately control consumer risks. Through online automated processes we can audit any process at any

		time, improve, change or add where as in comparison to a human adviser they are inconsistent and difficult to improve and audit there process they have gone through.
7	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?	[REDACTED]
8	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.	[REDACTED]

	<p>providing a personalised robo-advice service unworkable?</p> <p>Do you agree with our proposed list of eligible products?</p> <p>Should personal insurance products be included in the eligible product list? And how should they be capped?</p> <p>Should we apply value cap and/ or duration limits on the proposed eligible products?</p> <p>Should we impose an individual client investment limit?</p>	
20	<p>Do you agree with the proposed conduct obligations?</p> <p>Should the conditions be applied in a manner that is proportionate to the size and scale of the robo-advice service offered?</p>	<p>We think the proposed conduct obligations are appropriate and capable of being complied with by even small providers like us.</p> <p>We think the proposed conditions should be applied in a way that is proportionate to the nature and risks of the product and the scale and nature of the provider's business.</p> <p>This is consistent with the FMA's general licensing and compliance approach.</p>

Conclusion

26. We are very supportive of the proposed exemption for robo advice and would be keen to work with the FMA over the months ahead to discuss issues raised by our submission, to answer any questions you may have and to help you test the conditions you propose in a 'real life' situation

Yours sincerely





Date:	14 th July 2017
Pages:	6
Name of submitter:	[REDACTED]
Company or entity:	InvestNow Saving and Investment Service Limited, Implemented Investment Solutions Limited. Retail Direct Managed Funds Channel, Manager Investment Schemes.
Organisation type:	[REDACTED]
Contact name (if different):	[REDACTED]
Contact email and phone:	[REDACTED]

General questions	InvestNow Response
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.	<p>No, we do not support having an exemption.</p> <p>In a newly regulated industry, we do not think that the law should altered by an exemption of this nature.</p> <p>We question the FMAs rationale for considering the need to apply limits and conditions. Refer to our responses under “Exemption limits and Conditions”. There should not be a need to include safeguards and restrictions of this nature (rather the law should be amended and changed in accordance with the normal process).</p> <p>Note that we believe several successful offshore robo-advice models don’t readily translate into the New Zealand market. For example, offering model portfolios of directly held shares may inadvertently breach New Zealand’s tax rules in relation to capital gains (within NZ there is a wide misconception that individuals are not subject to capital gains tax, which is why we think it would be easy for a provider to promote a model that inadvertently breached this sort of area, and creates a inherent systematic risk to the end investors).</p> <p>Separately (but still on tax), NZ’s tax laws for global equities are complex. We question whether an automated advice process can deal with this complexity, as this is driven by the specific circumstances of each individual (which is impossible to model for). Key here is that in following the proper process to change the law (to allow robo-advice) we think that consideration will be needed to be given to changing the FIF tax rules (which are needlessly complex, and results in significant variance in tax outcomes based on each individual’s circumstance).</p> <p>Custody is another area that needs to be addressed with the introduction of robo-advice. The IMF has identified that custody is an area that needs greater regulatory focus in NZ. We think that the introduction of robo-advice adds even greater need to do this. This reflects that we think many robo-advice models will also hold assets for the end investors, reflecting that the platforms will be easier to build by doing this. This introduces a range of significant risks (such as there being no independence and checks between the robo-technology and the ownership of the underlying assets). We think the regulations enabling robo-advice should include the requirement to use an independent custodian.</p> <p>These types of complex issues won’t get due consideration if the proposed exemption is granted.</p>
Q2. Do you agree it is appropriate for us to consider using	No. We are not 100% certain that the FMA has the power to state

Date:	14 th July 2017
Pages:	6
Name of submitter:	[REDACTED]
Company or entity:	InvestNow Saving and Investment Service Limited, Implemented Investment Solutions Limited. Retail Direct Managed Funds Channel, Manager Investment Schemes.
Organisation type:	[REDACTED]
Contact name (if different):	[REDACTED]
Contact email and phone:	[REDACTED]

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.	exemptions that are in conflict with existing legislation. We think that this exemption should be used in relation to minor matters (whereas this is a situation where the what is being proposed is completely contrary to the existing legislation).
Q3. Do you think the costs for robo-advice providers to comply with the 'natural person' requirement (if no exemption is granted): <ul style="list-style-type: none"> • Would be unreasonable? or • Would not be justified by the benefit of compliance? Please give reasons for your answer.	The robo-advice providers need to comply with the law (which contains the 'natural person' requirement). The costs of doing this are irrelevant.
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.	We don't support either approach. We definite do not support granting individual exemptions, as this provides an unfair competitive environment.
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).	There are inherent risks associated with robo-advice, not limited to: <ul style="list-style-type: none"> • By definition, entering into contracts and commitments through direct channels is easier than face-to-face or offline channels. There is a risk that less-knowledgeable investors may commit to something online, without fully appreciating the obligations & consequences. This can have a "ticking time bomb" dimension to it, in situations where an investor may have an accruing financial obligation e.g. tax, that they are both unaware of and unable to meet at a date in the future • Any automated process has the inherent risk of something continuing for a long period of time, before it is discovered. Who carries that risk/liability? It relies upon the service provider actively monitoring for errors or mistakes – you can't rely upon the investor to look out for such things. How many Kiwis are actively engaged in their KiwiSaver commitments? The answer to that would give a fair indication of how many investors would be actively engaged in a robo-advice offering. We have noted the proposed potential requirement for the provider to have systems and processes in place detect issues, but question how this would happen (without an individual going through and vetting the advice given to each client. If there is a fault in the "robo" function, then it isn't immediate apparent to us how this is detected using a "robo" check). • We envisage that if the exemption is granted there will be new groups offering robo-advice who have limited experience in the New Zealand investment industry.

Date:	14 th July 2017
Pages:	6
Name of submitter:	[REDACTED]
Company or entity:	InvestNow Saving and Investment Service Limited, Implemented Investment Solutions Limited. Retail Direct Managed Funds Channel, Manager Investment Schemes.
Organisation type:	[REDACTED]
Contact name (if different):	[REDACTED]
Contact email and phone:	[REDACTED]

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.	<p>We do not think that there is any negative impact if no exemption is granted. There is already a process in place to introduce laws to allow Robo-advice.</p> <p>There is threat of overseas providers offering services to NZ investors. However this risk is pretty limited given the small economies of scale offered by the NZ market relative to the costs and overhead associated with customising a solution to our tax and regulatory frameworks. The complexity of NZ's tax rules also mitigates this risk (as any offer would need to take these into account).</p> <p>We will investigate offering class advice services.</p>
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?	We think the key issue is the complexity in meeting the regulatory requirements relating to giving investment advice. It is difficult to understand how robo-advice will fill any advice gap without providing a lower level of advice/care.
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.	We do not intend relying upon the proposed exemption.
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.	<p>The fact that the FMA is considering imposing limits or conditions raises alarm bells for us. One would assume that the rationale for limits and considerations reflects the FMAs concerns regarding the riskiness of robo-advice. Why does the FMA see a need to impose limits and conditions?</p> <p>If the proposed limits were to be applied it would actually introduce a different set of risks, primarily those that arise as a consequence of a service not being financially viable or sustainable. This would impact support and investment in the service, which in turn is risky for any investor.</p>
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	We do not intend relying upon the proposed exemption.

Date:	14 th July 2017
Pages:	6
Name of submitter:	[REDACTED]
Company or entity:	InvestNow Saving and Investment Service Limited, Implemented Investment Solutions Limited. Retail Direct Managed Funds Channel, Manager Investment Schemes.
Organisation type:	[REDACTED]
Contact name (if different):	[REDACTED]
Contact email and phone:	[REDACTED]

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.	No, because we are not 100% certain that the FMA has the power to state exemptions that would conflict with the appropriate legislation.
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.	Refer to our response to Q9
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.	Refer to our response to Q9
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.	Refer to our response to Q9
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.	Refer to our response to Q9
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	Refer to our response to Q9

Date:	14 th July 2017
Pages:	6
Name of submitter:	[REDACTED]
Company or entity:	InvestNow Saving and Investment Service Limited, Implemented Investment Solutions Limited. Retail Direct Managed Funds Channel, Manager Investment Schemes.
Organisation type:	
Contact name (if different):	
Contact email and phone:	[REDACTED]

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?

No, because we are not 100% certain that the FMA has the power to state exemptions that would conflict with the appropriate legislation.

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?

No. This should be set by the laws and regulations.

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.

Robo-advice should conform to the same controls and assurances as per the products being provided irrespective of the channel those products are being offered i.e. should be channel agnostic.

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.

Robo-advice should conform to the same controls and assurances as per the products being provided irrespective of the channel those products are being offered i.e. should be channel agnostic.

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.

Robo-advice should conform to the same controls and assurances as per the products being provided irrespective of the channel those products are being offered i.e. should be channel agnostic.

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?

N/A. We don't think the exemption should be granted.

Please give reasons for why any additional conditions would be appropriate and provide proposed wording for

Date:	14 th July 2017
Pages:	6
Name of submitter:	[REDACTED]
Company or entity:	InvestNow Saving and Investment Service Limited, Implemented Investment Solutions Limited. Retail Direct Managed Funds Channel, Manager Investment Schemes.
Organisation type:	
Contact name (if different):	
Contact email and phone:	[REDACTED]

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.

Robo-advice should conform to the same controls and assurances as per the products being provided irrespective of the channel those products are being offered i.e. should be channel agnostic. Size and scale should not be taken into consideration.

Q24. Are there any other limits or conditions you think would be appropriate to put in place?

N/A. We don't think the exemption should be granted.

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?

N/A. We don't think the exemption should be granted.

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?

N/A. We don't think the exemption should be granted.

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'?

Yes

Q28. Do you have any other feedback or comments?

No

Feedback form: Proposed exemption to facilitate personalised robo-advice

Please submit this feedback form electronically in both PDF and MS Word formats and email it to us at consultation@fma.govt.nz with 'Proposed exemption to facilitate personalised robo-advice: [your organisation's name]' in the subject line. Thank you.

Submissions close on 19 July 2017.

Date: 22/6/2017

Number of pages: 4

Name of submitter: [REDACTED]

Company or entity: Kehlmann Berleys Capital Ltd

Organisation type: Investment advice, investment, research.

Contact name (if different):

Contact email and phone: [REDACTED]

Question or paragraph number	Response
<i>You don't need to quote from the consultation document if you note the paragraph or question number.</i>	
Q1	<i>Yes, I personally support proposed exemption. Nowadays, a personal computer became indispensable for everybody. The rapid development of Internet and performance of modern computers opened up new vistas in many fields of human activities. As early as 20 years ago, the financial market trade was available only for banks and for a limited community of specialists. Today, anybody can join the world of professional traders and start independent trading at any time. It is a trend robo trading or advice will replace many of financial activities only just matter of the time in future. As you can see, auto hedge system and computers have replaces most of dealers' job just in last 20 years. Just 20 years ago, dealers need deal all the clients' orders, after clients called the dealing room. Right now, clients can all do it by themselves with mobil apps or computers, there are no dealing desks. Quantittiatvities trading or algorithmic trading will have more and more advantages. One example is AlphaGo's algorithm uses a combination of machine learning and tree search techniques, combined with extensive training, has won human beings.</i>
Q2	<i>I 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. FMA can set some limits for certain companies. For example, size of clients funds. Maximum risk tolerance, and etc.</i>
Q3	<i>I think FMA should encourage the new technology, and support some companies or persons are willing to study and research for future developments. I believe the costs of rebo advice will less in general, but it will depends on the situations.</i>
Q4	<i>I believe the class exemption or personalized exemption is almost same. The reason, there are always a group of clients will use the same investment portfolios, only differences among different clients in the same group are the size of each client's fund and risk tolerance. It is very easy to set via programme, only need to change the indicators. The adviser only need to talk to clients the risks and investment objectives for each model</i>

	<i>before providing the service.</i>
Q5	<i>I think risks are almost same with human actives, as long as the programmes have been tested.</i>
Q7	<i>AFAs want to provide this service, and they must understand the basic algorithm of their models, and understands the potential risks, trading products. So they can explain to clients. For my experiences, some clients want to use this service; they have already had some investment experiences, and have known the potential risks. I spent thousands of hours in research in developing models with my partner and tested hundreds of models in last few years. Experiences person, like me, I only need to see the trading history, I know the potential risks and basic logics of the models.</i>
Q8	<i>Yes, I intend to rely on the proposed exemption. I have submitted DIMS application. We will launch it soon. At the moment, ROBO advice is using in currencies, CFDs and stock index. In the US and HK it has been using in share trading and futures. They are using in different computer languages. However, the algorithm is similar. Some modern platforms have provided robo trading for shards. Eve you have algorithm, but it need time and funds to hire some experiences programmers to develop the new ideas and algorithm. However, research and development need large among of time and certain funds. Normally, it should generate an idea from highly experience persons, both understands markets and basic algorithm. And then programmers can create the basic programmers. It may be tested hundreds of times and the programmes have changed tens of times after it put in use. However, the programmes will be update from time to time to adapts new environments. There are many failures even spends so much time when the market condition has changes. You have to abandon them.</i>
Q9	<i>NO, new technology comes it will bring more protection for clients, and give their more choices. As we can see, traditional investments way in NZ is buying and holding products for a long time. When economic crisis like 2008, almost all the shares or funds dropped dramatically. However, I have seen many algorithms did better in 2008 and 2009. The reasons, and they use different mythologies. The algorithm can more easily judge the trends during the financial crisis. Change positions from long to sell short. Some algorithm is designed to be more volatile and more profits. It can balance the total risks.</i>
Q10	<i>I believe robo advice(Robo provider) is a kind of DIMS according to FA ACT, or FMC ACT, it trades on the behalf of clients, and rebalance clients' positions all the time without telling clients.</i>
Q12	<i>No need to proposed list of eligible products as long as the products have enough liquidity, transparent, which easily buy and sell the products without delaying.</i>
Q13	<i>About insurance, normally, the insurance provide the minimum investment exposure is 1million. In last a year, I was seeking almost all the insurance company for PI. Only one company can provide PI for my company with unreasonable price, 50,000 NZD premium not include GST, access fee is 50,000 NZD. If you one claim, the price is up to 100,000 a year. But recent I know, you can join the professional membership like PAA, IFA, and you can get insurance with reasonable price.</i>
Q14	<i>Duration is not necessary, we do not know the market, and market may be very quiet for a long time, also can be change frequently in a short period time. About value cap, it must depend on the product. Different products have different liquidities. It also depends on the</i>

	<i>algorithm, different algorithm may have different risks level.</i>
Q15	<i>For the beginning, it can set a limit for retail clients, I suggest 100,000 USD (150,000 NZD), but no limit to the whole sale clients. The reason in USD, because most of products are measured in USD. We believe whole sale clients have understand the risks.</i>
Q16	<i>No need for the total amount of products. Total capital cap is just enough. Because you can buy many products with very small amounts to diversify the risks or you can only buy one product with big amount.</i>
Q 17	<i>Yes</i>
Q18	<p><i>I think only need to tell clients risk, trading which products, a simple introductions about modeling, not too complex. No many clients will understand the methods and the algorithms.</i></p> <p><i>For example: Robo model one (90% of trades automatically, 10% manually).</i></p> <p><i>The most suitable trading products: XAU, GBPJPY, EURUSD ...</i></p> <p><i>Objectives: Speculating Seeking high Return with medium risks</i></p> <p><i>Focus on medium trading period, main time frame is 15 mins chart</i></p> <p><i>Maximum floating loss in total is less than 5%.</i></p> <p><i>Maximum stop loss for a single trade is 1-1.5%.</i></p> <p><i>There is a risk control system. When the systems reach the pre-agreed maximum loss, the system will be stopped.</i></p>
Q26	<i>Yes, both clients and service providers are likely to see that in the FMA website.</i>
Q27	<i>Robo-advice is good.</i>
Q28	<p><i>In Conclusion:</i></p> <p><i>Because of the limits of robo advice, we currently have not reach machine learning stages. All the algorithms are designed and programmed by persons, they cannot learn by itself. I believe there is some percentages Robo advice, but it is better to combine with human's interventions for now.</i></p> <p><i>Even a programme is tested in all the real data, accurate to the ticks (less than a second). It shows make stable profits every year in last 10 years; it still not guarantees it can make profits in the future. In order to reduce the risks, the programmes will be modified and improved from time to time. And using more than two different models which are from different trading strategy and trading a less correlated currency pairs to diverse the risks.</i></p> <p><i>Although, Robo trading has some limitations and risks, it can still bring huge potential profits in future. I believe Robo trading will replace many of professional traders' work, and more and more investment companies or trading companies in the world have used the programmes to trade in the capital market.</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.

By email

19 July 2017

Financial Markets Authority
1 Gray Street
Wellington 6012

Submission on Consultation Paper – Proposed exemption to facilitate personalised robo-advice

- 1 This is a submission by Kensington Swan on the Financial Markets Authority ('FMA') *Proposed exemption to facilitate robo-advice* consultation paper dated June 2017 ('Consultation Paper').

About Kensington Swan

- 2 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.
- 3 We have extensive experience advising a range of organisations that provide financial adviser services, from major fund managers and insurers to brokers and sole adviser practices. We act for many advisers, QFEs, brokers, and other financial markets participants. We assist our clients with their regulatory compliance obligations and initiatives aimed at providing effective, relevant financial adviser services to consumers.

General comments

- 4 We support the proposed exemption from the provisions of the Financial Advisers Act 2008 ('FAA') that only permit natural persons to provide personalised financial advice and investment planning services to retail clients. We welcome the FMA's decision to take up the challenge of how best to regulate robo-advice under the current regulatory regime.
- 5 We emphasise the importance of:
- a taking action now and not waiting for the Financial Services Legislation Amendment Bill ('Bill') to come into force; and
 - b within the conditions, ensuring that the exemption is flexible enough to cater for the variety of robo-advice services that providers may offer during the lifetime of the exemption. In particular:
 - i rather than imposing product-level limits, as proposed, risks associated with particular products should be addressed through conditions on the capability of an individual system; and
 - ii the conditions of the exemption should be drafted broadly enough to allow providers to comply in the most appropriate manner for the particular service to be provided.

KENSINGTONSWAN.COM

AUCKLAND 18 Viaduct Harbour Ave, Private Bag 92101, Auckland 1142, New Zealand DX CP22001 P.+64 9 379 4196 F.+64 9 309 4276

WELLINGTON 89 The Terrace, P O Box 10246, Wellington 6143, New Zealand DX SP26517 P.+64 4 472 7877 F.+64 4 472 2291

- 6 We also see significant value in the FMA producing a consumer-targeted information sheet about robo-advice generally.
- 7 Further detail is set out in our below responses to the FMA's consultation questions.
- 8 We have also included our comments, in the form requested by the FMA, as an **attachment** to this letter.

Specific responses to consultation questions

Question 1

- 9 We support the proposed exemption from the 'natural person' requirement in the FAA, provided the exemption is subject to conditions and limits that provide appropriate consumer protection safeguards. Please see our responses to questions 13 and 14 (addressed together) and 15 and 16 (addressed together) for our views as to which conditions and limits we consider to be appropriate.
- 10 While the Bill will provide sufficient flexibility for robo-advice and other FinTech services to be provided, waiting for its full implementation will:
- a cause a significant delay in the development of technology-enabled advice channels in New Zealand; and
 - b prolong the advice gap the FMA has identified.
- 11 Granting an exemption now, with appropriate limits and conditions in place, will provide an opportunity to overcome the advice gap much sooner, while maintaining, and in some instances possibly enhancing (see, for example, our response to question 12 below), consumer protection safeguards.
- 12 Robo-advice services are already offered by offshore providers, with those services able, in practice, to be accessed by New Zealanders. Continuing under the current regime without an exemption would be ignoring the fact that robo-advice already exists and is already accessible, notwithstanding the strict legal position.
- 13 Delaying the implementation of robo-advice would also disadvantage New Zealand's growing and well-regarded tech sector vis-a-vis the rest of the world, and could inhibit local financial technology development in the future.

Question 2

- 14 For the reasons outlined above, we agree that the FMA's use of its exemption powers to facilitate the provision of robo-advice is appropriate. We do not believe that the FMA should wait for the Bill to come into effect.

Question 3

- 15 We understand that the costs for potential robo-advice providers to comply with the 'natural person' requirement if no exemption is granted will be both unreasonable and unjustified by any benefit of compliance with that requirement.
- 16 As noted in the Consultation Paper, maintaining the status quo would require an authorised financial adviser ('AFA') to review and sign off on each piece of advice produced by the robo-advice service. This would entirely remove the primary benefits of robo-advice, being its

automation-enabled scalability and corresponding increased consumer access to advice at a lower cost.

- 17 We anticipate that the actual costs of compliance will be able to be quantified by financial advice providers.

Question 4

- 18 We support the class exemption approach proposed, provided that the FMA is open to considering individual exemptions on a case-by-case basis where a particular service does not fall within the terms of the exemption. We expect this will be case.
- 19 We consider that the FMA's proposed approach is cost-effective and will provide a 'level playing field' for providers, while also leaving the door open for providers to seek individual exemptions for unique robo-advice or similar propositions.
- 20 However, we suggest that the information sheet to be released when the exemption is finalised provides as much guidance as possible as to what any provider seeking an individual exemption will need to show. This could be similar to the content of page 13 of the Consultation Paper (which notes that a provider applying for an individual exemption will need to explain why modifications are appropriate for their particular service), but with emphasis as to which elements of the conditions (if any) are of particular concern to the FMA. This will allow providers to focus their individual exemption application on the key matters that the FMA will need to be satisfied of before granting an individual exemption.

Questions 5 and 6

- 21 Please see our responses to questions 1 and 3 in respect of the key impacts we believe the exemption (or, alternatively, no exemption) would have.
- 22 In addition, we note that there may be some negative effect on AFAs where consumers choose to seek robo-advice over face to face advice. However, as the FMA noted on page 7 of the Consultation Paper, robo-advice will likely not be suitable for all advice, and face to face advice will continue to have an important role to play in the financial advice landscape.
- 23 We anticipate that individual providers will be able to confirm, through the consultation process, the impacts that the two scenarios would have on their businesses.

Question 7

- 24 We understand, from anecdotal evidence, that there is an advice gap. For example, with 2.6m KiwiSaver members and approximately 1,800 AFAs as at 30 June 2016,¹ the ratio of advisers to members suggests that many members are not receiving advice.
- 25 We anticipate that providers will be able to comment on the approximate balance a consumer would need, before a provider or AFA will be willing to provide advice to them.

Question 8

- 26 We have no response to this question.

¹ Based on the content of the FMA's *KiwiSaver Annual Report 1 July 2015 – 30 June 2016* and the FMA's third statistical report on AFAs in New Zealand (released 27 March 2017).

Exemption limits and conditions

Question 9

- 27 We broadly agree that the limits and conditions strike an appropriate balance between consumer protection and promoting innovation, although for the reasons outlined in our response to questions 12, 13, and 14 we disagree with the inclusion of product limits.
- 28 We note the FMA's comment on page 7 of the Consultation Paper that '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.' To mitigate the risk of increased regulatory burden, resulting from a mismatch between the exemption and the requirements of the new Code under the Bill, we suggest that the FMA consult now with the recently-announced Code Working Group members in relation to the proposed conditions and limits.

Question 10

- 29 We have no response to this question, but anticipate that individual providers will be able to confirm the cost impacts and workability of the proposed limits and conditions.

Question 11

- 30 We agree that the proposed exemption should be available to investment planning services as well as financial advice (although please see our comments in relation to question 12 regarding the efficacy of investment planning services if, as proposed, the personalised robo-advice can only be provided in respect of some financial products).
- 31 We agree that it would be inappropriate to include discretionary investment management services ('DIMS') within the exemption. The separate DIMS licensing regime under the Financial Markets Conduct Act 2013 provides adequate flexibility for a licensed entity, rather than an individual, to provide personalised DIMS.

Question 12

- 32 We do not agree with the concept of limiting eligible products as proposed.
- 33 This is for the following reasons:
- a A registered financial adviser ('RFA') can provide class advice on any type of financial product, and an individual RFA can provide personalised advice on any category 2 product, without being under any conduct obligations beyond those contained in the FAA. An AFA can provide personalised advice on any type of financial product, subject to the terms of the AFA's authorisation and compliance with the adviser's duties under the FAA and the Code of Professional Conduct for AFAs ('Code'). As the proposed exemption will impose applicable Code obligations, as noted on page 11 of the Consultation Paper, we see including product limitations as being inconsistent with the concept of regulating robo-advice on a consistent basis with advice provided by individuals.
 - b We query how membership of a KiwiSaver scheme or consumer credit contract could be described as 'easy to exit'. Membership of KiwiSaver is difficult to reverse, and exiting a consumer credit contract would generally require full repayment of the relevant loan. We wonder whether imposing an 'easy to exit' limit on some eligible products would create a

distortion in the financial advice able to be provided by limiting consumer access to robo-advice on certain products, as this could lead to sub-optimal consumer outcomes.

- c The Consultation Paper does not discuss why mortgage financing is excluded from the proposed list of eligible products. Again, as RFAs can provide personalised advice on mortgages, we see no reason for robo-advice to be treated differently – particularly when the proposed conditions will impose conduct obligations on robo-advice providers that do not apply to RFAs.
- d If controls are to be placed on the products that can be advised on through robo-advice, we submit that these would be better presented as conditions on the capability of an individual system. We see the proposed conduct and filtering conditions as a natural restriction on the types of products that will be advised on – that is, if a product is too complex for a provider to discharge its obligations in relation to that product, it will be unlikely to be feasible to include it in a robo-advice tool.

Questions 13 and 14

- 34 We support the inclusion of personal insurance products as permitted products.
- 35 We do not agree with imposing value or duration caps (on either personal insurance products or any other products), as we consider that the proposed conduct and filtering conditions will provide a natural restriction on the products that can be advised on – please see our responses to question 12 above.
- 36 We understand that the FMA is concerned about the significant consequences that can arise if a consumer or product provider fails to disclose material information. However, we submit that the proposed conduct and disclosure obligations will mean that robo-advice services will need to be designed to ensure that these disclosure obligations are complied with, in order for the exemption to be relied on. In addition, the FMA could impose a specific disclosure obligation relating to the insurance duty of disclosure and the consequences of failure to disclose, to ensure that all clients understand this risk.
- 37 As noted above, including value or duration caps would be inconsistent with the concept of regulating robo-advice equivalently to advice provided by individuals.

Questions 15 and 16

- 38 In our view, the FMA should not impose an individual client investment limit or a limit on the total investment amount of products advised on through a robo-advice service.
- 39 We understand from discussions with providers that including these limits are unlikely to be commercially viable. In particular, we see significant issues with any suggestion that limits should be imposed on the total amount of investment products that can be advised on through robo-advice, particularly when the example given is so low (\$5m total). Any limit of this nature would be difficult to enforce and would severely impact on the viability of a robo-advice service, reducing the likelihood of industry reliance on the exemption, and seems hard to rationalise on a principles basis.
- 40 In addition, we see significant issues with attempting to enforce an individual client limit. The size of an investment is not always a meaningful indicator of the complexity of a client's needs, meaning that it is unlikely to be a useful filter for determining whether it is appropriate for a given client to receive robo-advice. Further, when confronted with a notice that the

client's balance is too high for a robo-advice service to advise on, the client may simply elect to access the service again and alter the total amount disclosed in respect of which they want advice (potentially leading to inappropriate advice being given).

- 41 We also submit that, as outlined in paragraph 33d, if a product is too complex for a provider to discharge its obligations in relation to that product, it will be unlikely to be feasible for a provider to include it in their robo-advice tool.

Question 17

- 42 We submit that if the FMA is concerned about consistency of disclosures; the status disclosure statement informing clients that the provider is providing a personalised robo-advice service in reliance on the exemption notice and that the FMA has not endorsed, approved, or reviewed the particular robo-advice service should be prescribed.
- 43 However, any prescribed statement should be as clear, concise, and effective as possible. If there is any possibility of a provider needing to modify the statement for their particular service, the exemption notice should also provide the necessary flexibility for those modifications to be made (similar to regulation 9 of the Financial Markets Conduct Regulations 2014).

Question 18

- 44 We strongly agree that providers should have flexibility to decide how to comply with the disclosure condition. This will enable providers to incorporate the required disclosures into their robo-advice tool in a way that the provider believes will be the most user-friendly and easy for consumers to understand. This will allow providers to word the disclosures in plain English and to make use of pop-ups and videos, and to stagger the disclosures throughout the information collection process, as the provider sees fit.
- 45 Providing flexibility would also cater for robo-advice services that are not delivered through a traditional platform or tool. For example, prescribing the form and method of disclosure is likely to cause significant issues, and to negatively impact on the client experience, where personalised advice is provided directly to clients via other digital formats.
- 46 In addition, in our experience, prescribed disclosures often need to be modified by providers to ensure that statements made are not misleading when made in relation to a particular product or service.
- 47 Accordingly, we see very limited benefit in the FMA prescribing the method and forms of disclosure required.

Question 19

- 48 We anticipate that most providers would, as a matter of course, obtain active confirmation from a client that they have read the disclosures and agree to receiving advice through the robo-advice service on the basis described.
- 49 However, requiring this as a condition of the exemption may cause issues for services not delivered through a traditional platform or tool. Accordingly, we suggest that any condition is drafted on the basis that the provider has reasonable grounds to believe that the client has received the disclosures and agrees to using the service, without prescribing the manner in which providers should obtain comfort on the point.

Questions 20 and 21

- 50 We agree that the proposed conduct obligations capture all directly relevant Code Standards. We consider that the proposed conduct obligations and other conditions impose equivalent obligations to those applying to an AFA, as they apply to a robo-advice service. While not expressed as a conduct obligation, we also agree with the capability condition, as we see it as a natural and beneficial application of Code Standard 14 (under which an AFA must have the requisite competence, knowledge, and skills to provide a service) to robo-advice.
- 51 We submit that an information sheet outlining the FMA's expectations of how providers can demonstrate that they are meeting the conduct obligations in practice would be helpful for providers.

Question 22

- 52 In line with our response at paragraph 50 above, we generally agree with the FMA's approach taken to modifying Code Standards in formulating the conduct conditions.
- 53 We also provide specific comments on the Code Standards to which the FMA sought feedback in the table below:

Code Standard	Feedback sought	Kensington Swan's feedback
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.	Whether there may be any difficulties applying the proposed conduct condition that the provider must not do anything or make an omission that could bring the financial advice industry into disrepute in a robo-advice context.	<p>We consider that this condition may be difficult to apply where technological errors are the primary source of any reputational issues. Accordingly, we suggest that the information sheet to be released with the exemption provides clear guidance to providers as to how they can meet this obligation.</p> <p>Subject to that qualification, we agree that this obligation should be retained.</p>
6 - An AFA must behave professionally in all dealings with a client, and communicate clearly, concisely and effectively.	Whether it would be useful to include a modified version of this requirement as an exemption condition.	<p>In the robo-advice context this Code Standard could be reinterpreted to align with our comments on Code Standard 2, namely to guide providers' actions (and omissions) after any technical issues with the robo-advice system arise.</p> <p>However, given the reputational risks of behaving unprofessionally and not adequately communicating to clients, and the content of the conduct obligations and other conditions, we consider that there are likely to be sufficient commercial incentives and controls to achieve the same outcome without needing to include a modified version of this Code Standard.</p>

Code Standard	Feedback sought	Kensington Swan's feedback
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.	Whether to include a condition that the provider obtains active confirmation from the client that the client agrees to receiving the advice through the robo-advice service on the basis described.	Please see our response to question 19 at paragraph 48.

Question 23

- 54 We acknowledge that this approach is conceptually appealing, but we are concerned about how it would (or could) be applied in practice. We are of the view that it is better for the conditions to be as principle-based and flexible as possible, to accommodate further advancements of technology, rather than tethering the conditions to specified 'proportional' settings.
- 55 We submit that the better approach would be to have uniform conditions supplemented by an information sheet or guidance note which outlines how the FMA would approach monitoring and enforcing the conditions.

Question 24

- 56 We do not think any additional conditions or limits are necessary.

Other

Question 25

- 57 We agree that an information sheet would be very helpful, and would assist the industry to take a consistent approach to the exemption and its conditions. We suggest that the information sheet includes:
- a practical examples of how the FMA expects providers to comply with conditions of the exemption;
 - b how the FMA would approach monitoring and enforcing the conditions; and
 - c what a provider seeking an individual exemption will need to show, with emphasis on which elements of the conditions (if any) are of particular concern to the FMA.
- 58 In addition to the information sheet for providers giving guidance on how the exemption conditions apply and will be enforced, we suggest that the FMA also release a consumer information sheet. This sheet would explain how robo-advice works and the types of things consumers should consider when deciding whether to use robo-advice services. This will help providers with the consumer education and access to advice elements of the purposes of the proposed exemption.

Question 26

- 59 In our view, a list of providers would be useful. In particular, we consider that a list would give consumers confidence that a provider is actually relying on the exemption. In this sense, such a list would operate as a tool against providers who have not notified the FMA and who may be trying to avoid the FMA's oversight.

Question 27

- 60 We note that 'robo advice' is the internationally recognised and used term for this type of service, and we cannot see any reason to use a different term.
- 61 We agree with the definition of the term 'robo-advice' on page 3 of the Consultation Paper, as it caters for a broad range of services and is flexible enough to capture future technological advancements.

Question 28

- 62 We support the FMA undertaking this measured consultative process for robo-advice.
- 63 We assume that the exemption will be drafted so, as to give providers flexibility to satisfy the conditions through reliance on systems and/or personnel of related bodies corporate, thereby maximising efficiencies to deliver lower cost access to financial advice.
- 64 As the drafting of the final exemption notice will be key to the usefulness of the exemption, we suggest that the FMA releases a draft exemption notice for further consultation in due course.

Further information

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

Yours faithfully
Kensington Swan



Feedback form: Proposed exemption to facilitate personalised robo-advice

Please submit this feedback form electronically in both PDF and MS Word formats and email it to us at consultation@fma.govt.nz with 'Proposed exemption to facilitate personalised robo-advice: [your organisation's name]' in the subject line. Thank you.

Submissions close on 19 July 2017.

Date:	19 July 2017	Number of pages:	8
Name of submitter:	[REDACTED]		
Company or entity:	Kensington Swan		
Organisation type:	Law firm		
Contact name (if different):	[REDACTED]		
Contact email and phone:	[REDACTED]		

Question or paragraph number	Response
<i>You don't need to quote from the consultation document if you note the paragraph or question number.</i>	
None – general comments	1 We support the proposed exemption from the provisions of the Financial Advisers Act 2008 ('FAA') that only permit natural persons to provide personalised financial advice and investment planning services to retail clients. We welcome the FMA's decision to take up the challenge of how best to regulate robo-advice under the current regulatory regime.
	2 We emphasise the importance of: <ul style="list-style-type: none"> a taking action now and not waiting for the Financial Services Legislation Amendment Bill ('Bill') to come into force; and b within the conditions, ensuring that the exemption is flexible enough to cater for the variety of robo-advice services that providers may offer during the lifetime of the exemption. In particular: <ul style="list-style-type: none"> i rather than imposing product-level limits, as proposed, risks associated with particular products should be addressed through conditions on the capability of an individual system; and ii the conditions of the exemption should be drafted broadly enough to allow providers to comply in the most appropriate manner for the particular service to be provided.
	3 We also see significant value in the FMA producing a consumer-targeted information sheet about robo-advice generally.
	4 Further detail is set out in our below responses to the FMA's consultation questions.
Q1	5 We support the proposed exemption from the 'natural person' requirement in the FAA, provided the exemption is subject to conditions and limits that provide appropriate consumer protection safeguards. Please see our responses to questions 13 and 14 (addressed together) and 15 and 16 (addressed together) for our views as to which conditions and limits we consider to be appropriate.

	<p>6 While the Bill will provide sufficient flexibility for robo-advice and other FinTech services to be provided, waiting for its full implementation will:</p> <ul style="list-style-type: none"> a cause a significant delay in the development of technology-enabled advice channels in New Zealand; and b prolong the advice gap the FMA has identified. <p>7 Granting an exemption now, with appropriate limits and conditions in place, will provide an opportunity to overcome the advice gap much sooner, while maintaining, and in some instances possibly enhancing (see, for example, our response to question 12 below), consumer protection safeguards.</p> <p>8 Robo-advice services are already offered by offshore providers, with those services able, in practice, to be accessed by New Zealanders. Continuing under the current regime without an exemption would be ignoring the fact that robo-advice already exists and is already accessible, notwithstanding the strict legal position.</p> <p>9 Delaying the implementation of robo-advice would also disadvantage New Zealand's growing and well-regarded tech sector vis-a-vis the rest of the world, and could inhibit local financial technology development in the future.</p>
Q2	<p>10 For the reasons outlined above, we agree that the FMA's use of its exemption powers to facilitate the provision of robo-advice is appropriate. We do not believe that the FMA should wait for the Bill to come into effect.</p>
Q3	<p>11 We understand that the costs for potential robo-advice providers to comply with the 'natural person' requirement if no exemption is granted will be both unreasonable and unjustified by any benefit of compliance with that requirement.</p> <p>12 As noted in the Consultation Paper, maintaining the status quo would require an authorised financial adviser ('AFA') to review and sign off on each piece of advice produced by the robo-advice service. This would entirely remove the primary benefits of robo-advice, being its automation-enabled scalability and corresponding increased consumer access to advice at a lower cost.</p> <p>13 We anticipate that the actual costs of compliance will be able to be quantified by financial advice providers.</p>
Q4	<p>14 We support the class exemption approach proposed, provided that the FMA is open to considering individual exemptions on a case-by-case basis where a particular service does not fall within the terms of the exemption. We expect this will be case.</p> <p>15 We consider that the FMA's proposed approach is cost-effective and will provide a 'level playing field' for providers, while also leaving the door open for providers to seek individual exemptions for unique robo-advice or similar propositions.</p> <p>16 However, we suggest that the information sheet to be released when the exemption is finalised provides as much guidance as possible as to what any provider seeking an individual exemption will need to show. This could be similar to the content of page 13 of the Consultation Paper (which notes that a provider applying for an individual exemption will need to explain why modifications are appropriate for their particular service), but with emphasis as to which elements of the conditions (if any) are of particular concern to</p>

		the FMA. This will allow providers to focus their individual exemption application on the key matters that the FMA will need to be satisfied of before granting an individual exemption.
Q5 and Q6	17	Please see our responses to questions 1 and 3 in respect of the key impacts we believe the exemption (or, alternatively, no exemption) would have.
	18	In addition, we note that there may be some negative effect on AFAs where consumers choose to seek robo-advice over face to face advice. However, as the FMA noted on page 7 of the Consultation Paper, robo-advice will likely not be suitable for all advice, and face to face advice will continue to have an important role to play in the financial advice landscape.
	19	We anticipate that individual providers will be able to confirm, through the consultation process, the impacts that the two scenarios would have on their businesses.
Q7	20	We understand, from anecdotal evidence, that there is an advice gap. For example, with 2.6m KiwiSaver members and approximately 1,800 AFAs as at 30 June 2016, ² the ratio of advisers to members suggests that many members are not receiving advice.
	21	We anticipate that providers will be able to comment on the approximate balance a consumer would need, before a provider or AFA will be willing to provide advice to them.
Q8	22	We have no response to this question.
Q9	23	We broadly agree that the limits and conditions strike an appropriate balance between consumer protection and promoting innovation, although for the reasons outlined in our response to questions 12, 13, and 14 we disagree with the inclusion of product limits.
	24	We note the FMA's comment on page 7 of the Consultation Paper that '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.' To mitigate the risk of increased regulatory burden, resulting from a mismatch between the exemption and the requirements of the new Code under the Bill, we suggest that the FMA consult now with the recently-announced Code Working Group members in relation to the proposed conditions and limits.
Q10	25	We have no response to this question, but anticipate that individual providers will be able to confirm the cost impacts and workability of the proposed limits and conditions.
Q11	26	We agree that the proposed exemption should be available to investment planning services as well as financial advice (although please see our comments in relation to question 12 regarding the efficacy of investment planning services if, as proposed, the personalised robo-advice can only be provided in respect of some financial products).
	27	We agree that it would be inappropriate to include discretionary investment management services ('DIMS') within the exemption. The separate DIMS licensing regime under the Financial Markets Conduct Act 2013 provides adequate flexibility for a licensed entity, rather than an individual, to provide personalised DIMS.

² Based on the content of the FMA's *KiwiSaver Annual Report 1 July 2015 – 30 June 2016* and the FMA's third statistical report on AFAs in New Zealand (released 27 March 2017).

Q12	<p>28 We do not agree with the concept of limiting eligible products as proposed.</p> <p>29 This is for the following reasons:</p> <ul style="list-style-type: none"> a A registered financial adviser ('RFA') can provide class advice on any type of financial product, and an individual RFA can provide personalised advice on any category 2 product, without being under any conduct obligations beyond those contained in the FAA. An AFA can provide personalised advice on any type of financial product, subject to the terms of the AFA's authorisation and compliance with the adviser's duties under the FAA and the Code of Professional Conduct for AFAs ('Code'). As the proposed exemption will impose applicable Code obligations, as noted on page 11 of the Consultation Paper, we see including product limitations as being inconsistent with the concept of regulating robo-advice on a consistent basis with advice provided by individuals. b We query how membership of a KiwiSaver scheme or consumer credit contract could be described as 'easy to exit'. Membership of KiwiSaver is difficult to reverse, and exiting a consumer credit contract would generally require full repayment of the relevant loan. We wonder whether imposing an 'easy to exit' limit on some eligible products would create a distortion in the financial advice able to be provided by limiting consumer access to robo-advice on certain products, as this could lead to sub-optimal consumer outcomes. c The Consultation Paper does not discuss why mortgage financing is excluded from the proposed list of eligible products. Again, as RFAs can provide personalised advice on mortgages, we see no reason for robo-advice to be treated differently – particularly when the proposed conditions will impose conduct obligations on robo-advice providers that do not apply to RFAs. d If controls are to be placed on the products that can be advised on through robo-advice, we submit that these would be better presented as conditions on the capability of an individual system. We see the proposed conduct and filtering conditions as a natural restriction on the types of products that will be advised on – that is, if a product is too complex for a provider to discharge its obligations in relation to that product, it will be unlikely to be feasible to include it in a robo-advice tool.
Q13 and Q14	<p>30 We support the inclusion of personal insurance products as permitted products.</p> <p>31 We do not agree with imposing value or duration caps (on either personal insurance products or any other products), as we consider that the proposed conduct and filtering conditions will provide a natural restriction on the products that can be advised on – please see our responses to question 12 above.</p> <p>32 We understand that the FMA is concerned about the significant consequences that can arise if a consumer or product provider fails to disclose material information. However, we submit that the proposed conduct and disclosure obligations will mean that robo-advice services will need to be designed to ensure that these disclosure obligations are complied with, in order for the exemption to be relied on. In addition, the FMA could impose a specific disclosure obligation relating to the insurance duty of disclosure and the consequences of failure to disclose, to ensure that all clients understand this risk.</p>

	33	As noted above, including value or duration caps would be inconsistent with the concept of regulating robo-advice equivalently to advice provided by individuals.
Q15 and Q16	34	In our view, the FMA should not impose an individual client investment limit or a limit on the total investment amount of products advised on through a robo-advice service.
	35	We understand from discussions with providers that including these limits are unlikely to be commercially viable. In particular, we see significant issues with any suggestion that limits should be imposed on the total amount of investment products that can be advised on through robo-advice, particularly when the example given is so low (\$5m total). Any limit of this nature would be difficult to enforce and would severely impact on the viability of a robo-advice service, reducing the likelihood of industry reliance on the exemption, and seems hard to rationalise on a principles basis.
	36	In addition, we see significant issues with attempting to enforce an individual client limit. The size of an investment is not always a meaningful indicator of the complexity of a client's needs, meaning that it is unlikely to be a useful filter for determining whether it is appropriate for a given client to receive robo-advice. Further, when confronted with a notice that the client's balance is too high for a robo-advice service to advise on, the client may simply elect to access the service again and alter the total amount disclosed in respect of which they want advice (potentially leading to inappropriate advice being given).
	37	We also submit that, as outlined in paragraph 29d, if a product is too complex for a provider to discharge its obligations in relation to that product, it will be unlikely to be feasible for a provider to include it in their robo-advice tool.
Q17	38	We submit that if the FMA is concerned about consistency of disclosures; the status disclosure statement informing clients that the provider is providing a personalised robo-advice service in reliance on the exemption notice and that the FMA has not endorsed, approved, or reviewed the particular robo-advice service should be prescribed.
	39	However, any prescribed statement should be as clear, concise, and effective as possible. If there is any possibility of a provider needing to modify the statement for their particular service, the exemption notice should also provide the necessary flexibility for those modifications to be made (similar to regulation 9 of the Financial Markets Conduct Regulations 2014).
Q18	40	We strongly agree that providers should have flexibility to decide how to comply with the disclosure condition. This will enable providers to incorporate the required disclosures into their robo-advice tool in a way that the provider believes will be the most user-friendly and easy for consumers to understand. This will allow providers to word the disclosures in plain English and to make use of pop-ups and videos, and to stagger the disclosures throughout the information collection process, as the provider sees fit.
	41	Providing flexibility would also cater for robo-advice services that are not delivered through a traditional platform or tool. For example, prescribing the form and method of disclosure is likely to cause significant issues, and to negatively impact on the client experience, where personalised advice is provided directly to clients via other digital formats.

	42	In addition, in our experience, prescribed disclosures often need to be modified by providers to ensure that statements made are not misleading when made in relation to a particular product or service.						
	43	Accordingly, we see very limited benefit in the FMA prescribing the method and forms of disclosure required.						
Q19	44	We anticipate that most providers would, as a matter of course, obtain active confirmation from a client that they have read the disclosures and agree to receiving advice through the robo-advice service on the basis described.						
	45	However, requiring this as a condition of the exemption may cause issues for services not delivered through a traditional platform or tool. Accordingly, we suggest that any condition is drafted on the basis that the provider has reasonable grounds to believe that the client has received the disclosures and agrees to using the service, without prescribing the manner in which providers should obtain comfort on the point.						
Q20 and Q21	46	We agree that the proposed conduct obligations capture all directly relevant Code Standards. We consider that the proposed conduct obligations and other conditions impose equivalent obligations to those applying to an AFA, as they apply to a robo-advice service. While not expressed as a conduct obligation, we also agree with the capability condition, as we see it as a natural and beneficial application of Code Standard 14 (under which an AFA must have the requisite competence, knowledge, and skills to provide a service) to robo-advice.						
	47	We submit that an information sheet outlining the FMA's expectations of how providers can demonstrate that they are meeting the conduct obligations in practice would be helpful for providers.						
Q22	48	In line with our response at paragraph 46 above, we generally agree with the FMA's approach taken to modifying Code Standards in formulating the conduct conditions.						
	49	We also provide specific comments on the Code Standards to which the FMA sought feedback in the table below:						
		<table><tr><th>Code Standard</th><th>Feedback sought</th><th>Kensington Swan's feedback</th></tr><tr><td>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.</td><td>Whether there may be any difficulties applying the proposed conduct condition that the provider must not do anything or make an omission that could bring the financial advice industry into disrepute in a robo-advice context.</td><td>We consider that this condition may be difficult to apply where technological errors are the primary source of any reputational issues. Accordingly, we suggest that the information sheet to be released with the exemption provides clear guidance to providers as to how they can meet this obligation.</td></tr></table>	Code Standard	Feedback sought	Kensington Swan's feedback	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.	Whether there may be any difficulties applying the proposed conduct condition that the provider must not do anything or make an omission that could bring the financial advice industry into disrepute in a robo-advice context.	We consider that this condition may be difficult to apply where technological errors are the primary source of any reputational issues. Accordingly, we suggest that the information sheet to be released with the exemption provides clear guidance to providers as to how they can meet this obligation.
Code Standard	Feedback sought	Kensington Swan's feedback						
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.	Whether there may be any difficulties applying the proposed conduct condition that the provider must not do anything or make an omission that could bring the financial advice industry into disrepute in a robo-advice context.	We consider that this condition may be difficult to apply where technological errors are the primary source of any reputational issues. Accordingly, we suggest that the information sheet to be released with the exemption provides clear guidance to providers as to how they can meet this obligation.						

			Subject to that qualification, we agree that this obligation should be retained.	
	6 - An AFA must behave professionally in all dealings with a client, and communicate clearly, concisely and effectively.	Whether it would be useful to include a modified version of this requirement as an exemption condition.	<p>In the robo-advice context this Code Standard could be reinterpreted to align with our comments on Code Standard 2, namely to guide providers' actions (and omissions) after any technical issues with the robo-advice system arise.</p> <p>However, given the reputational risks of behaving unprofessionally and not adequately communicating to clients, and the content of the conduct obligations and other conditions, we consider that there are likely to be sufficient commercial incentives and controls to achieve the same outcome without needing to include a modified version of this Code Standard.</p>	
	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.	Whether to include a condition that the provider obtains active confirmation from the client that the client agrees to receiving the advice through the robo-advice service on the basis described.	Please see our response to question 19 at paragraph 44.	
Q23	50	We acknowledge that this approach is conceptually appealing, but we are concerned about how it would (or could) be applied in practice. We are of the view that it is better for the conditions to be as principle-based and flexible as possible, to accommodate further advancements of technology, rather than tethering the conditions to specified 'proportional' settings.		
	51	We submit that the better approach would be to have uniform conditions supplemented by an information sheet or guidance note which outlines how the FMA would approach monitoring and enforcing the conditions.		

Q24	52	We do not think any additional conditions or limits are necessary.
Q25	53	<p>We agree that an information sheet would be very helpful, and would assist the industry to take a consistent approach to the exemption and its conditions. We suggest that the information sheet includes:</p> <ul style="list-style-type: none"> a practical examples of how the FMA expects providers to comply with conditions of the exemption; b how the FMA would approach monitoring and enforcing the conditions; and c what a provider seeking an individual exemption will need to show, with emphasis on which elements of the conditions (if any) are of particular concern to the FMA.
	54	In addition to the information sheet for providers giving guidance on how the exemption conditions apply and will be enforced, we suggest that the FMA also release a consumer information sheet. This sheet would explain how robo-advice works and the types of things consumers should consider when deciding whether to use robo-advice services. This will help providers with the consumer education and access to advice elements of the purposes of the proposed exemption.
Q26	55	In our view, a list of providers would be useful. In particular, we consider that a list would give consumers confidence that a provider is actually relying on the exemption. In this sense, such a list would operate as a tool against providers who have not notified the FMA and who may be trying to avoid the FMA's oversight.
Q27	56	We note that 'robo advice' is the internationally recognised and used term for this type of service, and we cannot see any reason to use a different term.
	57	We agree with the definition of the term 'robo-advice' on page 3 of the Consultation Paper, as it caters for a broad range of services and is flexible enough to capture future technological advancements.
Q28	58	We support the FMA undertaking this measured consultative process for robo-advice.
	59	We assume that the exemption will be drafted so, as to give providers flexibility to satisfy the conditions through reliance on systems and/or personnel of related bodies corporate, thereby maximising efficiencies to deliver lower cost access to financial advice.
	60	As the drafting of the final exemption notice will be key to the usefulness of the exemption, we suggest that the FMA releases a draft exemption notice for further consultation in due course.
Feedback summary – See 'General comments' above.		
<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.		

Feedback form: Proposed exemption to facilitate personalised robo-advice

Please submit this feedback form electronically in both PDF and MS Word formats and email it to us at consultation@fma.govt.nz with 'Proposed exemption to facilitate personalised robo-advice: [your organisation's name]' in the subject line. Thank you.

Submissions close on 19 July 2017

Date: 19 July 2017 **Number of pages:** 10

Name of submitter: [REDACTED]

Company or entity: Kiwi Group Holdings including Kiwibank Limited, the Gareth Morgan Investments Limited Partnership (GMILP) and Kiwi Wealth Limited

Organisation type: Registered Bank and QFE, and Managed Investment Scheme licensee and Discretionary Investment Management Services licensee

Contact name (if different): Same as above

Contact email and phone: [REDACTED]
[REDACTED]

Question or paragraph number

Response

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.

Yes we do support the proposed exemption, subject to most of the proposed limits and conditions.

We believe that automated personal financial advice is the best way of increasing access to financial advice for the retail public.

A well designed automated advice tool has a number of benefits, it can:

- provide advice at no or low cost relative to advice provided solely by a human adviser;
- service a large volume of clients and do so 24/7 at a time and place that suits the clients;
- provide advice in a simple, clear and educational way with customers able to progress at their own pace and with the ability to link to other educational material, including from independent sources;
- provide advice without the need for face to face contact or geographical proximity;
- provide consistent advice;
- provide impartial advice without judgment or bias;
- overcome the 'intimidation' factor in dealing with a financial adviser.

It will also deliver the same benefits as advice provided by a person, automated advice can:

- provide competent and compliant financial advice;
- take into account the circumstances of the retail client using it.

In short automated advice can remove many of the barriers that prevent or deter retail clients from obtaining financial advice at present, whilst still delivering the quality of advice provided by a person.

We note the 2016 Cabinet Paper, which describes the lack of robo-advice in New Zealand as a 'missed opportunity':

"The legislative requirement for personalised advice to be provided by a natural person is a barrier to the provision of robo (or online) advice. Internationally robo-advice has a rapidly growing market share and is increasingly used by technologically savvy investors who may otherwise struggle to get advice due to the smaller size of their investments and the cost of person to person advice. This is a missed opportunity for both consumers and businesses in New Zealand."

(Cabinet Paper "Improving Access to Quality Financial Advice: Recommendations to Amend the Financial Advisers Act 2008 and Financial Service Providers Act 2008" by Hon Paul Goldsmith published on 13 July 2016).

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.

From both a policy and legal perspective we agree it is appropriate to use the FMA's exemption powers now. We agree that automated financial advice was not contemplated when the Financial Advisers Act 2008 (**FAA**) was enacted. Since then the financial advice 'gap' has become more apparent (see our answer to question 7 below). Further the ability of technology to provide competent financial advice and public acceptance of and even preference for such advice, have grown significantly (see our answer to question 5 below).

Legal perspective

We believe that both of the conditions under section 148 of the FAA can be satisfied, as explained below (see our answer to question 3).

We also consider that the proposed exemption would be consistent with the purpose of the FAA. That is:

"to promote the sound and efficient delivery of financial adviser and broking services, and to encourage public confidence in the professionalism and integrity of financial advisers and brokers."

We believe that online automated advice can provide sound, consistent and efficient financial advice to a broad spectrum of the retail public often for a reduced cost compared to the 'in person' alternative. Public confidence in the integrity and professionalism of financial advice will be maintained through the proposed conditions.

We also consider that such an exemption aligns with the FMA's statutory objective under the Financial Markets Authority Act 2011 of promoting and facilitating the development of fair, efficient, and transparent financial markets. When delivered properly an online advice tool provides efficient and transparent advice for consumers.

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.***

We agree that section 18 of the FAA could be read as requiring each instance and iteration of the advice to be reviewed and delivered by a permitted individual adviser such as an AFA, who must also comply with Code of Conduct obligations, such as providing a written Statement of Advice. Firms are likely to be reluctant to take other interpretations without any formal guidance from the FMA, the courts and the dispute resolution schemes. Involvement of an AFA in each case, would impose an unreasonable cost on such entities, especially given the high volume, 'open all hours' responsive nature of such a service and the benefits it offers retail clients.

The cost of compliance (having an AFA provide the advice) is effectively that we may be unable to offer an online advice tool to provide sound, immediate and accessible financial advice to our clients and to the retail public. Such a tool would help them make good investments decisions that take into account aspects of their individual financial situation in an accessible way. Such a service could be live virtually 24 hours a day 7 days a week (subject to normal IT maintenance etc) and be able to generate advice promptly and concurrently for multiple users. Instead, customers may continue to have access only to class advice tools, with the associated costs for individuals and society of sub-optimal product choices.

The current section 18 requirements mean that we are unlikely to deliver such a service without the repeated and in depth involvement of individual AFAs. We would likely require a team of AFAs to deliver the large volume of advice that may be generated within the expected rapid time frames. The team would need to operate for the same period the tool is available e.g. 24 hours a day 7 days a week (or the availability of the tool would need to be restricted). This would be burdensome for the entities who are the service enablers and for the AFAs signing off on each piece of advice.

Based on our understanding of the market an individual AFA can usually handle no more than 175 - 500 clients and dealing with each client can take around 4 or 5 hours of work per year. Figures can vary depending on the nature of advice provided, the adviser's back office support and whether a client chooses to have an annual review and/or undertakes additional transactions. This is why most AFAs who deal with investment products focus on high net worth clients.

Therefore to service a larger client base of say 200,000 clients, based on the maximum 1:500 ratio, would require 400 AFAs. Providing such a service to clients could only be commercially viable with significant fees, which would make it unattractive to the retail customers it aims to serve. Enabling a digital advice service will enable providers to provide financial advice to a wider client base.

We believe a properly constructed online advice tool, can provide sound and prompt financial advice. The tool would apply financial rules to the client's data to generate financial advice recommendations for them. Having an AFA vet each such piece of advice would add limited benefit, if any, and therefore the cost cannot be justified. This of course takes into account the proposed qualitative conditions, including the suitability of the service and the disclosures.

This unreasonable cost compared to benefit is particularly true where the tool might provide relatively simple and unsophisticated forms of limited personalised advice – for example, a forecasting tool for retirement income linked to an ability to buy investments; a basic risk profile tool suggesting a choice between investment options linked to an ability to buy investments or change an investment profile; a tool to choose between a small number of products. Automated-advice tools will not necessarily be artificial intelligence tools selecting complicated share portfolios, and in some cases similar tools may already be in use by AFAs to support their service.

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.

We accept that a class exemption would be efficient for industry and for the FMA and would have the benefits attaching to transparent and consistent regulation. However, it might also have the effect of having to apply onerous conditions (e.g. conditions more suitable for sophisticated artificial intelligence tools, such as dollar or product limits) to all advice providers, regardless of the scope of their proposed provision of automated-advice. Our preference is for individual exemptions more tailored to the actual proposed use. We refer to GMILP's exemption application dated 22 March 2017. Whilst this may partly delay the benefits accruing to an early exemption, it would also give providers more certainty that their approach is likely to be acceptable in a licensing regime. However, we would be content with a class exemption.

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).

Retail customers

The proposed exemption will primarily affect consumers of retail financial advice. We believe it will do so positively by enabling them to obtain sound financial advice through accessible platforms that can promptly generate information that takes into account their financial situation. As such a service will likely be online it will offer great convenience for consumers; it will potentially be available 24 hours a day 7 days a week, without the need to select an individual adviser, book an appointment or travel to meeting.

We also believe that a properly structured an online financial advice service can be less intimidating to many retail clients. The 2015 survey by the Commission for Financial Capability looked at the attitudes of over 50 year olds in New Zealand towards financial advice. The survey found that 25 per cent of people didn't get financial advice because they didn't know how to find or choose an adviser. We think an online service will help overcome that hurdle.

Some clients are also reluctant to seek financial advice due to perceived barriers to doing so, such as time and cost and even being intimidated or embarrassed. A 2016 survey of 1,750 people by www.sorted.co.nz found that many people are self-conscious about their financial situations:

"I'm anxious about what they will say to me. Will they tell me I'm a bad person?"

"I feel very inadequate about this area of my life and somewhat embarrassed."

"I feel too financially small to require one."

The online nature of a digital advice service may help alleviate some of that nervousness. People can get advice that is tailored for them in the comfort of their own home, with no fear of personal judgement.

A 2016 survey by law firm Minter Ellison Rudd Watts (**MERW**) found that investors under 30 are more likely to trust financial

advice from a robot than from a person. MERW concludes, “automated online platforms are the best way to provide personalised financial advice” to this generational cohort (‘millennials’).

Overall a digital advice service, with appropriate controls, has the potential to materially improve financial literacy and access to financial advice for retail clients, so they can make better and more informed financial decisions.

The risks associated with automated-advice tools include the harm that could result from a tool which delivers incorrect or poor advice, given that this could be consistently given to a larger volume of customers than a rogue human adviser could reach. We believe that the conditions proposed by the FMA can mitigate these risks.

Advice market including competitors

We expect that initially some AFAs may be critical of an automated advice service. However, we believe there is a place for both services in the market place. They can exist side by side and complement one another. There is a spectrum of automated advice services; an AFA could use automated tools to help them provide advice. Likewise an automated advice provider could have AFAs available as an escalation point for clients.

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.

The challenge for New Zealand is how to provide financial advice for the ‘under’ and ‘un’ advised. Automated advice will help bridge the advice gap. If no exemption is granted that advice gap will continue for some years. That could produce an unfortunate legacy for those people who are making material financial decisions now, without easy access to advice. In particular not allowing automated advice now might hinder people making good decisions about their retirement savings, such as KiwiSaver, or insurance, which could hurt them in the future.

We currently offer online information and class advice tools. For example our Future You KiwiSaver tool is available free to our Kiwi Wealth KiwiSaver members. The development of these types of tools, and their benefit for clients, is being hindered by the section 18 compliance requirements. We have found that when people use these tools they are more likely to take notice of them and change their behavior when they are personalised in some way. For example a risk profile exercise that produces an asset allocation (or fund type) will be more meaningful when it is based on a member’s personalised goals combined with their actual current balance, contribution, fund type and other details of their particular financial situation. The advice it provides will be much more useful for the person concerned than class advice based on a hypothetical ‘typical customer’ – and avoids leaving the customer to judge whether they are ‘typical’.

Customers are likely to become increasingly frustrated that tools available are interesting and look useful, but cannot help them personally. The situation risks regulation being perceived by customers as a barrier, rather than a protector or enabler. A perception that tools are disappointing, or not useful, is likely to take time to counteract when regulation finally permits better tools in the future.

For providers, poor customer experience or feedback as a result of frustrations may create a disincentive for them to widen the reach of class advice tools.

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?

Advice gap

Yes we do believe there is a real advice gap. We know there is a numbers problem, with too few AFAs for those who may need advice. Using AFAs and KiwiSaver as an example:

- There are approximately 1,800 AFAs in NZ as at June 2016;*
- Of those 12% are not active*, leaving around 1,570 active AFAs;
- There are approximately 2.6 million KiwiSaver members; **
- That means there is approximately 1 AFA for every 1,500 KiwiSaver members;
- Based on our understanding of the market it takes an AFA around 4-5 hours to service a client each year;
- There are 246 working days a year excluding weekends, public holidays and 3 weeks annual leave;

- We have assumed an AFA could see two clients a day on each working day and do nothing else. That seems possible but ambitious and not ideal.

Based on the above, an AFA could potentially deal with 500 clients per year and it would take each AFA three years to service just the original pool of KiwiSaver members allocated to them, if they did nothing else for KiwiSaver or other products. That also assumes those members would be willing and able to pay an AFA for that service. This demonstrates the 'numbers problem' with personalised financial advice if automated advice is not permitted.

*Source: FMA Report "Authorised Financial Advisers in NZ" 2016.

Link: <https://public.tableau.com/profile/fmaadmin#!/vizhome/AFAInformationReturns2016/AFAReturnsStory>

** Source: FMA KiwiSaver Annual Report 1 July 2015- 30 June 2016

Link: <https://fma.govt.nz/assets/Reports/161004-FMA-KiwiSaver-Report-2016.pdf>

Approximate balance

Based on our scan of the current market most AFAs would require a balance of at least \$200,000 or many over \$1million to provide personalised advice. A 2016 NZ Herald article on private banking reports:

"At ASB bank you'll need an income of at least \$250k, at ANZ it's higher at \$300k or around \$1 million in investable assets -- and no you can't include your Auckland home in that.

BNZ also requires at least \$1 million in investable assets while Westpac sets the highest bar at \$2 million."

http://www.nzherald.co.nz/personal-finance/news/article.cfm?c_id=12&objectid=11687808

Our scan of non bank advisers indicates most require investable assets of over \$200,000 to \$250,000 in order to provide advice. It is possible that an existing KiwiSaver fund would not qualify as it would not be considered available to invest. That a high balance is currently required for financial advice is also consistent with the 2016 FMA Report on Authorised Financial Advisers. That found that around 75% of AFAs have less than 200 clients each, which suggests AFAs tend to have a small number of clients with relatively high balances.

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.

[REDACTED]

Q9. Do the proposed limits and conditions strike an appropriate balance between consumer protection and promoting innovation? Please give reasons for your view.

For the most part we support the proposed qualitative conditions, except as noted elsewhere particularly in questions 10 and 13. We think they are appropriate to ensure the capability and resources of the provider and the reliability and the suitability of the advice.

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.

Limits

We do not agree with the proposal to limit the total investment amount of products that an automated-advice service can advise on to \$5m or an individual limit of \$100,000 per client. This is impracticable and would prevent automated advice being given to those who need it.

It is unclear whether the maximum limit for investment products is intended to be a customer portfolio limit or a provider limit. For example, if it is a provider limit, most KiwiSaver providers have more than \$5m under management each. This limit would prevent them giving automated advice to their members. The FMA's 2016 KiwiSaver Annual Report shows just 7 of the 32 providers have less than \$10m under management. Those 7 smaller providers have less than 0.08% of all members (2,059 out of 2,600,000). So this limit would leave over 99% of KiwiSaver members unable to access automated advice from their own provider.

If the limit is a customer portfolio limit, then there would need to be some leeway allowed for market fluctuations and growth over time in asset values. A disclosure to customers investing more than a certain sum that they should only invest a percentage of their portfolio through each tool might be preferable.

Likewise the \$100,000 per client limit could also stop those who need advice from getting it. Many people who have sold a house or reach retirement need advice but would be barred from seeking automated advice. Automated advice might include simple tools like assistance with choosing and placing a bank term deposit or Notice Saver accounts. Such people may also seek advice from an individual AFA in conjunction with automated advice. For example they may initially use an online tool to gauge the process and product range as a stepping stone before talking to an adviser. They should have both options available to them.

Record-keeping

Conditions on record-keeping may need to be revisited if they are to be practical for firms and not present a barrier to customers in using tools. The record-keeping conditions are impractical from a customer tracking perspective. They ignore the spectrum of automated advice and how people use such advice tools. The conditions seem to assume that there is one model of full end to end automated advice which always results in that advice being given to a named client with a specified investment amount and always results in linked product acquisition.

However, automated advice can run from the simple to the complex. Some self-help advice tools will not always capture a person's name and will not necessarily nor immediately lead to execution of the advice e.g. acquisition of a specific product. Some clients may return to a single tool several times. They may use these repeatedly over different days as they explore different options and get familiar with the terminology and process before they commit to any decisions. Clients may also use different tools for different types of advice e.g. an insurance tool one night and a KiwiSaver tool the next night. The tools may be free and won't necessarily capture the person's name and a client won't always complete the process, or enter the exact same name each time. So while providers can record when a complete automated advice process has been delivered to a named client with set funds, they will find it extremely difficult to accurately track clients who have made multiple visits to different tools and only partially completed the processes.

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.

We think the exemption should be available for both financial advice and investment planning services. We think there is huge potential to provide budgeting and money management assistance through automated investment planning services, and that it would be better if it were clear that these tools are acceptable under the Act.

We agree that DIMS should not be covered by the exemption for now. This is because it is a relatively sophisticated service under which a customer delegates decisions to buy and sell financial products to someone else. That service could cover the acquisition of an array of liquid and illiquid products. The scope of the DIMS and the risks need to be well understood by the customer. It is possible this could be achieved through a well designed automated advice service, especially if it was for a limited liquid product set. Therefore the inclusion of DIMS should be revisited later when automated advice is more established.

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.

Yes we largely agree with the list of eligible products. However, we believe that home lending (commonly referred to as ‘mortgages’) should be included as an eligible product, especially for borrowers who already have home loans. This is because we anticipate that automated advice tools will enable customers to make better decisions about their home loans such as loan amount and duration, or structure of the loan (e.g. proportion to fix or understanding offset loans). Although home loans are a large and long commitment so that they cannot always be exited simply, they are similar to KiwiSaver in that they can be amended during the term and borrowers do ‘transfer’ loans between providers. Simple tools for borrowers are already common (how much can I afford to borrow? how much will my repayment be?) and customers already do some simple actions online themselves e.g. apply or fix their loans. There is likely to be a demand for links between the tools and application/action processes and the sophistication of tools is likely to increase. Such simple developments are likely to be hampered without access to the class exemption.

We also note that an exemption would only facilitate advice about home lending, it would not loosen the current home loan application and execution processes and its protections for borrowers. The material risks for consumers associated with borrowing are addressed in the Credit Contracts and Consumer Finance Act 2003 (CCCFA). The CCCFA would still apply to borrowers who wish to make lending decisions at the end of the automated advice process. In particular the CCCFA protects them by requiring lenders to comply with the responsible lending code and make initial and ongoing disclosures to borrowers.

We think the list of eligible products should be revisited as this service develops when the providers and FMA have greater experience of the capability and controls.

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.

We believe that personal insurance should be included on the eligible product list, as well as general insurance. This is consistent with the current FAA inclusion of most insurance as a category 2 product (only an investment-linked contract of insurance is a category 1 product). That reflects the relative risk and complexity of such products. We note that the FMA’s research (and overseas experience) has highlighted that some advisers are potentially adversely influenced to churn customer policies by conflicted remuneration models – and that regulatory requirements for personalised automated-advice models for category 2 products would potentially be stronger under the exemption than those applying to Registered Financial Advisers.

If life insurance is to be included then a cap of \$100,000 is too low. A market scan suggests the most common amount of life insurance bought is \$200,000 but often more is needed (see: http://www.nzherald.co.nz/personal-finance/news/article.cfm?c_id=12&objectid=11490116 and <http://www.stuff.co.nz/business/money/9175823/Life-insurance-a-necessary-evil>.)

To take a conservative example, if a customer has an income of around \$50k, they may want cover to replace their income for 3-5 years, that’s \$150,000 - \$250,000, plus they commonly add in the value of their mortgage, bringing the sum insured to well over \$100,000. The appropriate figure can be personalised looking at a customer’s particular family and financial circumstances. However, this assistance will be hampered if the exemption doesn’t include personal insurance or includes it with an unrealistic dollar cap.

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

We do not consider a value cap nor a duration limit is appropriate for the deposit and investment products or for insurance products (see our comments on question 13). In particular such value caps and duration limits could have the effect of excluding KiwiSaver from automated advice. See our comments on question 10 above. We think the proposed qualitative conditions provide better controls in substance and in practice terms and they remove the need to impose a quantitative cap or duration

limits.

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.

No see our comments at question 10 above.

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.

No see our comments at question 10 above.

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?

We do not support the provision of a status disclosure statement. Whilst we understand that this is an element of current disclosure statements, we are unclear of the benefit to the customer of being told that a provider is relying on an exemption – given that the exemption is a complicated legal document exempting the entity from a set of requirements that the customer is not familiar with. The current regime has been criticised for the complexity of the number of types of adviser, and this has partly arisen from the requirement to detail the adviser type to the customer – rather than relying on powers under the regime to ensure all entities are acting appropriately.

However, if a status disclosure statement is required, we support this being a brief simple prescribed status disclosure statement. Having its contents prescribed will ensure key aspects are covered in an objective fashion. Having a prescribed status disclosure form also offers consistency and certainty for providers and ensures a level playing field for disclosure.

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?

We do not think that the form and method of disclosure should be prescribed (beyond the status disclosure). This presumes each process will have a standardised disclosure that appears at its beginning or end. However, in our experience with online tools and processes the length and rigid placement of such disclosures are not effective for customers. It is better to break down the disclosures into component parts and have the key messages appear alongside the relevant part of the process. This draws it to the attention of users at the right time and makes it more likely they will read and understand it. Having a lengthy disclosure at the beginning or end of a process is off putting for consumers and is unlikely to be properly read and understood by them.

Further there is a spectrum of automated advice processes, for the simple to the complex. The evolution of these should not be restricted. A 'one size fits all' disclosure is not appropriate to cater for that range and could stifle innovation.

If the FMA intends to use existing disclosures as a template, we suggest that the FMA carefully considers which elements are needed before the advice is provided and whether there is scope to allow some to be disclosed afterwards eg complaints related information.

The condition should be clear whether some or all of the disclosure information can be provided by inclusion of a link in the automated-advice process.

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.

No, because we find the best approach is to break down the disclosures into component parts and have them appear alongside the relevant process (as set out above at question 18). That provides the most effective disclosure for customers by drawing

their attention to the relevant message at the relevant time. However, coupling that customer friendly approach with requiring active confirmations would then require getting multiple confirmations from customers as they journey through the process. This would be impractical and off putting for customers, it could make them unlikely to continue with the full advice process.

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.

We support the proposed conduct obligations, we think they offer necessary protections for consumers. They also ensure a level playing field for automated and human advisers.

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.

No, we think the proposed conduct conditions are appropriate and ensure that advice provider has the capability to provide the services, that it is suitable for users and there are sufficient controls. We are concerned that imposing additional conditions could stymie innovation and the development of automated advice services. Additional conditions could also make the services costly and complex to provide, which would prevent providers from offering them and/or deter customers from using them.

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.

We have no comments on this question.

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.

The conditions should be applied in a manner that is proportionate to the scope and nature of the advice, but not the size and scale. Looking at the different automated advice available overseas indicates that the spectrum of services will vary greatly. For example some services may focus purely on one product such as KiwiSaver. Some may be free or cheap and be for the guidance of the user, to help them manage their budget better, rather than encouraging them to acquire particular financial products. Therefore it is important that the obligations are relative to the scope and nature of the automated advice service. The conditions should, however, apply a consistent standard across providers for the same scope and nature of service – i.e. they should not be applied relative to the volume (size/scale) of the advice provided.

Q24. Are there any other limits or conditions you think would be appropriate to put in place?

We submit that a local residency requirement should be considered as one of the conditions. With online advice it is more likely that the provider could be located offshore. If that advice is inaccurate then consumers and the regulators needs some comfort that they can hold someone legally accountable for it, both in terms of compensation for losses and penalties. An overseas provider could simply shut up shop with little threat of being held responsible.

Alternatively, more stringent checks should be undertaken on entities which are based abroad in relation to fit and proper directors and senior managers, extending to their overseas activities within a period of time e.g. 10 years. This would ensure that crimes which would prevent registration if committed in New Zealand are taken into account, creating a level playing field. This would be appropriate as offshore based on-line advice could be a pipeline for fraud, being used to funnel funds into scams, and could achieve significant volume in a short space of time without recourse to the providers compared to local advice activities.

We also think a local advice provider is more likely to have the capability to provide automated advice to New Zealanders. This is because they will be more likely to have an awareness of the nuances of the New Zealand financial landscape, for example KiwiSaver rules.

At present, a company doing business in New Zealand must register here and have one director who is resident here or in Australia (Section 10(d) Companies Act 1993). However, the experience with the Financial Services Providers Register suggests this is open to abuse and the FMA has had to play an active role in removing companies who are inappropriately registered here (section 18B Financial Service Providers (Registration and Dispute Resolution) Act 2008). Further the FMA's removal powers do

not wholly address the risk of a company being registered here but having insufficient assets in New Zealand in the event of a claim or charges being laid against them.

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?

We think the content of the exemption notice should suffice. While an information sheet can be helpful it often ends up being viewed as quasi regulation by the industry and is another layer of rules to interpret and clarify, generating its own debate and questions. The FMA could assess this after 12 months and provide an information sheet then if that was considered necessary. It may also pay to wait 12 months to see what tools are actually offered and what issues arise, so that the information sheet is more meaningful for providers.

Q26. Would you like to see a list of providers relying on the exemption, if granted, on our website? If not, why not?

We are happy for a list of providers relying on the exemption to be on the FMA's website. This provides transparency for providers and users.

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'?

We prefer the term 'automated advice' as it is more accurate and neutral than 'robo-advice'. We think the term 'robo advice' is somewhat emotive, inaccurate and could be misused by its detractors. It could be off putting for some customers as it conjures up an image of a Star Wars like creature remotely generating advice for them. The reality is that most providers will use human designed algorithms and rules to assess specific customer data and generate consistent and compliant advice about a specific product set. This could be done in conjunction with varying degrees of input and oversight from a human adviser.

Q28. Do you have any other feedback or comments?

The paper notes that QFE providers would need to comply with the QFE conditions and obligations. We seek clarity as to how the conditions, liability and breach notification processes would sit alongside some elements of the QFE regime. For example:

- QFE groups - it would appear that if entities in a QFE group utilise the class exemption, the QFE would be accountable for their activities (e.g. s76(1s) and s77(1) FAA). If this is the case, we assume that the QFE would need to make or approve any notifications on behalf of the group and to monitor compliance with the exemption conditions.
- Disclosure - the paper notes the disclosure requirements in Part 2 of the FAA will apply. QFEs are required to make disclosure before personalised services are provided in accordance with section 25 of the FAA and the associated Regulations. We assume that drafting will ensure that only disclosure under the exemption is required for automated-advice provided by a QFE or member of a QFE group.

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.

19 July 2017



MAS
19-21 Broderick Road
PO Box 13042
Johnsonville
Wellington 6440

**SUBMISSION ON CONSULTATION PAPER:
PROPOSED EXEMPTION TO FACILITATE PERSONALISED ROBO-ADVICE**

BACKGROUND

Medical Assurance Society (“MAS”) was established in 1921 by a group of doctors in Napier who felt that existing insurance companies were not adequately meeting their needs. Today MAS provides a range of financial services including insurance, lending and investments. Our Members remain predominantly doctors, dentists and veterinary professionals. We also provide financial services to other professional groups, including accountants, architects, engineers and lawyers.

MAS is licensed as a Qualifying Financial Entity (“QFE”) and provides services through a face-to-face network of salaried advisers (made up of both AFA and QFE advisers) supported by a national Call Centre.

Financial advice is provided by MAS AFAs and QFE advisers in respect of MAS issued products only. These products include two category one products - a KiwiSaver scheme and a workplace savings scheme. The remaining products are category two and include fire and general insurance, life and disability insurance, and legacy business and personal lending.

This submission will largely concentrate on those aspects of the proposed exemption that are relevant to our business model.

GENERAL COMMENTS

MAS welcomes the FMA’s proposal to utilise its exemption powers to expedite the provision of personalised financial advice via digital robo-advice tools.

Today's consumers are increasingly looking to the convenience of digital channels in many aspects of their lives and financial services are no different. For example, online banking has revolutionised the way consumers interact and transact with their banks. The insurance industry is quickly moving towards offering online sales and claims functionality to meet the needs and demands of their customers. It is natural therefore that there is an increasing appetite for more complex financial services to be available through digital channels.

For many people, such as those who are time poor but technologically savvy, or millennials who have grown up with the expectation that services they require are readily available online, a robo-advice experience will be preferable over traditional advice distribution models. Consumers may also like the privacy offered by a digital solution, and the increased ability to learn and to chart their own path.

It is our expectation that a robo-advice tool will complement and not replace the existing natural person advice channel. A robo-advice channel will be advantageous for consumers who are:

- Seeking advice, but for whom it is not convenient to meet face-to-face with an adviser;
- Concerned about the perceived potential cost of accessing financial advice;
- Younger, with fewer assets to manage. Robo-advice fills a void for millennials, allowing them to start building wealth and planning for the future.

Importantly, the provision of personalised advice through a digital tool backed by appropriate controls affords advice service providers with a number of benefits including:

- Cost effective channel for the provision of advice;
- Adviser time can be allocated more efficiently – i.e. dealing with those clients who have more complex requirements.

A risk of not expediting the availability of robo-advice services in New Zealand is that the consumers who want such services may go looking for them elsewhere online without understanding the risks involved and without local consumer protections.

It is important that there are appropriate quality assurances in place behind any robo-advice service, and appropriate disclosure to ensure that consumers can make an informed decision about the service.

- MAS supports the disclosure obligations as proposed in the consultation document;
- MAS supports the proposal for modified versions of Code Standards 1, 2 and 9 as appropriate conduct obligations and the importance of considering these requirements in the design and delivery of any robo-advice service.

To help in achieving more informed consumers and better market outcomes, there should be flexibility for robo-advice service providers to experiment with methods for effective disclosure. This would be a recognition that achieving effective disclosure to consumers has been a long-standing issue.

INVESTMENT PRODUCTS

- MAS's interest extends to KiwiSaver and other managed funds only. We support these products being included in the scope of the exemption.
- An individual advice value cap of \$100,000 is too restrictive to make a digital tool effective in facilitating improved access to financial advice to a broad section of clients.
- A total investment cap of \$5,000,000 on products that a robo-advice service can advise on is completely unworkable and would present a barrier to developing such a service.

MAS's investment offering is relatively simple. We offer a KiwiSaver Plan and a workplace savings scheme to MAS Members as options for them to save for retirement. We are considering the development of an open ended investment fund product. MAS only provides financial advice services on its own products.

There is value in being able to offer a digital advice tool to clients who are seeking a more personalised level of advice than can be offered within the boundaries of class advice now. Within the retirement savings space that MAS offers advice, important factors that could be included in a digital tool are:

- What age that someone is intending to retire;
- What income that they would like in their retirement;
- With KiwiSaver, utilizing the First Home Withdrawal benefit.

Factors such as these can be modelled through algorithms to ensure a consistent quality of advice in much the same way as advisers use existing retirement savings calculators to illustrate how a client can achieve their financial goals following a face-to-face advice engagement.

If consumers are informed, through effective disclosure of the risks and limitations to any advice provided by a robo-advice service, then it is our preference that the robo-advice service not be stifled by restrictive value caps.

With total FUM of in excess of \$1.2bn, and an average client balance of approximately \$106,000 in our workplace retirement savings scheme and approaching \$40,000 in KiwiSaver, it is undesirable that individual or total investment caps unduly limit facilitating the delivery of financial advice to

clients who are seeking it, particularly where they have a preference to interact with us through digital channels. Some of the key risks that caps present are:

- If someone who prefers to engage online encounters a barrier to getting advice through their preferred channel, they may not pursue advice through another, less preferred channel even if it is in their interests to do so.
- Caps could also drive consumers to split their portfolios over multiple providers, resulting in inconsistent (and possibly) inappropriate solutions.

A total investment cap could present a barrier to developing robo-advice services because any benefit of the robo-advice service as a cost effective channel risks being diluted by caps preventing economy of scale in the number of clients that can access the channel, and therefore making such a tool less viable to develop. The perverse outcome of this is that a broad section of clients who would use such a tool end up not accessing advice simply because the tool isn't made available to them.

The risks noted in the consultation document as being the reasoning for caps can be overcome if other factors such as disclosure, conduct, capability, filtering processes and control environments are subject to effective oversight.

PERSONAL INSURANCE PRODUCTS

- Personal insurance products should be included in the scope of the exemption.
- They should not be subject to a value based cap.

The premise of personalised advice is that it is structured around what is suitable for the client. Caps are a barrier to providing quality, meaningful personalised financial advice.

The suggested cap of \$100,000 is wholly inappropriate to meet the needs of a typical person who is considering life and disability cover. Typically a person seeking life insurance advice will be seeking advice on cover for their home and other debt, their family's future and their income.

- In November 2016, it was reported that the average new mortgage was \$390k ([Newshub](#)).
- Research published by [Inland Revenue](#) estimates that the cost to raise a child for an average income earner is \$268 per week between the ages of 0 and 12, rising to \$316 per week from age 13 to 18. This gives the approximate total cost to raise 1 child of \$265k.

Just these two factors, an average mortgage and a single child raised on an average income, present \$640k that could quite reasonably be covered by life insurance, and that's without even considering other debt, providing for a surviving spouse, additional children or legacy provisions. In reality, a "typical" family could easily have a reasonable insurable need of in excess of \$1m. Requirements for disability and/or income protection potentially pushes the total higher.

It is important to establish what a client's insurable need is, not to set restrictive barriers which may discourage them from seeking advice. Precluding an average person from a personalised robo-advice service because their cover needs exceed a monetary cap goes against the objective of encouraging consumers to access to financial advice. It also presents the very real risk that consumers, especially those for whom a digital tool is their preferred channel for which to access advice, end up under insured because they change their behaviours in order to fit within the limitations of a digital tool without adequately understanding or appreciating the risks of doing so.

We note the risks that the FMA have highlighted – that some personal insurance products are not easily exited, and the consequences of failing to disclose material information are high. However, these risks are present now with a number of class advice tools and online application portals already in the market.

A further risk is that some of the class advice tools already in use in New Zealand appear to push the existing boundaries between class and personalised advice. A high level of personal information is collected and a cover recommendation made based upon this information. However, they use disclaimers to “remain” in the class advice space. This highlights the perverse outcome of the limits of current legislation and the need to facilitate a higher level, and appropriately regulated, system for the provision of digital advice.

Submission prepared by:

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] [REDACTED]

Feedback form: Proposed exemption to facilitate personalised robo-advice

Please submit this feedback form electronically in both PDF and MS Word formats and email it to us at consultation@fma.govt.nz with 'Proposed exemption to facilitate personalised robo-advice: [your organisation's name]' in the subject line. Thank you.

Submissions close on 19 July 2017.

Date: 19 July 2017 Number of pages: 10

Name of submitter: [REDACTED]

Company or entity: Mercer (N.Z.) Limited

Organisation type: Manager, managed investment schemes; Qualifying Financial Entity

Contact name (if different):

Contact email and phone: [REDACTED] [REDACTED]

Question or paragraph number	Response
Background	
	<p>Mercer LLC and its separately incorporated operating entities around the world (Mercer LLC) are part of Marsh & McLennan Companies, a publicly held company (ticker symbol: MMC) listed on the New York, Chicago, and London stock exchanges.</p> <p>At Mercer LLC, we make a difference in the lives of more than 110 million people every day by advancing their health, wealth, and careers. We're in the business of creating more secure and rewarding futures for our clients and their employees — whether we're designing affordable health plans, assuring income for retirement, or aligning workers with workforce needs. Using analysis and insights as catalysts for change, we anticipate and understand the individual impact of business decisions, now and in the future. We see people's current and future needs through a lens of innovation, and our holistic view, specialized expertise, and deep analytical rigor underpin each and every idea and solution we offer. For more than 70 years, we've turned our insights into actions, enabling people around the globe to live, work, and retire well. At Mercer, we say we Make Tomorrow, Today.</p> <p>Mercer (N.Z.) Limited (Mercer) has operated in New Zealand in the provision of investment and funds management services, primarily in the areas of workplace savings, since 1957. In addition to nearly 100,000 Mercer KiwiSaver scheme members, we provide administration and/or investment management services to approximately 70 corporate and/or Workplace Savings Scheme clients.</p>
General	
	<p>Mercer supports the proposed exemption from the requirement for personalised advice to retail clients to be provided by a natural person. Subject to certain limits and conditions which ensure consumer protection safeguards, the proposed exemption will encourage innovation in the delivery of personalised financial advice and improve access to advice for the many consumers not currently engaged through traditional advice channels.</p> <p>This approach is also consistent with the purpose of the Financial Advisers Act.</p> <p>Whilst not agreeing with all of the proposed limits (value caps on the client or total product investments), we agree with the proposed conditions as they relate to the robo-advice provider's capability, competence and conduct.</p> <p>We support the application of the Standards contained in the current Code of Professional Conduct for Authorised Financial Advisers, inasmuch as they reasonably pertain to the provision of robo-advice.</p> <p>Mercer LLC has shown its commitment to consumer-driven robo-advice in the Pacific market, where a Decimal Software solution 'Eqilize' offers digital advice to various retirement savings clients in Australia. Mercer is currently exploring how this tool could be customised to meet the needs of our New Zealand investors.</p>

Feedback form: Proposed exemption to facilitate personalised robo-advice

<p><i>Question 1</i> 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?</p>	<p>Mercer supports the proposed exemption from the requirement for personalised advice to retail clients to be provided by a natural person.</p> <p>In an increasingly digital and consumer-driven world, it is critical that consumers have the opportunity to decide how they wish to obtain personalised financial advice and whether their preference is for advice delivered by a human or electronically.</p> <p>The purpose of the Financial Advisers Act is, amongst other things, to promote the <i>sound and efficient delivery</i> of financial adviser and broking services.</p> <p>We consider the proposed exemption will go a long way to facilitating this purpose, whilst also supporting the main and additional purposes of the Financial Markets Conduct Act, in particular s.4(d) - the promotion of innovation and flexibility in the financial markets.</p> <p>However, we do not believe that all of the proposed limits and conditions are necessary to achieve consumer protection or promote innovation and flexibility in financial markets.</p>
<p><i>Question 2</i> 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 to reform to come into effect?</p>	<p>Mercer supports the exemption powers being used to facilitate robo-advice prior to law reform as this will expedite consumer access to advice, particularly in respect of KiwiSaver, which is the foundation retirement savings vehicle for most consumers.</p>
<p><i>Question 3</i> Do you think the costs for robo-advice providers to comply with the 'natural person' requirement (if no exemption is granted):</p> <ul style="list-style-type: none"> • Would be reasonable • Would not be justified by the benefit of compliance 	<p>Mercer is of the view that the costs for robo-advice providers to comply with the 'natural person' requirement (if no exemption is granted) would be unreasonable and would not be justified by the benefit of compliance.</p> <p>Additionally, any obligation to comply with the 'natural person' requirement would deter providers' investment in robo-advice and negate the benefits available to consumers.</p>
<p><i>Question 4</i> 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.</p>	<p>Mercer supports the proposed approach of granting a class exemption rather than individual exemptions in order to provide a level playing field for robo-advice providers and improve product/advice comparability for consumers.</p>
<p><i>Question 5</i> 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)</p>	<p>We believe that granting the exemption will lift consumer participation rates for financial advice in the short-term and enhance consumer financial well-being in the long-term.</p> <p>We anticipate that the exemption will also reduce the cost to consumers of obtaining financial advice and increase financial product comparability across providers.</p> <p>Robo-advice providers will incur costs to build a robo-advice platform to consumers, as well as needing to provide on-going support to ensure that it is</p>

	<p>maintained to a robust and reliable standard.</p> <p>We don't foresee robo-advice supplanting the natural person adviser but complementing it instead.</p> <p>There will always be situations where the insight of a natural person will be required.</p>
<p><i>Question 6</i> <i>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.</i></p>	<p>If no exemption is granted i.e. status quo maintained, the current low participation rates for financial advice can be expected to continue.</p> <p>For some consumers, this may also mean that they remain in investment options or products which won't deliver optimal results, having regard to their risk profiles and retirement savings horizons.</p> <p>Some consumers may also look overseas for robo-advice solutions which may not be customised for local conditions.</p> <p>For providers, it would represent a lost opportunity to develop innovative and customised ways to engage with consumers.</p> <p>We would consider providing class robo-advice services even if no exemption is granted as the consumer demand grows.</p>
<p><i>Question 7</i> <i>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?</i></p>	<p>Studies have demonstrated a significant advice gap, meaning many consumers can't access the advice they want or need.</p> <p>Whilst Mercer provides multiple opportunities for engagement with all of its consumers, irrespective of their balances, we understand that consumers don't typically seek advice from an AFA until their investment is in the \$50-100,000 range.</p> <p>This range exceeds many KiwiSaver scheme members' balances.</p>
<p><i>Question 8</i> <i>(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 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.</i></p>	<p>Yes, Mercer intends to rely on the proposed exemption as we believe that robo-advice will be the preferred channel for many of our investors.</p> <p>If an exemption was granted in late 2017, we would expect to provide some form of robo-advice in 2018.</p> <p>We would likely provide advice on our KiwiSaver and Workplace Savings schemes.</p> <p>A robo-advice model has yet to be formalised as it will be necessary to factor in limits and/or conditions which may be imposed by the exemption.</p>
<p><i>Question 9</i> <i>Do the proposed limits and conditions strike an appropriate balance between consumer protection and promoting innovation? Please give reasons for your view.</i></p>	<p>We agree that the exemption conditions are, in the main, sound and will protect consumers' interests whilst also enhancing their access to robo-advice.</p> <p>However, we are of the view that the majority of the proposed limits are not compatible with the goal of achieving an appropriate balance between consumer protection and the promotion of innovation.</p> <p>Limits or conditions should be imposed only to the extent necessary to ensure that personalised robo-advice is provided on the same bases (conduct,</p>

	<p>competence, capability etc.) that are required of an AFA providing personalised advice – this approach is consistent with FMA’s view (p.13) that “<i>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.</i>”</p>
<p>Question 10 <i>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 limits or conditions do this, and what those costs or impracticabilities are. Please also provide alternative conditions that would provide a similar level of protection, if possible.</i></p>	<p>Exemption limits on scope of service</p> <p>Service We are of the view that the exemption, at this stage, should apply to financial advice only.</p> <p>Product type We do not believe that the exemption should be limited to products ‘<i>which are easy to exit</i>’ – either the provider’s robo-advice is appropriate for the product (and suits the needs of the consumer) or it is not. In any case, KiwiSaver could not reasonably be seen to be ‘<i>easy to exit</i>’, notwithstanding that it is included in the eligible product list.</p> <p>KiwiSaver, as a product, lends itself to robo-advice. We also support the inclusion of personal insurance products and note that many personal insurance products are already distributed through on-line channels. Robo-advice would be an additional benefit for consumers.</p> <p>Individual client investment We do not agree that an investment limit should be set as the provider’s robo-advice is either fit for purpose or it’s not.</p> <p>Having an arbitrary limit could also operate to confuse consumers and disenfranchise long-term investors whose balance exceeds \$100,000 from accessing robo-advice.</p> <p>Limit on total investment amount of products We do not support limiting the total investment amount of products that a robo-advice service could advise on. A maximum of \$5million would exclude all KiwiSaver providers.</p> <p>We consider that both the individual client limit and the total investment amount conditions are inconsistent with the purpose of the exemption; will not meet consumer expectations of the utility of robo-advice; and will deter providers’ willingness to invest in and innovate with new technology.</p> <p>Exemption conditions</p> <p>(a) Pre-notification procedure We support this condition.</p> <p>(b) Status disclosure We do not consider that it adds to the consumer experience to know that the digital tool is being provided on the basis of an exemption granted by FMA and do not support this statement being included. Additionally, by not referring to the grantor of the exemption, it is our view that it is redundant to require a further statement that the service is not endorsed, approved or reviewed by</p>

FMA.

(c) Disclosure

We agree with the principle of providing sufficient information to enable the consumer to make an informed decision as to whether or not to use the robo-advice service.

(i) Nature and scope

Whilst we support explaining the nature and scope of the robo-advice service, we suggest that any mandatory explanation is kept to a minimum so that consumers aren't so overwhelmed by disclaimers and other information that they cease their engagement with the tool.

Some of the technical explanation of how robo-advice works is generic and best included in a T&C section, which could be a pop-up.

(ii) Fees

We agree that in any situation where the consumer is going to be charged fees for using robo-advice, this should be made explicit.

Fees applicable to the product should be part of any disclosure.

Mercer already reports most fees in dollar amounts.

(iii) How the provider is paid

Again, whilst we agree that this information is important and should be disclosed, it must be done in such a way that it does not impede the consumer's progress through the tool.

Where the provider does not charge a fee for accessing robo-advice, the provider should be able to incorporate the payment, conflicts and other relevant information by reference to disclosure materials and documents, including by hyperlink.

(iv) Complaints

We agree that consumers must be informed how to complain to the provider of the robo-advice and more specifically, receive information on the provider's dispute resolution mechanism, including its membership of a recognised, independent dispute resolution provider.

(d) Conduct

See our response at question 20.

(e) Capability

(i) Expertise in technology and algorithms

We agree that experts must be involved and certify that the technology and algorithms used to provide the advice are robust and reliable. Their continued involvement is essential to ensure that the system continues to operate as intended and a recurring re-certification would be supported.

(ii) Advice output

We agree that any approval under the exemption should require advice sampling by an appropriately qualified adviser (AFA/QFE/contractor) to ensure that the advice being generated is consistent with expected algorithmic outcomes,

consumer suitability and other relevant requirements.

(f) Filtering process

We support the proposal that the provider must have appropriate processes in place to filter out clients who are not suited to receive personalised financial advice of the nature and type the tool is designed to provide.

We would also expect that the filtering would operate to provide the consumer with another channel to find answers to their financial advice questions e.g. include reference to helpline, advisers etc.

(g) Monitoring and testing

(i) Regular reviews

We support the proposal for sample reviews to be conducted by an appropriately qualified human being.

(h) Systems and controls

(i) Risk management

We agree with the proposal to require the provider to ensure that they have adequate risk management systems in place.

(ii) Information security

We agree that it is critical that a provider relying on the exemption can prove that their information security systems are no less than 'adequate'.

Additionally, there should be protocols regarding the security and length of time that consumer details should be kept and an auto-delete provision for any personal details entered by a consumer where that consumer does not complete the robo-advice to the point of receiving personalised advice.

(i) Complaints

We agree that the provider must have an appropriate internal process for resolving consumer complaints about the personalised robo-advice.

Further, all robo-advice providers should be required to be members of an approved external dispute resolution scheme.

(j) Record keeping

We agree that the provider must keep up-to-date records and make them available to FMA on request.

We also consider that the advice provided to a consumer should be capable of being printed and create an audit trail for the provider.

(k) Reporting

(i) Significant matter

We agree that a material breach of an exemption condition or a material technology/algorithm failure should be reported to FMA within 5 business days of the provider becoming aware of the matter.

(ii) New matter or criminal convictions

We agree that new material matters and directors'/senior managers' new criminal convictions should be reportable to FMA within the timeframe above.

Proportionality

	<p>We do not support the proposed conditions being applied in a way which differs depending on the size and scale of the service being offered.</p> <p>Firstly, we don't believe that exemption limits, as mooted by FMA, are appropriate to the robo-advice tool.</p> <p>Secondly, allowing differing conditions across various providers' tools will result in consumer confusion and potentially cause general disengagement with any robo-advice tools.</p> <p><i>Insurance</i></p> <p>As additional conditions, we suggest that providers must:</p> <ul style="list-style-type: none"> • hold adequate Professional Indemnity (PI) insurance; and • be members of approved external dispute resolution schemes.
<p><i>Question 11</i></p> <p><i>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 management service (DIMS) should not be covered by the exemption? Please give reasons for your view.</i></p>	<p>We support the exemption being limited to financial advice.</p> <p>We consider that the Service limit (p.7) is appropriate and that DIMS should be excluded, as well as investment planning services, both of which, in our view, require more comprehensive engagement with an appropriately qualified human adviser.</p> <p>Both products are inherently more complex and could potentially encompass a consumer's entire savings portfolio which requires a greater degree of sophistication and more regulatory oversight than is appropriate for an exemption.</p> <p>Additionally, investment planning services would likely require consideration of product types which are not currently included in the exempt list on page 7.</p>
<p><i>Question 12</i></p> <p><i>Do you agree with our proposed list of eligible products? Please indicate if there are products that should be included or excluded.</i></p>	<p>We agree with the proposed list but not because we regard these products as being 'easy to exit'. Rather, we support these products being included because of the demonstrable need to improve access to financial advice, especially for KiwiSaver scheme members and Workplace Savings Scheme members.</p>
<p><i>Question 13</i></p> <p><i>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 products, 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.</i></p>	<p>We support the inclusion of personal insurance products on the list as such products are currently offered on a class basis across numerous platforms.</p> <p>We don't support value caps or duration limits on the basis that the robo-advice provided is either fit for purpose or it's not.</p>
<p><i>Question 14</i></p> <p><i>Should we also apply a value cap/duration limit on some or all of the other proposed eligible products? Please give reasons for your view. If you consider a value cap/duration limit would be appropriate, please specify what this should be.</i></p>	<p>We don't support value caps or duration limits on the proposed eligible products on the basis that the robo-advice provided is either fit for purpose or it's not.</p> <p>Instead, the provider should be subject to stringent licensing criteria which, amongst other things, require the provider to hold appropriate public liability</p>

	insurance and be members of a recognised dispute resolution system.
<p><i>Question 15</i> 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.</p>	<p>We do not support individual client investment limits and consider that such a limit is inconsistent with the purpose of the exemption; consumer expectations of the utility of robo-advice; and providers' willingness to invest in and innovate with new technology.</p>
<p><i>Question 16</i> 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.</p>	<p>We do not support a limit on the total investment amount of products advised on through the robo-advice service.</p> <p>We do not support the concept of two limits (a higher one for QFEs and a lower limit for non-QFEs) but instead consider that all providers be subject to the same rigour before being approved to provide robo-advice.</p> <p>The imposition of limits is inconsistent with the purpose of the exemption and would likely operate to stifle investment by providers in advice innovation.</p> <p>In any case, QFEs which provide personalised robo-advice would be required to amend their Adviser Business Statements to recognise this new channel.</p> <p>Non-QFE robo-advice providers should have to complete a QFE-like Statement.</p>
<p><i>Question 17</i> 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?</p>	<p>No. Given the potential breadth and depth of robo-advice tools and algorithms, prescribing the status statement may unintentionally operate to limit disclosures in a way that is inconsistent with the service being offered.</p> <p>However, we support mandating some form of warning that the consumer is receiving robo-advice.</p>
<p><i>Question 18</i> Do you think providers should have flexibility to decide how to comply with the disclosure conditions, 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?</p>	<p>As noted above for question 17, we are of the view that prescribing the status statement may operate to limit disclosures in a way that is inconsistent with the service being offered.</p> <p>In order to maximize the effectiveness of disclosure, we are in favour of at least an element of provider discretion regarding compliance with the disclosure condition.</p>
<p><i>Question 19</i> 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.</p>	<p>We support a condition which requires the provider to obtain active confirmation from the consumer that they have read the disclosures and agree to receiving advice through the robo-advice service. These confirmations could be combined so as to make accessing advice as simple as possible for the consumer.</p>

<p><i>Question 20</i> 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.</p>	<p>We are of the view that robo-advice should be provided in a manner that's consistent with all the conduct obligations that would otherwise apply if the personalised advice was being provided by a human-being i.e. the Code of Professional Conduct for Authorised Financial Advisers, amended only as necessary to recognise the particular channel through which advice is provided.</p> <p>This includes the three conduct obligations recorded on page 11.</p>
<p><i>Question 21</i> 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.</p>	<p>As per our answer to question 20, we are of the view that robo-advice should be provided in a manner that's consistent with all the conduct obligations that would otherwise apply if the personalised advice was being provided by a human-being i.e. the Code of Professional Conduct for Authorised Financial Advisers, amended only as necessary to recognise the particular channel through which advice is provided.</p>
<p><i>Question 22</i> 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.</p>	<p>We consider that all Code Standards are applicable to the providers of robo-advice except to the extent that the channel renders them manifestly unworkable.</p> <p>Code Standard 1: client interests first: We believe that this Standard should be expressly retained and that integrity is manifest in the robo-advice scenario having regard to various factors including:</p> <ul style="list-style-type: none"> • the design of the platform and the credentials of the designers • the review and testing processes associated with the platform and the algorithms • the nature and currency of the disclosures • the processes for filtering out 'unsuitable' consumers • the nature and frequency of the sampling undertaken by the provider • the skills and experience of the human-being performing the review • the provider's response to any review • the statement of advice generated for the consumer • the providers' history of complaints and any evidence of systemic failures • the provider's provisioning for PI insurances
<p><i>Question 23</i> 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.</p>	<p>We do not support an approach which attempts to qualify the application of the conditions depending on the size or scale of the robo-advice service offered.</p> <p>Consumers are entitled to expect consistency and ease of comparability across robo-advice providers' platforms. The condition being proposed creates the potential for consumer confusion and dissatisfaction with the technology generally.</p>
<p><i>Question 24</i> Are there any other limits or conditions you think would be appropriate to put in place?</p>	<p>All potential robo-advice providers should have to complete a licensing process similar to that used to confer QFE status or to grant licences under the Financial Markets Conduct Act.</p>
<p><i>Question 25</i> 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 not, why not?</p>	<p>Yes. Guidance on how to comply would improve consistency and remove any ambiguity around the exemption requirements. Guidance documents should be provided well in advance of the commencement of the exemption.</p>

<p><i>Question 26</i> <i>Would you like to see a list of providers relying on the exemption, if granted on our website? If not, why not?</i></p>	<p>Mercer supports the proposal that a list of providers relying on the exemption should be available on the FMA website.</p> <p>This would enhance consume awareness and increase transparency.</p>
<p><i>Question 27</i> <i>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'?</i></p>	<p>Financial advice generated by algorithms without the direct involvement of a human adviser can be described via a multitude of terms, including, as noted "robo-advice", "digital advice" or "automated advice", but also many others.</p> <p>Mercer is of the view that whichever term is used, it must be used consistently and with one definition as to what is included and excluded from that description. For example, in our view, digital advice is a broad term which includes the provision of advice (both personalised and class) either via an advisor (e.g. chat functionality) or via a robot. This term is broader than the intended scope of this consultation paper which focusses on automated advice only.</p> <p>While the common element across all terms is that advice is delivered via technology, given this channel is relatively new and rapidly evolving, Mercer's view is that some definition of the terms used would provide clarity to providers and consumers alike. We also suggest that the terminology and definitions be reviewed regularly, to ensure current thinking is reflected in the language used.</p>
<p><i>Question 28</i> <i>Do you have any other feedback or comments?</i></p>	<p>Thank you for the opportunity to provide feedback.</p>
<p>Feedback summary – if you wish to highlight anything in particular</p>	
<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>	
<p>Thank you for your feedback – we appreciate your time and input.</p>	



Submission on the consultation – Proposed exemption to facilitate personalised robo-advice

Thank you for the opportunity to provide feedback on the proposed exemption to facilitate personalised robo-advice.

Milford is supportive of a class exemption (rather than individual exemptions) as we believe it offers a simple solution to encourage the development of automated advice pending the new financial advice regime run coming into effect. We agree with FMA that providing a class exemption would support innovation and create consumer benefits during the transitional period.

We see the earlier development of automated advice in New Zealand as a positive outcome for a wide range of consumers. Especially, we think that those who have not had access to, or limited access to, personalised financial advice in the past and those who need simple, focused, cost-effective advice will benefit when making financial decisions. Milford positively supports a regime that enables all New Zealanders to have access to personalised financial advice.

We have only provided feedback to the questions we think are most relevant to Milford's clients and our business as a whole. We acknowledge that we may be affected by some of the issues that we have not submitted on. Our key messages are:

- We do not agree with the exemption limits on the scope of service outlined in the consultation paper. Instead, we think the risks of automated advice services would be better dealt with using clear and concise disclosure in plain language, explanation of limitations of the scope, probing questions to ascertain the initial and ongoing suitability of the service for the consumer at appropriate junctures in the process, and the ability for a consumer to leave an automated advice environment and to talk to a human adviser if preferred or required. Whilst safeguarding consumers against being given unsuitable advice should be a key focus for providers, we think there are other ways in which providers can demonstrate their service is mindful of vulnerable, or financially unsophisticated, clients.
- We are concerned that FMA plans on applying the capability and conduct obligations as drafted in the consultation paper proportionately depending on the scale of the service and/ or size of the business providing the service. For the benefit of the end consumer, we would prefer to see consideration given to how automated personalised advice can be delivered in a manner that is consistent with all aspects of the obligations on an AFA under the current regime, not on the size of the firm delivering the service.



Question 9 – Do the proposed limits and conditions strike an appropriate balance between consumer protection and promoting innovation? Please give reasons for your view.

We think that investment planning services (IPS) should be included in the exemption (in addition to financial adviser services). Milford anticipates that one of the most meaningful aspects of personalised automated advice for consumers will be forecasting and planning tools, for example those nearing retirement and the decumulation phase. Without including IPS in the class exemption we are concerned that providers will be unable to offer tailorable planning tools that complement product recommendations.

We are concerned about the proposal to apply an individual investment limit on clients. Whilst we understand that those with larger sums to invest or transfer *can* be more financially sophisticated, our experience shows this is not always the case. Many clients have sold a property, a farm, or have spent their working lives in professions that have not required them to have investment experience. Some clients may want advice on transferring a sizeable KiwiSaver balance. Imposing the limits outlined in the consultation paper would prevent many of Milford's clients from being able to access automated advice under the class exemption.

We believe a more appropriate response to provide consumer protections would be to ensure the initial disclosure and explanation of the scope of the advice (including its limitations) are clearly and concisely defined so that only consumers who are suited to delivery of this type of advice use it. A full explanation of the pros and cons of the delivery method and the option to exit the process at any time to discuss with a human adviser should also be available. We are also fully supportive of an adequately skilled and competent human monitoring the output of the automated advice service to ensure it is fit for purpose. Another option could be to impose limits on the complexity of advice that is provided to ensure that only simple, focused advice on one particular goal or objective is permitted under the exemption. However, if this option were adopted we would hope to see IPS included in a later iteration of the exemption as we see it as being interlinked and complementary to financial advice.

Question 10 – 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.

Milford's view is that introducing a limit on the total investment amount of products is too simplistic and would prevent Milford, as a KiwiSaver provider who is not a QFE, from introducing automated advice for its clients. We do not



support QFEs being given different criteria to others as the focus should be on the ability of the provider to offer a service that compiles with the requirements of the exemption, rather than its size or regulated status.

Question 18 – 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?

We submit that FMA prescribing the content or method of disclosure is unnecessary, and may not provide a client-centric experience for consumers because of the range of ways in which different providers may utilise the exemption. Feedback from Milford clients suggests that prescriptive disclosure can be confusing and unhelpful as it is often drafted in legal language and includes jargon and/or technical language. Instead, Milford would prefer to see FMA providing guidance or an information sheet that outlined its expectations about the content of disclosures, but allowed providers to choose how best to meet those disclosure requirements.

Milford offers learning and planning tools using class advice on its website. We agree that requiring clients or prospective clients to actively indicate their understanding when defining the scope, disclosing important information, or explaining the limitations of a service is important. We are also supportive of other forms of active engagement with a client upfront, or at appropriate points through an advice process, such as wizards and online tutorials.

Question 20 – 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.

We agree that the obligations outlined in the consultation paper capture the main conduct areas that ought to apply to the conduct to an automated advice service and its provider. We think that aspects of Code Standard 14 should also be included within the first conduct obligation proposed. We would like to see the wording extended to state something such as:

‘The provider must place the client’s interests first. As with advice through ‘non-digital’ channels, the provider is not required to provide advice on products outside of the scope of the robo-advice service, nor outside their area of competence, knowledge, and skills.’

We make this suggestion to ensure that only providers with demonstrable expertise and sufficient resourcing in a particular area is able to set up an automated advice service delivery advice in that area.



Milford is also supportive of the planned inclusion of other requirements from the Financial Advisers Act 2008 concerning conduct and we question why the requirements of clauses 33, 34 and 35 have not been included in the appendix (particularly when they were mentioned in the body of the consultation).

Our view is that these are also important in the assessment of an automated advice service. This is particularly true of clause 35, which covers the prohibition of misleading, deceptive or confusing advertising.

Given personalised automated advice will be new for New Zealand consumers we are keen to see it advertised or promoted as such. Marketing tools should not be allowed to masquerade as automated personalised advice, and there should be adequate controls implemented to contemplate the output of the service being a recommendation that the client not proceed further with a provider's automated advice service.

Turning to the capability requirements outlined in the consultation paper, we expected to see outsourcing oversight requirements more in line with the FMCA licensing minimum standards and standard licence conditions. Given the large numbers of consumers who are likely to engage with an automated advice service, we would like to see a condition included that requires scrutiny and oversight of any third-party providers involved in the provision of the service.

As mentioned previously, we are supportive of the filtering requirements to ensure that the service is only delivered to consumers that understand the parameters within which the service works.

Question 23 – 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.

We think further consideration should be given to the proposal to apply conditions to providers proportionately depending on the size and scale of the service offered. In our opinion, the conditions included in the class exemption should act as a benchmark that is applicable to all providers. Whilst we agree that smaller providers may have more simple controls and processes, we do not support altering the expectation of a condition based on the size of the provider. We would prefer to see conditions being applied equally but using a lens that considers the complexity or maturity of a provider. This would create a focus on the interests of the consumer first and foremost, not an assessment based on the scale of a business.



Question 25 – 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?

Milford is always receptive to guidance and information from FMA and it assists with ensuring we understand the FMA's thinking. Since personalised automated advice is a new area for providers and consumers, we think it would be a good idea to provide both groups with extra information to inform and educate them as we embark on this positive development of the advice processes in New Zealand.

MinterEllisonRuddWatts

20 July 2017

PRIVATE AND CONFIDENTIAL

BY EMAIL: consultation@fma.govt.nz

Consultations Team
Financial Markets Authority
Level 5
Ernst & Young Building
2 Takutai Square
AUCKLAND 1010

Consultation paper: Proposed exemption to facilitate personalised robo-advice

Introduction

1. This submission is made on behalf of MinterEllisonRuddWatts, a national law firm with one of New Zealand's leading financial services law practices. It relates to the Consultation Paper: Proposed exemption to facilitate personalised robo-advice (the **Consultation Paper**). This submission reflects our own views and not necessarily those of any of our clients.
2. We have previously submitted extensively on the topic of robo-advice (in this submission we use our preferred term, "digital advice"). In February 2016 we made a submission (**2016 Submission**) on the November 2015 Options Paper published by the Ministry of Business, Innovation and Employment (**MBIE**). In that 2016 Submission we focussed on digital advice issues. This followed the findings of an in-house survey of 80 young lawyers in our Auckland office and a further focus group of six young lawyers. For convenience we referred to this group, all of which were under the age of 30, as **Millennial Professionals**.
3. In April 2017 we also made a submission on the consultation draft of the Financial Services Legislation Amendment Bill (**2017 Submission**). That submission also focussed on the provision of digital advice. We set out our recommendations, based on detailed research of overseas jurisdictions, as to how MBIE could ensure that the eventual digital advice regime is fit for purpose – in that it provided the best outcomes for consumers, advice providers and the New Zealand fintech industry.
4. We have not responded to the specific questions for consultation included at the end of the Consultation Paper. As we have previously submitted extensively on digital advice, we have already in effect addressed many of the issues raised in the Consultation Paper in our 2016 Submission and 2017 Submission. We instead have two key overarching submissions on the Consultation Paper.
 - (a) we are supportive of the class exemption to enable digital at an earlier date in the Consultation Paper (the **Proposed Exemption**);
 - (b) digital advice should not be regulated through investment limits and restrictions on the scope of services, but rather capability and disclosure requirements are appropriate.
5. We set out these conclusions in more detail below.

We are supportive of the Proposed Exemption

Digital advice will assist Millennial Professionals and others to receive financial advice

6. We are supportive of the Proposed Exemption, as we consider digital advice to be an important enabler for Millennial Professionals to receive financial advice. As raised as an issue in the Consultation Paper, we consider there is an "advice gap" where Millennial Professionals are not receiving advice. The lack of advice for Millennial Professionals is likely a component of the Financial

20th Floor, Lumley Centre, 88 Shortland Street, Auckland 1010
PO Box 3798 Auckland 1140 New Zealand DX CP 24061 Auckland
T +64 9 3539700 F +64 9 3539701 minterellison.co.nz



Markets Authority's (FMA) own assessment of the more general lack of financial advice being provided (i.e. for KiwiSaver). As set out in our 2016 Submission, digital advice will increase access to financial advice because:

- (a) Millennial Professionals generally look for answers online, and are comfortable receiving advice through an internet platform;
 - (b) Millennial Professionals consider digital advice to be more reliable, as it does not involve human error, uses a wide range of data, and can have less personal bias; and
 - (c) digital advice can be provided at a lower cost to groups such as Millennial Professionals, who may have less financial resources.
7. We suspect that in addition to Millennial Professionals, there will be other sectors of technologically competent consumers who will benefit from access to digital advice services. Our focus on Millennial Professionals reflects only the results of our own direct research.

The Proposed Exemption is justified

8. If the Proposed Exemption was not granted, digital advice will not be permitted until 2019. Based on the current draft of the Financial Services Legislation Amendment Bill, this leaves digital advice providers with an approximately two-year gap in which digital advice cannot be provided due to regulation.
9. As previously set out in our 2017 Submission, this delay risks New Zealand being left behind comparable jurisdictions, such as Australia and the United States. From our experience advising clients interested in digital advice, there are providers in New Zealand who are either ready now, or who can be ready shortly, to go to market with digital advice services. These include both large industry participants (such as banks) but equally small innovative start-up companies. Without the Proposed Exemption, innovation in this area will continue to be delayed until 2019.

The Proposed Exemption should be a class exemption

10. Obtaining an exemption can be challenging due to the significant cost involved for smaller providers. Smaller and less well-resourced businesses may be hesitant to commit the financial resources to applying for an individual exemption. A class exemption alleviates this barrier to entry and ensures a level playing field for both smaller and larger providers, allowing for a diverse digital advice market.

Digital advice should not be regulated through investment limits and restrictions on the scope of services, but rather capability and disclosure requirements are appropriate

Digital advice should be regulated through capability and disclosure requirements

11. The Proposed Exemption is subject to a number of conditions in the Consultation Paper. We agree with these conditions that relate to digital advice providers having the appropriate capability to operate their digital advice service, for example, the requirements to:
- (a) have appropriate people to review the algorithm and the advice generated;
 - (b) implement processes to monitor and test the advice in the algorithm and ensure that the advice is appropriate; and
 - (c) confirm that their directors and senior managers are of good character.

Digital advice should not be subject to financial limits

12. We do not consider that the limits proposed on the scope of digital advice are appropriate. As a general statement of principle, if a digital advice provider can demonstrate to the FMA that they have the capability to provide a service to customers, and the customer receives disclosure so that they understand the service, we see no reason why that service should not be provided. The advice being provided through a different channel should not change the overall outcome of the advice being fit for purpose.

13. The Consultation Paper provides that digital advice services should be subject to investment limits of either \$100,000 per client or \$5 million for the service as a whole (with a higher limit proposed for qualifying financial entities (QFEs)). We disagree with these limits as being an appropriate way to regulate digital advice. As acknowledged in the Consultation Paper, it can be difficult to quantify the monetary value of any advice given and we question how these limits will operate in practice (for example, a customer receiving advice on a withdrawal for their KiwiSaver scheme, to purchase their first home may immediately surpass the \$100,000 limit). Regardless, we consider that instead of limiting the scope of the service, ensuring that service providers have the required capability and consumers have effective disclosure is the appropriate way to regulate digital advice.
14. The reasoning in the Consultation Paper for the above investment limits is to limit the potential harm to investors in the event the digital advice service fails. This appears to be an “ambulance at the bottom of the cliff” approach. Ensuring the service is held to high standards so that it is unlikely to fail before FMA can intervene will result in better outcomes for customers, rather than limiting potential harm “when” the service fails.
15. We also note that higher limits are proposed for QFEs. While this will alleviate some of the negative consequences of investment limits for QFEs, this is unhelpful for smaller providers who intend to rely on digital advice to deliver low cost advice to customers. Smaller providers with significant growth may quickly reach the investment limit, constraining their growth or effectively requiring them to become QFEs. In this scenario, regulation directly acts as a barrier to innovation and the growth of the New Zealand fintech industry.

The scope of digital advice services is correct

16. The Consultation Paper provides that digital advice should be open to financial adviser services and investment planning services, and asks whether it is appropriate for investment planning services to be included. We consider that investment planning services should be included, as they are conceptually similar enough to financial adviser services to have the same requirements apply.
17. Discretionary investment management services (DIMS) are excluded from the Proposed Exemption, due to the additional requirements on DIMS in the FMCA. We agree that DIMS should be excluded, as it may be difficult for a digital advice algorithm to satisfy the FMCA requirements. However, we note the potentially problematic interaction between DIMS and digital advice, as set out in our 2017 Submission (in short, many digital advice services offer model portfolios with automatic rebalancing, which may be considered a DIMS under the Financial Advisers Act 2008 or the FMCA). It may not be appropriate to address this in the Proposed Exemption, but will be necessary should New Zealand wish to develop large digital advisers similar to Wealthfront or Betterment in the United States.

Digital advice providers should be subject to further capability requirements

18. In our 2017 submission we set out seven key recommendations for a digital advice licensing regime. The Proposed Exemption in the Consultation Paper (which is effectively a transitional licensing regime) adopts equivalents of six of our recommendations, and we generally support the proposed conditions. Below are two focus areas in which the clarity of the proposed conditions could be expanded, the flexibility of conditions, and governance arrangements.

Flexibility of conditions on digital advice

19. Digital advice is appealing for smaller providers because it allows them to take advantage of economies of scale and provide advice to a large customer base with less resources. An onerous digital advice regime may mean that smaller participants cannot sustain the cost of compliance, and regulation will act as a barrier to entry. Digital advice regulation should be scaled to the size of the provider's business. The Consultation Paper acknowledges this flexibility is desirable, but then asks submitters whether it is appropriate for conditions to be scaled to the size of the applicant's business. We submit that conditions should remain flexible, to ensure a level playing field for both smaller and larger providers.

Governance and compliance arrangements

20. As set out in our 2017 Submission, we consider that digital advice providers should be required to formalise their compliance arrangements into a compliance programme, and appoint a compliance officer to be responsible for the digital advice algorithm. As mentioned above, this requirement may

be scaled depending on the size of the provider's business. Please see our 2017 Submission for further discussion.

Conclusion

21. As we have submitted extensively on the topic of digital advice previously, our submission largely reflects the issues previously addressed in our 2016 Submission and 2017 Submission, that digital advice should be enabled, and that digital advice providers should be subject to ongoing capability requirements as part of the licensing regime. We have attached copies of our 2016 and 2017 Submission as part of this submission at Appendices 1 and 2 of this submission.
22. Thank you for taking the time to consider this submission. Please contact us on the details below if you wish to discuss any of the matters raised in this submission.

Yours faithfully

MinterEllisonRuddWatts



Appendix 1: MinterEllisonRuddWatts 2016 Submission

MinterEllisonRuddWatts

26 February 2016

BY EMAIL: faareview@mbie.govt.nz

Financial Markets Policy
Ministry of Business, Innovation & Employment (MBIE)
PO BOX 3705
WELLINGTON

Review of the Financial Advisers Act 2008

1. Introduction

- 1.1 This submission is made on behalf of Minter Ellison Rudd Watts, a national law firm with one of New Zealand's leading financial services law practices, in relation to the Financial Advisers Act 2008 (**FA Act**) review. The submission reflects our own views, and not necessarily those of any of our firm's clients.
- 1.2 For the reasons outlined below, we have focussed this submission on the "advice through technological channels" section of the Options Paper or what we will refer to as "automated personalised advice". We will not comment on the other matters raised by the Options Paper, in relation to either the FA Act or the Financial Service Providers (Registration and Dispute Resolution) Act 2008.
- 1.3 We expect that MBIE will receive many submissions which focus on the interests of consumers who are in the Baby-Boomer or Gen-X generations¹. That is understandable as they are either in retirement (when wealth preservation and de-cumulation are the priority), or are well advanced in the accumulation stage. They may have material financial assets already and certainly the most pressing needs. They are therefore of immediate interest to advisers and product providers. Accordingly, we assume others will address the issues for those groups.
- 1.4 However, we expect there may be comparatively less focus on the interests of those New Zealanders in or about to enter their 20s (late Gen-Y and early Gen-Z). Their largest (and perhaps only) asset is time - time to build assets and watch their investments grow. Yet we suspect they are much less likely to be able to rely on the level of the current state provision for their retirement and other needs.
- 1.5 Accordingly, we decided our best contribution to the reform process would be to look at the FA Act review from the perspective of young working law graduates, who have yet to purchase their first home. They are, we believe, a proxy for a wider group whose interests are vitally important in the longer term – for convenience we refer to this group as "**Millennial Professionals**".
- 1.6 We set out in the schedule our methodology for collating the findings that form the basis of this submission. Essentially, this involved an in-house survey of 80 young lawyers in our firm under the age of 30 which helped us to understand the investment decisions and behaviours of Millennial Professionals. We found that, among other things, Millennial Professionals were interested in investment options outside of Kiwisaver and the trade-off between saving for a house deposit and other forms of investments.
- 1.7 From there, we formed a focus group of 6 young Auckland based lawyers where we discussed in more detail their investment / financial knowledge and habits, their

¹ The terms Baby-Boomer, Gen-X, Gen-Y and Gen-Z are often used ambiguously. For clarity see <http://www.talentedheads.com/2013/04/09/generation-confused/> for the sense in which we use those terms.



investment / financial decision making process and their views about obtaining personal financial advice and other sources of financial information.

- 1.8 Below we set out a summary of our submission, and further analysis on each of the points follows. We have not completed the template submission form because only questions 9, 10 and 11 are relevant to the matters on which we wish to make submissions.

2. Summary

- 2.1 The main points of our submission are as follows:

- (a) automated online platforms are the best way to provide personalised financial advice to Millennial Professionals and in particular, its perceived accuracy, independence and the ability to utilise future technology such as “big data” makes it an attractive decision making tool;
- (b) the current FA Act regime restricts the provision of personalised financial advice through automated online platforms leaving many consumers, especially Millennial Professionals, out of the market for financial advice;
- (c) the provision of automated personalised financial advice should be facilitated by a new category of “licensed financial advice platform” being added to the regulatory regime to supplement the current AFA regime and address the needs of a segment of the market who are not currently accessing personalised financial advice;
- (d) licensed financial advice platforms should be subject to a suitable licensing regime, similar to the discretionary investment management service (DIMS) regime and also ethical requirements comparable to authorised financial advisers (AFAs); and
- (e) any regulatory changes should support innovation in the industry and future proof the regime to allow further developments in technology. On that basis, we consider a hybrid approach, where after using an automated platform the consumer must be given the option to talk to an AFA, to be inappropriate.

- 2.2 For certainty, we are not suggesting a restriction on the current ability to provide class financial advice or for issuers to advertise financial products by automated online means.

- 2.3 We explain the above summary points in further detail below.

3. Automated online platforms are the best way to provide personalised financial advice to Millennial Professionals and in particular, its perceived accuracy, independence and the ability to utilise future technology such as “big data” makes it an attractive decision-making tool.

- 3.1 Our focus group told us that they and their peer group would be likely to embrace personalised financial advice provided by technological means because Millennial Professionals:

- (a) look for answers online generally in their lives;
- (b) consider automated personalised advice is more likely to be reliable;
- (c) expect automated personalised advice can be provided at a more acceptable cost; and

- (d) consider that automation is inevitable and New Zealand's choice is whether to be at the forefront and guide its development.

Millennial Professionals look for answers online generally in their lives

- 3.2 The current regime has failed to capture the needs of a generation of consumers who rely on technology for everyday decision-making.
- 3.3 Our focus group told us that they live in a world where they look for information, advice and services of any sort via internet search and smart phone applications as a first step. In a generation where people use social media apps² to find their life partner, they told us it was unlikely they would sit down with an AFA to make financial decisions.
- 3.4 As digitisation of knowledge services and artificial intelligence becomes more prevalent, the availability of technology to assist with decision making will only become increasingly the norm. Consumers today already rely heavily on online, automated platforms for everyday decision making. For example, the success of websites such as Webjet, Trivago and Expedia have revolutionised the tourism industry. Few young consumers now go to travel agents to book their holidays.
- 3.5 This revolution can also be seen in other industries, such as insurance (for example, Trademe's Life Direct), dining (for example, restauranthub.co.nz) and even education (for example, edX).
- 3.6 Consequently, where personalised financial adviser services are not available online, many Millennial Professionals consider that service to be out of reach. In reality, it might as well be unavailable. For Millennial Professionals particularly, the nature of their lifestyles means that sitting down with an AFA for personalised financial advice is most unlikely.

Millennial Professionals consider automated personalised advice is more reliable

- 3.7 Our focus group told us that from the Millennial Professional's perspective, personalised financial advice provided by natural persons are not only *not* seen as better than an automated online platform, but are seen by them as less reliable and more susceptible to human error and misunderstanding of an individual's mentality and motivations.
- 3.8 Before personalised financial advice is sought, the consumer must decide whether a particular AFA has the adequate knowledge, skills and competence levels appropriate for their needs. The uncertainty as to whether a particular AFA understands the needs and wants of Millennial Professionals and the volatility in skills of each individual AFA are also disincentives for that segment of the market to seek personalised financial advice. This problem is compounded by the fact that AFAs do not all provide the same services (for example, some might specialise in insurance while others in mortgages or KiwiSaver).
- 3.9 Some of our focus group said that they thought Millennial Professionals would rather obtain financial "reassurance" (rather than advice) from their friends, who have minimal financial knowledge, than seek the services of an AFA due to a lack of trust and understanding of how AFAs work.
- 3.10 The consumer distrust of a human adviser can be seen in other industries too. For example, Webjet's recent advertising campaign shows a young woman complaining to a friend about her travel agent who found fewer flights than she did while researching

² For support of what our focus group told us about how radically behaviour has changed see *Modern Romance: An Investigation* by Aziz Ansari and Eric Klinenberg, published in the UK by Penguin Press summarised by BBC World here: <http://www.bbc.com/news/magazine-35535424>
15496589 4

herself and was generally disinterested in her needs. For Millennial Professionals, online automated platforms are assumed to be more reliable, generally have wider breadth of resources and can be more easily controlled to provide unbiased results.

- 3.11 Given that AFAs often refer to electronic systems and questionnaires when providing personalised financial advice to a client, an automated online platform may take this process and provide it directly to consumers. All of the Millennial Professionals in our focus group considered themselves to be sophisticated enough to confidently operate and interpret the questionnaire themselves. They also liked the idea that they could change variables and see the impact on different outcomes.
- 3.12 This option could arguably provide better personalised financial advice than at least some AFAs. For example, in the future automated online platforms may be able to utilise resources such as “big data” to provide personalised advice for a client with access to information that the consumer himself or herself may not even be aware of. The complexity and possibilities that can be achieved by a computer algorithm even today far surpasses the capabilities of a human being. For sophisticated Millennial Professionals that is where they consider the true value add of financial advice to be.

Millennial Professionals expect automated personalised advice can be provided at a more acceptable cost

- 3.13 Our focus group told us that cost is a further impediment to them taking personalised financial advice under the current regime. Our focus group all had some savings and were interested in the best ways to manage their money and to invest it in higher return financial products but the idea of paying potentially hundreds of dollars for financial advice did not make financial sense to them. It would take a long time for any investments to recover that cost.
- 3.14 The focus group readily understood and accepted that the services of an AFA can cost hundreds of dollars, reflecting the level of personal time involved and the high level of training required for the AFA as a professional. But the difficulty was that cost is either met by:
- (a) clients, for example by way of fees per hour or per item of advice, which renders personalised financial advice out of reach when the cost of advice is disproportionately high to the amount of current savings; or
 - (b) product providers, for example via commissions, which raised concerns for the focus group about incentives and conflicts of interest.
- 3.15 Additionally, the focus group said some AFAs seemed unwilling to provide advice unless it is part of a full financial plan or when other significant services are also provided to that client. Consequently consumers who are not adequately attractive clients (and most Millennial Professionals with modest savings are not attractive clients) for AFAs fall through the cracks, creating a gap in the market.
- 3.16 The focus group considered it self-evident that an automated solution would be less costly, because it would not require an individual human being to deliver the advice one-to-one, and could achieve economies of scale.

Millennial Professionals consider automation is inevitable and New Zealand's choice is whether to be at the forefront and guide it

- 3.17 Lastly, even if the regulatory regime does not keep up with changes in the market, the market will not be deterred from changing. Automated online platforms are an inevitable

future. In the United States and Europe, these services are gaining momentum. Australia is also consulting on the issue.³

- 3.18 By not addressing this gap in our regulatory regime, and restricting automated online platforms to only providing class advice, it creates a risk that permitted class advice will be stretched further and further until it becomes effectively personalised advice *disguised* as class advice. That is not desirable, and it would be better to provide an avenue to provide automated personalised financial advice legitimately.
- 3.19 In Australia, similar tensions arise.⁴ Online platforms have argued that the personal information collated from the clients is merely being used to provide “general advice” that is *more relevant* to the client. However, some commentators have expressed doubts about how robust that approach is. At least it creates a risk of confusion in the market and could lead to consumers believing they have obtained personalised advice but the platform has not been adequately regulated to provide sufficient protections for consumers.
- 3.20 During our focus group discussion, the Millennial Professionals were very attracted to the technological developments in the industry and the possibility of using complicated algorithms and big data to create financial advice. They expressed frustration if this technology was not available in New Zealand merely due to regulatory barriers.
4. **The current FA Act regime restricts the provision of personalised financial advice through automated online platforms leaving many consumers, especially Millennial Professionals, out of the market for financial advice.**
- 4.1 The Options Paper identified one of the main goals of the FA Act review is to ensure that consumers have the ability to access quality advice when they need it. It also identified that barriers to achieving this outcome include:
- (a) it is hard for consumers to know where to seek financial advice from;
 - (b) certain types of advice are not being provided; and
 - (c) consumers do not always understand the limitations of different types of advice.
- 4.2 Currently, personalised financial advice to retail clients can only be provided by natural persons, and in relation to category 1 products, only by AFAs. QFEAs can also provide financial advice in relation to the QFE’s products. As a result, automated online platforms are practically limited to providing “class advice” because no natural person is involved.
- 4.3 We submit that the restrictions in the current regime contribute to the barriers identified above as it is not robust enough to cater to the needs of all consumers (especially Millennial Professionals) and the developments in the industry.
- 4.4 The requirement that personalised financial advice can only be provided by natural persons is outdated and does not reflect the needs and expectations of a modern generation. As we explained above, seeking the services of an individual to help with financial decision making is no longer the “natural” approach for many consumers and the lack of an online option means many do not know where to find an appropriate source of reliable information. Our focus group believe that while they could benefit from financial advice, they have been left out of the market.

³ See for example the article *UK banks set to launch ‘robo-advisers’* in the Financial Times: <http://www.ft.com/intl/cms/s/0/afb03182-c107-11e5-9fdb-87b8d15baec2.html#axzz411QjNo16>; and *Would you take financial advice from a robot* in the Sydney Morning Herald: <http://www.smh.com.au/money/would-you-take-financial-advice-from-a-robot-20151125-ql7w3v.html>.

⁴ See article by Kate Jackson-Maynes, a partner at King & Wood Mallesons Sydney, *The rise of Robo Advice tools in financial planning*: <http://www.kwm.com/en/au/knowledge/insights/rise-robo-advice-tools-financial-planning-20150716154965894>

- 4.5 Furthermore, by restricting the giving of personalised advice to natural persons, New Zealand is falling behind, as compared to other countries such as the UK and US, in terms of supporting innovation and using innovation and new technology to improve the efficiency and effectiveness of the financial adviser industry. For the reasons explained in section 3 of this submission, not allowing technological products participate in the personalised financial advice market may limit some consumers from obtaining financial advice.
5. **The provision of automated personalised financial advice should be facilitated by a new category of “licensed financial advice platform” being added to the regulatory regime to supplement the current AFA regime and address the needs of a segment of the market who are not currently accessing personalised financial advice.**
- 5.1 We agree with the Options Paper that the financial advisers regulatory regime needs to support and encourage innovation in the financial services industry in New Zealand. But one only needs to look to the US and Europe (as referred to above) to see that it is no longer just about encouraging innovation but rather meeting the needs of an industry that is ready to introduce innovative solutions into the market.
- 5.2 In relation to the Option Paper section on “advice through technological channels”, we support option 1 where entities will be licensed to provide personalised advice through an automated platform.
- 5.3 We consider it is important that online automated financial advice platforms are adequately licensed and regulated to give consumers reassurance that they are using a reliable source of information. Our focus group expressed that despite that vast amount of information available online, they would still be willing to pay for financial advice from an automated online platform provided that the platform could demonstrate they were adequately regulated and there is some “guarantee” that they can provide quality and valued added financial advice.
- 5.4 To be clear, we are not proposing that this licensing regime should capture any sales activities or automated online platforms that only provide “class advice” or advertisements by issuers, which are already permitted in the current regime. However, it will be important that they are not misleading as to the nature of the advice given. There are existing rules in Part 2 of the Financial Markets Conduct Act 2013 (FMCA) and the FA Act which address that concern sufficiently.
- 5.5 A licensed financial advice platform regime that provides personalised financial advice would address the needs of a segment of the market that is unlikely to be currently receiving financial advice - i.e. Millennial Professionals. Yet it is this same group of consumers that would benefit from financial advice but are deterred for the many reasons addressed above. The benefit of such a regime is that it does not impinge on the current AFA regime as they have a different target audience, but actually supplements the current regime.
- 5.6 We submit that the current territoriality threshold in the FA Act should remain the same and the licensing regime should apply to any online platform provider where the financial advice is received by a client in New Zealand, regardless of where the entity providing the service is incorporated or carries on business. It may be possible for entities subject to comparable regimes overseas to be exempted on the basis that they are already regulated.

6. **Licensed financial advice platforms should be subject to a suitable licensing regime, similar to the DIMS regime and also ethical requirements comparable to AFAs.**
- 6.1 We submit that the solution is to add a new category of “licensed financial advice platform” to the regulatory regime to regulate automated online platforms that intend to provide personalised financial advice. The entity providing the platform should be the responsible body for the advice transmitted by it. This clarifies the legal status of automated financial advice platforms, allowing them to be adequately regulated and held accountable. We envision this regime to be similar to the FMCA DIMS licensing regime currently in place and would be administered by the Financial Markets Authority (FMA).
- 6.2 These platform providers will need to demonstrate to the FMA that they have the resources and capabilities to meet their legal, professional and ethical obligations in relation to providing personalised financial advice.
- 6.3 The FMA may be given power to consider whether the platforms are suitable for their intended purpose, meets technical requirements (i.e. the infrastructure of their website) and is attractive to the target audience, in order to adequately address the barriers to receiving financial advice identified above.
- 6.4 Amongst other things, the FMA should be required to consider:
- (a) the operations of the platform, including whether consumers have adequate opportunities to provide details about their personal circumstances on the platform such that it is comparable to the services of an AFA;
 - (b) whether the platform is robust enough to cater to the needs of different consumers, including those who may have unusual circumstances or needs;
 - (c) whether the entity and the consumers using its platform have access to support services so that the platform can provide a reliable and trustworthy service;
 - (d) whether the advice is given in a “clear, concise and effective” manner;
 - (e) whether the entity has access to expert advice in putting together the platform, including its credentials and the basis of any questionnaire it will be using and how comparable they are to the resources utilised by AFAs; and
 - (f) whether the platform has processes and procedures in place to ensure that it is updated frequently and has access to appropriate and reliable sources of information and knowledge.
- 6.5 Additionally, we submit that as the licensed platform providers will be providing personalised financial advice, they should also be subject to comparable ethical obligations as those placed on AFAs, for example to put the interests of the clients first. This includes, where relevant, different requirements depending on whether the platform provider only provides advice or also provides links to the recommended financial products for the consumer to invest in or sign up for.
- 6.6 Our focus group told us that with an online automated advice platform they were concerned to know what entity would be accountable if after paying for the service they receive advice that is unhelpful or unreliable. Therefore, compared with traditional financial advice, the need is even greater that the identity of the licensed provider is very clear and that it is ensured consumers have access to sufficient means of holding that entity accountable for the services they provide. This will include sufficient disclosure as to the entities operating the platform and their licensed status.

- 6.7 In terms of liability, we submit that licensed financial advice platforms should be subject to similar liability provisions as DIMS providers in the FMCA.
7. **Any regulatory changes should support innovation in the industry and future proof the regime to allow further developments in technology. On that basis, we consider a hybrid approach, where after using an automated platform the consumer must be given the option to talk to an AFA, to be inappropriate.**
- 7.1 We do not consider option 2 is the appropriate response to address the challenges faced by the financial advice industry. The hybrid approach would place additional burdens on entities who want to provide automated financial advice (for example, they would still need to hire AFAs and in certain cases, make them available across the country). Instead of complying with only one regime (i.e. the AFA regime), they now have to comply with two regimes. This increases the cost of compliance on entities and will detract from some of the biggest positive benefits of permitting the operation of such platforms – i.e. quality financial advice at a lower cost.
- 7.2 Additionally, we submit that a hybrid approach does not future proof the legislation and encourage innovation. The increased cost of having available AFAs will discourage entities from investing in this industry, which would not promote the development of higher quality services.
- 7.3 We submitted earlier that automated financial advice could in the future have access to additional resources such as big data, completely revolutionising the resources financial advisers have access to, including data (and conclusions drawn from those data) that the consumer himself or herself are not even aware of. The legislative regime should support these innovations to ensure that consumers are given access to the best and most technologically advanced financial advice.
- 7.4 One of the most attractive aspects of an automated online platform from the perspective of our focus group was that consumers do not have to speak to an actual person and that these platforms have access to a broader range of information and its ability to use complex computer algorithms to provide solutions one cannot come up with on their own. We consider option 2 does not provide sufficient recognition for these considerations.
8. **Conclusion**
- 8.1 We have presented our submission at a high level at this stage of the legislative review process. We will be happy to discuss technical solutions and drafting issues in more detail in due course if this will be of assistance.
- 8.2 Thank you for taking the time to consider this submission. Please contact us (details below) if you wish to discuss any of the matters raised above further.

Yours faithfully

Minter Ellison Rudd Watts



Schedule - Methodology

Phase One – in house survey

In July/August 2015 we conducted an in-house anonymous survey of young working law graduates and lawyers in Auckland and Wellington in relation to their investment activities and expectations.

Number surveyed	80
Number of responses	42
Gender balance	37 males, 43 females
Age group	Roughly between the ages of 23 to 30 and with between 0 to 7 years of work experience.
Survey method	We set out an anonymous survey on an external website and sent an email to 80 law clerks / junior solicitors in our team. Surveys were completed and the results automatically generated by the website.

Phase Two – focus group

In February 2016 we formed a focus group of 6 young lawyers in Auckland to discuss in more detail their current investment / financial knowledge and habits, the resources they currently use to make financial decisions and the resources they would like to have available, how they compare their investment / financial knowledge to their peers in other industries, and their thoughts about “automated personalised advice”.

Number of people	6
Gender balance	2 males, 4 females
Age	Between 23 to 25 years old with 1 to 2 years of work experience
Culture / backgrounds	1 person was born in New Zealand 5 people were born overseas but have lived in New Zealand from a very young age All currently live and work in Auckland but have grown up in various parts of New Zealand
Education	All 6 people have a Bachelor of Laws degree 3 people have a Bachelor of Commerce degree, 3 people have a

	Bachelor of Arts degree
Method	<p>We set out an informal round table discussion with the focus group where we provided discussion questions including:</p> <ul style="list-style-type: none"> • how would you described your investment / financial knowledge / habits? how would you compare these to your friends in other industries? • what types of investments do you have at the moment? why do you invest in those products? • do you currently use the services of a financial adviser? why / why not? what are your thoughts about financial advisers? • what resources in the market do you currently use for financial knowledge? what resources do you want to see available in the market? • are you ever frustrated that you don't have access to enough quality financial information? • what are your main concerns about getting financial advice? what do you consider to be quality advice? • what are some barriers you experience to receiving quality financial advice / being a financially aware person? • what are your thoughts towards automated online platforms vs natural persons providing financial advice? how do they compare? • would you pay for an automated online platform for financial advice? if so, how much? • what kind of automated online platform would be attractive for you to use?

MinterEllisonRuddWatts

3 April 2017

BY EMAIL: faareview@mbie.govt.nz

Financial Markets Policy
Ministry of Business, Innovation & Employment (MBIE)
PO BOX 3705
WELLINGTON

Financial Services Legislation Amendment Bill

1. Introduction

- 1.1 This submission is made on behalf of MinterEllisonRuddWatts, a national law firm with one of New Zealand's leading financial services law practices. It relates to the consultation draft of the Financial Services Legislation Amendment Bill (**Bill**). The submission reflects our own views, and not necessarily those of any of our firm's clients.
- 1.2 For the reasons outlined below, we have focussed this submission on certain questions of the **Consultation Paper** in respect of the Bill, relating to the provision of "automated personalised advice" or "robo-advice" (in this submission we use our preferred term, "**digital advice**"). We have set out in the Appendix what we mean by "digital advice" and "digital advisers" in the context of this submission.
- 1.3 We will not comment on the other matters raised in the Consultation Paper, in relation to the review of either the Financial Advisers Act 2008 (**FA Act**) or the Financial Service Providers (Registration and Dispute Resolution) Act 2008.
- 1.4 In February 2016 we made a submission on the November 2015 Options Paper published by MBIE (**2016 Submission**).¹ In that 2016 Submission we focussed on digital advice issues. This followed the findings of an in-house survey of 80 young lawyers in our Auckland office and a further focus group of six young lawyers. For convenience we referred to this group, all of which were under the age of 30, as **Millennial Professionals**.
- 1.5 As discussed in our 2016 Submission we considered our best contribution to the reform process would be to look at the FA Act review from the perspective of young working law graduates, and in particular how accessible, accurate and affordable financial advice could be provided to this cohort through enabling digital advice. Paragraph 2.1 of our 2016 Submission sets out a summary of our points on this.
- 1.6 The five main points in paragraph 2.1 of our 2016 Submission have been fully or substantially addressed in the draft Bill and the Consultation Paper. Therefore, except for two specific comments on the Bill set out below, we support the Bill and Consultation Paper as they relate to digital advice.
- 1.7 In this submission we have decided that our best contribution would be to continue to focus on digital advice and leave it for others to address broader issues in their submissions.

¹ Our 2016 Submission can be found here: <http://www.mbie.govt.nz/info-services/business/business-law/financial-advisers/review-of-financial-advisers-act-2008/options-paper/options-paper-submissions/Minter-Ellison-Rudd-Watts.pdf>



2. Summary

2.1 In this submission we have set out:

- (a) in Part A, two specific comments on the Bill in response to the Consultation Paper; and
- (b) in Part B, our recommendations, based on detailed research of overseas jurisdictions, as to how MBIE could ensure that the eventual digital advice regime is fit for purpose – in that it provides the best outcomes for consumers, advice providers and the New Zealand fintech industry.

Part A: Issues with the Bill

- (c) Under the proposed transitional period the realistic earliest timing for obtaining a digital advice licence is around April 2019. This is too late. New Zealand consumers, fintech firms and the New Zealand economy are ready for digital advice now. Digital advice should be enabled earlier by way of earlier licensing of digital advisers or a class exemption from the FA Act.
- (d) Sophisticated digital advice providers should be regulated under the Financial Markets Conduct Act 2013 (**FMCA**) financial advice regime but, because of the ancillary discretionary services they may provide, some providers may fall within the discretionary investment management service (**DIMS**) regime in the FMCA. We think that the Bill should explicitly exempt such providers from the DIMS regime to ensure that the right services are regulated by the right legal requirements.

Part B: Recommendations for a Successful Digital Advice Regime

- (a) The Bill must be drafted to ensure that the licensing and regulation of digital advice in New Zealand is both sufficiently flexible to enable innovation and sufficiently robust to protect consumers.
- (b) Ensuring that quality information is disclosed will have a critical role in establishing and supporting consumer trust in digital advisers. Key requirements for disclosure should be reflected in the disclosure regulations.
- (c) Digital advisers should employ information gathering and analysis techniques, and suitable means of client engagement, to ensure that the advice provided is suitable for the particular client.
- (d) The Code of Conduct should set minimum expectations for suitability of advice, to underpin consumer confidence and set market expectations.
- (e) The eligibility criteria for a licence to provide digital advice should establish expectations for review and monitoring of the advice algorithm to ensure it is functioning correctly.
- (f) The eligibility criteria for a licence to provide digital advice should require digital advisers to ensure they have sufficient cyber-security in place.
- (g) To ensure that the recommendations above are implemented and complied with by the digital advice platforms, the eligibility criteria and/or the Code of Conduct should require digital advisers to have in place adequate compliance programmes and to establish appropriate governance structures.

PART A: ISSUES WITH THE BILL

3. Transitional Issues

- 3.1 In this paragraph we respond to questions 33 and 34 of the Consultation Paper, regarding transitional issues.
- 3.2 Currently the Consultation Paper provides that digital advice may only be provided under a full licence. Applications for a full licence will open on 28 February 2019. Firms will be able to elect their licence effective date. All firms must be licensed by 28 February 2021.
- 3.3 Based on previous experience under the FMCA licensing processes, it is likely that the minimum processing time for a relatively smooth licence application will be in the order of two to three months. This means the earliest realistic timing for the licensing of the first digital advice provider will be April or May 2019.
- 3.4 This timeline is too long, for the following reasons:
- (a) New Zealand consumers are ready to receive digital advice now. In our 2016 Submission we highlighted the reasons why Millennial Professionals and other consumers want the option of receiving digital advice as soon as possible. This included an “advice gap” in the market where consumers, particularly those with limited resources, currently find it hard to access financial advice suitable for their needs. Millennial Professionals also identified other benefits such as accuracy, independence, convenience and cost that digital advice platforms offer.
 - (b) Innovative New Zealand businesses are ready and willing to provide digital advice now. Further delay negatively impacts the viability of these business. Further, and perhaps most importantly, it inhibits businesses from developing their initial business models in line with international best practice, by incentivising them to commence operations with reduced-functionality models in order to comply with the current sub-optimal regulatory environment. This is a concern that has been expressed to us by market participants.
 - (c) New Zealand risks being left behind comparable jurisdictions. We pride ourselves on being an innovative country with a responsive regulatory regime. The Minister of Commerce and Consumer Affairs recently described fintech as a fast growing sector with exciting opportunities for New Zealand companies and consumers.² Any delay in enabling fintech applications such as digital advice that are in line with global best practice, risks putting New Zealand further behind our international competitors and limits the potential international opportunities for New Zealand businesses. Innovative talent and capital investors may be drawn to other countries which are trying to position themselves as the Asia Pacific hub for fintech innovation. This would be a loss to the New Zealand economy. As one market participant told us, “it would be very easy for New Zealand to be left behind”.
- 3.5 We note that the Financial Markets Authority (FMA) has also recently expressed its support of the early adoption of digital advice as a means of increasing access to financial advice for consumers.³

² <http://www.nztech.org.nz/nz-governments-role-in-driving-the-pace-of-fintech-development-with-fintechnz/>

³ See the FMA's *AFA Information Report*, at: <https://fma.govt.nz/news/media-releases/fma-releases-afa-information-report/>
18031425 3

3.6 Digital advice should be enabled earlier than 2019. This could be done in one of two ways:

- (a) A specific digital advice licensing process could be developed for full digital advice licensing in August 2018 (at the time of transitional licensing for other financial advice providers). The duties, disclosure requirements and liability regime in the Bill would apply to digital advisers from this point. Any requirements not yet covered by legislation could be imposed by way of licence conditions. This is our preferred option.
- (b) If option (a) is not available, MBIE could work with the FMA to consider how digital advice could be enabled by way of a class exemption from the current FA Act. The exemption conditions would substantially replicate the requirements for digital advisers that are intended to be imposed by the Bill, with digital advisers still required to go through a licensing process in accordance with the current legislative timetable.

4. Interaction with DIMS

- 4.1 The Bill should better regulate when the digital advice or DIMS regimes apply, particularly with respect to complex financial advice and financial planning services.
- 4.2 As discussed in the Appendix, the best examples of the sophisticated digital advice and financial planning platforms that we have seen are the US-based businesses. Many of these have an automatic rebalancing or other automatic investment component to them. Worldwide, the combination of advice and portfolio management services is common.⁴ New Zealand would benefit from enabling such businesses. A platform may use multiple sources to rebalance a portfolio, including deposits, dividends, reinvestments or even withdrawals. Typically, a firm would use investment inflows and outflows to restore the target asset allocation of the investment portfolio, i.e. inflows to purchase under-weighted assets and outflows to withdraw from over-weighted asset classes.⁵
- 4.3 Under the FMCA, automatic portfolio rebalancing and other discretionary investment into financial products may be a DIMS.⁶ Where a person acts as a provider of a DIMS to retail clients that person must be licensed by the FMA.⁷ Under the Bill, financial advice provided as part of providing a DIMS is not regulated financial advice if it is provided by a person under a DIMS licence.⁸ Therefore, the internationally successful models of sophisticated digital advice and investment planning would likely be governed by the DIMS regime in New Zealand instead of or as well as the financial advice regime. That would not be a good outcome for the following reasons.
- 4.4 First, automatic portfolio rebalancing may be a relatively ancillary part of a digital advice business, with the principal activity of such businesses being the provision of financial advice – perhaps in the form a detailed investment planning service. Compared with traditional DIMS, which is aimed at sophisticated investors and may include broad investment discretions, any discretionary investment services offered by digital advisers

⁴ International Organisation of Securities Commissions, *Update to the Report on the IOSCO Automated Advice Tools Survey: Final Report*, page 7. See: <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD552.pdf> (IOSCO Final Report),

⁵ For more details on discretionary mandates provided by digital providers in the US, see: FINRA, *Report on Digital Investment Advice*, <https://www.finra.org/sites/default/files/digital-investment-advice-report.pdf> (FINRA Report).

⁶ Under section 392 of the FMCA a person (A) provides a DIMS where A decides which financial products to acquire or dispose of on behalf of an investor (B) and, in doing so is acting under an authority granted to A to manage some or all of B's holdings of financial products.

⁷ Section 388(c) of the FMCA.

⁸ See clause 13 of the proposed new Schedule 5 of the FMCA, to be introduced by the Bill.

is likely to involve limited discretions (e.g. limited to rebalancing in accordance with an asset allocation plan) and therefore lower risk. The Bill excludes financial advice given only as an ancillary part of a business from being regulated financial advice.⁹ We recommend that MBIE amends the Bill to extend a similar exemption to services that may amount to a DIMS provided only as an ancillary part of provision of regulated financial advice.

- 4.5 Secondly, given the principal business of digital advice platforms is providing advice, it seems sensible to us that these businesses should be regulated within the framework of the new digital adviser regulation, rather than as a DIMS (the regulatory framework of which is similar to the regulation of a financial product). For example, the requirements of the new Code of Conduct would not currently apply to the provision of advice under a DIMS.
- 4.6 Thirdly, we submit that enabling digital advisers to execute investment plans for clients will produce better consumer outcomes. From discussions with industry participants we understand that often consumers of financial advice fail to take steps to implement the financial advice, because of the friction points in taking action. Enabling financial advisers to execute investment plans for clients would remove one of these friction points and lead to overall better consumer outcomes.
- 4.7 We submit that MBIE should carefully consider the circumstances under which digital advisers should be regulated as financial advice providers, and when they are regulated as DIMS providers. In particular, we would like to see the Bill include a clear exemption for digital advisers providing ancillary DIMS services from being regulated under the DIMS regime.
- 4.8 Once the legislation has been finalised, it will be important for the FMA to provide market guidance on the difference between a digital advice service and a DIMS. This would be consistent with recommendations for regulators from the International Organization of Securities Commissions.¹⁰ However, this is not a substitution for clear law in the first place.

5. PART B: RECOMMENDATIONS FOR A SUCCESSFUL DIGITAL ADVICE REGIME

- 5.1 Enabling innovation in the provision of digital advice will assist consumers, innovative businesses and the New Zealand fintech industry. In order to do this, we submit that the regulation of digital advice in New Zealand should be both sufficiently flexible to enable innovation and sufficiently robust to protect consumers.
- 5.2 These goals align with the policy development objectives in the Consultation Paper, being:
 - (a) consumers can access the advice and assistance they need;
 - (b) advice improves consumers' financials outcomes and makes them better off; and
 - (c) consumers have access to effective redress.¹¹
- 5.3 We have looked at a number of other jurisdictions¹² for lessons on how to meet these objectives. It is critical that the New Zealand regime aligns with global best practice, both

⁹ See clause 7 of the proposed new Schedule 5 of the FMCA, to be introduced by the Bill.

¹⁰ IOSCO, *Research Report on Financial Technologies (Fintech)*, February 2017, page 35. See: <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD554.pdf>

¹¹ Consultation Paper, page 7.

¹² We reviewed digital advice material from the US, UK, Australia, Europe (ex. UK) and Canada, as well as aggregated international reports on digital advice regulation such as the IOSCO Final Report.

to ensure the regime works best for New Zealand consumers and to enable New Zealand digital advisers to scale internationally. In this section we set out the results of this research and our recommendations on actions MBIE should take.

6. Flexible Licensing

6.1 As discussed in the Appendix, digital advice is a wide concept encompassing a broad range of services with varying levels of complexity. Further, businesses that provide digital advice will range from large financial institutions to the small and innovative start-up businesses. The licensing regime must be sufficiently flexible to cater for these differences. In particular:

- (a) Smaller start-up businesses seeking to provide innovative digital advice services will often have limited resources. Licensing should therefore be “right-sized”, and should not be a barrier to entry for these businesses.
- (b) In addition to being right-sized, licensing should be sufficiently flexible to enable many different advice services. For example, a digital adviser that provided traditional “class advice”, such as equities research, will now be providing regulated financial advice and will be required to be licensed. However, the client risks in respect of this type of general advice are likely to be lower than, for example, a detailed financial planning and investment service. The licence requirements and conditions should reflect these different risk profiles.

6.2 The Bill should enable a flexible approach to licensing by requiring the FMA to have regard to the size and complexity of a business (including of the advice it provides) when considering a licence application. An example of the flexible approach can be taken from the FMA’s “Quick guide to licence applications for small businesses providing DIMS”.¹³

7. Adequacy of disclosure

7.1 As noted in our 2016 Submission, digital advice consumers are concerned to know that they are being provided with sufficient information about the digital adviser and the service being provided.¹⁴ Consumer confidence will be a critical factor in the success of digital advisers. From our 2016 Submission process, Millennial Professionals emphasised that it was the quality of information that is disclosed by a digital adviser, rather than quantity, that matters and they are happy to rely on the regulator’s licensing process to ensure that a digital adviser was capable and reliable. Examples of information Millennial Professionals wanted digital advisers to clearly disclose include incentives, potential conflicts, fees, and the limitations of the advice provided.

7.2 Traditional human financial advisers can communicate the scope, limitations and risks of advice to clients through back and forth conversation with their clients. This is potentially more difficult for digital advisers, who rely on one-way information input from clients and on algorithms to provide advice. Additionally, consumers may also be less likely to comprehensively read information provided in digital form, meaning that it is even more important to ensure that any information provided is concise and fit for purpose. The disclosure regulations will therefore perform a critical role in establishing and supporting consumer trust in digital advisers.

7.3 Lessons for the optimal disclosure requirements can be drawn from recent publications from the Staff of the Division of Investment Management of the US Securities and Exchange Commission (SEC)¹⁵ and the Australian Securities and Investments

¹³ See here: <https://fma.govt.nz/assets/Guidance/140618-licensing-small-dims-businesses-guide.pdf>

¹⁴ 2016 Submission, paragraph 6.6.

¹⁵ SEC, *Guidance Update*, February 2017. See: <https://www.sec.gov/investment/im-guidance-2017-02.pdf> (SEC Guidance).

Commission (ASIC)¹⁶, as well as other international regulatory publications. Based on a review of these publications we recommend that the disclosure regulations, supported by commensurate duties in the Code of Conduct, should require digital advisers to:

- (a) ensure that client communications are clear, concise, effective and timely. This means digital advisers should put their client's needs first when designing their communications and disclosure, and ensure that key information relevant to the client is provided at the right time in the decision-making process. This disclosure requirement will be supported by the new duty to put the client's interests first;¹⁷
- (b) when providing disclosure, consider the technological medium through which advice is being provided. As noted in our 2016 Submission, increasingly digital advice will be delivered through new and different technological channels.¹⁸ For example, disclosure information that is suitable for a laptop computer may not be suitable for the smaller screen of a smart phone. Key disclosures should be highlighted in a technologically useful manner, e.g. through the provision of pop-up boxes;¹⁹ and
- (c) explain to the client at the outset, and at key points in the advice process, the limitations the scope of advice, any potential conflicts or biases inherent in the digital advice platform and the potential consequences, limitations, conflicts or biases. For example, digital advisers should be careful not to mislead clients by implying the advice is of a different type, e.g. that a comprehensive financial plan is being providing when it is in fact not doing so²⁰ and clarify if the algorithm is designed to only advise on certain financial products;²¹ and
- (d) provide an explanation of the business model of the digital adviser, for example a statement that an algorithm is used to generate advice and a description of the degree of human involvement (if any) in the preparation of the advice.²² As noted in our 2016 Submission, many sophisticated Millennial Professionals see the provision of advice without human involvement to be a benefit (for example, because of the lesser risk of unconscious bias),²³ so it will be important to understand what the human involvement is, as well as the incentives, checks and balances that apply.

8. Suitability of Advice

- 8.1 Overseas regulators have noted that digital advice raises specific issues in respect of the suitability of the advice it provides to clients. Digital advisers often obtain information based primarily, if not solely, on client online questionnaires. This method of information collection may not give the client a chance to provide additional information, nor to permit the human advisers to ask follow-up or clarifying questions.²⁴

¹⁶ ASIC, *Regulatory Guide 255 – Providing Digital Financial Product Advice to Clients*, August 2016. See: <http://download.asic.gov.au/media/3994496/rg255-published-30-august-2016.pdf> (ASIC Guidance).

¹⁷ ASIC Guidance, paragraph 97.

¹⁸ 2016 Submission, paragraphs 3.2 to 3.6.

¹⁹ SEC Guidance, page 5.

²⁰ SEC Guidance, page 5; IOSCO Final Report, page 11.

²¹ European Supervisory Authorities, *Joint Committee Paper*, page 23.

²² SEC Guidance, pages 3 and 4; This was also a concern of the European Supervisory Authorities. See European Supervisory Authorities, *Joint Committee Discussion Paper on Automation in Financial Advice*, 4 December 2015, page 22. See here:

<https://www.esa.europa.eu/documents/10180/1299866/JC+2015+080+Discussion+Paper+on+automation+in+financial+advice.pdf>

²³ 2016 Submission, paragraphs 3.11 and 3.12.

²⁴ SEC Guidance, page 6. See also, IOSCO Final Report, page 10.

- 8.2 This was not perceived as an issue for the Millennial Professionals in our 2016 Submission, who all considered themselves to be sophisticated enough to confidently operate and interpret questionnaires and to understand the limitations of digital products.²⁵ Indeed, provided the algorithm is correct, digital advisers can be more reliable than a human adviser through greater computing power, the reduction of human error and the removal of unconscious bias.
- 8.3 However, there is a need for the Bill to set market expectations in order to promote consumer confidence, particularly for less technologically sophisticated investors. In particular, we have been told by industry participants that businesses developing digital advice algorithms approach this with varying levels of experience in providing financial advice. Developers will need to be presented with an upfront explanation of the regulatory requirements, so that they are focussed not just on providing technological solutions, but on ensuring that these are providing the best results for consumers. In particular, the Code of Conduct should set market expectations in respect of suitability of advice. This should be supplemented by FMA guidance in due course.
- 8.4 Specifically, digital advisers should be required to:
- (a) ensure information-gathering methods elicit sufficient information to allow the digital adviser to conclude that its initial and ongoing advice is suitable and appropriate for the client;²⁶
 - (b) test for inconsistencies in the answers given by a client (for example, answers that indicate both low risk tolerance and a maximum growth objective), and to address inconsistencies:
 - (i) incorporate features into questionnaires to alert clients to inconsistent responses to ensure the inconsistency is intended by the client;²⁷
 - (ii) consider stopping the client from completing the questionnaire until the inconsistency is resolved,²⁸ or filter the client out of the digital advice process if the process is not suitable for the client; and²⁹
 - (iii) monitor and, if required, flag inconsistencies to the digital adviser so that either the digital adviser,³⁰ or a human adviser,³¹ can intervene in the advice process;
 - (c) where a client is able to select a portfolio other than the portfolio recommended by the digital adviser, explain to the client why the initial portfolio was selected for the client and alert the client to the risks associated with not following the advice; and
 - (d) identify where a client requires advice outside of the scope that the digital advice platform is capable of providing, filter the client out of the digital advice process (or require the client to talk with a human adviser).³²

²⁵ 2016 Submission, paragraph 3.11.

²⁶ Sufficiency of information gathering was seen by the European Supervisory Authorities to be a source of potential risk for digital advisers. See their *Joint Committee Discussion Paper*, page 21.

²⁷ SEC Guidance, page 7. FINRA Report, page 10.

²⁸ The Canadian Securities Administrators, *Guidance for Portfolio Managers Regarding Online Advice*, https://www.osc.gov.on.ca/documents/en/Securities-Category3/csa_20150924_31-342_portfolio-managers-online-advice.pdf - although note that Canada operates a "hybrid model" where advising representatives oversee algorithm generated advice (CSA Guidance).

²⁹ ASIC Guidance, paragraph 106.

³⁰ SEC Guidance, page 7.

³¹ CSA Guidance, page 3.

³² ASIC Guidance, para 103; IOSCO Final Report, page 11.

- 8.5 Ultimately the question of suitability of advice is something that both human and digital advisers will grapple with. Just as human advisers use systems to reduce this problem, we are optimistic that sufficiently sophisticated digital advice systems will eventually overcome these issues. Until that point, however, we consider that appropriate regulation and regulatory guidance are necessary to assist digital advisers and provide consumers with appropriate protection.

9. Reviewing and testing of digital advice

- 9.1 We identified in our 2016 Submission that digital advice platforms may eventually be able to utilise resources, such as “big data”, to provide a higher quality advice than human advisers.³³ While this will eventually occur, there is likely to be a transitional period in the development of sufficiently reliable algorithms where human adviser checking of digital advice may still be required.
- 9.2 We therefore recommend that the eligibility criteria made under the Bill should specify that a licensee must have sufficient resources (including, where necessary, human adviser resources) available to review advice for legal compliance and suitability. Digital advisers may meet this requirement in the following ways:
- (a) engage a suitably qualified human adviser to review, perhaps on a sample basis, digital advice provided to ensure it complies with the law.³⁴ This may be an adviser employed by the digital adviser or available on a contracting basis. As technology progresses however, in the Bill provision needs to be made for automated review – by an independent system;
 - (b) reviews of advice should be undertaken frequently at the outset of the algorithm’s operation, and whenever changes to the algorithm are made; and
 - (c) whenever reviews of the advice provided by the algorithm detect errors, and the error is likely to result in a loss to the client or breach of the law, immediate steps should be taken to rectify the error, and the algorithm should not continue to provide advice until the error is resolved.³⁵

10. Oversight of the algorithm

- 10.1 Based on overseas regulatory comment we recommend that digital advisers should be required to ensure that their advice algorithms are continuously monitored and reviewed, due to the lack of the human involvement in the process. We recommend that the eligibility criteria made under the Bill should specify this as a requirement for licensing.
- 10.2 To meet this review requirement:
- (a) digital advisers should engage at least one person in senior management who has a general understanding of the technology and algorithms used to provide digital advice. It may not be necessary for this person to understand the specific computer coding of an algorithm, but that person must understand the rationale, risks and rules behind the algorithms used to provide the digital advice;³⁶
 - (b) if the algorithm is outsourced, the digital adviser will be responsible for having in place sufficient contractual arrangements with the outsource provider to ensure oversight of the algorithm. The engagement of this algorithm expert should

³³ 2016 Submission, paragraph 3.12.

³⁴ ASIC Guidance, paragraph 110.

³⁵ ASIC Guidance, paragraph 114.

³⁶ ASIC Guidance, page 19.

include a requirement for the expert to be available to explain the workings of the algorithm, on request, to the FMA;

- (c) regular development, testing and back-testing of the algorithmic code should be carried out, and changes to the code that affect client accounts should be disclosed;³⁷
- (d) digital advisers should have adequate documentation of decision making processes which make up the algorithm, e.g. “decision trees” or “decision rules”.³⁸ This will assist the digital adviser to have documentary evidence at hand which can be provided to the FMA as required to understand that algorithm and any potential issues that may arise; and
- (e) records of past iterations of the advice algorithm should be kept for a minimum period of time to allow reconstruction of previous versions if required for regulatory purposes.³⁹

10.3 Due to the specialised nature of digital advice and the technological basis of algorithms, it may be challenging for regulators such as the FMA to evaluate an algorithm at face value. It will likely be necessary for digital advice providers to have high quality documentary evidence of how their algorithm complies with the relevant regulatory requirements and the terms of their licence in order to satisfy the FMA or other regulator’s expectations.

11. Cyber-security

11.1 While cyber-security is not an issue unique to digital advisers, digital advisers may be more likely to be targeted by cyber-attacks due to the potential holding of client money by the provider,⁴⁰ and the storage by providers of vast amounts of personal information of clients. We recommend that the eligibility requirements for digital advisers should specifically require digital advisers to address cyber-security. This could be done in the following ways:

- (a) Overseas regulators have emphasised the importance of assessing digital adviser’s cyber-security frameworks against equivalent national standards and making it a priority for the provider. Expectations have developed for digital advice providers to have a “cyber-security policy” which is compliant with the various guidance notes issued by overseas regulators.⁴¹
- (b) In a New Zealand context this will likely involve a new undertaking by the FMA to develop a clear set of cyber-security principles and standards for digital advice providers. These new principles and standards may be based on existing New Zealand and overseas standards, so that digital advice providers can ensure they have adequate cyber-security measures in place to mitigate the threat of a potential cyber-attack.⁴²

³⁷ SEC Guidance, page 8.

³⁸ ASIC Guidance, paragraph 74. A decision tree is said to refer to a tree-like graph or model displaying the various decisions the algorithm makes and the potential consequences.

³⁹ ASIC Guidance, paragraph 74.

⁴⁰ ASIC Guidance, page 22. IOSCO, *Automated Advice Tools Final Report*, page 12. SEC Guidance, page 8.

⁴¹ ASIC Guidance, paragraph 80.

⁴² See, for example, the materials referenced in ASIC Guidance, paragraph 79.

12. Digital advice compliance programmes and governance of digital advisers

- 12.1 To implement the recommendations set out in this submission, we submit that the licensing eligibility criteria made under the Bill should require digital adviser to have in place sufficient compliance programmes and governance and supervision arrangements. These should be appropriate for the particular digital adviser, taking into consideration the size and complexity of that digital adviser's business.
- 12.2 Overseas regulators have noted that compliance programmes should:
- (a) require the digital adviser to adopt, implement, and annually review written policies and procedures that are reasonably designed to prevent breaches of the new FMCA requirements and other legal requirements. A digital adviser should be mindful of the unique aspects of the particular business model in designing these programmes, e.g. the reliance on algorithms, or the limited amount of human interaction in the provision of the financial advice;⁴³
 - (b) designate a compliance officer who is responsible for the advice policies and procedures.⁴⁴ This role could be similar in nature to that of the compliance officer required under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009; and
 - (c) provide that people within their business with the appropriate skills review both the digital advice provided (see paragraph 9, above) and the advice algorithm (see paragraph 10, above).⁴⁵
- 12.3 In particular, while digital advice platforms can operate autonomously, overseas regulators have identified the importance of having human oversight (such as by the compliance officer) at a platform level to appropriately supervise any automated advice. This will be particularly important in the earlier stages of digital advice, to ensure that algorithms are working correctly and to give consumers confidence in digital advice.
- 12.4 In terms of formal oversight processes, overseas regulators have noted that it is common practice to have some form of investment policy committee (which may be appropriate for more sophisticated digital advisers) to:
- (a) oversee the development and implementation of algorithms;
 - (b) participate in the due diligence on the tools of external providers which are incorporated into the algorithm; and
 - (c) evaluate the outcomes which the algorithm produces.⁴⁶
- 12.5 In the event digital advisers construct model portfolios, overseas regulators have noted that the above investment policy committee will likely also review the model portfolios that the algorithm will produce to ensure they match client profiles. Information about clients such as risk tolerance and asset allocations should be matched against the model portfolio produce to ensure consistency.⁴⁷
- 12.6 Appropriate governance arrangements will be critical for financial advice providers to demonstrate that they have met their duties in the new sections 431I and 431J of the FMCA, to exercise care, diligence, and skill and to comply with the Code of Conduct. We

⁴³ SEC Guidance, page 8.

⁴⁴ SEC Guidance, page 7.

⁴⁵ ASIC Guidance, page 19.

⁴⁶ FINRA Report, page 6.

⁴⁷ FINRA Report, page 6.

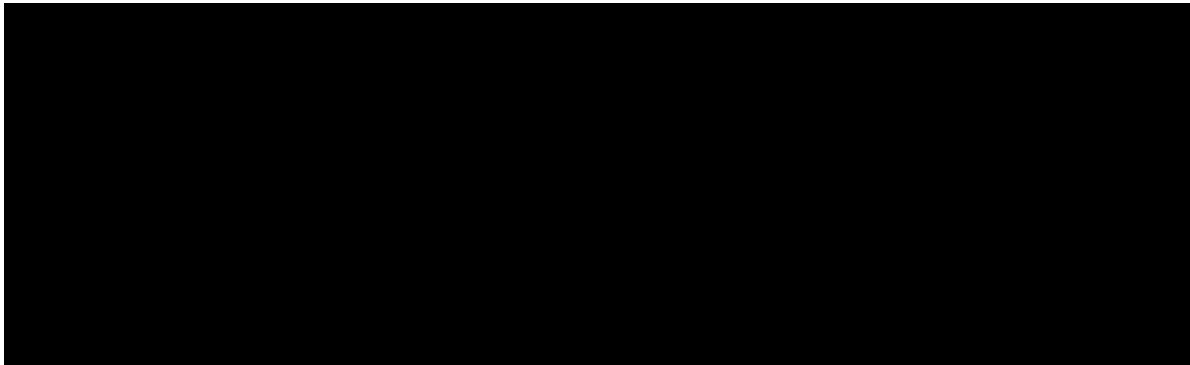
expect that the Code of Conduct will address governance requirements for digital advisers, and that the licensing process will set governance and supervision minimum standards.

13. Conclusion

13.1 We have presented our submission at a high level and with the intention of raising issues relevant to the final form of the Bill, the regulations, the licensing requirements and any regulatory guidance. We would be happy to discuss technical and drafting requirements in respect of the Bill and the regulations, requirements and guidance during the process of preparation of these documents.

13.2 Thank you for taking the time to consider this submission. Please contact us on the details below if you wish to discuss any of the matters raised in this submission.

Yours faithfully
Minter Ellison Rudd Watts



APPENDIX – THE DIGITAL ADVICE ECOSYSTEM

In this Appendix we set out what we mean by digital advice and digital adviser, and provide some overseas examples of digital advisers.

1. What do we mean by digital advice?

- 1.1 In this submission we use “digital advice” to refer to the whole spectrum of digital advice services. However, the common characteristic for all digital advice services is that they have limited, or no, human adviser involvement in the provision of the financial advice. A “digital adviser” is a provider of digital advice.
- 1.2 As noted in the Consultation Paper, there is no one typical digital advice service. The Bill deliberately does not define digital advice, so that it is technologically neutral and will capture future digital advice developments. Digital advice services can vary widely in scale and complexity.
- 1.3 At the less complex end of the spectrum, a digital advice platform may be a simple online questionnaire with a limited number of questions that provides a limited recommendation on what is the most suitable fund for a client to invest in.⁴⁸
- 1.4 At the more complex end of the spectrum, it could be full investment planning service, such as what is offered by Wealthfront⁴⁹, Betterment⁵⁰ or Acorns⁵¹, that requests detailed financial information from a client and provides a tailored investment planning service (including some or all of: risk profiling, asset allocation, portfolio selection, trade execution, portfolio rebalancing, tax loss harvesting and portfolio analysis). Three of these types of services are described in paragraph 2 below.

2. Examples of digital advisers

- 2.1 In order to understand where digital advice development in New Zealand might lead, we analysed a number of different international businesses. These businesses are principally located in the United States of America (US), which is the most developed digital adviser market.
- 2.2 Below are three examples of different digital adviser services:

Betterment

Feature	Description
Name	Betterment Inc.
Location	New York, US
Size	US\$7.36 billion assets under management (AUM). The largest digital adviser by AUM. Approximately 280,000 accounts.
Regulation	Betterment is a registered investment advisor regulated by the SEC. It trades through Betterment Securities LLC, a FINRA-registered broker-dealer.
Investments	Betterment achieves its asset allocation by investing in index-tracking exchange traded funds (ETFs).

⁴⁸ For example, something similar to Sorted.org.nz's KiwiSaver Fund Finder: <http://fundfinder.sorted.org.nz/find-the-right-type-of-fund-for-you>

⁴⁹ <https://www.wealthfront.com>

⁵⁰ <https://www.betterment.com>

⁵¹ <https://www.acorns.com>

Description	<p>Betterment is a digital investment advisory and investment planning service. Investors sign up through a simple online process where they fill out a questionnaire to establish their risk tolerance and investment timelines. They are presented with a personalised investment plan and, if this is accepted, asked to fund an investment account.</p> <p>Betterment takes funds from the investment account and automatically invests this in underlying ETFs in accordance with the investment plan and limited trading authorization granted by the client.</p> <p>Betterment continuously monitors the asset allocation thresholds and automatically rebalances the investment portfolios where they move outside of the thresholds. This is done using deposits, withdrawals and dividends from the portfolio.</p> <p>Betterment's point of difference is that investors are asked to elect a number of different investment goals, such as buying a house, safety net, retirement etc. Each goal has its own investment portfolio, target balance, time horizon and deposit/withdrawal schedule.</p>
--------------------	---

Wealthfront

Feature	Description
Name	Wealthfront Inc.
Location	Redwood City, California, US.
Size	AUM of US\$5 billion. Second largest digital adviser behind Betterment. Approximately 100,000 accounts.
Regulation	Wealthfront is a registered investment advisor regulated by the SEC. It trades through Apex Clearing Corp LLC, a FINRA-registered broker-dealer.
Investments	Wealthfront achieves its asset allocation by investing in index-tracking ETFs.
Description	<p>Wealthfront is a digital investment advisory and investment planning service. Investors sign up through a simple online process where they fill out a questionnaire to establish their risk tolerance and investment timelines. They are presented with a personalised investment plan and, if this is accepted, asked to fund an investment account.</p> <p>Wealthfront takes funds from the investment account and automatically invests this in underlying ETFs in accordance with the investment plan and limited trading authorization granted by the client.</p> <p>Wealthfront continuously monitors the asset allocation thresholds and automatically rebalances the investment portfolios where they move outside of the thresholds. This is done using deposits, withdrawals and dividends from the portfolio.</p> <p>Wealthfront allows the holding of individual securities transferred from other investment accounts, and will work these into the asset allocations of the investor's portfolio.</p>

Acorns

Feature	Description
Name	Acorns Advisers LLC
Location	Newport Beach, California, US.
Size	AUM of US\$257 million. Approximately 1.16 million accounts.
Regulation	Acorns is a registered investment advisor regulated by the SEC. It trades through Acorns Securities LLC, a FINRA –registered broker-dealer.
Description	<p>Acorns is a digital investment advisory and investment planning service. Investors sign up through a simple online process where they fill out a questionnaire to establish their risk tolerance and investment timelines. They are presented with a personalised investment plan and, if this is accepted, asked to fund an investment account.</p> <p>Acorns takes funds from the investment account and automatically invests this in underlying ETFs in accordance with the investment plan and limited trading authorization granted by the client.</p> <p>Acorns' investment plans are less tailored than Betterment and Wealthfront. It offers clients an option of one of five model portfolio options: conservative, moderately conservative, moderate, moderately aggressive and aggressive.</p> <p>Acorns continuously monitors the asset allocation thresholds and automatically rebalances the investment portfolios where they move outside of the thresholds. This is done using deposits, withdrawals and dividends from the portfolio.</p> <p>Acorns' point of difference is that it links to as many debit and credit card accounts as a client wants. Each purchase in these accounts is rounded to the nearest dollar, and the difference is transferred into the Acorns investment account, e.g. for an \$18.20 purchase, \$0.80 would be transferred to Acorns. These amounts are then invested in the client's investment portfolio.</p>

Submission

to the

Financial Markets Authority

on the

Consultation Paper: Proposed exemption to facilitate personalised robo- advice

19 July 2017

About NZBA

1. NZBA works on behalf of the New Zealand banking industry in conjunction with its member banks. NZBA develops and promotes policy outcomes that contribute to a strong and stable banking system that benefits New Zealanders and the New Zealand economy.
2. The following sixteen registered banks in New Zealand are members of NZBA:
 - ANZ Bank New Zealand Limited
 - ASB Bank Limited
 - Bank of China (NZ) Limited
 - Bank of New Zealand
 - Bank of Tokyo-Mitsubishi, UFJ
 - Citibank, N.A.
 - The Co-operative Bank Limited
 - Heartland Bank Limited
 - The Hongkong and Shanghai Banking Corporation Limited
 - Industrial and Commercial Bank of China (New Zealand) Limited
 - JPMorgan Chase Bank, N.A.
 - Kiwibank Limited
 - Rabobank New Zealand Limited
 - SBS Bank
 - TSB Bank Limited
 - Westpac New Zealand Limited.

Background

3. NZBA welcomes the opportunity to provide feedback to the Financial Markets Authority (**FMA**) on Consultation Paper: Proposed exemption to facilitate personalised robo-advice (**Consultation Document**).
4. If you would like to discuss any aspect of the submission further, please contact:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

General

5. NZBA commends the FMA for its proactive stance on this issue, and supports the general approach to the proposed exemption outlined in the Consultation Document.
6. NZBA considers that the exemption will benefit consumers by increasing access to personalised financial advice for those who are not currently well served by the financial adviser market (ie plugging the “advice gap”), as well as allowing consumers to receive financial advice in the way they want it.

7. NZBA agrees that it is appropriate to implement the proposed exemption in advance of the reform of the Financial Advisers Act 2008; technology and consumer expectations are evolving rapidly, and delaying the proposed exemptions would risk disadvantaging the New Zealand financial services industry, as well as needlessly preventing consumers from accessing the financial advice they want.

Exemption should apply to a wider range of products (Q 12 & 13)

8. The Consultation Paper states that eligible products should be limited to those which are easy to exit on the basis that such a limit is likely to reduce any potential harm arising from the provision of robo-advice; consumers should be able to unwind an investment decision if they have received poor or unsuitable robo-advice.
9. NZBA considers that such a limit is not necessary. While the ability to easily redeem or transfer a product may have the potential to minimise harm in some cases, it may not do so in every case, for example, where the relevant product has significantly declined in value.
10. NZBA submits that the exemption for robo-advice should apply to a wider range of products as that will contribute to achieving the FMA's aim of enhancing innovation and creating opportunities for consumers who may not otherwise have access to financial advice.
11. In particular, NZBA considers there would be significant consumer benefit to be gained by extending the exemption to apply, for example, to mortgages and personal insurance:
 - a. *Mortgages*: the market for online advice on mortgage products is already well developed, with sophisticated tools and calculators available. Extending the exemption for robo-advice to include mortgage products would improve the quality of advice that New Zealanders are already seeking online, from providers whom they already trust. QFEs have strong institutional control systems and processes already in place to help mitigate any risks arising from the provision of robo-advice on mortgage products, in addition to a comprehensive regulatory overlay (eg the responsible lending provisions of the Credit Contracts and Consumer Finance Act 2003).
 - b. *Personal insurance*: in New Zealand there is clear evidence that levels of life insurance cover are often poorly chosen, indicating household considerations about insurance cover levels are inadequate, and that New Zealanders are underinsured for non-life personal risk (eg inability to work). Given the existing evidence, and FMA's goal of addressing the "advice gap", NZBA considers that the robo-advice exemption should be extended to personal insurance products.
12. NZBA also considers that there is good justification for extending the exemption to all products Authorised Financial Advisers (**AFAs**) are permitted to advise on. NZBA expects that robo-tools should be able to provide advice to the same standard as an AFA, and, accordingly, a QFE operating a properly monitored robo-advice tool should be permitted to provide the same advice.
13. Our members have reviewed the position in other jurisdictions and have been unable to identify any examples of equivalent exclusions.

Limits on amount of client investments and/or total amount of investments are unworkable (Q 15 & 16)

14. NZBA opposes the individual client investment limit and the limit on total investment amount of products, as set out in the Consultation Document (**Caps on Investment**).
15. NZBA agrees that there is an “advice gap” which means that consumers may not be able to access personalised financial advice. However, if the proposed Caps on Investment were introduced, NZBA considers that the ability of robo-advice tools to plug the “advice gap” would be significantly diminished:
 - a. *Individual client investment limit*: this has the potential to be unnecessarily restrictive, particularly for KiwiSaver where sums invested are likely to exceed the proposed \$100,000 limit.

Further, home insurance policies and life insurance policies will rarely be less than \$100,000, which poses a practical barrier to having robo-advice address the “advice gap” for these products. We note, however, that it is not clear whether the individual client investment limit would also cover insurance products or if it would be limited to “investments” only.
 - b. *Limit on total investment amount of products*: again, NZBA considers that this limit has the potential to be unnecessarily restrictive. Additionally, there would be practical hurdles associated with withdrawing individuals from the tool as their asset values increase.
16. Additionally, NZBA considers that Caps on Investment would create significant workability issues, as well as arbitrariness with respect to the implementation of the limits.
17. The rationalisation for imposing Caps on Investment seems to be the concern that errors will go undetected (eg failures in filtering mechanisms, errors in algorithms, etc) and, over time, large numbers of consumers could be affected. NZBA considers that position does not take into account the efficacy of control mechanisms that QFEs are required to implement as part of their registration conditions (whether for advice provided by humans or robo-tools).

Clarification regarding disclosure requirements is necessary (Q 18)

18. The Consultation Document provides some guidance regarding the nature and extent of the proposed disclosure requirements for robo-advice.
19. Methods of delivering automated advice will evolve rapidly, meaning that prescribed methods of disclosure may quickly become unworkable for the new technologies. As such, NZBA considers that providers should have flexibility to decide how to comply with the FMA’s disclosure requirements as this will provide greater flexibility and enable providers to convey the relevant information in the way that it is most appropriate for each particular digital advice tool.
20. NZBA also notes that prescribing the form and method of disclosure would be contrary to the approach taken by other regulators in this area, where the trend is towards providing flexibility and enabling innovative and engaging ways of providing financial product and service disclosures.

21. It is also important that disclosure requirements are not duplicative of existing disclosure, reporting and accountability mechanisms that are in place for QFEs as duplication will likely create confusion for consumers.
22. Finally, NZBA submits that members would benefit from further guidance on the following:
 - a. how the disclosure requirements under the Financial Advisers Act 2008 and the Financial Advisers (Disclosure) Regulations 2010 will apply where personalised robo-advice is provided under the exemption; and
 - b. how disclosure requirements for QFEs will apply in the context of robo-advice.

Active confirmation condition unnecessary (Q 19)

23. The Consultation Document queries whether providers should be required to obtain active confirmation that their clients have read the disclosures and agree to receive advice through the robo-advice service.
24. NZBA's view is that this condition may be unduly restrictive. In particular, it may prevent providers from pro-actively providing personalised robo-advice to their customer, which providers may be positioned to do as they continue to develop their data and analytics capabilities. Additionally, providers may wish to provide calculators and other tools on websites or mobile devices, which can provide personalised advice to prospective customers, without a formal agreement or defined customer/adviser relationship being in place.
25. The disclosure conditions could accordingly be clarified to explicitly permit proactive provision of advice.

Clarification regarding record keeping requirement is necessary

26. The consultation document states that a provider must ensure that it keeps up-to-date records about its personalised robo-advice service, including adequate information about the advice provided to the client and the algorithms used by the robo-advice service.
27. NZBA seeks clarification on this requirement; in particular, we query whether the FMA's expectation is that a record of every customer engagement with a robo-tool must be retained. The requirement seems to assume that customers will always use the full end-to-end automated advice service in a linear way, and, as such, record keeping should be straightforward. However, NZBA considers that customer engagement with robo-tools is unlikely to be that simple.
28. Whilst it is possible to retain a record of customer engagement in circumstances where a customer completes a purchase (ie is provided advice), retaining records where they have engaged with a robo-tool but have not completed a purchase may be problematic for some providers. The reason being that customers are likely to interact with robo-tools in a non-linear way; before a customer makes a decision they are likely to return to a single tool on a number of occasions over a period of time as they explore different parts of/paths through the tool, different financial options (eg different investment amounts and risk profiles), and become familiar with the terminology and process. They are likely to complete only part of the tool at some visits and may also visit several providers' tools. This behaviour supports good

decision-making. For some providers, it will be unduly onerous to require record keeping of all part-complete visits, particularly where the customer has not been required to provide personal details.

29. Additionally, customers are likely to see a requirement that they provide personal identifying information every time the robo-tool is used as a barrier to use. To encourage customers to explore tools, providers should be able to leave provision of identifying information until later in the process.

Feedback form: Proposed exemption to facilitate personalised robo-advice

Please submit this feedback form electronically in both PDF and MS Word formats and email it to us at consultation@fma.govt.nz with 'Proposed exemption to facilitate personalised robo-advice: [your organisation's name]' in the subject line. Thank you.

Submissions close on 19 July 2017.

Date: 19 July 2017 Number of pages:

Name of submitter: New Zealand Funds Management Limited ("NZ Funds")

Company or entity: New Zealand Funds Management Limited ("NZ Funds")

Organisation type: Licenced Managed Investment Scheme Manager

Contact name (if different): [REDACTED]

Contact email and phone: [REDACTED]

Question or paragraph number	Response
<i>You don't need to quote from the consultation document if you note the paragraph or question number.</i>	
Q1	NZ Funds is supportive of the proposed exemption. NZ Funds believes that reducing barriers to the introduction of technological innovation in the provision of financial advice will be positive for consumers. NZ Funds is not supportive of imposing the dollar limits proposed in the consultation paper as it believes such limits are likely to unduly restrict the scalability of robo advice solutions such that they will not be commercially viable.
Q2	Yes, NZ Funds believes that providing a pathway now will enable robo solutions to come to market more rapidly than might otherwise be the case. This should be positive for consumers in that it may enable some consumer groups to obtain access to advice that they may not otherwise been able to obtain.
Q4	NZ Funds supports a class exemption approach and believes this approach should cover most likely services. NZ Funds notes that any services that fall outside of the class exemption can apply for an individual exemption.
Q5	NZ Funds considers that the exemption should have broadly positive outcomes in that new offerings can come to market. The nature of the services offered could be many and varied, therefore there is considerable uncertainty regarding the potential costs and risks. However, NZ Funds believes that there may be a reluctance for market participants to use the exemption as it is unclear at this time how robo services will be regulated post the reform of the Financial Advisers Act (FAA). This uncertainty raises the risk that a service designed to meet the requirements of the exemption may require amendment (with the associated costs) to meet the requirements of the new legislation. NZ Funds therefore recommends that regard be had as to the likely requirements for robo advice post the reform of the FAA.
Q9	Refer previous comments regarding limits. NZ Funds notes that, by its nature, a robo offer is intended to be, largely, a digital experience. How conditions crafted for use in the "offline" world translate into the "online" world will have a significant impact on the scalability of a robo solution and the quality of the consumer experience it provides.

	While the proposed conditions appear sound in principle, it will be important that considerable flexibility is afforded to providers in terms of how those conditions are met.
Q11	As the intention of the exemption is permissive, NZ Funds does not think the exemption should be limited in scope. Rather, NZ Funds believes that the FMA should ensure that the exemption provides it with the ability to add certain conditions when approving an application for use of the exemption depending on the scope and nature of a specific service offered.
Q15 and Q16	The investment required to establish a robo service can be significant. NZ Funds believes that the imposition of limits on either client investment level, or the overall level of assets managed via a specific robo service, would impede the commercial viability and scalability of a service. Thus, the likelihood of a range of services coming to market for the benefit of consumers will be reduced.
Q25	Yes, NZ Funds believes that an information sheet would be helpful.
Q26	Yes, NZ Funds believes that a list of providers relying on the exemption would be helpful.
Feedback summary – <i>if you wish to highlight anything in particular</i>	
<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.	

FMA Consultation,
Wellington.
18 July 2017.
By email

Re: Submission by New Zealand Shareholders Association on the proposed exemption to facilitate personalize robo-advice.

Relationship of Submitter:

The New Zealand Shareholders Association (NZSA) is the only independent organisation representing New Zealand retail equity and debt investors. The Association has 6 regional branches across New Zealand, with a separate Head Office and executive function in Auckland. NZSA is regularly consulted as a “key participant” by MBIE, market regulators and a wide range of other capital market participants. Most of the Association’s members are active investors, and many utilise financial advice services at a range of levels, both generic and personalised. While our interest is primarily in the areas noted above, we are also concerned to see that all advice is regulated in such a way that those giving it are competent to do so and that it is “fit for purpose.”

Executive Summary

NZSA has previously submitted on various aspects of the Financial Advisors Act (FAA) review. We have expressed concern about the availability and cost of personalised financial advice, particularly for smaller or beginning investors. We acknowledge that technological change must be embraced to best achieve outcomes and are not opposed to the concept of robo-advice, whether generic or personalised, so long as the limitations are clearly evident to consumers.

We acknowledge the argument that having some level of NZ regulated robo-advice in place sooner than when the FAA is operative does help counteract the potential influence of overseas robo-advice sites that may or may not be suitable for the local market. However, this must be tempered by risk of bringing the whole process into disrepute if it is inadequately set up, monitored and enforced.

We are particularly concerned that the proposed exemption will pre-date the work of the new Code Committee, and may be unreasonably influential on its deliberations. Providers who develop exempt services may endeavour to leverage their investment by claiming they have created a precedent on which the FAA and the new Code conditions should be based and interpreted. We note that FMA has said that the final form may be different to anything developed under the exemption, but do not consider this is spelled out strongly enough.

There is also a strong likelihood that only the largest providers could take advantage of the exemption as smaller providers would lack the resources to “have two bites at it” should the final requirements materially differ. This risks reducing the range of options for consumers and could threaten the viability of some smaller providers who lose clients as a result. We would be concerned if this potential consequential outcome was not mitigated in some way.

We consider the proposed complaints process for robo-advice should be more clearly defined. In particular any exemption needs to spell out that complaints can be directed to a real person and that contact information for both written and verbal complaints must be provided to robo-advice clients.

Responses to FMA Questions

Q1. In broad terms NZSA supports the proposal, but we suggest some additional clarification and safeguards below. The main reason is to accelerate access to cost effective advice for smaller investors. Secondly, to provide a New Zealand centric service rather than have investors try to get potentially unsatisfactory advice from offshore robo-advice.

Q2. We believe it is right for FMA to consider all options. In regard to timing, we give qualified support to introducing the changes now, subject to some additional safeguards detailed in other answers. We draw your attention to our concerns that early adoption could influence the new Code Committee and that providers may use their first iteration as a precedent to influence the final form of regulations and the new Code.

Q3. Without the exemption, we think it is unlikely that the costs to comply with the “natural persons” requirement would be sustainable. The overall cost would likely be higher than simply using an AFA. This is because the cost of developing the robo-advice portal would have to be amortised via an additional charge.

Q4. We support a class exemption on the basis that it creates a level playing field for all and is less susceptible to manipulation to the benefit of an individual provider or small group or class of providers.

Q5. Refer to the executive summary and the answers to other questions.

Q6. The main risk for consumers if an exemption is not granted is that cost effective advice will remain out of reach for longer. A second risk is that consumers will be tempted to use overseas based robo-advice which is not tailored to the New Zealand situation. The situation is less clear for providers because they still have the opportunity to apply for an individual exemption if they really want to. This is likely to be more costly in the short term, but could give a competitive advantage as an “early adopter”. The last part of the question is not applicable to NZSA.

Q7. Yes. The absolute minimum at present for face to face advice appears to be \$50k, and then only if additional funds will be invested over time. We would expect this to drop substantially if robo-advice is utilised.

Q8. Not applicable.

Q9. Generally the conditions and limits appear satisfactory. However, we take some issue with the comment that the advice is limited to products that are easy to exit. While that may be true, there is usually a cost to the consumer to do this. By the time the inadequacy of the advice is recognised, this can be substantial. FMA itself recognises that some “easy to exit” products such as equities are not so easy to automate with standard algorithms. With a human AFA, there is a clear pathway to remedy costs due to inadequate advice and FMA itself can be involved. We are less sure that such a clear path exists

with robo-advice. FMA itself acknowledges that most of its usual enforcement tools would not apply. We think this aspect needs more thought given that comprehensive new rules are some time away.

Q10. Not applicable.

Q11. Investment planning is often a short step from advice and it does not seem unreasonable that it should be included in the exemption. Currently, many AFA's uses a set of standardised questions to determine the clients risk profile and then apply a largely standardised set of investment matrixes. All this would seem to be within the capacity of a robo-advice algorithm.

We do not see the DIMS services in the same light because a) they are subject to different restrictions and rules and b) the DIMS service effectively acts like a focussed active fund manager. DIMS services may not be trying to give the broad service that other advisors do. Their mandate which is agreed with the client, may be limited to narrow areas (for example, Australian small cap stocks). This is the attraction for some investors, but could lead to conflict with the intent of the exemption. For example, the client might insist on investment into an area that is performing poorly. From the DIMS providers' point of view, how does that sit with the requirement to act in the best interests of the client? Also, some DIMS providers may invest in less liquid assets, again depending on the client mandate.

Q12. We agree, but like FMA have concerns about some more sophisticated insurance products.

Q13. We see robo-advice as a viable way for insurance companies to reduce premiums by cutting out the advisor (more accurately often a commission salesperson). Whether this would happen is another matter.

However, more personal insurance products such as income protection or health insurance often require an in depth assessment of client needs. This is probably best done by a suitably qualified person. In any event, the fees for these are usually incorporated into the product itself, so there is a much lower cost to obtaining appropriate advice compared with other financial advice or financial planning. Consequently, we see little need for an exemption in this area prior to the new Code being developed.

Q14. See the answer to Q15. Rather than a set duration, it may be better to limit the exemption to products that can be withdrawn from at any time, at the consumer's request, and with a refund (pro-rated?) payable.

Q15. An investment limit in dollars is a blunt instrument. We would suggest that if a limit is applied, this should relate to the total liquid (or readily able to be liquidated) assets that each client has. This is information that would normally be sought during the assessment (robo or otherwise), so should be able to be easily incorporated into an algorithm. Perhaps a limit of 20% of liquid funds could apply to robo-advice, at least during the exemption period. This could be in conjunction with a de minimis dollar figure (say \$5000 or \$10,000) to ensure smaller investors get advice based on a meaningful investment amount. At the other end of the scale, we are less concerned. Investors with large portfolios are more likely to seek appropriate advice and can more easily afford to do so.

Q16. See the answer to Q15. We do not see any reason for a higher limit for QFE's. The concern should be to protect the consumer from over exposure to a new technology that is untried in the New Zealand setting and as yet is not subject to comprehensive assessment by the new Code Committee – who may have a different view to that taken by FMA.

Q17. Yes. A clear and concise, plain English standardised form will ensure this information is provided to consumers in a manner most can understand.

Q18. A degree of flexibility is sensible. However, FMA should develop a list of matters which must be addressed in the disclosure to ensure all key matters are included. It would then be up to the provider how they complied.

Q19. Yes. This is the only way to impress on people that this is a specific form of advice and has some limitations. While many may not read it, over time we think it will encourage better understanding of the product. It is a very inexpensive check and balance. Additionally, it would make sense to insist that unless this acknowledgement is made, the consumer cannot proceed further in the system.

Q20. We support the Conduct obligations. Without these, the advice is not of a standard to be considered personalised. It is up to the providers to determine how or if they can meet these fundamental standards.

Q21. See answer to Q 22.

Q22. We believe that the additional requirements in Code standard 6 (recommendations only for products that have been assessed or reviewed) are important and should be included. At this time, we consider it unlikely that robo-advice can be automated to the point that it can digest and formulate a view of the suitability of a product from (for example) a PDS. Therefore we believe there will continue to be human interaction at that level (at least until the revised FAA and Code are in place). In those circumstances, the additional Code Standard 6 obligation is appropriate to remain in force.

Q23. We do not agree. Advice should be accurate and concise regardless of the level of funds. A small investment may well be more valuable to a poor person than a large investment is to a rich person. They both deserve the same standard of advice regardless.

Q24. No comment.

Q25. Not applicable

Q26. We consider it desirable that a list of providers should appear on the FMA website. This is an easy way for consumers to check that the service they intend to interact with is actually subject to New Zealand regulation. Failure to produce and maintain this list leaves open an opportunity for overseas based fraudsters pretending to be based in New Zealand. They could, for example, defraud local consumers by persuading them to “invest” in nonexistent entities. We note that a precedent exists with other services and providers already required to be listed on the FMA website and see this as protection for both consumers and legitimate providers. .

Q27. Robo-advice is easily understood. Digital is a poor terminology because it is widely used in situations where people are still very much involved – for example digital TV. Automated tends to imply a simplistic service which good robo-advice will certainly not be. For example – an automated answering service.

Q28. In the “Capability” section, we would like a specific obligation that the service provider is responsible for the actions of its contractors as well as its employees. Unless this is addressed, we see potential for a set-off of responsibility.

In the “Disclosure” section, where a provider makes it possible to speak to a human advisor, the cost of this needs to be made clear in advance. In the case of complaints, there should be no cost involved.

In the “Record Keeping” section, we consider that providers should have to keep all client advice records. As written, we interpret the FMA proposal to mean that only the current, up-to-date information must be kept. In the event there is a problem to be resolved, we submit that a full trail will be an essential component of any investigation.

Summary

NZSA gives qualified support to the intention to provide an exemption allowing the early provision of robo-advice. Our major reason is the urgent need to make “fit for purpose” personalised advice available to a wider range of consumers, particularly those with smaller amounts to invest.

We add the important caveat that a stronger message needs to be given that any robo-advice developed under the exemption will not provide any precedent or influence the considerations of the new Code Committee and that development of such advice is entirely at the risk of the provider.

NZSA has made a number of other suggestions in answering FMA’s questions and also in the executive summary. These largely relate to ensuring a balance between adequate consumer protection and the earlier introduction of technology based solutions.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Feedback form: Proposed exemption to facilitate personalised robo-advice

Please submit this feedback form electronically in both PDF and MS Word formats and email it to us at consultation@fma.govt.nz with 'Proposed exemption to facilitate personalised robo-advice: [your organisation's name]' in the subject line. Thank you.

Submissions close on 19 July 2017.

Date: _____ Number of pages: _____
Name of submitter: [REDACTED]
Company or entity: Nikko Asset Management New Zealand Limited
Organisation type: Licensed Managed Investment Scheme Manager, wholesale fund manager
Contact name (if different): [REDACTED]
Contact email and phone: [REDACTED] [REDACTED]

Question or paragraph number	Response
<i>You don't need to quote from the consultation document if you note the paragraph or question number.</i>	
Q2	<i>Yes - It is appropriate for the FMA to consider using its exemption powers</i>
Q3	<i>For the current requirement of the 'natural person' test to be met, we believe this would require each and every piece of output that provides individual advice to be confirmed/affirmed by an appropriately qualified individual. Under such an approach the cost and accessibility of providing robo-advice would be largely unchanged from the current model and therefore not deliver the desired efficiencies. Accordingly, the cost of providing robo-advice with the 'natural person' requirement would be unreasonable if the intention is to use this technology to provide a lower cost, more accessible solution.</i>
Q4	<i>A class exemption would seem to be the most appropriate way to proceed, but we would prefer the exemption to require participants to apply, rather than simply notify. The alternative would result in more work and cost for all parties (including the FMA) and a more disjointed approach across the industry. However, the issue of limits & conditions is something which will need careful thought, but this would be the case whether there are individual or class exemptions provided.</i>
Q5	<i>The paper's summary of the risks and possible consequences for consumers are well articulated. From an industry perspective it should be noted that it will be easy for anyone to compare the advice provided by different tools, and this will inevitably lead to comparisons and noting of differences of output. Whilst this is true under the current situation with individual advisors, in reality this is not currently so visible. Under a widely accessible robo-advice approach, multiple outcomes will be available and the industry will need to be able to respond to possible questions on this. Clearly, there will always be a range of acceptable answers, and this needs to be understood and accepted.</i>
Q6	<i>There is currently a grey area between what is a tool providing information and a tool providing advice. This distinction will always be there, but acknowledging this and dealing with it through good regulation and practice as early and quickly as appropriate will be helpful. This is preferable to leaving the industry without clarity and having divergent</i>

	<i>practices based off varying assessments of what is and isn't permissible.</i>
Q7	<p><i>Yes there is currently an advice gap in New Zealand and that gap appears to be increasing compared to other OECD countries where robo-advice tools are permitted.</i></p> <p><i>There are other issues raised by this question. The most obvious ones are:</i></p> <ul style="list-style-type: none"> <i>- The lack of advisers to physically provide advice to all consumers of financial products</i> <i>- The cost of providing bespoke, tailored advice to those with low asset balances for whom the cost of such advice is out of proportion to their assets</i> <i>- The lack of desire by many people to seek advice due to either not knowing where to go, or the preference to search out solutions more anonymously whilst making decisions (akin to searching online for various services and products rather than visiting shops or stores in the first instance).</i> <p><i>Accordingly, robo-advice is not something which replaces the human adviser but provides a complementary service that meets needs that may otherwise be left unmet.</i></p>
Q9	<p><i>Introducing limits has a number of merits as outlined in the paper. However, they also raise a few concerns:</i></p> <ul style="list-style-type: none"> <i>- In protecting an individual, the issue is not so much the size of the investment/product if something goes wrong, but the proportion it is of their total wealth. Eg someone with limited savings would be more impacted with a \$5,000 error, than someone with hundreds of thousands would have with a \$20,000 error.</i> <p><i>Accordingly, we would suggest not having an individual client limit, but rather encouraging investors to think about the nature of this new form of advice delivery in the context of their financial position. It is for the consumer to decide if they want to proceed.</i></p> <ul style="list-style-type: none"> <i>- At an aggregate level the \$5m is too low. This equates to just 100 people with \$50k balances. Given the intention to make advice more accessible it would seem odd that firms could be shutting their tools down to new investors after possibly just a few weeks before many people have had the opportunity to proceed. Furthermore, with a FUM balance of \$5m, this would be too low a volume to justify the cost of running a robo-tool and therefore places a barrier on the industry growing quickly to having a scalable enterprise. Lastly, it should be assumed that the market will gravitate to the better/preferred tools. If so, then it would be inappropriate for these providers to turn people away due to a size limit, potentially forcing those consumers to use the less desirable tools that still have 'capacity' under the regulation.</i> <p><i>Accordingly, we would propose not having formal limits in place for providers, but instead for all providers to be required to give their supervisor/the regulator a (monthly?) summary of the number of people using their tools, and business written through robo-advice so that efforts can be targeted to ensure that the growth areas are being appropriately monitored.</i></p>
Q11	<i>Starting with a more limited exemption would make sense and therefore restricting the exemption to financial advice only and excluding investment planning and DIMS would</i>

	<i>seem a reasonable first step.</i>
Q15-16	<i>Please see response to Q9 above.</i>
Q17	<i>A prescribed form would likely be most appropriate and will provide the required consistency of standard disclosure during the class exemption period.</i>
Q18	<i>Given the differing nature of advice being provided, a prescribed form may end up being sub-optimal from the perspective of relevance and clarity for a particular tool. It would likely be difficult to find a form of disclosure that is simple, clear, concise and covers the full range of robo-advice being provided. Accordingly, guidelines on the aspects of disclosure that are required to be considered/provided would be most suitable which providers can then tailor to the specific proposition they are bringing to the market.</i>
Q19	<i>During the class exemption period when robo-advice is being introduced to NZ consumers, it makes sense for such confirmation to be required. It would be unacceptable for consumers to believe they are receiving advice from an individual/AFA when in fact they are using a software package.</i>
Q20	<i>Conduct is very important when considering the behavior of individuals and companies. It seems less relevant when dealing with software/computer programmes. If a provider meets the requirements as set out in exemption conditions (e), (f), (g) and (h) then the tool will by definition be fit for purpose and therefore the need for separate conduct requirements would seem redundant. The provider should be subject to another license with the FMA (for instance, Managed Investment Scheme)</i>
Q25	<i>Guidance would be helpful as we enter a new stage of advice dissemination. This will help ensure both consistency for consumers and certainty for providers that their approach is in line with regulatory expectations/requirements.</i>
Q26	<i>Disclosure of who is providing advice is a good idea. There isn't a reason why any provider should not want to be known to be providing robo-advice.</i>
Q27	<i>We are likely to avoid using the term robo-advice in our marketing and communication material. Other terms, such as those suggested are preferable. Whilst it's inevitable that there will be a range of terms used within the industry, some standardisation would be helpful for consumers who may not realise that many of the terms are interchangeable.</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.	

Feedback form: Proposed exemption to facilitate personalised robo-advice

Please submit this feedback form electronically in both PDF and MS Word formats and email it to us at consultation@fma.govt.nz with 'Proposed exemption to facilitate personalised robo-advice: [your organisation's name]' in the subject line. Thank you.

Submissions close on 19 July 2017.

Date: 18 July 2017 Number of pages: 11

Name of submitter: [REDACTED]

Company or entity: Partners Life

Organisation type: Life and health insurance provider

Contact name (if different):

Contact email and phone: [REDACTED] [REDACTED]

Question or paragraph number	Response
------------------------------	----------

You don't need to quote from the consultation document if you note the paragraph or question number.

1	<p><i>We support the class exemption to allow robo-advice.</i></p> <ul style="list-style-type: none"><i>- It will improve access to advice for consumers much sooner than will happen awaiting implementation of the Financial Services Legislation Amendment Bill. Robo-advice platforms can service many consumers, even if they are remotely located, including customers who do not use traditional advice methods.</i><i>- It will improve the consistency of advice for consumers. Robo-advice platforms use repeatable algorithms, so like situations will receive like recommendations.</i><i>- It enables New Zealand robo-advice providers to develop and implement solutions sooner, minimising a timing disadvantage to foreign competitors who already offer these services in foreign markets.</i> <p><i>We agree that there should be conditions imposed on those relying on the exemption. We disagree with limits proposed, and we suggest further conditions (see below).</i></p>
2	<p><i>We agree that it is appropriate for the FMA to use its powers to issue a class exemption.</i></p> <ul style="list-style-type: none"><i>- A class exemption will enable consumers to access advice through robo-advice platforms at least one year before they can if they must wait for legislative change.</i><i>- A class exemption ensures New Zealand companies have a greater chance to succeed in this market. An extra year, awaiting legislation, gives foreign companies an advantage to hone their platforms in their own markets, then transport them to New Zealand.</i>
3	<p><i>Yes, we think the costs to comply with the 'natural person' requirement are unreasonable and unjustified by compliance benefits.</i></p> <ul style="list-style-type: none"><i>- A key benefit of robo-advice is the reduced cost to serve once scale is achieved (most costs are in development, with low marginal costs).</i><i>- Lower cost increases access to advice for consumers.</i>

	<ul style="list-style-type: none"> - Requiring a natural person to review advice for each customer would effectively eliminate this cost advantage. - Requiring a natural person to review advice for each customer also introduces the risk of advice variability and an additional “point of failure” in relation to human error, which undermines a key strength of a robo-advice platform. - A natural person(s) of appropriate skill and experience should be involved in the design, testing and monitoring of the platform. Because of the repeatable nature of robo-advice platforms, similar inputs will give the same outputs. There is no compliance benefit from checking every output recommendation.
4	<p>Yes, we support the class exemption option.</p> <ul style="list-style-type: none"> - It is fairer for providers, because everyone has access to the exemption equally and at the same time. This aligns with the FMA’s objective of “fair, efficient, and transparent financial markets”. - The FMA can focus its resources on monitoring providers, rather than writing exemptions. <p>We agree with the conditions proposed, and suggest further conditions. We do not support the limits proposed.</p> <ul style="list-style-type: none"> - We submit that the class exemption could be aligned with future licensing. Conditions should be like the licensing requirements that will come with the new law, based on the requirements of the existing FMCA licenses (because there is significant commonality across the six existing licence types). - We submit that limits should not be imposed. Limits restrict consumer access to advice, without improving the quality of advice. Instead, the FMA should vet and monitor entities who rely on the class exemption. <p>We note that there may be instances where a robo-advice provider plans a service that is not covered by the class exemption. We note that the class exemption does not preclude some providers from applying for individual exemptions.</p>
5	<p>Impacts on consumers of providing the class exemption</p> <ul style="list-style-type: none"> - Lower cost advice available earlier - More convenient advice (any time or place) - Greater options for the delivery of advice, making this available to customers who will not access advice through traditional channels - There is a risk that a provider may give low quality advice (an existing provider, or a robo-advice provider) - There is no product risk, because product providers must be licensed (managers of MIS require FMCA licences, insurers require RBNZ licences, etc) - For robo-advisers who are not vertically integrated, there will be financial risk as money passes from the client, through the robo-provider to the product provider – therefore robo-advisers may also be brokers who must comply with broking requirements of the FAA - Once money passes to the product provider, there is little financial risk to the consumer. If the robo-advice provider gets into financial difficulty, the client’s money and/or products are held by the product provider. The residual risk is

	<p>ensuring the consumer understands the changed communication lines and service levels.</p> <p>Impacts on providers of providing the class exemption</p> <ul style="list-style-type: none"> - Some capital investment required, and small operating costs, so once providers reach scale, the cost to serve is quite low - There are risks for providers who do not reach scale, which may impact the reputation of the industry as well as the provider; however, there should be little financial risk to consumers - May reduce commissions to advisers through competition with a lower cost channel - There are risks associated with robo-advisers who advise clients to replace existing business – these risks can be mitigated through process design that considers these risks - If the class exemption is not aligned with future licensing requirements, those relying on the exemption must expend resources to comply with the exemption, and then expend resources again to apply for and comply with the licence.
6	<p>If no exemption is granted, impacts on consumers include:</p> <ul style="list-style-type: none"> - Consumers who will be served by robo-advice have their access delayed by at least one year; the delay will have significant opportunity costs (such as lost investment revenue, lack of insurance cover, and possible cover exclusions or loadings from the risk of health deteriorating). - A timing advantage to offshore providers, so consumers are less likely to be served by companies with local representatives (to whom it may be easier to complain if there are problems). <p>If no exemption is granted, impacts on providers include:</p> <ul style="list-style-type: none"> - Offshore robo-advisers have at least a year to hone their services in their own countries, so they have a significant advantage over local entities when robo-advice becomes legal. <p>We would not provide class robo-advice if no exemption is granted.</p> <p>Providers who are interested in providing class robo-advice could be doing so now – they would not be waiting for this class exemption.</p>
7	<p>Yes, we agree that there is an advice gap.</p> <p>There are about 1.8m households in NZ (Stats NZ). FMA research showed that 1,100 financial advisers actively sell life insurance. That would be 1,600 households per adviser, when large advisers have a few hundred clients. If every QFE adviser sold life insurance, that would be about 70 households each.</p> <p>The Massey University FSC study “Exploring Underinsurance within NZ” found, “there is strong evidence of high levels of underinsurance so that levels of cover do not correspond to actual financial vulnerability.” “The survey shows that the biggest issue within New Zealand seems to be the low levels of ownership of personal insurance around permanent disability”.</p>

	<p><i>Our data imply that most advisers are less likely to advise clients for very small sums insured. This implies that they are more likely to target higher value customers, leaving many New Zealanders under-advised.</i></p> <p><i>This question seems to assume that robo-advice means wealth advice. A 'balance' is not directly relevant to insurance advice.</i></p>
8	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>
9	<p><i>We submit that the proposed limits are neither in the best interests of the consumer, nor the robo-advice provider, particularly product restrictions, value caps and duration limits. See our answers 12-15 below.</i></p> <p><i>Only a very small portion of our life insurance policies have sums insured of \$100,000 or less. The proposed limit means that robo-advice will not be available for most life insurance customers.</i></p> <p><i>We agree that the conditions imposed are reasonable and will help protect consumers.</i></p> <p><i>Conditions will minimise costs for robo-advice providers if they are closely aligned with future licensing requirements. We submit in answer 21 below that additional Code Standards should be incorporated into the conditions.</i></p> <p><i>To align the class exemption with future FMCA licensing requirements, a condition should be added about appropriate financial resources. This seems to be the only element of FMCA licensing that is missing from the proposed class exemption.</i></p> <p><i>Appropriate financial resources may include positive net tangible assets, and a level of professional indemnity insurance that is appropriate to the size of the entity.</i></p>
10	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p><i>We also think that the value and duration limits are unworkable, and not in the best interests of consumers, as submitted in answers 13 and 15.</i></p> <ul style="list-style-type: none"> <i>- Instead we suggest that other limits are more appropriate to personal insurance, as submitted in answer 13.</i> <i>- However, as we also submit in answer 13, we think the industry will provide better outcomes for the consumer without these limits. Instead, we submit that the FMA should monitor those relying on the class exemption according to their risk.</i> <p><i>We submit that the conditions should be aligned with future obligations in the Financial Services Legislation Amendment Bill, and the expected FMCA licensing requirements.</i></p>

	<p><i>For example, a condition should be added about appropriate financial resources. This seems to be the only element of FMCA licensing that is missing from the proposed class exemption.</i></p> <p><i>We suggest that this will minimise the risk that a robo-advice provider may rely on the exemption, and then fail to obtain a financial advice provider licence. If a robo-advice provider fails to obtain a licence, it will reflect badly on the provider, the FMA, and the industry. It may also reduce consumer confidence in robo-advice and the industry generally.</i></p>
11	<p><i>We have no comment.</i></p>
12	<p><i>We disagree with the proposed list of eligible products. Specifically, we disagree with excluding personal insurance and mortgage products.</i></p> <ul style="list-style-type: none"> - <i>It creates an unequal playing field. Providers of both investment and personal insurance products will be able to enter the market and hone their service with investment products, while providers offering only personal insurance will be unable to do so. This gives horizontally integrated providers an unfair advantage, contrary to the FMA’s objective of “fair, efficient, and transparent financial markets”.</i> - <i>Personal insurance policies are easily exited by cancelling the policy. For customers who do not have an existing policy, justifying the limitation as “difficult to exit” is incorrect.</i> - <i>There are risks of replacement business which can be mitigated in other ways. (The risks are the insured’s health changed since acquiring the existing policy, insured is moved into a less suitable product, insured cancels the existing product before the new product comes into force, and stand down periods for new business although these are often waived for replacement business).</i> - <i>This limitation assumes that robo-advice is more risky than existing human advice. FMA research and monitoring do not support this assumption.</i> - <i>Robo-advice platforms can be required to provide evidence in advance that their advice is provided well.</i> <p><i>We submit that these products should be included in the class exemption, and other methods should be used to reduce the risk of poor advice.</i></p>
13	<p><i>As we submit in answer 12 above, personal insurance products should be included in the eligible product list.</i></p> <p><i>We think that value limits are inappropriate for personal insurance products.</i></p> <ul style="list-style-type: none"> - <i>\$100,000 of life insurance, \$100,000 of trauma insurance, \$100,000 of TPD, and \$100,000 of income protection are very different products and risk levels. They are incomparable. Health insurance does not have an insured value.</i> <p><i>Instead, we suggest that other types of limits could be more appropriate, such as:</i></p> <ul style="list-style-type: none"> - <i>If a customer’s health has changed since taking an existing policy.</i> - <i>If a customer has an existing policy (replacement business).</i> - <i>If a customer’s age puts them at greater risk.</i> - <i>If a customer’s health requires exclusions or loadings.</i>

	<p>However, we submit that these limitations would disadvantage consumers by reducing access to advice. Alternatively, we submit that consumers will receive better outcomes if robo-advice providers face scrutiny through reporting and monitoring.</p>
14	<p>We disagree with value caps and duration limits, because they will have unforeseen consequences.</p> <p>Value caps are unfair to clients, and unwieldy in insurance products:</p> <ul style="list-style-type: none"> - In investments, what happens when a client's \$100,000 investment grows to a value greater than the value cap? Must the client stop using the robo-advice platform and be referred to a human adviser? How does that affect robo-advice providers who do not have human advisers? - In investments, two clients, A and B, want to invest \$100,000. Client A's robo-adviser recommends one lump-sum investment, Client B's robo-adviser recommends dollar cost averaging. Client A invests \$100,000. Client B invests \$50,000. Clients earn 10% return, so A has \$110,000 and B has \$55,000. Client B wants to invest the remaining \$50,000, but can only invest \$45,000 to reach the \$100,000 value cap. Because of the limit, these clients are not treated equally. In a rising market, the customer who uses dollar cost averaging is disadvantaged. - In personal insurance, value caps are inappropriate unless they are different for different types of product. This becomes confusing. See answer 13 above. <p>Duration limits have unintended consequences in insurance products:</p> <ul style="list-style-type: none"> - Life insurance policies usually have longer durations. During the policy, the insured has the right but not the obligation to continue on the same terms by paying the premium. The insurer is obliged to continue the policy if the insured pays the premium. - To limit robo-advice to one year durations has no benefit to the insured. However, it may allow the provider not to renew the policy, which may disadvantage the insured significantly (eg, if their health has changed). <p>Other types of limitations may be more appropriate for insurance and other types of products (see answer 13 above).</p>
15	<p>We disagree with individual client investment limits.</p> <ul style="list-style-type: none"> - These seem to imply that all robo-advice applies to investment. How does this translate to other products? Does it mean you cannot insure a car or contents for more than \$100,000, or that the premium must be less than \$100,000? - Consumers who require more than the limit may find it easier to buy the limit with robo-advice than seek advice from a natural person. This may leave many consumers with insufficient protection, which is an adverse outcome. - As stated in answer 14, is this based on the amount invested, or the value of the investment? What happens when an investment grows above the individual investment limit – does it have to pass to a human adviser? This becomes unfair for two investors who both want to invest the limit, but time their investments differently. <p>We submit that consumers will have better access to advice, and better protection from poor conduct, if the FMA allows the exemption with conditions aligned to future licensing</p>

	<p>requirements, and with monitoring, rather than opening the gates to all low value providers who agree to act within the proposed limits and conditions.</p>
16	<p>We submit that a total investment / premium limit for a robo-advice platform would be unworkable without disadvantaging the provider and the consumer.</p> <ul style="list-style-type: none"> - Robo-advice platforms require high initial investment with low marginal operating costs. Limiting total business limits the viability of these platforms, because they will have to charge a higher price to break even. Moreover, robo-advice platforms have to attract an audience, and marketing costs increase initial development costs. - A robo-advice provider invests resources in developing and marketing a platform. It becomes successful and reaches the provider limit. It cannot take new customers or new business from existing customers. - The robo-advice provider would not be able to accept new custom until their total investment or premium falls below the company limit (eg, a down market). Customers are temporarily unable to access the service. These kinds of service interruptions result in customer frustration and, ultimately, lost customers. - This is both unfair, and inefficient, contrary to the FMA's objective.
17	<p>Yes. We agree that it is best to define the form of disclosure that states that the provider is relying on this class exemption.</p> <p>We think that this defined form should include a hyperlink to the FMA website where the list of robo-advice providers relying on the exemption is displayed. (See answer 26.) This makes it easy for the consumer to verify the provider's claim.</p> <p>We submit that the location and timing of this disclosure should be determined by the robo-advice provider, so long as it is prominent.</p> <p>Robo-advice can be offered by providers reactively or proactively. (Reactively when a consumer uses the provider's tool or website, proactively when the provider uses data they already hold to offer unsolicited personalised advice to customers). Inflexible disclosure could stifle innovation by, for example, effectively prohibiting proactive personalised robo-advice.</p>
18	<p>We think providers should have flexibility to decide how to comply with the disclosure condition, provided that they are required to disclose in a manner that is in the best interests of the customer.</p> <p>Rather than have one long disclosure statement for clients to read, providers can separate disclosure into smaller parts, and disclose each part at a point in their process that is most relevant.</p> <p>Creative providers may use this as an opportunity to educate their clients about the products. They may use video, diagrams, gamification, or other methods that will enhance customer understanding.</p> <p>The FMA should describe the minimum content for disclosure – what must be disclosed.</p> <ul style="list-style-type: none"> - This should include disclosing which products are available on the robo-advice platform and why they were chosen. - For example, if a robo-advice provider aims to promote one product range, they can offer that range together with product ranges of significantly lower quality.

	<p><i>This gives an impression of independence, while effectively pushing the client to a single product set.</i></p> <ul style="list-style-type: none"> - <i>A vertically integrated robo-advice provider will be able to provide reasons for offering a single product range.</i> - <i>This matches the future requirement to ensure the client understands the limitations of the advice.</i>
19	<p><i>We do not object to the client confirming their understanding of the advice given. However, a check box at the end of a long, complex disclosure statement does not achieve this.</i></p> <p><i>If clients are required to confirm, it should be in a manner that confirms effectively that they understand the disclosure. Creative providers may use gamification or a few questions to learn whether the client understands clearly the information disclosed.</i></p> <p><i>We submit that the timing of this disclosure should be determined by the robo-advice provider, so long as it is prominent. If customer confirmation is required before personalised advice is offered, it will stifle innovation by, for example, not permitting proactive personalised robo-advice (see answer 17 above). In this case, customer confirmation would have to occur after personalised advice is provided.</i></p>
20	<p><i>We agree with the proposed conduct obligations.</i></p> <p><i>We particularly agree with aligning these conduct obligations with the obligations in the Financial Services Legislation Amendment Bill. This will reduce the compliance costs of robo-advice providers, compared to complying with one set of conditions now, and redesigning their processes to meet a different set of conditions at the point of licensing. It also reduces the risk that a provider who relies on the exemption later fails to obtain a financial advice provider licence.</i></p>
21	<p><i>We submit that the following Code Standards and Conditions are applicable to robo-advice, and could be reflected in the conditions:</i></p> <ul style="list-style-type: none"> - <i>Code Standard 1</i> - <i>We disagree that integrity is not required by a robo-advice provider. For example, start-up robo-advice providers may not be subject to a Code of Conduct that requires them to operate with integrity.</i> - <i>While a robo-advice tool will operate according to its programmed rules, those rules should be designed to operate with integrity. Therefore integrity is applicable to robo-advice.</i> - <i>Code Standard 6</i> - <i>Clear, concise and effective communication should be expressly required. This would enhance the effectiveness of flexible disclosure, and client confirmation of understanding.</i> - <i>The robo-advice platform should only advise on products that have been assessed or reviewed by the entity. (This could be incorporated into the capability condition.)</i> - <i>This is particularly relevant to replacement business advice – a robo-advice tool should not advise a client to replace a product unless it can effectively compare the existing product to the recommended product.</i> - <i>Code Standard 7</i>

	<ul style="list-style-type: none"> - Required disclosure, together with effective communication, should be designed to achieve this requirement. - Code Standard 13 - The proposed record-keeping condition does not achieve the same thing as the requirement to keep records for a minimum of 7 years. "Up-to-date records" are satisfied if the robo-advice provider deletes a client's records as soon as they cease being a client. If the client subsequently complains, there may be no records in evidence. - Robo-advice providers should be required to keep up-to-date records, and keep records for a minimum of 7 years after a client ceases to be a client. - Code Standard 17 - The robo-advice platform should be regularly reviewed to ensure that it remains fit-for-purpose as products change, technology improves, and client needs change. - Standard Condition 2 - We submit that consumers will receive better outcomes if the FMA offer a class exemption as a forerunner to licensing. Rather than open the gates and allow anyone in, we submit that the FMA should require providers who rely on the exemption to report specific data periodically, and the FMA use these data for risk-based monitoring. - Data could include measures of size and value (number of retail customers, funds under management, annual premium income). Proactive monitoring would be better for the industry and clients than limits to total investment (question 16). - Standard Condition 5 - We disagree that conditions around client money are not applicable. Rather, we submit that while these might not be applicable for vertically integrated robo-advisers, robo-advisers who sell products for multiple providers are likely to collect client money and pass it on to providers. - In these cases, the broker provisions will apply notwithstanding the robo-advice service. While it is not robo-advice itself that must meet the broker provisions, it is incorrect to say that the broker provisions are not applicable. - For this reason, we submit that the broker obligations may apply, and should be expressly mentioned in the class exemption conditions.
22	See question 21, above.
23	<p>Yes, the conditions should be applied proportionally as applicable to the provider. However, it is not size or scale that should determine this proportionality, but rather complexity and risk.</p> <ul style="list-style-type: none"> - Robo-advice providers may target segments of the market. Vulnerable customers may warrant further protection. - If a robo-advice provider deliberately targets low risk, low value business (such as car insurance), their requirements could be lower than a provider advising on high risk or high value business (such as derivative products, high value investments, or complex insurance products). - If a robo-advice provider uses deep learning algorithms where the tool develops its own rules and outcomes based on artificial intelligence, there could be higher standards of internal testing and monitoring. Machine learning can deliver

	<p><i>perverse outcomes, and these should be monitored, identified, and corrected. (For example, https://www.propublica.org/article/machine-bias-risk-assessments-in-criminal-sentencing and http://www.newsweek.com/artificial-intelligence-can-be-racist-sexist-just-humans-584240)</i></p> <ul style="list-style-type: none"> - <i>If the requirements are not applied proportionally, they must be either (a) overly complex and costly for low risk robo-advice platforms (which may stop them from entering the market), or (b) insufficiently complex to protect clients of high risk robo-advice platforms (which may result in harm to consumers that could be prevented).</i> <p><i>However, we submit that the minimum standards for all robo-advice providers should be high, so that consumers are adequately protected.</i></p>
24	<p><i>Yes.</i></p> <p><i>We submit that all robo-advice providers with client login facilities should be required to provide a free test login to the FMA. Hence, the FMA could use the tool and determine whether it meets the other conditions of the class exemption appropriately.</i></p> <p><i>The MBIE consultation document on the Financial Services Legislation Amendment Bill asked how licence applications could be smoothed through the transition period. We submit that the robo-advice class exemption should expire early in the transition period (estimated February 2019 to February 2021), to require these providers to apply for financial advice provider licences early in the period. There is little incentive for other temporary licensees to apply early, so this will help smooth the spike of licence applications that may occur at the end of the transition period.</i></p>
25	<p><i>Yes, we would find it helpful if the FMA provided an information sheet explaining the exemption notice and providing guidance on how to comply with it.</i></p> <p><i>We also believe that other members of the industry, including the advisers who advise on our products, would find the information sheet helpful.</i></p>
26	<p><i>Yes, we would like to see a list of providers who rely on the exemption on the FMA website.</i></p> <p><i>We also suggest that a link to this page should be included in the regulated disclosure on robo-advice platforms stating that they are relying on the exemption notice (question 17).</i></p> <p><i>This would increase consumer confidence in robo-advice.</i></p> <p><i>A similar approach could be used to align the exemption with future licensing requirements. The class exemption could include a schedule of entities to whom the class exemption applies. Robo-advice providers could apply to the FMA to be added to the schedule, enabling the FMA to review the company's processes before they are allowed to rely on the class exemption.</i></p>
27	<i>We are ambivalent on this point and have no comment.</i>
28	<i>We have no further comments.</i>
Feedback summary – if you wish to highlight anything in particular	

Our responses to questions 8 and 10 contain commercially sensitive information. We ask you to withhold this information from public release.

The content of this consultation implies that the FMA seeks to open the doors for limited applications of robo-advice, and keep the option closed to other possible robo-advice providers – such as high value investment, personal insurance and mortgages.

We disagree with this approach, because it creates an unequal playing field. This is contrary to the FMA’s objective of fair, efficient, and transparent financial markets.

If the FMA grant a class exemption, we submit that it should be in a manner that foreruns the new law. It should make robo-advice available for all products, durations and values, with conditions that mirror future licence requirements and enable the FMA to monitor robo-advice providers. (There is significant commonality across existing FMCA licences, so the requirements for financial advice provider licences are largely predictable and most are reflected in the conditions in this consultation document.)

We submit that this will minimise the risk that a robo-advice provider may rely on the exemption, and then fail to obtain a financial advice provider licence. If a robo-advice provider failed to obtain a licence, it will reflect badly on the provider, the FMA, and the industry. It may also reduce consumer confidence in robo-advice and the industry generally.

We submit that:

- The class exemption for robo-advice should happen.*
- Products should not be limited. Instead, the FMA should monitor the quality of providers who rely on the exemption.*
- Limits to value or duration should not be imposed, because they are arbitrary and do not relate to the consumer.*
- Robo-advice providers should report key metrics to the FMA regularly (periodic reporting), as well as exception reporting. This gives the FMA the information they need to perform proactive risk-based monitoring.*

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.

From: [REDACTED]
To: [Consultation](#)
Cc: [REDACTED]
Subject: Proposed Exemption to Facilitate Personalised Robo Advice
Date: Tuesday, 18 July 2017 10:49:47 a.m.

Thank you for the opportunity to contribute to the consultation

My company, Peter Dredge Limited, has developed the base system for a fully automated life and income protection planning tool. The tool is designed for clients to be able to develop a robust and effective "control" strategy to manage their financial risks in the event of a major health failure.

The system is ready for development into a full online platform.

The base proposition is thus...

"If we can make you smarter than your insurance advisor in 5 minutes, help you build a robust life and income protection plan in under an hour and save you thousands in insurance premiums, would you be interested?"

This tool is developed to give insurance advice superior to most advice available in the market today.

Why?

- : - it's based on a well proven and successful manual advice model with world leading emotional and conceptual engagement tools
- : - it has a very strong base "architecture". The plan design is driven by a very robust base set of principals (an insurance claim as early as possible with as much certainty as possible).
- : - the client is educated (in the above 5 minutes) about what can go wrong and the types of financial responses available. Literally they become smarter than most insurance advisors
- : - the boundaries of the advice model are very clearly defined (as soon as possible into the disablement process move to control health, income and debt)

Why is the system needed?

Currently, our life and income protection insurance model is badly broken. Viewing the present system as an exemplar of good practice is a fallacy.

Ask yourself (or a member of the public who already holds life and income insurance) the following about your current insurance plan...

- : - what insurance policies do you hold, what do they do and when do they do it?
- : - how competent was your advisor, in your opinion?
- : - whose interests do you think were paramount in the transaction? Yours or the advisors?

The system as it stands robs control of the process from the client. Is the exact antithesis of the growing movement to consumer control. The distribution methodology is very expensive thus denying clients much needed insurance cover. The sales methodology is firmly based in "foot in the door" techniques which are manipulative and fundamentally dishonest.

To deny consumers access to the very superior experience of well crafted Robo Advice at this point is to deny their very right to control of the most vital service to ensure their continuing financial welfare.

Thank you for your consideration of my submission.

Kind regards

[REDACTED]

[REDACTED]

Feedback form: Proposed exemption to facilitate personalised robo-advice

Please submit this feedback form electronically in both PDF and MS Word formats and email it to us at consultation@fma.govt.nz with 'Proposed exemption to facilitate personalised robo-advice: [your organisation's name]' in the subject line. Thank you.

Submissions close on 19 July 2017.

Date: 19 July 2017

Number of pages: 3

Name of submitter: [REDACTED]

Company or entity: Russell McVeagh

Organisation type: Barristers & Solicitors

Contact name (if different): [REDACTED]

Contact email and phone: [REDACTED] [REDACTED]

Question or paragraph number	Response
<i>You don't need to quote from the consultation document if you note the paragraph or question number.</i>	
Q1	Yes, we support the proposed exemption. We acknowledge the advice gap identified by the FMA and believe the proposed safeguards will be appropriate in minimising the potential risks of robo-advice. There is a general reluctance to pay for financial advice, and enabling personalised robo-advice to be provided will decrease costs, thus increasing access to financial advice. In addition, while it may take some time for systems to be developed in order to enable robo-advice to be provided, the exemption is the first step to providing a framework against which the systems can be developed.
Q2	We agree it is appropriate for the FMA to use its exemption powers to facilitate the provision of robo-advice and see an exemption as consistent with the overall purposes of the FA Act regime. As discussed above, providing an exemption now (rather than waiting for the law reform to come into effect) will enable providers to start work on developing the systems required to provide robo-advice.
Q4	Yes, we support the proposed approach. We agree that this will provide certainty and consistency, and avoid imposing unnecessary compliance costs on potential providers (as well as on the FMA in providing individual exemptions). We assume that the FMA will adequately vet potential robo-advice providers as part of the initial pre-notification procedure and that there will be sufficient ongoing supervision of platforms by providers due to the "monitoring and testing" and "systems and controls" conditions.
Q9	We believe the proposed conditions strike an appropriate balance between consumer protection and promoting innovation. We do not share the same view with regards to the individual client investment limit and the limit on total investment amount of products suggested by the FMA (see Q15 and Q16).
Q13	Yes, personal insurance products should be included in the eligible product list. However, there should not be a value cap based on the sum insured per product (as this would immediately exclude most, if not all, home insurance products). If a limit is required, we consider that the most appropriate limit would be to products that can be cancelled

	easily.
Q14	We do not believe that a value cap and/or duration limit would be necessary, as the proposed eligible products can be easily exited (or switched).
Q15	<p>We consider each of the proposed limits to be unnecessary.</p> <p>We find it difficult to identify a rationale for the individual client investment limit (“Individual Limit”). This is because, assuming DIMS is not included in the exemption, a robo-advice provider is ultimately only providing advice – the individual investment decision remains for the client to make. Limiting the access of those wishing to invest over a certain amount runs contrary to the FMA's aim of addressing the advice gap (which gap exists regardless of the amount the client has available to invest).</p> <p>As identified by the FMA, an Individual Limit also presents difficulties where, for example, advice is given in a general sense. Robo-advice providers should not be prevented from giving such general advice. Requiring clients to specify the amount they are wishing to invest may turn some clients away from robo-advice (and financial advice at all) and will limit the options robo-advice providers have for flexibility and innovation.</p>
Q16	<p>We also do not support the introduction of a limit on the total investment amount of products (“Total Limit”). Such a limit will unnecessarily restrict the development of the robo-advice industry.</p> <p>Of particular concern is the fact that a Total Limit that is too low will unfairly penalise those providers who are successful in developing a popular robo-advice platform by halting their platform’s growth. The FMA has itself acknowledged the difficulty of setting the value of a Total Limit. We suggest that this is because it is not yet possible to know the likely uptake of robo-advice and it is too difficult to set a Total Limit to accommodate providers of all sizes.</p> <p>We acknowledge the FMA's concerns about widespread harm due to the scalability of robo-advice. We suggest, however, that a preventative approach to avoiding this harm is preferable to imposing a Total Limit, and that these concerns are sufficiently addressed through the proposed "monitoring and testing" and "systems and controls" conditions.</p> <p>Ultimately, if the FMA does seek to place a limit on robo-advice, we suggest that an Individual Limit would be more appropriate than a Total Limit. If a Total Limit is imposed, there should be methods in place for reviewing and increasing this limit for certain providers.</p>
Q17	Yes, we believe the form of the status disclosure statement should be prescribed, provided it is framed carefully and is sufficiently flexible to be used across different mediums. It is desirable to have consistency between providers and ensure that providers are clear as to how the warning needs to be displayed.
Q18	We support the FMA's flexible position with regards to general disclosure and believe disclosure requirements should reflect this.
Q19	Active confirmation from the client should not be a condition of the exemption and would do little to prevent harm. It is more important that disclosure is effective, engaging and able to be readily understood by a potential client.
Q20	We believe the FMA has selected the appropriate conduct obligations from the Code of

	Professional Conduct for Authorised Financial Advisers and has suitably modified these obligations for the robo-advice context. We cannot identify any potential unintended consequences of applying these conduct obligations to robo-advice providers.
Q21	We do not think it is necessary to adopt any further conduct obligations.
Q23	We do not think the conditions should be applied in a manner proportionate to the size and scale of the service offered. The proposed conditions appear appropriate for providers of all sizes and we believe consistency as to the obligations of providers is desirable.
Q25	Yes, we believe an information sheet would be helpful in consolidating the conditions of the exemption for potential providers.
Q26	We can see no reason for the FMA not to list providers on its website.
Feedback summary – <i>if you wish to highlight anything in particular</i>	
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: Proposed exemption to facilitate personalised robo-advice

Please submit this feedback form electronically in both PDF and MS Word formats and email it to us at consultation@fma.govt.nz with 'Proposed exemption to facilitate personalised robo-advice: [your organisation's name]' in the subject line. Thank you.

Submissions close on 19 July 2017.

Date: 19/07/2017

Number of pages: 6

Name of submitter: [REDACTED]

Company or entity: Sharesies Limited

Organisation type: Financial Service Provider

Contact name (if different): [REDACTED]

Contact email and phone: [REDACTED]

**Question or
paragraph number**

Response

You don't need to quote from the consultation document if you note the paragraph or question number.

Q1

Yes we support the proposed exemption. New Zealand is currently behind in this area of digital advice and as a result many retail customers with smaller balances are not receiving access to affordable, good quality financial advice. This has flow on impacts to other areas of the economy including house prices, wealth development, and retirement savings.

Q2

Yes we agree it is appropriate to use exemption powers for this purpose. Promoting innovation in financial services requires flexibility within the regulation to deliver these services to New Zealanders. Our research shows that the vast majority of New Zealanders are not receiving financial advice. This is an inherited problem due to accessibility and stigma of financial advice providers here. With housing becoming less attainable for the majority of New Zealanders wealth must be developed through other avenues - else we end up with a nation of homeless retirees.

Class advice is not necessarily good advice, it puts people in buckets and depending which box you tick has a material difference on your financial future, financial advice should be personalised, affordable, unbiased and horizon based.

Q3

We believe the cost of complying with the 'natural person' requirement would not be justified by the benefit of compliance.

We currently have over 2,500 active investors using the Sharesies platform, at 6 weeks into our Beta product we have an average weekly investment of \$50 from our customers. As a low cost wealth development platform it would not make economical sense for Sharesies or our customers to provide advice from a natural person unless requested specifically by our customers. Based on an optimistic estimate of \$150 per customer per year to provide the service including a natural person this would not be a viable option.

Q4	<p>We support the proposed approach of granting a class exemption. It is our opinion that there are better ways to regulate the exemption than by providing them individually. This includes commercially realistic limits and conditions that must be adhered to by any party offering a robo advice service. It is also important to have the disclosure requirements set to ensure they are clear to the customer - though not prescribed in how this disclosure should be delivered.</p> <p>A class exemption is preferred because it provides certainty for providers, consumers and the market on the limitations and conditions that must be followed. We agree that a class exemption also reduces the regulatory burden and costs on individual providers, particularly given the temporary nature of the exemption. This is also relevant for when dealing with a transitional period to fully comply with the new financial adviser laws.</p>
Q6	<p>The number one question people have once they are given access to alternative investment and savings options is “where is the best place for me to put my money?”. In the case of Sharesies we have 2,500 (and growing) retail investors who are focused on developing their wealth. Instead of us providing those who want robust advice based on their individual goals, we instead are required to speak in ifs and maybes, or, you should seek personal financial advice elsewhere. We know from our research that the majority of people do not go to see a financial advisor and instead put investing in the too hard basket.</p> <p>Sharesies will consider using class robo-advice services if no exemption is granted but we have reservations about the full customer benefits of this when compared with personalised and are concerned that without the exemption we are not giving our customers the best chance of getting ahead financially, particularly those customers who are looking to invest smaller sums of money.</p>
Q7	<p>Having spoken with over 500 retail customers and surveying over 4,000 we have evidence that there is an advice gap in the NZ consumer market. Customers expectation is that they would need to invest at least \$10,000 for personalised advice - in reality this number is more likely to be \$100,000.</p>
Q8	<p>Yes, Sharesies does intend to rely on the proposed exemption. We are concerned about the level of financial advice in New Zealand and have verbatim feedback from customers that they would like more in-depth advice even on smaller balances of investments.</p> <p>We would expect to be able to launch an offering within 2-3 months as we have already started on the scoping and analysis of international models. Sharesies would focus on a wealth development model. Ensuring customers have the basics covered (mortgage, rainyday fund etc) before helping customers build a diversified investment portfolio that meets their individual objectives and ideals (including a money coach).</p>
Q9	<p>We do not believe there is the requirement for the limit of \$100k per customer (though this is not our target market). The overall Assets Under Management number of \$5,000,000 we consider to be far too low. To promote innovation in this sector there also has to be a commercial benefit to those offering the service. With assets under management of \$5m the fees would need to be too high to appeal to customers in order for a business to make the expense of developing this service appropriately.</p>

	<p>Our opinion is that with the appropriate disclosures in place and conditions - this is sufficient.</p> <p>The conditions outlined in the consultation paper all seem to be good practice for any financial offering. Specific to the capability we agree there needs to be appropriately qualified people to carry out both the technical build and the oversight of advice. We would not like to see this limited to AFA's for example as it has potential to limit both innovation and new thought into this area and risks embedding human biases into the technical solutions.</p>
Q10	<p>As outlined above - the limit to us offering this service would be the overall assets under management of \$5m. This would mean we would only be able to offer a select number of our customers this service. Despite the majority having balances well below the \$100k proposed individual minimum if that were to come into effect. We would also argue this impacts the people who need this service more.</p> <p>In our view, the 'capability' exemption condition in (e) (ii) is a major impediment to us providing a personalised robo-advice service. This conditions states that:</p> <p><i>"The provider must maintain appropriate expertise to provide the personalised robo-advice service. This includes having</i></p> <p><i>(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."</i></p> <p>The requirement for individual AFAs to oversee and review the advice output would come at significant cost and, in our view, would not be justified by the benefit of compliance. We believe this condition would be uneconomic to implement and would be of negligible benefit given the technology now available to enable personalised advice through digital tools.</p> <p>In our view the above condition is also inconsistent with, and does not promote the purposes of the FA Act, which includes promoting innovation and flexibility in the financial markets.</p> <p>Aside from the costs, there is also the practical consideration of recruiting numbers of independent AFAs to oversee and review the advice output.</p> <p>This imposes an undue barrier to innovative robo-advice offerings.</p> <p>The exemption condition (f) relating to 'filtering processes' is not particularly clear and we would be concerned if this meant hard rules are set around how people are filtered and therefore potentially excluded from receiving advice. We note that many new services like ours appeal to young, internet-savvy consumers that will offer low-cost advice options aimed at those without other financial advice options. We believe it is important that any filtering processes are relevant for the particular target market, and do not continue to create a barrier to advice, especially for consumers investing smaller sums of money.</p>
Q11	<p>We agree that the exemption should include investment planning services. This is important to recognising the longer term goals of customers when helping them with financial advice.</p>

<p>Q12</p>	<p>In general we are comfortable with the list of products of which advice will be available, subject to the following:</p> <ol style="list-style-type: none"> 1. for the algorithms to be developed correctly and take into account the full financial position of a customer before giving any personalised advice - it would be necessary for a customers full financial position to be taken into account - as this is happening we wonder whether the product restrictions are as necessary? 2. with reference to managed funds, we note the requirement for at least 80% of the scheme's assets are in certain liquid assets.
<p>Q14</p>	<p>We do not believe a value cap or duration limit is required - limiting the scope of what this advice would be able to offer would likely result in reducing the benefits that it is available to deliver also.</p>
<p>Q15</p>	<p>We do not believe that an individual client investment limit is necessary given the precedent and learning that can be gained from looking to individual models that have been operational for some time.</p> <p>We think an individual client limit imposes an unnecessary barrier to access financial advice especially for products like KiwiSaver. For those people who have more than \$100k in their KiwiSaver, this limit would not address the problem that the FMA highlighted in their report that only 3 in 1000 sales or transfers had occurred with personalised advice.</p> <p>A mandatory requirement to speak to someone if over \$100K would be a missed opportunity if this limit meant personalised digital advice did nothing to close the gap identified by the FMA. One of the advantages of digital advice platforms is that it means consumers can try different platforms and see what different providers recommend for them. As with all advice, different platforms may offer different advice depending on their limitations and product offering, but it gives consumers the ability to shop around and compare. It also creates an opportunity for the market to interrogate and make comparisons between different advice platforms, which is not currently available. This creates an opportunity for introducing useful 'check and balance' on advice that doesn't currently exist. Of the more than 1800 AFAs, based on the 2016 AFA report only 1% had more than 4 complaints in the last 12 months and 5.7% between 1 and 3 complaints. This seems very low given the numbers...we wonder if through providing access to digital advice options, this gives greater transparency and interrogation?</p> <p>An alternative perhaps would be a <u>choice</u> of speaking with a natural person is mandatory for people with individual investment of over \$100k.</p>
<p>Q16</p>	<p>We strongly believe no limit should be placed on the total amount of products advised on - better advice will come from having a bigger picture of the customer. We also do not believe a monetary limit is appropriate (particularly if there is an individual client limit in place already). Having these limits will result in a have and have not scenario and potentially put some people at least 2 years behind those who were able to access this service financially - 2 years is a long time with compounding interest and contributions considered.</p> <p>We see no reason for a difference between QFEs and non-QFEs. A greater range of unbiased advice is likely to come from the non-QFE sectors (purely by the range of</p>

	products which can be offered) which we believe is important to promote innovation and wealth development in NZ.
Q17	No. The key pieces of information outlined in the consultation paper should be included as a requirement but how this is delivered should be left to individual providers. We believe this will promote innovation to help customers understand the most important aspects that relate to them and ensure delivery fits naturally to the UI.
Q18	<p>No. The key pieces of information outlined in the consultation paper should be included as a requirement but how this is delivered should be left to individual providers. This will promote innovation and hopefully get more people understanding the most important aspects that relate to them. Something that many PDS are not doing.</p> <p>We would go through a customer testing cycle as to the best way to deliver this and possibly have multiple options for a customer to consume this information. We are considering voice, text, interactive, video.</p>
Q19	Yes, we believe it is important for both the provider to obtain from the client, and the client to confirm their understanding, of the disclosures and limitations of the service. In our view, it is also important to obtain agreement from the client to receiving advice on the basis described through the digital advice service. In our view this is best practice as it protects both the provider and client by showing clients are given the relevant information at the appropriate time to make an informed decision. It is our view that enabling understanding is key. We support and agree with the use of technology to better present disclosures in a contextual / user-friendly way that clients will understand.
Q20	Our main concern here is that robo advisers work best with as much information as possible and this should be taken into account. For example - if a customer has a very liquid and diversified portfolio, and specifically hunting something a bit more speculative - should this not be served up to them as an option?
Q21	We believe it should be considered that advice providers have of digital advice platforms must have a presence and operations in NZ so there is the less risk of seeking redress against platform providers based in different jurisdictions.
Q22	<p>Code standard 1. We believe there should still be a requirement to act with integrity as robo-advisors can have inbuilt biases. They will work off the information that they have been given during the build process and integrity is key during this development.</p> <p>It is not sufficient to simply implement whatever you think is a good idea and leave it at that. Providers should need to keep evidence that they made a good faith effort to examine the algorithm/outcomes for bias.</p>

Q23	No, class conditions would make the process the cleanest for consumers and providers.
Q25	Yes
Q26	Yes, we support a proposal that your website maintains a list of providers relying on the exemption.
Q27	We think robo-advice is fine from now and well understood internationally. During the development of the new act it would be great to move to talking just about 'Advice'. And how the advice is delivered does not impact how it is regulated.
Q28	We see this as a great opportunity to provide what retail customers in NZ want - affordable personalised advice on where their dollar is best spent. We think it is important to close the advice gap that currently exists and have a broad range of companies offering a digital advice service as this will help with innovation in the industry and ultimately see more New Zealanders in a better financial position.
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.	

19 July, 2017.

Financial Markets Authority
PO Box 106 672
Auckland 1143

To Whom it May Concern

Consultation Paper: Proposed exemption to facilitate personalised robo-advice

Thank you for the opportunity to respond to the Financial Markets Authority's (FMA) Consultation Paper: Proposed exemption to facilitate personalised robo-advice. This submission is made by Southern Cross Medical Care Society (**Southern Cross**).

Southern Cross is the largest private health insurer in the New Zealand market with over 800,000 New Zealanders as members. Southern Cross is licensed under the Financial Advisers Act 2008 as a Qualifying Financial Entity (QFE) and provides advice on 'category two' insurance products.

Southern Cross would encourage the inclusion of Health Insurance to the proposed eligible products list. We note the concerns expressed by the FMA in relation to personal insurance products. However, we strongly feel that these do not extend to health insurance and respond as follows:

- Having a cap of \$100,000. would greatly impact on our member benefit entitlements as some of our product benefits exceed that threshold;
- Health insurance is generally a product sought for the longer term; but can be easily exited at any time;
- It is important for Southern Cross to maintain pace with innovation and technology delivery channels so as not to be competitively disadvantaged;
- Treasury released a report last year which indicates how under-insured New Zealanders are; Southern Cross is committed to ensuring accessibility to health providers and insurance for customers and our members.

Southern Cross offers an on-line class advice via our Plan Finder tool. We would welcome the opportunity to potentially build on this platform providing a more personalised robo-advice tool.

Please find attached our feedback form and feel free to contact [REDACTED]

Yours sincerely,

[REDACTED]

Feedback form: Proposed exemption to facilitate personalised robo-advice

Please submit this feedback form electronically in both PDF and MS Word formats and email it to us at consultation@fma.govt.nz with 'Proposed exemption to facilitate personalised robo-advice: [your organisation's name]' in the subject line. Thank you.

Submissions close on 19 July 2017.

Date: 19 July 2017

Number of pages: 7

Name of submitter: [REDACTED]

Company or entity: The Southern Cross Medical Care Society (trading as **Southern Cross Health Society**) a Qualifying Financial Entity under the Financial Advisers Act 2008.

Organisation type: Health Insurance

Contact name (if different): [REDACTED]

Contact email and phone: [REDACTED]

Question or paragraph number

Response

You don't need to quote from the consultation document if you note the paragraph or question number.

Q1	<p>Yes, Southern Cross Health Society supports the proposed exemption for advice to be provided by a natural person subject to Health Insurance being included in the eligible product list (please see response to Qs 12 and 13). Some of the reasons for our support include the following:</p> <ul style="list-style-type: none"> a) Robo-advice has the potential to benefit consumers' accessibility to financial advice, making it faster, more convenient and potentially more affordable for consumers. It also has the potential to increase financial literacy among consumers, especially those who would not ordinarily seek out financial advice; b) It will continue to enable innovation in the delivery of products and services by financial service providers to consumers during the implementation of the new financial services regime.
Q2	<p>Southern Cross Health Society supports the FMA using its powers to facilitate the provision of personalised robo-advice in advance of the law reform, sooner rather than later. The reasons for our support include the following:</p> <ul style="list-style-type: none"> a) Class robo-advice is already being used by financial service providers. The nature of technology and delivery of products and services is evolving quickly. The need to maintain pace with technology and innovation is, therefore, essential; b) Consumers now seek a more convenient method to assess products and services. Robo-advice offers a level of impartiality and makes it quicker and simpler to compare products and services; c) There is a need to provide accessibility to those consumers who may not ordinarily seek the services of a financial adviser (i.e. lower amount of funds, lack of confidence, feel intimidated, don't know how to).
Q3.	<p>As noted above Southern Cross Health Society feels robo-advice does have a place and would support the FMA using its powers.</p> <p>We currently are unable to quantify the costs; however, it is envisaged costs may be balanced by the need to remain relevant, innovative and competitive in an evolving technical environment. Southern Cross Health Society would continue to offer personalised financial advice (by a 'natural person') which would complement robo-advice.</p>

Q4	<p>Southern Cross Health Society supports a class exemption rather than granting individual exemptions. The reasons for supporting class exemptions include the following:</p> <ul style="list-style-type: none"> a) It will reduce the regulatory load during a time of much regulatory change; b) The proposed exemption balances the need to innovate and protect consumers subject to limits and conditions (also please consider our responses to Qs 12 and 13).
Q5	<p>If this exemption was granted financial service providers would need to consider the following risks and impacts to ensure consumer confidence and organisational and industry reputation is maintained:</p> <ul style="list-style-type: none"> a) Limited human interaction Robo-advice will not initially take into consideration human response / cues and reactions to questions that would otherwise be explored further in a human interaction, though this may change in the future as technology advances. b) Regulatory risk Financial service providers will need to ensure they are well equipped to implement, design, manage, and monitor capability and competencies against legislative obligations to make sure they can demonstrate compliance. c) The suitability of advice The potential for unsuitable products to be generated, or that the consumer does not understand the recommended product or service. Consumers currently purchase health insurance without personalised advice via digital channels; having robo-advice platforms available should reduce the risk. To mitigate the potential of unsuitable product or service recommendations Southern Cross Health Society would consider the following: <ul style="list-style-type: none"> I. pre-testing before and during the implementation process with current or prospective customers to assess the effectiveness and accuracy of the questioning process and the recommendation generated; II. ongoing testing and monitoring assessments; III. ensuring suitably qualified employees review the advice output from the system; IV. ongoing competency and conduct training and upskilling of qualified and specialist employees; V. careful consideration in all communications (i.e. using clear, easy-to-understand language will facilitate more accurate responses and support more meaningful disclosures and awareness of warnings and complaints process, etc). <p>It is worth noting that Southern Cross Health Society always has customers' / members' best interests at heart and if mistakes are made, they are corrected as soon as identified.</p> d) Business operations and technology risks – failing to get the system right. The customer experience must be seamless and consistent; the technical environment is critical. If planning is ineffective and the system design is flawed, it may result in customer loss and brand or industry impact. Southern Cross Health Society would take into consideration: <ul style="list-style-type: none"> I. the importance of the robo-advice technology's concept and design (i.e. ensuring the algorithms are correct with regular testing, monitoring and reporting); II. testing the concept and design with customers and members to ensure they system is operating effectively; III. having technology expertise to build and oversee the system i.e. review algorithms, undertake ongoing integrity testing and monitoring of rules to ensure design effectiveness; IV. regularly reporting testing results and any identified anomalies (if issues are identified, the system would be easily disabled); V. inclusion of robo-advice into the Business Continuity Programme and customer feedback loops; VI. use of information management frameworks that are not only efficient at managing external threats, but also effectively maintain internally-held personal and health customer / member data (customer data and records are protected and cyber security threats are managed); VII. having effective complaints management procedures that identify and rectify system and process /

	<p>control issues.</p> <p>e) Risk management framework failure Risk management frameworks implemented to ensure effective processes, controls and reporting systems are embedded. Regular assurance review by the business, risk and compliance and internal audit to certify frameworks remain robust.</p> <p>f) Cost to comply As noted above, Southern Cross Health Society is currently unable to quantify costs. However, it is hoped that costs would be balanced by the need to remain relevant, innovative and competitive in an evolving digital environment. It is envisaged robo-advice will be a low cost channel.</p> <p>If this exemption was granted the impacts and risks to consumers may be:</p> <p>a) That financial service providers fail to develop robo-advice platforms that provide suitable consumer outcomes resulting in the erosion of consumer confidence.</p>
Q6	<p>If there were no exemptions granted we would need to consider the following:</p> <p>a) Southern Cross Health Society may expect to be limited by the types of products and services we could bring to market over the transitional licensing period;</p> <p>b) Potentially other industries would innovatively evolve around us domestically, providing more competitive, effective and efficient ways to interact with customers;</p> <p>c) It is worth noting that Southern Cross Health Society would continue to offer class robo-advice.</p>
Q7	<p>Southern Cross Health Society agrees there is potentially an advice gap which may make it difficult for consumers to access financial advice. This has been demonstrated by the recent Kiwisaver review, which indicates there is an advice gap for consumers who are not currently accessing personalised financial advice.</p>
Q8	<p>If health insurance is included in the proposed eligible products (please see Qs 12 and 13), we would rely on the proposed exemption. The detailed responses to Q8 are as follows:</p> <p>a) Southern Cross Health Society would like to remain relevant and competitive, keeping pace with technology and innovation to meet consumer needs. Southern Cross currently offers class robo-advice via our Plan Finder tool. This allows customers and members to compare plans, get a quote and sign up to a plan by responding to high-level questions. Please see following page for screen shots.</p>

Plan Finder steps are as follows:

1. Start

Southern Cross Health Society
Call 0800 100 777
Monday to Friday, 9am to 5pm

Put your health first
Find the right cover for you and your family

Let's get started.
I need cover for:

Me Me, partner & me Me, family

0800 100 777
Monday to Friday, 9am to 5pm
Auckland, New Zealand
Visit the Southern Cross Health Society website

Copyright © Southern Cross Medical Care Society Terms of use Privacy

2. Questions

Southern Cross Health Society
Call 0800 100 777
Monday to Friday, 9am to 5pm

Put your health first
Find the right cover for you and your family

Let's get started.
I need cover for:

Me Me, partner & me Me, family

Next - Recommended a plan for me
Stop ahead and view all plans now

3. Plan Options

Southern Cross Health Society
Call 0800 100 777
Monday to Friday, 9am to 5pm

Put your health first
Find the right cover for you and your family

Let's get started.
I need cover for:

Me Me, partner & me Me, family

Next - Recommended a plan for me
Stop ahead and view all plans now

4. Quote

Southern Cross Health Society
Call 0800 100 777
Monday to Friday, 9am to 5pm

Put your health first
Find the right cover for you and your family

Let's get started.
I need cover for:

Me Me, partner & me Me, family

Next - Recommended a plan for me
Stop ahead and view all plans now

	<p>b) We would welcome the opportunity to potentially build on this platform, providing a more personalised robo-advice tool;</p> <p>c) Southern Cross Health Society would look to launch personalised robo-advice between 2018-2020, covering all products and services. As noted above, our proposed robo-advice tool would leverage and enhance our current Plan Finder platform. It is likely we would move from presenting a 'plan set' to a 'benefit set', ensuring customers clearly receive benefits and limitations at the outset of the robo-advice journey. We are keen to ensure our robo-advice still feels personal; but have yet to explore what that may look like;</p> <p>d) The proposed model would involve a significant concept design phase and system build to ensure algorithms are appropriate and rules are pre-tested (resulting in accurate suitable advice outcomes) such as;</p> <ol style="list-style-type: none"> I. flagging inconsistent responses for independent review; II. time spent on sections (either too little or too long), to ensure they have understood the disclosures, warning and recommended products / services; III. tracking the customer's interaction with other areas of the portal to determine understanding of the products and services they are viewing; <p>e) The implementation process would involve:</p> <ol style="list-style-type: none"> I. initially (and possibly ongoing) either all applications or a subset could be potentially be followed up with human interaction i.e. a 'welcome call' to ensure suitability and to check any pain points with the system; II. a comprehensive assessment process of individual needs to identify gaps; III. filtering customers who are not suited to robo-advice at commencement and throughout the process (e.g., limited understanding of English) so they are directed to a 'real person' (financial adviser); IV. disclosures and warnings would be built in at the most appropriate times, as would the opportunity to talk to a "real person". <p>f) Ongoing, testing, monitoring and reporting:</p> <ol style="list-style-type: none"> I. the logic and rules around system decision making would be reviewed and reported regularly by both advisers and specialist technical staff; II. this may involve qualified advisers undertaking physical file reviews and reporting on anomalies; III. specialist technical staff may frequently test, monitor and report algorithms to ensure the robo-advice service is working effectively; IV. built-in record-keeping tools would demonstrate / evidence the personalised advice provided; V. complaints management would be useful in identifying any additional issues with the personalised robo-advice service (with key learnings fed back for training and process improvement); VI. the internal risk management and information security frameworks would be amended to include the robo-advice platform to ensure testing, monitoring and reporting on the adequacy of process and controls.
Q9	As noted above the proposed limits and conditions appear to hold an appropriate balance between protecting consumers and promoting innovation.
Q10	Southern Cross Health Society foresees considerable cost to design, implement, manage and monitor robo-advice but does not consider any of the conditions or limitations unworkable.
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?

	Southern Cross has no additional comments to add.
Q12	Southern Cross would encourage the inclusion of Health Insurance to the proposed eligible products list. If the exemption is based on products which are easy to exit, then health Insurance should be included. It is worth noting that if a member or customer received poor or unsuitable advice Southern Cross Health Society would always remedy the situation. Please see below.
Q13	<p>Southern Cross Health Society notes the concerns expressed by the FMA in relation to personal insurance products. However, we strongly feel that these do not extend to health insurance and respond as follows:</p> <ul style="list-style-type: none"> a) Having a cap of \$100,000 would greatly impact on our member benefit entitlements as some of our product benefits exceed that threshold; b) Health insurance is generally a product sought for the longer term; but can be easily exited at any time; c) It is important for Southern Cross Health Society to maintain pace with innovation and technology delivery channels so as not to be competitively disadvantaged; d) Treasury released a report last year that indicates how under-insured New Zealanders are; Southern Cross Health Society is committed to ensuring accessibility to health providers and insurance for customers and our members.
Q14	<p>Should we also apply a value cap and/or duration limit on some or all of the other proposed eligible products?</p> <p>Southern Cross Health Society has no additional comments to add.</p>
Q15	<p>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)</p> <p>Southern Cross has no additional comments to add.</p>
Q16	<p>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.</p> <p>Southern Cross Health Society has no additional comments to add.</p>
Q17	<p>Southern Cross Health Society supports the provision of guidance on what form the Disclosure Statement should take, but makes the following comments for consideration:</p> <ul style="list-style-type: none"> a) The industry is best placed, and should be allowed, to determine how the Disclosure Statement requirements should apply within their robo-advice environment; b) This would ensure the delivery of disclosure in an informative and meaningful manner, appropriate and specific to the products and services offered (i.e. more complex products and services would hold more disclosure and warnings. There is a wide breadth of financial products and services, so a standardised disclosure could be too general and therefore confuse rather than protect).
Q18	As noted above, Southern Cross Health Society supports a flexible approach to complying with the disclosure conditions. The industry understands its products and services best, including the best method of delivering disclosure to ensure it is appropriate, informative, useful and adds value to the customer robo-advice experience.
Q19	Southern Cross supports the condition that requires the financial service provider to obtain active confirmation from the customer that they have read the disclosures and agree to receiving advice as:

	<p>a) This would help to demonstrate the customer has understood the process at key points of the robo-advice journey; it could be a trigger for them to question whether they do understand and, if not, to contact Southern Cross Health Society directly;</p> <p>b) It would help Southern Cross Health Society to ensure compliance by ensuring all relevant disclosures and warnings are included at the most appropriate times.</p>
Q20	<p>Southern Cross Health Society questions the conduct obligation “must always place the client’s interests first” and how it would work with an automated system – in particular, where system errors may be detected after robo-advice is generated.</p> <p>It would be appreciated if this could be considered further. For example, if a system error resulted in unsuitable advice being provided, but this is identified and rectified immediately (or as soon as possible after the event), how could this conduct obligation be met?</p>
Q21	Southern Cross Health Society agrees with the current proposed conduct obligations while noting the Q20 feedback.
Q22	Southern Cross Health Society does not have any additional feedback on the tables set out in the appendix.
Q23	It’s expected that the limits and conditions would be applied in proportion with the size and scale of the robo-advice service offered.
Q24	There are no other limits or conditions we consider should be included.
Q25	Yes, Southern Cross Health Society would encourage the FMA to provide any additional guidance or information sheets, as this would help industry comply with the standards and requirements of the Act.
Q26	Yes, it would be useful to see a list of financial service providers relying on a granted exemption.
Q27	<p>Southern Cross Health Society supports the idea of a more user-friendly term, such as ‘digital adviser’ or ‘digital assistant’.</p> <p>We acknowledge that ‘robo-advice’ is an international term; however we would welcome flexibility for the industry to find the right wording which may align well for brand, values, vision and strategy. For example Air NZ and Dominos both have integrated tools. This can provide customers with something that is potentially fun, memorable and easily identifiable (e.g. Air New Zealand’s virtual travel assistant ‘Oscar’ and Dominos’ ‘DRU’, which is a virtual assistant who talks, texts and interacts with customers).</p>
Q28	<p>Do you have any other feedback or comments?</p> <p>No further comments or feedback.</p>
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.	

20 July 2017

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

Consultation Paper: Proposed exemption to facilitate personalised robo-advice

I am writing to commend the FMA for its proactive stance on this issue, and support the general approach to the proposed exemption outlined in the Consultation Document. TSB Bank considers that the exemption will be of benefit both to individual consumers and the market more generally. Furthermore we strongly support implementing the proposed exemption in advance of the reform of the Financial Advisers Act 2008, noting that failure to do so risks unreasonably confining the development of the industry.

We note that there has been a more substantial submission made on behalf of the industry by the NZBA, and support the content of that submission. I note that there are, however, a couple of additional points that TSB Bank would like to make.

TSB Bank fundamentally supports innovation in the market, particularly where it is led by customer need. The FMA has sought to encourage the provision of personalised advice, particularly for those who are not currently well served by the financial adviser market (ie plugging the “advice gap”). I note that this has also been discussed with the Bank individually during its last onsite visit by the FMA, with the FMA strongly encouraging the Bank to widen its provision of personalised advice.

The effective provision of personalised advice poses a number of obstacles for entities such as TSB Bank. First, due to our size it is challenging to provide sufficient geographic coverage to make it a viable service proposition, particularly as the Bank does not currently have any AFA roles. Building up a sufficiently large AFA network, either through internal upskilling or through acquisition would be prohibitive both financially and in terms of time. Further, there is serious uncertainty as to whether building up an AFA network would ever be commercially viable for the Bank. Robo advice provides a way for us to quickly and affordably increase capacity for advice throughout our network while ensuring we can comply with regulatory requirements.

I further note that as the Bank develops we, like many others in the market, are increasingly relying on non-face-to-face channels to engage with our customers. As such robo-advice aligns with our preferred strategy in the coming years.

Noting the conclusion above as to the value of robo-advice, TSB Bank strongly believes that the exemption should be as wide as possible. As such we do not support any limits to the range of products or investment amounts.

TSB Bank believes that the overall FAA regime places sufficient controls to ensure the adequacy of advice. Furthermore, it is up to entities to self-regulate and prove the compliance of their processes. As such, we believe that there is already sufficient incentive on providers to limit the scope of robo-advice offered to areas where they are confident they can effectively meet the regulatory requirements. It seems unnecessarily bureaucratic to build additional robo-advice specific limitations, and we strongly believe that this would only serve to limit the scope for innovation in the market.

In summary we strongly support the introduction of a wide-ranging exemption, and believe that this is an exciting development for the financial services industry in New Zealand. If you would like to discuss this matter further please do not hesitate to contact me.

Regards

[Redacted signature block]

Westpac New Zealand Limited's submission to the Financial Markets Authority on the Consultation Paper: *Proposed exemption to facilitate personalised robo-advice* – 19 July 2017

Introduction

This submission to the Financial Markets Authority (**FMA**) is made on behalf of Westpac New Zealand Limited (**WNZL**) in respect of the Consultation Paper: *Proposed exemption to facilitate personalised robo-advice* (**Consultation Paper**).

WNZL's contact for this submission is:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

Summary of key feedback points

This section of WNZL's submission summarises key points of feedback that we wish to emphasise. It also outlines points of general application that arise in response to the questions posed by the FMA in the Consultation Paper.

Where necessary, we have cross-referenced this summary to those questions below and provided more detail in response to certain questions.

1. WNZL supports the proposal to introduce an exemption to permit personalised robo-advice

As WNZL has outlined in previous submissions regarding robo-advice,¹ we support law reform that enables WNZL to provide automated personalised financial advice.

WNZL envisages utilising the proposed exemption ahead of future law reform, so long as the conditions of the exemption are appropriately calibrated.

It is important that the exemption is implemented in a way that reduces duplication (and confusion for consumers) by leveraging existing disclosure and creating operational efficiencies (by utilising reporting and accountability mechanisms that are already in place). As a Qualifying Financial Entity (QFE) we already have extensive safeguards in place

¹ See, for example, WNZL Submission to Ministry of Business, Innovation and Employment on Issues Paper: *Review of the Financial Advisers Act 2008 and the Financial Service Providers (Registration and Dispute Resolution) Act 2008*, 22 July 2015.

(including documented controls and exceptions reporting, which help to mitigate the risk of programming errors causing consumer harm).

2. Financial advice on a broader range of products should be permitted under the exemption

In our view, a broader range of products ought to be covered by the exemption, including mortgages, personal insurance and transactional/savings accounts.

The current financial adviser regime enables personalised financial advice to be provided on a full range of products, including mortgages and personal insurance. We see no reason why an entity operating a properly monitored robo-advice tool should not be permitted to provide the same advice that can be provided by a human adviser. This is particularly true in respect of credit products, because lenders are subject to pre-existing overlapping obligations under the Responsible Lending Code.

The Consultation Paper focuses on the gains to consumers from having greater access to advice on investment products. We encourage the FMA to ensure it also takes into account the consumer benefits that would come from increased access to personalised financial advice on mortgages, personal insurance and transactional/savings accounts too, through robo-advice.

For example, the market for online class advice on mortgage products is already well developed, with sophisticated tools and calculators available. It is possible that providers could innovate iteratively, and modify those tools so they can provide personalised robo-advice. That would improve the quality of advice that New Zealanders are already seeking online.

Further, the proposed exemption will allow providers an opportunity to test the market, assess the viability of the regulatory model, then feed that back into the reforms to financial adviser laws in 2019. Permitting robo-advice on a broader range of products now will allow better regulatory decisions to be made in the near future.

3. Limits on the amount of personalised robo-advice permitted are not justified

As set out above, our view is that limits on the amount of robo-advice that can be provided (whether per customer, or per tool) are not justified, particularly in the context of a QFE.

The primary risk identified by the FMA appears to be that errors and exceptions (failures in filtering mechanisms, or errors in algorithms) will go undetected and over time large numbers of consumers will be affected because of the scalability of robo-advice. QFEs are already required to outline their risk mitigation measures as part of registration. If there is a material change in a QFE's business (such as introducing personalised robo-advice), the FMA will be notified and have the opportunity to reassess whether appropriate risk mitigation measures are in place, and to tailor conditions if necessary. In our view, given the benefits of wider access to personalised advice, and the existing QFE registration regime, the case for imposing the proposed general limits on robo-advice providers in a QFE context has not been made out.

4. If imposed, the limits proposed in the Consultation Paper would be too low

WNZL is strongly opposed to the per tool and per customer limits proposed in the Consultation Paper.

The Consultation Paper acknowledges that there is an “*advice gap*” in New Zealand at present, and that robo-advice would help to plug that gap. Recent reports from the FMA have highlighted particular concerns around the lack of advice for KiwiSaver members (especially those with low balances). However, if we understand the per tool limit of \$5 million correctly, then only 100 people with a KiwiSaver balance of \$50,000 would be able to access robo-advice from one provider’s robo-tool. It goes without saying that this is a very small amount, and would do little ameliorate the advice gap identified. The per tool limit should not be imposed.

Similarly, many people have balances of \$100,000 or more in KiwiSaver, but fall into the “*advice gap*” identified. Further, the sum insured on most home insurance policies and life insurance policies will rarely be less than \$100,000. (It is unclear whether the “Individual client investment limit” is intended to apply to the sum insured for insurance products, or to investment products only.) These limits pose a practical barrier to having robo-advice address the advice gap for those products. The proposed per customer limit of \$100,000 of total investments should be removed for this reason.

As the Consultation Paper notes, “*these limits may be difficult to apply in practice*”. If imposed, there would be uncertainties (and arbitrariness) involved in implementing these limits. Would access be rationed on a first-come-first-served basis? Would the limits apply at the time of advice, or in an ambulatory fashion (eg. as the amount invested by those who have used robo-tools grows over time)?

5. Disclosure conditions should be drafted more flexibly to allow providers room to innovate in delivery methods

We encourage the FMA to frame the exemption’s conditions in a more flexible manner, so that they do not inhibit innovation in the method of delivery of robo-advice.

The examples given in the Consultation Paper revolve around interactions by consumers with web-based tools or apps. It appears the proposed conditions have been tailored to suit this paradigm. In our view, the present drafting of the conditions is insufficiently flexible to allow for innovation in other delivery methods.

We envisage situations where it is beneficial to proactively provide personalised robo-advice to consumers. For example, through the use of existing data, a provider may identify that a customer should hold a more suitable product for their needs. A provider ought to be able to automate the process of communicating that personalised advice to their customer through one-way communications such as an email.

The drafting of the disclosure conditions at present could be read as suggesting that all disclosure ought to be provided *prior to* the customer receiving the advice, rather than

contemporaneously or even at different stages in the process. Similarly, if imposed, a requirement for “*active confirmation*” would likely prevent innovation in delivery methods, including proactive provision of personalised robo-advice. In our view, the disclosure conditions should be clarified to explicitly permit proactive provision of personalised robo-advice.

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.

Yes, see points 1 and 4 above.

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.

Yes, it is appropriate to use your exemption powers in these circumstances. Our customers increasingly expect to be able to deal with us exclusively online, and expect us to be able to provide them with financial advice too. Consumer demand for robo-advice is present now.

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.

Yes, compliance with the natural person requirement would be unreasonable. The key benefit of robo-advice is the increase in access that comes with the scalability of robo-tools. Imposing a natural person in the advice chain for each customer interaction negates those benefits.

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.

Yes, we support granting a class exemption. The option for granting individual exemptions should be retained in appropriate cases.

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).

See points 4 and 5 above.

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.

WNZL already provides class robo-advice services. The key feature of the proposed exemption is that it enables providers to move to provision of personalised advice through this channel, helping to close the advice gap and leading to better outcomes for consumers.

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?

Yes, we agree that there is an advice gap – see point 4 above.

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.

Yes, we intend to rely on the proposed exemption. See point 1 above.

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.

No, they do not strike an appropriate balance - see points 3 and 4 above.

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.

Yes, some of the limits and conditions are unworkable - see points 4 and 5 above.

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.

We support financial advice and investment planning services being covered by the exemption. It is important that all customers are able to explain their financial needs by reference to their investment goals, including those that only have access to robo-advice. In our view, the operation of a DIMS should not be covered by the exemption, however providers should not be precluded from using robo-advice to provide personalised advice in relation to entering into or exiting a DIMS portfolio.

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.

No, see point 2 above.

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.

Yes, personal insurance products should be included. The sum insured should not be capped. See points 2, 3 and 4 above.

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.

No, caps or duration limits should not be applied. See point 3 above.

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.

No, per person investment limits should not be imposed, see point 4 above.

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.

No, a limit on the total investment amount per tool should not be imposed, see point 4 above. If limits are to be imposed, then they should be higher for QFEs – see point 3 above.

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?

No, see point 5 above.

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?

Yes, see point 5 above.

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.

No, see point 5 above.

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.

No comment.

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.

No comment.

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.

No comment.

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.

No, we do not generally support proportionality. However, if proportionality is considered appropriate, QFEs should be treated differently when it comes to conditions imposed under the exemption, given the high standards to which they are already held. See points 1 and 3 above.

Q24. Are there any other limits or conditions you think would be appropriate to put in place?

No.

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?

Yes.

Q26. Would you like to see a list of providers relying on the exemption, if granted, on our website? If not, why not?

Yes.

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'?

The term "*robo-advice*" is appropriate, given it is already in common use.

Q28. Do you have any other feedback or comments?

No.

Feedback form: Proposed exemption to facilitate personalised robo-advice

Please submit this feedback form electronically in both PDF and MS Word formats and email it to us at consultation@fma.govt.nz with 'Proposed exemption to facilitate personalised robo-advice: [your organisation's name]' in the subject line. Thank you.

Submissions close on 19 July 2017.

Date: 19 July 2017

Number of pages: 2

Name of submitter: [REDACTED]

Company or entity: personal capacity

Organisation type: Individual

Contact name (if different):

Contact email and phone: [REDACTED] [REDACTED]

Question or
paragraph number

Response

You don't need to quote from the consultation document if you note the paragraph or question number.

This submission is focused solely on the issue of whether FMA's power to make exemptions as expressed in s148 of FAA extends to the present proposal – my submission is that it doesn't and if FMA was to finalise this proposal it would be acting *ultra vires*, and usurping Parliament's sole right to amend the current law or make new law.

Despite the critical importance of this in a constitutional sense, very few people are likely to focus on this issue. I suspect this might be one of only a very few submissions on this point.

The institutions and their legal advisers are hardly likely to question FMA's authority to make the proposed exemption. A number of institutions and legal firms made early permission to introduce personalized roboadvice to retail customers a focus of their submissions on the Exposure Draft of FSLAB. Several of the large legal firms have since been public cheerleaders for the early adoption of an amendment to the regulatory regime to allow firms to provide personalised advice to retail clients even though they themselves are most unlikely users of the exemption – however their institutional clients will certainly be beneficiaries of the exemption if granted.

FMA itself in its consultation document did not spend any time on whether what they were proposing was a proper use of their exemption powers under s148 of the Act. FMA correctly stated that they had exemption powers, and that they proposed to use them, but their consultation paper did not address the fundamental issue of whether this would be a proper exercise of their powers. My submission is that it would not.

It doesn't seem right for FMA to take the role of being the judge of whether their own proposal is *intra vires* or *ultra vires*. There must be some other entity which has the responsibility to ensure that only those who are constitutionally authorised amend existing or make new law.

The nub of the Financial Advisers Act 2008 is that it implements occupational licensing for financial advisers. It sets out

- who is allowed to do certain things; and
- explicitly or implicitly, who is not.

The Act is largely about regulation of the first group – those who must be registered, and those who may be licensed (authorised) to undertake certain functions.

There are some conditions precedent to becoming authorised.

Once an adviser is registered and/or authorised, there are some obligations on the adviser. Some of these are positive obligations (e.g. file an annual return, to comply with the Code) and some are negative obligations (e.g. not to engage in misleading or deceptive conduct).

It is my view that the FMA exemption power is aimed at providing some flexibility around those obligations as described in the immediately preceding paragraph.

However based on published comments attributed to executives of FMA, FMA intends to turn all that on its head, and to treat a prohibition under the Act (i.e. a firm or entity cannot provide personalised advice to a retail client) as a “negative obligation”, and use its exemption power to turn this prohibited activity by firms in the Statute into a permitted activity under the exemption.

I submit what FMA is proposing is effectively to amend the statute to allow some persons currently prohibited from performing an activity under the statutory occupational licensing scheme henceforth to perform that activity.

That cannot be what Parliament intended. Taken to the extreme, FMA could apply the same logic to any prohibition under the Financial Advisers Act 2008, and make everything that the Act currently prohibits lawful.

It is the prerogative of Parliament to make the law. FMA would be usurping that right.

I am not a lawyer. I did however sit and pass a number of LL.B papers over 40 years ago. However interpretation of the law is not restricted only to lawyers.

I have attempted a serious research effort to discover whether there is any authority for FMA’s basic premise that a prohibition is actually a negative obligation. I haven’t had huge resources to undertake this, but to date I have found no applicable authority. In all the previous exemptions that I can find the FMA has made under the FAA, the FMA has granted an exemption to an obligation that arises only after a permission has been exercised.

This line of thinking is therefore new. I know institutions want to be able to offer personalised robo, it seems clear that FMA wants institutions to be able to offer personalised robo, and FSLAB when it finally reaches the debating chamber of Parliament presumably will allow firms to do anything.

But that is no excuse for sloppy process and the turning of a Nelsonian eye to the constitutional principles. The end certainly does not justify the means.

Finally why have I made this submission?

It is explicitly not because I am opposed to the introduction of robo-advice. Robo-advice is a reality. My observation is that most of the robo-activity I see around the world is actually robo-sales of either products manufactured by, or the platform services offered by the robo-adviser owner. But that is an argument for another day.

What I am opposed to is the incessant creep I see by Government departments and agencies to amend existing law or make new laws by administrative fiat.

I take my cue from Edmund Burke...”*The only thing necessary for the triumph of evil is for good men to do nothing. Nobody made a greater mistake than he who did nothing because he could do only a little.*”

This submission is my “little”.

Feedback form: Proposed exemption to facilitate personalised robo-advice

Please submit this feedback form electronically in both PDF and MS Word formats and email it to us at consultation@fma.govt.nz with 'Proposed exemption to facilitate personalised robo-advice: [your organisation's name]' in the subject line. Thank you.

Submissions close on 19 July 2017.

Date: 17 July 2017 Number of pages: Three

Name of submitter: [REDACTED]

Company or entity: this is a personal submission

Organisation type:

Contact name (if different):

Contact email and phone: [REDACTED] [REDACTED]

Question or paragraph number	Response
------------------------------	----------

You don't need to quote from the consultation document if you note the paragraph or question number.

Q28, 11	<p>I think some preliminary comments are useful.</p> <p>In principle I support the development of programmed computer-based sales and advice tools. This would be a natural development that follows advances in technology and its use by consumers.</p> <p>The development of any programmed advice/sales computer system will be done for commercial purposes. In the KiwiSaver context issuers will be keen to retain funds under management. Any computer system developed by an issuer will, on the balance of probabilities, end up recommending the issuer's product. Any computer-based systems need to be heavily disclaimed prior to its use as to what product or advice outcomes the system can/will produce.</p> <p>This issue highlights the divide between sales and advice. I see the latter as involving an element of <i>planning</i> (involving recommending strategies or courses of action that do not involve a product) whereas the former involves purely the buy, sell or hold of a <i>product</i>. It is timely to make this distinction so that the consumer knows just what the outcomes will be when engaging with such a product.</p> <p>Accordingly the use of the term "robo-advice" must be changed. I think the terminology needs to be "<i>computer programmed sales</i>" (CPS) or "<i>computer programmed advice</i>" (CPA). Such terms will more clearly point to the nature and purpose of what might be delivered. The word "advice" should not be linked to where there is a purely sales outcome.</p>
Q1, 2, 4	<p><i>I do not support the use of an exemption to regulate in this instance</i></p> <p>Given the potential market for the consumption of CPA/CPS extends to just about everyone over 16 years of age in NZ I think development of this area of law should be subject to the parliamentary process, and not left to officials in the FMA and/or MBIE. In my view to proceed in this fashion would amount to a misuse of the FMA's powers.</p>

	<p>I would be very surprised if the author of s148 of the Financial Advisers Act and Parliament itself contemplated that it might be applied in a way that potentially takes such a large number of consumers outside current law. I suggest the FMA submit their proposal to judicial or Cabinet review to determine if the exemption path really is in the public's best interest.</p> <p>I note that the Financial Adviser Act Review is still in progress and that the new Code Committee is yet to begin its work under this Review. For the FMA to develop an amended regulatory regime and Code to apply to CPA/CPS could be perceived to preempt or influence in advance outcomes of these streams of work.</p>
Q 7	<p>There is no doubt that more consumers should take more advice about financial matters than they do and from suitably qualified people. There is no problem for most consumers to get advice if they wish to do so. Their reluctance to pay for advice seems to be more the issue. While there may be an 'advice gap' there is no compelling evidence that availability of CPA/CPS avenues will address this.</p> <p>Real-person advisers only get paid by their clients. Computer-based systems will be no different in that the client will pay in some way for the output of the system. In this instance however there is greater potential for such costs to be made more obscure. If there is to be an up-front or subscription payment for CPA/CPS then the introduction of these systems will not solve the perceived unwillingness of the public to pay for advice.</p>
Q 5	<p>I would ask what would be the impact if no exemption were granted?</p> <p>I cannot see a need to rush into a solution for CPA/CPS. These systems and their regulatory framework are still in their infancy overseas. We should be prepared to wait, watch and take the best out of the overseas experience.</p> <p>Avenues for consumers to seek advice will remain.</p>
Q 9, 12-16	<p>Any regulation of CPA/CPS needs to cover the same types of products and advice as contemplated by the current review of the Financial Advisers Act.</p> <p>No product value limits should apply to the application of CPA/CPS.</p> <p>To offer some context to my comments below we need to understand that anyone's money is important to them, irrespective of the amount.</p> <p>In the investment context the idea that a lesser sum is of lesser importance flies in the face of what we know about risk capacity. For many New Zealanders their KiwiSaver balance might represent their entire financial assets. In this respect for someone with only \$50,000 the risks of poor advice to them is high, when compared to someone with a \$50,000 KiwiSaver balance but who has say \$1.0m of assets elsewhere. The latter person has more risk capacity (<i>ceteris paribus</i>).</p> <p>With respect to personal and fire and general insurance the notion that programmed insurance sales be limited by value is ludicrous. We all know that there is chronic under-insurance in NZ and that those who most need cover can often not afford what they really need. It therefore becomes even more critical for these people to receive good advice so they can optimize and preferably increase their cover. Regulating for price or value of cover under CPA/CPS will hamper efforts to address this rather than help.</p>

	<p>For budgetary reasons, and due to personal circumstances, there are often a series of trade-offs when assembling an insurance plan. Often certain cover is foregone so that cover becomes affordable. Any CPA/CPS system would need to be very sophisticated indeed for the client to understand the issues and be able to make informed decisions as to deal with these trade offs.</p> <p>By having limits any solution proposed by CPA/CPS would likely only present a part solution to what is potentially needed by the consumer. Would this be in the clients' best interests (reference CS1)?</p> <p>All advisers know that to a large extent you get what you pay for when it comes to insurance and that the cheapest product often is only cheaper because it mostly lacks the cover features of costlier policies. Regulating for price or cover limits once again is not the answer. That such limits have been proposed seems to show a fundamental lack of understanding about important key issues.</p>
Q 20, 21, 22	<p>Programmed advice/sales can come about only through human efforts. The computer is just a means of delivery and computation. The issuers of such programs must comply with all the same competency, disclosure and legal requirements as apply to advice delivered by a natural person, not to mention the need for provisions for consumer protection and consumer avenues for remedy to apply.</p> <p>As noted in the Consultation document CPA/CPS systems have the potential for significantly greater reach to consumers (scalability). Perhaps penalties that apply to issuers of these systems should be of magnitudes greater than might apply to an individual, natural person adviser?</p>
	<i>Thank you for the opportunity to submit. I would be happy to respond to any further questions you may have.</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.	