



Financial Advisers (Personalised Digital Advice) Exemption Notice 2018

Pursuant to section 148 of the Financial Advisers Act 2008, the Financial Markets Authority, being satisfied of the matters set out in section 148(2) of that Act, gives the following notice.

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Notice

- 1 Title**
This notice is the Financial Advisers (Personalised Digital Advice) Exemption Notice 2018.
- 2 Commencement**
This notice comes into force on 1 June 2018.
- 3 Revocation**
This notice is revoked on the close of 31 May 2023.

4 Interpretation

In this notice, unless the context otherwise requires,—

Act means the Financial Advisers Act 2008

debt security has the same meaning as in section 8(1) of the Financial Markets Conduct Act 2013

digital advice facility means a facility for giving automated personalised financial advice, or providing an automated personalised investment planning service, through a computer program using algorithms (whether with or without the involvement of any individual)

equity security has the same meaning as in section 8(2) of the Financial Markets Conduct Act 2013

managed investment product has the same meaning as in section 8(3) of the Financial Markets Conduct Act 2013

provider means an entity to which all of the following apply:

- (a) the entity is registered under the Financial Service Providers (Registration and Dispute Resolution) Act 2008 in respect of a financial adviser service; and
- (b) the entity is a member of an approved dispute resolution scheme in accordance with section 48 of that Act; and
- (c) the entity is specified in Schedule 1

quoted, in relation to an equity security, a debt security, or a managed investment product, means an equity security, a debt security, or a managed investment product that is approved for trading on either or both of the following (and, to avoid doubt, the financial product does not cease to be quoted merely because trading in the financial product is suspended):

- (a) a licensed market (within the meaning of section 6(1) of the Financial Markets Conduct Act 2013);
- (b) a financial product market that is authorised to operate overseas, if that market has primary jurisdiction for the listing requirements for the issuer and the quotation of the equity security, debt security, or managed investment product

senior manager, in relation to a person (A), means a person who is not a director but occupies a position that allows that person to exercise significant influence over the management or administration of the financial adviser service provided by A through the digital advice facility

specified product means—

- (a) a bank notice product (within the meaning of regulation 7B(2) of the Financial Advisers (Definitions, Voluntary Authorisation, Prescribed Entities, and Exemptions) Regulations 2011); or
- (b) a bank term deposit; or

- (c) a call building society share; or
- (d) a call credit union share; or
- (e) a call debt security; or
- (f) a consumer credit contract (within the meaning of the Credit Contracts and Consumer Finance Act 2003); or
- (g) a contract of insurance (other than an investment-linked contract of insurance within the meaning of regulation 5(1) of the Financial Advisers (Definitions, Voluntary Authorisation, Prescribed Entities, and Exemptions) Regulations 2011); or
- (h) a debt security issued by the Crown; or
- (i) an interest in a managed fund (within the meaning of regulation 5(1) of the Financial Markets Conduct Regulations 2014); or
- (j) a quoted equity security; or
- (k) a quoted debt security; or
- (l) a quoted managed investment product; or
- (m) a term deposit issued by a licensed NBDT (within the meaning of section 4(1) of the Non-bank Deposit Takers Act 2013); or
- (n) a unit in a cash or term portfolio investment entity (within the meaning of regulation 4(1) of the Financial Advisers (Definitions, Voluntary Authorisation, Prescribed Entities, and Exemptions) Regulations 2011); or
- (o) a renewal or variation of the terms or conditions of any existing financial product referred to in any of paragraphs (a) to (n).

5 Application of exemptions

- (1) The exemptions in clause 6 apply to a financial adviser service to the extent that it is provided in relation to 1 or more specified products.
- (2) The exemptions in clause 6 do not apply to a discretionary investment management service.
- (3) Subclause (4) applies if an individual (other than the client) (A) is involved in the giving of financial advice, or the provision of an investment planning service, through a digital advice facility and in doing so—
 - (a) A gives A's own financial advice or provides A's own investment planning service; or
 - (b) A holds out the financial advice or investment planning service given or provided through the digital advice facility as A's own financial advice or investment planning service.
- (4) The exemptions in clause 6 do not apply to—

- (a) A's own financial advice or investment planning service (in the case of subclause (3)(a));
- (b) the financial advice or investment planning service that is held out as A's own (in the case of subclause (3)(b)).

6 Exemptions for giving advice or planning service through digital advice facility

A provider that gives financial advice, or provides an investment planning service, to a retail client is exempt from sections 17(1), 20B, and 22 of the Act in respect of that financial adviser service to the extent that the service is a personalised service provided through a digital advice facility.

7 Provider must notify FMA of material change of circumstances

(1) This clause applies if—

- (a) a provider that is relying on clause 6 believes that a material change of circumstances has occurred, may have occurred, or is likely to occur; and
- (b) the provider fails to send to the FMA a report containing details of the change of circumstances and the provider's grounds for the belief as soon as practicable after the provider forms the belief.

(2) The exemptions in clause 6 do not apply during the period that—

- (a) starts when the provider fails to send the report as referred to in subclause (1)(b); and
- (b) ends at the close of the date on which the provider sends the report to the FMA.

(3) In subclause (1), *material change of circumstances* means—

- (a) a change that materially and adversely affects the provider's ability to provide the financial adviser service through the digital advice facility in an effective manner; or
- (b) the provider or any of its directors or senior managers are subject to any of the following:
 - (i) a relevant proceeding or action (within the meaning of regulation 5(1) of the Financial Markets Conduct Regulations 2014);
 - (ii) a civil or criminal proceeding (whether in New Zealand or overseas) for conduct relating to dishonesty, fraud, or misleading or deceptive conduct;
 - (iii) bankruptcy or any other insolvency proceedings.

8 Conditions of exemptions

- (1) The exemptions in clause 6 are subject to the following conditions in respect of financial advice or an investment planning service that is given or provided to a retail client that uses the digital advice facility:
 - (a) the provider must disclose the information set out in Schedule 2 to the retail client before, or at the same time as, the client receives any financial advice or investment planning service through the digital advice facility;
 - (b) the provider is satisfied on reasonable grounds that it has procedures in place—
 - (i) that give reasonable assurance that code standards 1 to 3, 5 to 7, and 9 to 11 of the code are complied with, in accordance with subclause (2), in relation to the financial adviser service that is provided through the digital advice facility; and
 - (ii) for identifying deficiencies in the effectiveness of the procedures referred to in subparagraph (i) and for promptly remedying any deficiencies discovered;
 - (c) the provider must retain written records about the personalised services provided to the retail client through the digital advice facility, including the following information:
 - (i) copies of the financial advice, or the output of the investment planning service, provided to the retail client through the digital advice facility; and
 - (ii) copies of the information received from the retail client that was relied on, or otherwise used, by the digital advice facility to generate that advice or output; and
 - (iii) copies of all algorithms and software used by the digital advice facility;
 - (d) the provider must make those records available to the FMA as soon as practicable after the FMA makes a request;
 - (e) the terms of the financial adviser service require the provider to—
 - (i) retain those records for at least 7 years; and
 - (ii) make those records (other than the records referred to in paragraph (c)(iii)) available to the retail client as soon as practicable after the retail client makes a request.
- (2) The code standards referred to in subclause (1)(b) apply to the financial adviser service that is provided through the digital advice facility with all necessary modifications as if the service were provided by an authorised financial adviser.

Schedule 1
Providers

cl 4

Kiwi Wealth Investments Limited Partnership
Kiwi Wealth Limited

Schedule 2
Information to be disclosed

cl 8(1)(a)

- 1 The information provided under clause 8(1)(a) is the following information about the financial adviser service provided through the digital advice facility:
- (a) the nature and scope of the service, including—
 - (i) the types of financial adviser service provided (that is, whether the service is giving personalised financial advice or is an investment planning service); and
 - (ii) the specified products in relation to which the service is provided; and
 - (iii) a brief description of how the digital advice facility works; and
 - (iv) the limitations (if any) on the scope of the service provided and a brief description of the implications (if any) that those limitations may have for the service provided; and
 - (b) if the provider provides the service only in respect of financial products of a particular product provider or particular product providers, a statement to that effect and the name of each of the product providers concerned; and
 - (c) if the provider will charge the client a fee for the service,—
 - (i) the basis on which the fee will be charged; and
 - (ii) the amount or a reasonable estimate of the fee; and
 - (iii) when the client must pay the fee; and
 - (d) details of every financial and other interest, relationship, or association of the provider (other than those disclosed under paragraph (b)) that a reasonable retail client would find to be reasonably likely to materially influence the provider in providing the service; and
 - (e) details of all remuneration (other than remuneration that a reasonable client would consider to be of such an insignificant nature that it would be unlikely to influence the provider) that the provider has received, or will or may receive, from a person other than the client in connection with the service, which must include—

- (i) the amount or rate, to the extent practicable, of the remuneration; and
 - (ii) the name of the person from whom the remuneration has been, or will or may be, received; and
 - (iii) details of any arrangements the provider has made to manage any conflict of interest arising from the receipt, or possible receipt, of the remuneration; and
 - (f) a brief description of the provider's internal complaints process, including how to initiate the process; and
 - (g) the name, address, telephone number, Internet site address, and email address of the approved dispute resolution scheme of which the provider is a member.
- 2 In this schedule, **remuneration** means any commission, fee, or other benefit or advantage, whether pecuniary or non-pecuniary, and whether direct or indirect.

Dated at Wellington this 10th day of May 2018.



Director of Regulation
Financial Markets Authority.

Statement of reasons

This notice comes into force on 1 June 2018 and is revoked on the close of 31 May 2023.

The exemptions are granted to permit entities to provide personalised services to retail clients when those services are provided through a digital advice facility. The exemptions apply to entities listed in *Schedule 1* of this notice that are providing services through a digital advice facility that are limited to—

- certain specified products (including interests in KiwiSaver schemes and other managed funds, quoted equity securities, quoted debt securities, quoted managed investment products, Crown-issued debt securities, contracts of insurance, savings products, and credit contracts); and
- investment planning services and financial advice (excluding discretionary investment management services).

The effect is that the entities are exempted from—

- section 17(1) of the Financial Advisers Act 2008 (the **Act**). The broad effect of this is that the entities are exempted from acting only through registered or authorised individual advisers:

Financial Advisers (Personalised Digital Advice)

Statement of reasons

Exemption Notice 2018

- section 20B of the Act (restrictions on holding out as financial planner or investment planner):
- section 22 of the Act (financial adviser must make disclosure before providing personalised service to retail client).

The exemptions in this notice do not apply if requirements to provide notifications on the occurrence of certain events to the Financial Markets Authority are not met. The exemptions are also subject to conditions relating to disclosure, procedures to comply with the code of conduct, and record keeping.

There is no exemption from the conduct obligations in the Act. When giving financial advice through a digital advice facility, the provider must, for example, exercise the care, diligence, and skill that a reasonable financial adviser would exercise in the same circumstances.

The obligations under the code of professional conduct are still relevant even though an authorised financial adviser does not give the financial advice. The conditions require the provider to have procedures in place that give reasonable assurance that various code standards are complied with (and those standards apply with all necessary modifications as if the financial adviser service were provided by an authorised financial adviser). This includes—

- the paramount obligation to place the interests of the client first and to act with integrity:
- the obligation to effectively manage conflicts of interest:
- the obligation to behave professionally in all dealings with a client, and to communicate clearly, concisely, and effectively:
- the obligation to take reasonable steps to ensure that the service is suitable for the client.

The Financial Markets Authority (the **FMA**), after satisfying itself as to the matters set out in section 148(2) of the Act, considers that it is appropriate to grant the exemptions because—

- granting the exemptions removes the rigidity in the current law, which did not contemplate the advances in technology that now enable personalised services to be provided through a digital channel in a manner that meets the objectives of the Act; and
- digital advice offers an alternative means to deliver personalised services to retail clients in a cost-effective and innovative manner. Granting the exemptions means that retail clients will gain access to the benefits of personalised digital advice services. This includes the potential to have increased access to financial adviser services in a fast, easy, and user-friendly manner and at potentially lower cost. This promotes the efficient delivery of financial adviser services and innovation and flexibility in the financial markets; and
- the exemptions promote the sound delivery of the advice and encourage public confidence in the professionalism and integrity of the providers because,—

- in order to rely on the exemptions, a provider must be listed in *Schedule 1* of this notice. The FMA is satisfied that each provider listed in *Schedule 1* has the capability and competency to provide the service and that its directors and senior managers are persons of good character; and
- appropriate exemption conditions require the service provided through the digital advice facility to be provided in a manner that is consistent with requirements that apply to authorised financial advisers. The conditions seek to ensure that providers take an appropriate degree of care in providing the service and that consumer protection safeguards are in place; and
- in these circumstances, the FMA is satisfied that the costs of compliance with the requirement for personalised services to retail clients to be provided by 1 of the specified types of human adviser is unreasonable and is not justified by the benefit of compliance. Compliance would require entities to use individual advisers to review, approve, and give each piece of advice generated through a digital advice facility. This is unnecessary and not justified by the benefit of compliance given the technological advances that mean personalised digital advice can now be delivered without the direct involvement of individual advisers in a manner that does not undermine consumer protection and is consistent with the objectives of the Act.

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*:

This notice is administered by the Financial Markets Authority.

