

Consultation

November 2017

Consultation: Exemption to enable personalised digital advice

About this consultation

Following our previous consultation, we have decided to grant an exemption to enable personalised digital advice services to be offered under the current financial advice regime. We believe this has the potential to improve consumer access to advice and promote innovation.

This second consultation seeks feedback on the draft exemption notice and accompanying documents. It follows our earlier consultation in June 2017 about using our exemption powers.

Who is this consultation for?

This consultation is for financial adviser entities, their advisers, and other interested parties.

It seeks feedback on the draft exemption notice and application documents.

Exemption overview

The exemption will be for financial adviser entities ('providers') who want to provide services to retail clients through a digital advice service.

The exemption will be granted subject to the following.

Limitations

The exemption will apply to personalised services provided to a retail client through a digital advice service that are limited to:

- financial advice or investment planning services – the exemption does not apply to discretionary investment management services
- certain eligible products including:
 - interests in KiwiSaver schemes and other managed funds
 - listed equity or listed debt securities
 - Government bonds
 - general and personal insurance products
 - mortgages and other credit contracts
 - savings products.

Conditions

The exemption will be subject to conditions relating to:

- disclosure
- compliance with the code of professional conduct
- record-keeping
- notifying the FMA of a material change in circumstances.

Applying to FMA

Providers need to apply to us to be included in the list of providers able to rely on the exemption. This list will be set out in Schedule 1 of the exemption notice. As part of the application process, providers will need to provide us with information showing that their directors and senior managers meet good character requirements, and that the provider meets minimum standards demonstrating their capability and competency to provide the personalised digital advice service.

Your feedback

We want your feedback on:

- The [draft exemption notice](#) (see page 1)
- The [draft information sheet](#) (see page 9). This explains the exemption notice and provides guidance on the exemption conditions. We may update this from time to time, which could, in future, include adding answers to common queries or examples of good and poor practice based on what we see in the market.
- The draft application documents:
 - [Application form](#) (see page 16). Applications will be made by completing an application form and emailing this to us.
 - [‘Good character’ declaration form](#) (see page 22) for directors and senior managers of the provider.
 - [Application guide](#) (see page 26). This sets out the minimum standards applicants will need to show they meet, all the questions in the application form, and our comments about these.

We are seeking comments on how effectively our policy decision to grant the exemption is reflected in the draft exemption notice and accompanying documents, including whether there may be any unintended consequences from the proposed drafting. Please also let us know if there are any parts of these documents that are unclear or where you think additional guidance or commentary would be helpful.

The policy decision to proceed with the exemption, as described under ‘exemption overview’ above, is not open for review.

Please note that the exemption notice is not yet in effect. Individual providers will not be able to rely on it until it is in effect and their name has been added to the list of providers able to rely on the exemption in Schedule 1 of the exemption notice.

Submissions close on 15 December 2017

Next steps

After we have considered all of the submissions, we will finalise the exemption notice and the application documents. We aim to have the exemption finalised and applications open in early 2018.

Questions

- Q1. Do you have any comments on the draft exemption notice?
- Q2. Do you have any comments on the draft information sheet?
- Q3. Do you have any comments on the draft application form?
- Q4. Do you have any comments on the draft declaration form?
- Q5. Do you have any comments on the draft application guide?
- Q6. (For providers) Do you intend to apply to us to be included in the list of providers able to rely on the exemption? If so, please provide an indication of when you expect to apply. Please also indicate how long you think it might take to prepare your application.
- Q7. Do you have any other feedback or comments?

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DRAFT FOR CONSULTATION

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 [date].
- 3 Revocation**
This notice is revoked on the close of [date].

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 financial advice, or providing an investment planning service,—

- (a) through a computer program using automated algorithms; and
- (b) without the direct involvement of any individual

equity security has the same meaning as in section 8(2) 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 or a debt security, means an equity security or a debt security that is approved for trading on either of the following (and, to avoid doubt, the security does not cease to be quoted merely because trading in the security 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 or debt security

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 term deposit; or
- (b) a call building society share; or
- (c) a call credit union share; or
- (d) a call debt security; or
- (e) a consumer credit contract (within the meaning of the Credit Contracts and Consumer Financial Act 2003); or

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cl 8

- (f) a pure risk contract of insurance (within the meaning of section 9(3) of the Financial Markets Conduct Act 2013); or
- (g) a debt security issued by the Crown; or
- (h) an interest in a managed fund (within the meaning of regulation 5(1) of the Financial Markets Conduct Regulations 2014); or
- (i) a quoted equity security; or
- (j) a quoted debt security.

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.

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 provider that is relying on clause 6 fails to notify the FMA in writing of a material change of circumstances that has occurred within 5 working days after becoming aware of the change.
- (2) The exemptions in clause 6 cease to apply on the date that is 5 working days after the expiry of the 5-working-day period referred to in subclause (1).
- (3) In subclause (1), **material change of circumstances** means—
 - (a) a change that 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 criminal conviction;
 - (ii) disciplinary proceedings under any enactment;
 - (iii) an adverse finding by a court or an approved dispute resolution scheme;
 - (iv) bankruptcy or any other insolvency proceedings.

8 Conditions of exemptions

- (1) The exemptions in clause 6 are subject to the conditions that—

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-
- (a) the provider must disclose the information set out in Schedule 2 to each retail client that uses the digital advice facility before, or at the same time as, the client receives any financial advice or investment planning service through the digital advice facility; and
- (b) the provider is satisfied on reasonable grounds that it has in place—
- (i) procedures 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) methods for systematically identifying deficiencies in the effectiveness of those procedures and for promptly remedying any deficiencies discovered; and
- (c) the provider must retain written records about the digital advice facility that show how the provider is complying with the conditions of this notice, including the following information:
- (i) copies of the financial advice, or the output of the investment planning service, provided to clients through the digital advice facility; and
 - (ii) copies of the information received from clients 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; and
- (d) the provider must make those records available to the FMA as soon as practicable after the FMA makes any 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 service were given by an authorised financial adviser.

Schedule 1 Providers

cl 4

[Insert names]

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 financial advice or providing 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) any limitations on the scope of the service provided; and
 - (b) if the provider provides the service only in respect of financial products of a particular product provider or product providers, a statement to this 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, and in this case, the provider must disclose—
 - (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

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Statement of reasons

- (g) the name, address, telephone number, and e-mail address of the approved dispute resolution scheme of which the provider is a member; and
 - (h) a statement that the service provided through the digital advice facility is not endorsed or approved by the Financial Markets Authority.
- (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 day of 2018.

Financial Markets Authority.

Statement of reasons

This notice comes into force on [date] 2018 and is revoked on the close of [date] 2023.

The exemption is granted to permit entities to provide personalised services to retail clients when those services are provided through a digital advice facility. The exemption applies to entities listed in the schedule of the 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 or debt securities, Crown-issued debt securities, pure risk insurance products, savings products, and credit contracts); and
- investment planning services and financial advice (excluding discretionary investment management services).

The effect is that these entities are exempted from—

- section 17(1) of the Financial Advisers Act 2008 (the **Act**). The broad effect is that this exempts the entity from acting only through registered or authorised individual advisers:
- 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 cease to apply if requirements to provide notifications on the occurrence of certain events to the FMA are not met. The exemptions are also subject to conditions relating to disclosure, procedures to comply with the code of conduct, and record-keeping.

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Exemption Notice 2018**

Statement of reasons

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 in place procedures to give reasonable assurance that various code standards are complied with (and those standards apply with all necessary modifications as if the financial advice 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 encourages public confidence in the professionalism and integrity of the providers because,—
 - in order to rely on the exemptions, a provider must apply to the FMA with information showing that it meets good character requirements for its directors and senior managers and has the capability and competency to provide the service; 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

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Statement of reasons

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.



Information sheet

Exemption enabling personalised digital advice

This information sheet explains the exemption that allows approved providers to provide personalised digital advice services under the current financial advice regime.

If you would like to apply to provide personalised digital advice services relying on the exemption, please read this information sheet along with our application guide (*see page 26 for the draft guide*).

If you are a provider thinking about offering personalised digital advice services, engage with us early.

The exemption

The Financial Advisers (Personalised Digital Advice) Exemption Notice 2018 (the 'exemption') permits financial adviser entities ('providers') to provide personalised digital advice services to retail clients. We granted this exemption because we believe it will improve consumer access to financial advice and promote innovation while providing consumer protection safeguards – promoting the overall purposes of the FA Act.

Currently, the Financial Advisers Act 2008 ('FA Act') impedes the development of personalised digital advice models in the New Zealand market, as it requires personalised financial advice to be given by a 'natural person'. The exemption overcomes this rigidity.

The exemption will be revoked when the new financial advice regime comes into effect, which is expected to be in 2019. The new regime is 'technology neutral' to enable providers to use a digital advice delivery channel if they wish.

What is a digital advice service?

A digital advice service is a facility to give personalised financial advice or investment planning services through a computer program using automated algorithms, without direct human involvement – usually through a website or mobile app. In the exemption notice this is called a 'digital advice facility'.

Who is the exemption for?

The exemption is for providers who want to offer personalised services to retail clients using a digital advice service.

A personalised service is a financial adviser service that takes into account a person's individual situation or goals. Providers can only offer personalised services if they are on the list of providers approved to rely on the exemption. The list is set out in Schedule 1 of the exemption.



Information sheet

Providers are permitted to provide class services under the FA Act without needing to rely on the exemption. Class services cover generic recommendations based on characteristics such as age and risk profile.¹

Eligibility criteria

To rely on the exemption, a provider must:

- complete the application process and be approved to rely on the exemption. Please see 'Application process' below for more information
- be registered on the Financial Service Providers Register ('FSP Register')
- be a member of an approved dispute resolution scheme.

For more information about how to register on the FSP Register and join an approved dispute resolution scheme, please see www.fspr.govt.nz

Application process

The exemption is only available to those providers we approve. The list of approved providers is set out in Schedule 1 of the exemption.

Providers need to apply to us to be included on the approved list. As part of the application process, providers need to provide us with good character declarations and show that they meet minimum standards demonstrating their capability and competency to provide personalised services through a digital advice service.

For more information about how to apply to rely on the exemption, and the minimum standards you'll need to show you meet, please see our application guide (*see page 26 for the draft guide*).

Is the exemption limited or restricted?

The exemption is limited to personalised financial advice or investment planning services ('IPS') provided through a digital advice service². It does not apply to a discretionary investment management service³.

The exemption is also limited to services that relate to certain eligible products. These include⁴:

- interests in KiwiSaver schemes and other managed funds
- listed equity or listed debt securities
- Government bonds
- general and personal insurance products
- mortgages and other credit contracts
- savings products.

¹ For more information on personalised and class services see s15 (When financial adviser service is personalised service or class service) of the [FA Act](#).

² For more information see s10 (When person gives financial advice) and s11 (When person provides investment planning service) of the [FA Act](#).

³ For more information see s12 (When person provides discretionary investment management service) of the [FA Act](#).

⁴ The full list of eligible products is set out in cl4 of the exemption – see definition of 'specified product'.



Information sheet

A provider can apply to us for an individual exemption if they want to provide personalised financial advice or IPS through a digital advice service on other products. Any decision we make about granting individual exemptions will be based on whether the statutory test for granting an exemption is met and it promotes the purposes of the FA Act.

Understanding the exemption conditions

The exemption has several conditions and requirements providers must comply with at all times while providing personalised financial advice or IPS through a digital advice service under the exemption.

Disclosure

What the exemption says

The provider must disclose the information set out in Schedule 2 of the exemption to each retail client that uses the digital advice service before or at the same time as the client receives any financial advice or IPS through the digital advice service.

Providers are also required to have procedures in place to comply with Code Standards 6, 7 and 10. Please see 'Conduct' below for more information.

Our comments

Disclosure is particularly important, as digital advice services are often provided with no, or limited, human interaction. Providers should recognise that digital advice services will be new to most consumers. This means there could be gaps in their understanding of what a digital advice service is and how it works.

The disclosure items in Schedule 2 are based on the existing requirements set out in the Code of Professional Conduct for authorised financial advisers (the 'Code') and the Financial Advisers (Disclosure) Regulations 2010.

The exemption requires providers to outline the nature and scope of the service, including a brief description of how it works, and any limitations in its scope. To comply with this requirement, providers may wish to consider:

- *Explaining the scope of the advice being offered*
For example, explaining that the digital advice service only offers advice on a provider's KiwiSaver scheme funds and does not cover other providers' KiwiSaver schemes. The provider could also explain that the service does not take into account other financial needs or goals the client may have, such as repaying debt.
- *Clarifying the information used as the basis for the service*
For example, explaining that the advice is based solely on the information the client provides as part of the digital advice service and does not take into account the client's broader circumstances, such as debt obligations or tax situation.
- *Clarifying the extent of human involvement*
For example, explaining to their clients:
 - what to do if they have questions
 - whether they can speak to a human adviser if needed.
- *Explaining how tailored the advice recommendations are*
For example, if the algorithm only generates a limited set of investment portfolios, that should be explained to the client.



How to disclose

To comply with Code Standard 6, providers need to ensure they communicate all information clearly, concisely and effectively.

A formal disclosure statement is not required, and the form or method of disclosure is not prescribed. This means providers can stagger disclosures throughout their digital advice service – for example, by spreading them across different webpages. It also recognises the best way to present the information effectively will vary from one medium to another.

Disclosures need to be structured to put the client's needs first. The information should be communicated to a client in a manner and at a time that best supports the use of that information by the client to make informed decisions. We encourage providers to think about how they can use technology to present plain-English disclosures in a user-friendly and engaging manner – for example, using pop-ups at appropriate points in the process, or short videos or graphics to explain how the service works.

The exemption requires all material information to be disclosed before, or at the same time as, the client receives any financial advice or IPS through the service. This means the client must have received all the required information either before the point that the digital advice service generates the financial advice or IPS, or with that advice or IPS. Providers should think carefully about the best time to provide the information. For example, information about potential conflicts may be most useful to inform a client's decision-making if it is provided to clients at the same time as the recommendation to buy a specific product. Fee information might be useful to provide once the client has undergone an initial needs analysis, so that an accurate estimate can be generated.

Existing FA Act disclosure obligations

The exemption notice exempts providers from section 22 of the FA Act. This means they do not have to give clients a short disclosure statement, which would be redundant in view of the fuller disclosure required under the exemption.

The exemption notice does not exempt providers from section 25 of the FA Act. This requires qualifying financial entities (QFEs) to make certain disclosures before providing a personalised service to a retail client. An exemption from section 25 is not needed because section 25 only applies when a QFE acts through a QFE adviser.

Conduct

What the exemption says

The provider must have procedures in place that give reasonable assurance they will comply with the following Code Standards when providing the digital advice service:

- Code Standard 1 – placing the interests of the client first, and acting with integrity
- Code Standard 2 – not doing anything to bring the financial advisory industry into disrepute
- Code Standard 3 – not stating or implying the adviser or the service is independent if that is not the case
- Code Standard 5 – effectively managing conflicts of interest
- Code Standard 6 – behaving professionally, and communicating clearly, concisely and effectively
- Code Standard 7 – ensuring retail clients can make informed decisions
- Code Standard 9 – ensuring the service is suitable for the client
- Code Standard 10 – ensuring retail clients can make informed decisions about personalised services



- Code Standard 11 – ensuring there is an appropriate internal process for resolving client complaints.

The provider must also have in place ways to identify and remedy any deficiencies in its procedures.

Our comments

Our view is that how personalised digital advice services are delivered needs to be consistent with the Code Standards. The exemption states that the Code Standards apply to the provider when providing financial advice or IPS through a digital advice service with all necessary modifications as if the service were given by an authorised financial adviser ('AFA'). This means providers do not need to comply with aspects of the Code that are not applicable to an entity – for example, parts of the Code that refer to an AFA's employer or principal; or to the receipt of salary or wages, do not apply.

Not all the Code Standards are listed in the conduct condition. Code Standard 4 is not appropriate to impose on a provider. It restricts an AFA from borrowing from or lending to a client. Providers may borrow from or lend to clients in the ordinary course of business. The other Code Standards are reflected as follows:

- Code Standard 8 – reflected in the disclosure condition
- Code Standards 12-13 – reflected in the record-keeping condition
- Code Standards 14 -18 – the competence of the entity to provide the digital advice service is assessed in the application process.

Record-keeping

What the exemption says

The provider must retain written records that show how it complies with the exemption conditions, and make these available to us on request. This includes:

- copies of the financial advice or IPS provided to clients through the digital advice service
- copies of the client information used by the digital advice service to generate that advice or IPS
- copies of all algorithms and software used by the digital advice service.

Our comments

To comply with this condition, the provider would need to keep a copy of the client's information used to generate the financial advice (eg income, age, assets, financial goals, investment horizon, risk tolerance), and a copy of the financial advice or investment plan itself.

The provider would also need to keep copies of the algorithms and software. One way to do this is by storing different versions of the algorithms and software.

Using open access tools

Some digital advice services are 'open access'. These may permit clients to get personalised advice without submitting personal details to the provider. Clients might also adjust their responses to see how this changes the advice. This does not change the provider's obligation to keep records of advice provided and the information this was based on. An advantage of digital advice services is the relative ease of recording information and keeping client records compared to traditional human advice processes.



Information sheet

[Case study: KiwiSaver open-access tool](#)

Aaron uses a tool freely available on a provider's website that gives people a recommendation of which of the provider's KiwiSaver funds would be right for them. The tool does not require users to provide their name or contact information. Based on the details Aaron provides, the tool recommends the provider's growth fund.

Aaron uses the tool again, changing one of his original responses to indicate that he is planning to use his KiwiSaver savings to buy his first home within the next three years. Based on this response, the tool now recommends the provider's conservative fund.

To comply with its record-keeping obligations, the provider keeps a record of the two recommendations provided to Aaron, and the different sets of details on which this was based. The provider's systems are able to recognise that the two recommendations were provided to the same client. However, as Aaron was not required to identify himself, the provider's record-keeping processes assign the record an anonymous user number.

Aaron revisits the website intending to see how the recommendation would change if he adjusted his intended retirement age. However, he stops and closes the browser window before completing all the questions. No advice was provided and the partially completed questions were not used as the basis for any advice, so the provider is not required to keep a record of this.

[Notifying FMA of a material change of circumstances](#)

What the exemption says

The provider must notify us in writing within five working days of becoming aware of a material change of circumstances. 'Material change of circumstances' means:

- A change that adversely affects the provider's ability to provide the personalised digital service effectively. This would include a change that means the provider would no longer satisfy the minimum standards⁵.
- The provider or its directors or senior managers becoming subject to any new criminal convictions, disciplinary proceedings, adverse findings by a court or dispute resolution scheme, or bankruptcy or insolvency proceedings.

Our comments

Notify us by email at: compliance@fma.govt.nz. The subject line of the email should be: 'FMC Personalised Digital Advice Exemption Notice – Material change notification – [name of provider]'. There is no prescribed form for the notification.

Other requirements

As well as complying with the exemption conditions, providers of personalised financial advice or IPS through digital advice services need to comply with other legislative obligations, including the conduct obligations in Part 2 of the FA Act. When giving personalised financial advice or IPS through a digital advice service, the provider must, for example, exercise the care, diligence and skill a reasonable financial adviser would exercise in the same circumstances.

⁵ More information about the minimum standards that we require providers to meet to be approved for inclusion in the list of providers who can rely on the exemption is available in our application guide (*see page 26 for the draft guide*).



What to do before you apply

Interested providers and their advisers should:

- read the exemption (*see page 1 for the draft exemption*) and become familiar with its requirements
- read our application guide (*see page 26 for the draft guide*) to see if you meet the minimum standards
- consider seeking legal advice on how the FA Act and exemption would apply to you and your proposed digital advice service
- get in touch with us early if you want to rely on the exemption.

[Contact us](#)

Monday to Friday 8.30am to 5.00pm

Calling from New Zealand: 0800 434 567

Calling outside New Zealand: +64 3 962 2698

Email: exemptions@fma.govt.nz.

Digital advice exemption application form

APPLICANT DETAILS

| Part# | Question | Answer |
|-------|--|--|
| 1. | Entity name | |
| 1a. | Registered address | |
| 1b. | Physical address (if different) | |
| 1c. | Phone number(s) | |
| 1d. | Email address | |
| 1e. | Website | |
| 2. | Contact person details | |
| 2a. | Name of contact person | |
| 2b. | Position | |
| 2c. | Physical address | |
| 2d. | Phone number(s) | |
| 2e. | Email address | |
| 3. | What is your FSP number? If you don't have an FSP number, you need to apply at www.business.govt.nz/fsp | |
| 4. | What is the name of your dispute resolution scheme? | |
| 5. | What is your New Zealand Business Number (if applicable?) | |
| 6. | Does the entity have any past, current or pending criminal prosecutions, civil litigations or administrative actions involving it? If YES, please provide details. | Yes <input type="checkbox"/> No <input type="checkbox"/> |
| 7. | Is your entity a QFE or a member of a QFE group under the Financial Advisers Act 2008? If YES, what is the name of your group? | Yes <input type="checkbox"/> No <input type="checkbox"/> |
| 8. | Is your entity a licensed provider under the Financial Service Providers (Registration and Dispute Resolution) Act 2008? | Yes <input type="checkbox"/> No <input type="checkbox"/> |

| APPLICATION DETAILS | | | |
|---------------------|--|------------------------------|-----------------------------|
| 9. | What financial adviser services does the digital advice service relate to? Please select one or both of the options (as applicable) | | |
| | Financial advice | | <input type="checkbox"/> |
| | Investment planning service | | <input type="checkbox"/> |
| 10. | What product type(s) will the digital advice service advise on? Please select all that apply from the list below | | |
| | Bank term deposit | | <input type="checkbox"/> |
| | Call building society share | | <input type="checkbox"/> |
| | Call credit union share | | <input type="checkbox"/> |
| | Call debt security | | <input type="checkbox"/> |
| | Consumer credit contract | | <input type="checkbox"/> |
| | Debt security issued by the Crown | | <input type="checkbox"/> |
| | Interest in a KiwiSaver scheme | | <input type="checkbox"/> |
| | Interest in a managed fund (other than a KiwiSaver scheme) | | <input type="checkbox"/> |
| | Pure risk contract of insurance | | <input type="checkbox"/> |
| | Quoted equity security | | <input type="checkbox"/> |
| | Quoted debt security | | <input type="checkbox"/> |
| 11. | Is the digital advice service limited to products of a particular product provider(s)? If YES , please answer questions 11a and 11b | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| 11a. | Please specify the name(s) of the provider(s) | | |
| 11b. | Please indicate whether the provider is a member of your QFE group (if applicable) or related to you | | |
| 12. | Please describe your personalised digital advice service | | |
| | | | |

| GOOD CHARACTER | | | |
|----------------|--|------------------------------|-----------------------------|
| 13. | Are you an existing Financial Markets Conduct Act 2013 licensee? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| 14. | How many directors and senior managers are you supplying details on behalf of for this application? | | |
| 15. | For EACH of these directors and senior managers please provide full name, date of birth, position, gender If you run out of space in the form you can use a separate sheet and attach it to this application | | |
| | Full name: | | |

| | | |
|--|-------------------------------|--|
| | Date of birth: | |
| | Position: | |
| | Gender: | |
| | Full name: | |
| | Date of birth: | |
| | Position: | |
| | Gender: | |
| | Full name: | |
| | Date of birth: | |
| | Position: | |
| | Gender: | |
| | Full name: | |
| | Date of birth: | |
| | Position: | |
| | Gender: | |
| | Full name: | |
| | Date of birth: | |
| | Position: | |
| | Gender: | |
| <p>Each director and senior manager listed in your application must complete a declaration form (see page 22 for the draft declaration form). The declaration form asks for their consent for third party checks.</p> <p>Please attach declarations for each person to this application.</p> | | |
| 16. | Declarations attached? | Yes <input type="checkbox"/> No <input type="checkbox"/> |

CAPABILITY

| | |
|-----|--|
| 17. | Please tell us what skills and experience you have identified that you need to provide the personalised digital advice service effectively. |
| | |
| 18. | Please explain how you have satisfied yourself that you have engaged people with these skills and experience, including staff or contractors: |

| | | | |
|---|---|------------------------------|-----------------------------|
| | <ul style="list-style-type: none"> To act as Technical Experts To perform the Quality Assurance function | | |
| Provide an organisation chart showing how the team that provides the digital advice service is structured. Please note any outsourced functions. | | | |
| 19. | Organisation chart attached? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| 20. | Do you or will you outsource any of the Technical Expert or Quality Assurance functions required for you to meet the minimum standards? If YES, please answer questions 20a to 20f | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| 20a. | Is the digital advice software a commercially available package (which may include some modifications for your use)? If so, please explain what it is, the name of the provider, and how you satisfied yourself that the software is fit for purpose. | | |
| 20b. | Describe the functions you will outsource and your arrangements (such as who will perform the functions, and how and where these will be carried out). | | |
| 20c. | Provide a high-level description of the due diligence process you undertook to select the most appropriate outsourced providers for your business. | | |
| 20d. | Explain how you have appropriate processes to ensure the outsourced provider(s) are appropriate and can effectively perform the outsourced function. | | |
| 20e. | Explain how you will monitor performance and ensure the outsourced providers perform to an acceptable level. | | |
| 20f. | Do you have formal legal agreements with outsourced providers? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| | If YES, do these agreements provide for information to be available to the FMA as required? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |

RISK MANAGEMENT PROCESSES

| | | | |
|-----|--|------------------------------|-----------------------------|
| 21. | Please explain how you have satisfied yourself that you have adequate risk management processes in place that meet the minimum standards for risk management processes. | | |
| 22. | Do you have systems and controls in place to suspend the digital advice service if necessary? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |

| | | | |
|-----|---|--|--|
| | If YES , please provide a high-level description of these | | |
| 23. | Please provide a high-level description of your systems and processes for monitoring and testing the algorithms used to deliver the digital advice service | | |
| 24. | Please provide a high-level description of your systems and processes for reviewing the advice provided to clients through the digital advice service | | |

IT SYSTEMS

| | | |
|-----|---|--|
| 25. | Please tell us the IT systems you have identified you need to meet the minimum standards for IT systems | |
| 26. | Please explain how you have satisfied yourself that your IT systems meet these requirements and have the necessary functionality to perform the digital advice service effectively | |

CLIENT FILTERING

| | | |
|-----|---|--|
| 27. | Please provide a high-level description of your client filtering processes for the digital advice service that meet the minimum standards for client filtering | |
|-----|---|--|

DECLARATION

| | | |
|-----|--|--------------------------|
| 28. | Name of individual completing form on behalf of the applicant entity | |
| 29. | Position | |
| 30. | I confirm that I am authorised to submit this application on behalf of the applicant. | <input type="checkbox"/> |
| 31. | After having conducted all the necessary enquiries, I declare the information provided in this application is true and correct to the best of my knowledge. | <input type="checkbox"/> |
| 32. | Date | |

ADDITIONAL INFORMATION

| | | | |
|-----|--|------------------------------|-----------------------------|
| 33. | Do you wish to submit any other information that is material and relevant to the application and not already submitted above? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
|-----|--|------------------------------|-----------------------------|

DA1.1

| | |
|-----|---|
| 34. | Please list any supporting documents |
|-----|---|

You may insert letterhead icon/logo here

DA1.1 Declaration

by *director or senior manager*
of applicant

| | | |
|------------------|----------------------|--|
| Applicant | | <i>to be included in the list of providers able to provide personalised digital advice under the Financial Markets Conduct (Personalised Digital Advice) Exemption Notice 2018</i> |
| Applicant name | Applicant FSP number | |

| | | | |
|---|---|---|-------------------------------------|
| Director or senior manager | | <i>to be completed by person making the declaration</i> | |
| Personal details | Gender <i>tick one</i> <input type="checkbox"/> Male <input type="checkbox"/> Female | Date of birth / / DD MM YY | |
| Your name | First name | Middle name(s) | Last name |
| Other names you are, or have ever been known as e.g. maiden names, aliases | First name | Middle name(s) | Last name |
| Contact email and daytime phone | Business email | | Landline/mobile – include area code |
| Residential details | Street number and name | | Suburb |
| | Town or city | | Postcode Country |
| Position | <i>tick one</i> <input type="checkbox"/> I am a director of the Applicant's business | | |
| | <input type="checkbox"/> I am a senior manager with responsibility for the Applicant's digital advice service | | |
| | Senior managers only: I have provided: <input type="checkbox"/> a position description with details about my senior manager's role in appendix 2 | | |

| My declaration for the ‘good character’ assessment | | |
|---|--|--|
| <ul style="list-style-type: none"> Please select YES or NO for each question. If any answer is YES, you must provide full details in appendix 1. You must answer each question in relation to both New Zealand and/or other jurisdictions. | | |
| 1. | Have you ever been charged with or convicted of (in New Zealand or overseas) a criminal offence relating to dishonesty, fraud, or misleading or deceptive conduct? | <input type="checkbox"/> YES <input type="checkbox"/> NO |
| 2. | Have you ever been convicted (in New Zealand or overseas) of any offence that you were sentenced to, or were liable to be sentenced to, a term of imprisonment for (even if you were not imprisoned)? | <input type="checkbox"/> YES <input type="checkbox"/> NO |
| 3. | Have you ever been charged with or convicted of an offence, or subject to a proceeding: <ol style="list-style-type: none"> In New Zealand under any financial markets legislation, as defined in the Financial Markets Authority Act 2011? In another jurisdiction under any financial markets legislation equivalent to that referred to in ‘a’ above? | <input type="checkbox"/> YES <input type="checkbox"/> NO |
| 4. | Have you ever been the subject of any civil proceedings (in New Zealand or overseas) for conduct relating to dishonesty, fraud, or misleading or deceptive conduct? | <input type="checkbox"/> YES <input type="checkbox"/> NO |
| 5. | Have you ever been the subject of any proceedings or action taken by a regulatory authority in New Zealand, or overseas? | <input type="checkbox"/> YES <input type="checkbox"/> NO |
| 6. | In the last 15 years have you been (in New Zealand or overseas) a trustee, director or partner of, or held any position of senior management in, any company or other incorporated or unincorporated entity which, while you were connected to that entity: <ol style="list-style-type: none"> Was placed into liquidation, administration, receivership or statutory management (or any overseas equivalent status), or Entered into any compromise agreement, moratorium or other restructuring to avoid liquidation, administration or receivership (or any overseas equivalent)? | <input type="checkbox"/> YES <input type="checkbox"/> NO |
| 7. | Have you ever been banned (in New Zealand or overseas) from: <ol style="list-style-type: none"> Providing financial services, or Acting as director of a company or other incorporated body, or Being involved in the management of any class of incorporated or unincorporated entity? | <input type="checkbox"/> YES <input type="checkbox"/> NO |
| 8. | Have you ever been dismissed or asked to resign, or subject to disciplinary proceedings resulting from, or in respect of, a position of trust, fiduciary appointment or similar (in New Zealand or overseas)? | <input type="checkbox"/> YES <input type="checkbox"/> NO |
| 9. | Have you ever been refused registration or other entry into, or restricted from the right to carry on in, any profession or occupation under the law of the country, or under the membership rules of any professional body <i>at any time</i> (in New Zealand or overseas)? | <input type="checkbox"/> YES <input type="checkbox"/> NO |
| 10. | In the last 15 years have you been made bankrupt, entered into a compromise agreement with creditors or been placed into statutory management (in New Zealand or overseas)? | <input type="checkbox"/> YES <input type="checkbox"/> NO |
| 11. | Are you subject to any pending proceedings or actions (in New Zealand or overseas) that mean you would have to answer YES to any of the above questions if an adverse finding is reached? | <input type="checkbox"/> YES <input type="checkbox"/> NO |

Consent and declaration

Consent to disclosure of information

I understand the information provided in this form is being collected by the Financial Markets Authority (FMA) in relation to an application to be included in the list of providers able to provide personalised digital advice under the Financial Markets Conduct (Personalised Digital Advice) Exemption Notice 2018.

In signing this declaration, I authorise the FMA to conduct enquiries and collect personal information about me from any **third party**, including any person and any New Zealand or overseas government agency, regulatory body or professional body – **for the purpose** of determining I am a person of **good character** to hold the position of **director** or **senior manager** of the Applicant's business. This includes carrying out identity, good character, and criminal record checks.

For that purpose I authorise:

- The FMA to disclose my personal information to any third party
- The third party to disclose my personal information to the FMA
- The FMA to use my personal information, provided or collected in connection with the Applicant's application, when the FMA performs its functions and exercises its powers under the Financial Advisers Act 2008, or any other legislation
- The FMA to disclose any personal information provided or collected about me to the Applicant, for the purposes of assessing the application, communicating the outcome of the assessment or providing reasons for the FMA's position on the application.

Declaration

I _____ of _____
Full name *Town/city and country*

Declare that:

1. I am a director / senior manager (*delete one*) of the Applicant.
2. The information provided in this form, and in the appendices attached to it, is true, correct and complete.

Signature

Dated: _____ day of _____ 20__

Applicant: please attach the signed form to your application – and retain original on file. We may ask for this

Please use these appendices to provide the background and position information requested (if applicable). Your completed declaration, including appendices, should be provided and uploaded as one document.

Appendix 1: Disclosure for 'good character' assessment

If you said **YES** to any of the questions 1-11 please provide full details below next to the correct question number.

Q 1

Q 2

Q 3

Q 4

Q 5

Q 6

Q 7

Q 8

Q 9

Q 10

Q 11

Appendix 2: Position description

What is your position title?

What position do you report to?

How many direct reports to your role?

What is the description of your role?



Personalised digital advice exemption

Your guide to applying to provide personalised digital advice under the Financial Markets Conduct (Personalised Digital Advice) Exemption Notice 2018

This guide covers all the questions you'll be asked, the minimum standards you need to meet, and the information and supporting documents you'll need to provide.

In this guide...

- Introduction
- Getting started
- Good character
- Capability
- Risk management processes
- IT systems
- Client filtering
- Final steps



How do I apply to be able to rely on the personalised digital advice exemption?

This guide contains information about how to apply to provide personalised digital advice (also referred to as ‘robo-advice’) under the Financial Markets Conduct (Personalised Digital Advice) Exemption Notice 2018 (the ‘exemption’). The list of providers approved to provide personalised digital advice is set out in Schedule 1 of the exemption.

The exemption has been granted because we believe personalised digital advice has the potential to improve consumer access to advice and promote innovation. However, providers need to meet certain standards and conditions to align with the objectives of promoting the sound and efficient delivery of financial advice, and encouraging public confidence in the professionalism and integrity of the advice providers. These objectives are stated in the Financial Adviser Act 2008 (‘FA Act’).

Your application needs to show us that you can meet the objectives mentioned above. If your application is approved, you’ll also need to comply with all other obligations in the exemption and the FA Act. Having your application approved does not mean you will meet the licensing standards under the proposed new regime that will replace the FA Act.

To apply, email us your completed application form (*see page 16 for the draft form*) and supporting documents. All mandatory information and documents must accompany your application.

This guide may be updated from time to time, so please check our website for the latest version before you apply.

Questions

Email exemptions@fma.govt.nz or call 0800 434 567 (8.30am to 5.00pm Monday to Friday). Overseas callers should call +64 3 962 2698.



| Who is this exemption for? | Things to know before you apply |
|---|---|
| <p data-bbox="185 368 573 403">Financial adviser entities</p> <p data-bbox="185 440 806 587"><i>The exemption is for financial adviser entities ('providers') who want to provide personalised financial advice or investment planning services to retail clients using a digital advice service.</i></p> <div data-bbox="264 703 745 1155" style="border: 2px solid green; border-radius: 20px; padding: 15px; margin-top: 20px;"> <p data-bbox="315 831 627 1002">After you submit your application, we may ask you to provide more information to help us progress your application.</p> </div> | <p data-bbox="864 363 1171 399">1. Eligibility criteria</p> <p data-bbox="864 424 2007 635">a. The exemption is available to entities that:</p> <ul data-bbox="909 459 1973 555" style="list-style-type: none"> • have been approved by us to be included in the list of providers able to rely on the exemption • are registered on the Financial Service Providers Register ('FSP Register') • belong to an approved dispute resolution scheme. <p data-bbox="864 576 2007 635">b. To approve your application, we must be satisfied you meet the minimum standards described in this guide.</p> <p data-bbox="864 663 1223 699">2. Minimum standards</p> <p data-bbox="864 724 1993 783">a. We expect all entities to meet the minimum standards, but there is flexibility in how you meet them depending on the size and nature of your business.</p> <ul data-bbox="909 807 1980 903" style="list-style-type: none"> • For smaller businesses, this may mean quite simple processes which are not fully documented (you'll still need to explain them in your application). • For larger businesses, we expect processes to be more detailed and fully documented. <p data-bbox="909 922 1917 981">When you're explaining how you will meet a minimum standard, tell us why your approach is appropriate for the size and nature of your business.</p> <p data-bbox="864 1002 1973 1098">b. When you've completed your application, look over all the minimum standards and check you've provided a level of information that would allow someone who doesn't know anything about your business to be comfortable that you will meet each of the minimum standards.</p> <p data-bbox="864 1118 1223 1153">3. Ongoing obligations</p> <p data-bbox="864 1179 1688 1203">a. If we approve your application you'll have ongoing obligations, including:</p> <ul data-bbox="909 1230 2047 1353" style="list-style-type: none"> • meeting all the conditions and requirements of the exemption • meeting all the relevant requirements of the FA Act • maintaining the minimum standards for as long as you provide the digital advice service in reliance on the exemption. <p data-bbox="864 1374 1879 1398">b. You may have other legal requirements including under other financial markets legislation.</p> |

Application questions

The questions we ask help us assess how you meet the minimum standards. Under Part B - *What do we ask*, we list all the questions in the same order as they appear in the application form.

- c. We may periodically request that you provide us with information about your use of the exemption and your digital advice service.

4. Using this guide

Structure

In each section you'll find the list of all of the questions in the application form, including the documents we ask you to provide.

The guide has been designed so that you can read the minimum standards (A), see what you'll be asked in the application form (B) and read our comments on things to think about when answering the questions (C), then assemble what you need before you start your application.

If you're asked to explain something, you can write your answer straight into the form, and/or supply a supporting document.

Supporting documents

If you supply answers in a supporting document, please indicate the document name and the section you're referring us to. If you are a QFE or a member of a QFE group, you are able to supply an updated version of your QFE Adviser Business Statement with tracked changes to support your answers.

If you have any questions email exemptions@fma.govt.nz or call 0800 434 567 between 8.30am and 5pm, Monday to Friday. Overseas callers should call +64 3 962 2698.



| | Information for applicants |
|---|--|
| <p>A. Getting started</p> <p><i>This guide is divided into sections, following the order of the application form. This ‘getting started’ section covers the first section of the form, which asks for details about you, your business, and your application.</i></p> <div data-bbox="264 770 741 1366" style="border: 2px solid green; border-radius: 25px; padding: 15px; margin: 20px 0;"> <p style="text-align: center;">Tell us about your service...</p> <p>No two products or services are the same. Your answers to our questions about your digital advice service will help us understand the size and nature of your proposed offering.</p> </div> | <p>B. What do we ask?</p> <p>Applicant details</p> <ul style="list-style-type: none"> ➤ Entity name and contact details. <p>Contact person details</p> <ul style="list-style-type: none"> ➤ Name of the contact person, their position, address, phone number/s and email. <p>FSP registration</p> <ul style="list-style-type: none"> ➤ What is your FSP number? <i>(See comment 1)</i> ➤ What is the name of your dispute resolution scheme? <i>(See comment 1)</i> <p>New Zealand Business Number</p> <ul style="list-style-type: none"> ➤ What is your New Zealand Business Number (if applicable)? <i>(See comment 2)</i> <p>Prosecution details</p> <ul style="list-style-type: none"> ➤ Does the entity applying to rely on the exemption have any past, current or pending criminal prosecutions, civil litigations or administrative actions involving it? If YES, please provide details. <p>QFE groups</p> <ul style="list-style-type: none"> ➤ Is your entity a QFE or a member of a QFE group under the Financial Advisers Act 2008? If YES, what is the name of your group? <p>Licensed Financial Service Provider</p> <ul style="list-style-type: none"> ➤ Is your entity a licensed provider under the Financial Service Providers (Registration and Dispute Resolution) Act 2008? <p>Application details</p> <p>Specific questions about your digital advice service <i>(See comment 3)</i></p> <ul style="list-style-type: none"> ➤ What financial adviser service(s) does your digital advice service relate to? Please select one or both of the options: financial advice, investment planning service. |

- What product type(s) will the digital advice service provide advice on? Please select all that apply from the list:
 - bank term deposit
 - call building society share
 - call credit union share
 - call debt security
 - consumer credit contract
 - debt security issued by the Crown
 - interest in a KiwiSaver scheme
 - interest in a managed fund other than a KiwiSaver scheme
 - pure risk contract of insurance
 - quoted equity security
 - quoted debt security.
- Is the digital advice service limited to products of a particular product provider(s)? Please specify the name(s) of the provider(s). Please indicate whether the provider is a member of your QFE group (if applicable) or related to you.

Your digital advice service

- Please describe your personalised digital advice service. *(See comment 4)*

C. What to think about

1. FSP registration

- a. You must be registered on the FSP Register at www.fspr.govt.nz. New registrations can take up to five working days. Please register for the FSP Register category 'Wholesale and/or generic financial advice'. This is the most appropriate financial adviser service category available to entities on the FSP Register.
- b. You will also need to be a member of an approved dispute resolution scheme. For more information about dispute resolution schemes [click here](#).

2. New Zealand Business Number

An NZBN is a unique 13-digit identifier available for every sole trader, business, corporate, partnership or trust in New Zealand. If you do not have an NZBN, please answer "Not applicable".

3. Tell us about your digital advice service

- a. This section asks for some specific details about the nature and scope of your proposed personalised digital advice service.

- b. The FA Act defines what is meant by:
 - Financial adviser service – see section 9.
 - Financial advice – see section 10.
 - Investment planning service – see section 11.
- c. When we ask about the product type(s) you can select as many as apply. Definitions of the product types are set out in clause 4 of the exemption and clause 5 of the FA Act.
- d. When we ask whether the digital advice service is limited to products of a particular product provider, this can include your own products. **Related** is defined in section 5 of the FA Act.

4. Describe your digital advice service

- a. Your comments should provide a high-level overview of the nature and scope of your personalised digital advice service. For example:
 - A high-level description of how the service works.
 - The target market for the service.
 - Whether the digital advice software is:
 - a bespoke application developed specifically for you – please indicate whether this was developed in-house and/or using external resource
 - a commercially available package – which may include some modifications for your use. Please indicate the name of the package and/or vendor, and what ongoing support is provided.
 - Your expected timing and plan for launching the service. For example, this could be:
 - as a pilot offering initially, which may involve intermittent service suspensions and reviews prior to a formal launch
 - with limited or phased functionality, followed by incremental expansion of the service and/or functionality over time
 - a full launch with all planned functionality and service available on day one.
 - How you will generate income from the service.
 - Your expected or target business size; for example, in terms of funds under advice and/or expected annual premium (if applicable). Please give your best estimate in NZ dollars.
- b. We do not need copies of the underlying algorithms and software as part of your initial application.
- c. We may periodically request that you provide us with updated information about your digital advice service and your use of the exemption.



Minimum standards

A. Good character

Your directors and senior managers must be of good character.

Minimum standards

1. Your directors and senior managers must be of good character. This covers integrity, probity, trustworthiness and reputation.

Numbered comments

Our comments are numbered sequentially throughout the document. If you call us, just quote the comment number your question is about.

Information for applicants

B. What do we ask?

- Are you an existing Financial Markets Conduct Act 2013 ('FMC Act') licensee? *(See comment 5)*
- How many directors and senior managers are you supplying details on behalf of for this application? *(See comments 6 and 7)*
- For each of these directors and senior managers please provide full name, date of birth, position, and gender.
- Attach a declaration form completed by each of these directors and senior managers. *(See comment 8)*

C. What to think about

5. Who does not need to provide declarations?

If you are an existing FMC Act licensee, and you have previously provided us with good character declarations for your directors and relevant senior manager(s), you do not need to provide new declarations.

6. Who should you include in your application?

This section relates to those who lead the digital advice service. You need to include:

- all current directors
- those senior managers responsible for the digital advice service.

7. How is 'senior manager' defined?

- a. The title 'senior manager' means different things in different organisations. **Senior manager** is defined in the exemption in clause 4. You only need to list people who have significant influence over the management or administration of the digital advice service (not the entity as a whole).

8. What do you need to supply?

- a. Each director and senior manager listed in the application form has to complete and sign a **declaration** *(see page 22 for the draft declaration form)*, which you need to scan and attach to your application. You must retain the original signed hard copy as we may ask for this later.
- b. The declaration asks the directors and senior managers on your list to tell us about their background and past conduct, and give us consent to complete checks with other third parties.

9. How do we assess good character?

Our assessment of good character is important for preserving public confidence in the professionalism and integrity of financial adviser entities providing digital advice services. We base our assessment on (but not limited to):

- information in the declarations in your application
- feedback from third parties checks such as the Ministry of Justice
- conduct indicating past non-compliance
- convictions or involvement in dishonesty, deceit, theft or fraud
- failure to manage business or personal financial affairs
- dismissal from a position of trust
- adverse information from other government agencies and regulators.



Minimum standards

A. Capability

Your organisation must have people with the right skills and experience to provide the personalised digital advice service effectively.

Minimum standards

1. You must have staff or contractors with appropriate expertise in the technology and algorithms used to provide the digital advice service (**‘Technical Experts’**).
2. You must have staff or contractors with the knowledge, skills and experience to oversee and review the advice generated by the algorithms used by the digital advice service (**‘Quality Assurance function’**).

Outsourcing

3. If you outsource any of these functions, before contracting a provider, you must have appropriate processes to ensure the provider is an appropriate entity and capable of effectively performing the outsourced function to an acceptable service level.
4. You must have a proper legal arrangement with any outsourced provider, including provisions that enable you to effectively monitor their performance and take appropriate action for non-performance.
5. Records and information the outsourced provider holds must be available for our inspection on request.
6. You must regularly review the outsourced arrangement (at a frequency appropriate to the risk involved). Your performance monitoring programme

Information for applicants

B. What do we ask?

Skills and experience of your team

- Please tell us what skills and experience you have identified that you need to provide the personalised digital advice service effectively. *(See comment 10)*
- Please explain how you have satisfied yourself that you have engaged people with these skills and experience, including staff or contractors:
 - To act as Technical Experts *(See comment 11)*
 - To perform the Quality Assurance function. *(See comment 12)*

Roles and responsibilities

- Provide an organisation chart showing how the team that provides the digital advice service is structured. Please note any outsourced functions. *(See comment 13)*

Outsourcing *(See comment 14)*

- Do you or will you outsource any of the Technical Expert or Quality Assurance functions required for you to meet the minimum standards? If YES, you will be asked:
 - Is the digital advice software a commercially available package (which may include some modifications for your use)? If so, please explain what it is, the name of the provider, and how you satisfied yourself that the software is fit for purpose.
 - Describe the functions you will outsource and your arrangements - such as who will perform the functions, and how and where these will be carried out.
 - Provide a high-level description of your due diligence process to select the most appropriate outsourced providers for your business.
 - Explain how you have appropriate processes to ensure the outsourced provider(s) are appropriate and can effectively perform the outsourced function.
 - Explain how you will monitor performance and ensure the outsourced providers perform to an acceptable level.
 - Do you have formal legal agreements with outsourced providers? If YES, do these agreements provide for information to be available to the FMA as required? *(See comment 15)*

must include:

- checks that the provider's performance meets required standards
- triggers for identifying non-performance
- a plan for steps you will take in the event of non-performance.

C. What to think about

10. What do we need to know?

- a. You need to tell us what skills and experience you have identified as being necessary to provide the personalised digital advice service effectively. This will vary depending on the nature of your service. You then need to explain how you are satisfied you have engaged staff or contractors with the appropriate skills and experience. This explanation must cover all staff who will perform the Technical Expert and Quality Assurance functions. (For outsourced functions, please see comment 14.)
- b. How you structure your business, and decide the skills, experience, the number of staff or contractors required to meet the minimum standards is up to you. If you choose to outsource any of the roles, you will need to meet the additional minimum standards set out in this section for outsourced functions.

11. Technical Experts

- a. Your team needs to include people with the right technical expertise to be able to meet the minimum standard for Technical Experts.
- b. You must decide what technical expertise is needed to provide your digital advice service effectively. This may vary depending on the complexity of the service provided and whether the digital advice software was developed specifically for you or was a commercially available package.

For example:

- If the digital advice software is a bespoke application developed specifically for you, you will need in-house technical expertise and/or external resource to undertake the initial design and build of the digital advice software.
- If the digital advice software is a commercially available package (which could include some modifications for your use), you will require sufficient knowledge and expertise to be able to assess whether the software meets your business requirements and can deliver your digital advice service effectively.

In both cases, you will need ongoing technical expertise to operate the system, including being able to change the algorithms and continuously monitor system performance – including identifying any system issues. If you have outsourced this to a third party (for example, the third party from which you purchased the software), you will need to meet the additional standards for outsourced functions.

12. Quality Assurance function

- a. Your team needs to include people with the right knowledge, skills and experience to enable you to meet the minimum standard for the Quality Assurance function.
- b. We would usually expect a person performing the Quality Assurance function to be an AFA who:
 - complies with the requirements of [Code Standards 16-18](#)
 - is authorised to provide the financial adviser service(s) offered by the digital advice service (for

example, financial advice and/or an investment planning service)

- has experience in advising on the product type(s) that the digital advice service relates to.
- c. If your team performing the Quality Assurance function includes people who are not AFAs, please explain how you are satisfied that these people have appropriate knowledge, skills and experience to perform this function. Consistent with Code Standard 15, we would expect them to have knowledge of the exemption, the FA Act and other legal obligations relevant to the operation of the digital advice service. They need to understand the personalised service provided to clients and be able to assess whether the digital advice service has generated advice that is suitable for clients.

13. Roles and responsibilities

You must provide an organisational chart showing the team structure of those who will provide the digital advice service.

This chart should show:

- the team structure, including key positions and how these roles relate to other roles
- the names of the people or (for larger organisations) number of FTE (full-time equivalent) staff performing the Technical Expert and Quality Assurance functions
- any outsourced providers performing the Technical Expert or Quality Assurance functions.

14. How will you select outsourced providers?

- a. You can outsource the Technical Expert or Quality Assurance functions to an outsourced provider and its staff. However, you remain responsible for any outsourced functions, as if performed by you. Your staff must have sufficient knowledge, skills and experience to monitor the performance of the outsourced functions.
- b. If you outsource any of the Technical Expert or Quality Assurance functions, please explain how you determined that the provider can perform the outsourced functions to the required standard.
- c. Please also describe the assurance processes you have in place to ensure the provider can effectively perform the outsourced function, and how you monitor their performance.

15. What records are required?

- a. The level and nature of records the outsourced provider must keep should be at least equivalent to what you would keep if you performed the function yourself.
- b. We expect to be able to view the records within a few days of a request, depending on the nature and volume of the records.
- c. Explain what records the outsourced provider will keep, and how we can access them. You don't need to arrange for direct access as long as we can obtain the records through you easily.



| Minimum standards | Information for applicants |
|---|--|
| <p data-bbox="176 379 846 427">A. Risk management processes</p> <p data-bbox="176 443 846 507">You must have adequate risk management processes in place to provide the digital advice service effectively.</p> <p data-bbox="176 539 846 587">Minimum standards</p> <ol data-bbox="176 587 846 970" style="list-style-type: none"> <li data-bbox="176 587 846 970">Your risk management processes must enable you to monitor and test the digital advice service and take appropriate action when necessary, including adequate and effective processes to: <ul data-bbox="224 730 846 970" style="list-style-type: none"> <li data-bbox="224 730 846 826">monitor and test the algorithms used to deliver the digital advice service, including changes to them <li data-bbox="224 842 846 970">review the advice provided to clients to test the quality of the advice and ensure it meets the standards required by the FA Act and the exemption. | <p data-bbox="855 379 2045 427">B. What do we ask?</p> <ul data-bbox="855 443 2045 715" style="list-style-type: none"> <li data-bbox="855 443 2045 507">➤ Please explain how you have satisfied yourself that you have adequate risk management processes in place that meet the minimum standards for risk management processes. <i>(See comment 16)</i> <li data-bbox="855 507 2045 571">➤ Do you have systems and controls in place to suspend the digital advice service if necessary? If YES, please provide a high-level description of these. <i>(See comment 16b)</i> <li data-bbox="855 571 2045 635">➤ Please provide a high-level description of your systems and processes for monitoring and testing the algorithms used to deliver the digital advice service. <i>(See comment 17)</i> <li data-bbox="855 635 2045 715">➤ Please provide a high-level description of your systems and processes for reviewing the advice provided to clients through the digital advice service. <i>(See comment 18)</i> <p data-bbox="855 730 2045 778">C. What to think about</p> <p data-bbox="855 794 2045 842">16. Risk management processes</p> <ol data-bbox="855 842 2045 1353" style="list-style-type: none"> <li data-bbox="855 842 2045 1066">a. You need adequate risk management processes to enable you to provide the digital advice service effectively. The processes you need will depend on the size and nature of your service. For larger or more complex services, we expect processes will usually be more detailed and documented. For smaller or less complex services, your processes may be relatively simple. For example, larger services may have automated exception reporting to identify situations where the advice output deviates from expectations. For smaller services, a manual review process may be adequate. <li data-bbox="855 1082 2045 1177">b. We expect your processes to include systems and controls to suspend the digital advice service, if necessary – for example, if an error in the algorithm is detected that may result in unsuitable advice or poor consumer outcomes. <li data-bbox="855 1209 2045 1353">c. If any of your risk management processes are outsourced to a third-party provider, you will need to explain what arrangements you have to ensure the outsourced functions are performed adequately and effectively. Please explain how any outsourced functions meet minimum standards 3 to 6 set out under ‘Capability’ above. <p data-bbox="855 1369 2045 1417">17. Monitoring and testing algorithms</p> <ol data-bbox="855 1417 2045 1433" style="list-style-type: none"> <li data-bbox="855 1417 2045 1433">a. Please explain how you are satisfied that your systems and processes to monitor and test the algorithms, |

are adequate and effective. These processes need to cover the design process, where applicable, and any changes made to it. You should have escalation and remediation processes where issues are identified.

- b. Please describe what processes you have to review and update the algorithms – for example, to reflect market events or changes in regulation or product design.

18. Monitoring and testing advice

Please explain how you are satisfied that your systems and processes for reviewing the advice provided to clients by the digital advice service are adequate and effective. You should consider:

- the role of your Quality Assurance function in reviewing the advice output
- the timing, frequency, and level of review and sign-off
- processes for escalation and remediation where issues are identified.

For example, we would expect rigorous testing and monitoring in the design phase, or after changes to the algorithm. This could include having a significant amount of the advice generated by the digital advice service reviewed by staff performing the Quality Assurance function to assess whether this resulted in advice that was suitable for those clients. At other times, during the business as usual operation of the service, regular reviews by your Quality Assurance function of samples of the advice may be enough.



| Minimum standards | Information for applicants |
|---|---|
| <p>A. IT systems</p> <p>The IT systems used to deliver your digital advice service must be secure and reliable. Your arrangements must ensure they perform efficiently and the associated risks are managed.</p> <p>Minimum standards</p> <ol style="list-style-type: none"> 1. Your IT systems include all necessary functionality to provide the digital advice service effectively. 2. You have effective safeguards and controls over these systems, (and the underlying processes) whether they are built into, or external to, the system. This includes processes: <ul style="list-style-type: none"> • to ensure cyber-resilience, data and system security and prevent errors or system failure • that account for risk from human error, technical failure and malicious conduct. 3. You have proper legal arrangements with any third party software providers, including licences for software and contracts for maintenance and support. | <p>B. What do we ask?</p> <ul style="list-style-type: none"> ➤ Please tell us the IT systems you have identified you need to meet the minimum standards for IT systems. <i>(See comment 19)</i> ➤ Please explain how you have satisfied yourself that your IT systems meet these requirements and have the necessary functionality to perform the digital advice service effectively. <i>(See comment 20)</i> <p>C. What to think about</p> <p>19. Your IT systems</p> <p>As a digital service, it is particularly important that the processes performed by your chosen IT systems to deliver are effective to deliver it. This includes adequate and effective IT systems for the service to:</p> <ul style="list-style-type: none"> • maintain cyber-resilience to detect, prevent and respond to cyber-risks • maintain client records • protect client data and confidential information • comply with your obligations under the exemption, the FA Act. and other legal obligations relevant to the provision of the digital advice service. <p>20. Key information about your IT systems</p> <p>When you outline your IT systems needed to deliver the service, include a high-level description of the following:</p> <ul style="list-style-type: none"> • key risks, and controls and safeguards in place (internal and outsourced) • your cyber-resilience framework – for example, whether you apply the NIST Cybersecurity Framework • how you manage data security and integrity (measures such as a security audit) • how you manage disruptions from IT system failures and outages (including outsourced providers) • legal agreements – your legal rights to use the software and if it is currently under support. |



| Minimum standards | Information for applicants |
|--|---|
| <p data-bbox="176 363 488 408">A. Client filtering</p> <p data-bbox="176 427 806 523">You must have adequate and effective processes to filter out clients who are not suited to receive advice through your digital advice service.</p> <p data-bbox="176 555 456 587">Minimum standards</p> <ol data-bbox="176 603 817 762" style="list-style-type: none"> 1. You have adequate and effective arrangements to filter out clients for whom the advice provided by the digital advice service is not appropriate, or who want advice that is outside the scope of the digital advice service. | <p data-bbox="857 363 1214 408">B. What do we ask?</p> <ul data-bbox="857 427 2045 491" style="list-style-type: none"> ➤ Please provide a high-level description of your client filtering processes for the digital advice service that meet the minimum standards for client filtering. <i>(See comment 21)</i> <p data-bbox="857 523 1272 568">C. What to think about</p> <p data-bbox="857 587 1303 625">21. Your client filtering processes</p> <ol data-bbox="857 628 2033 724" style="list-style-type: none"> a. Providers can use different methods for filtering clients. You can decide on the method you use, as long as you explain how you are satisfied that your client filtering processes are appropriate for your digital advice service and will meet the minimum standards for client filtering. <p data-bbox="857 743 1218 782">22. What is client filtering?</p> <ol data-bbox="857 785 2045 1426" style="list-style-type: none"> a. Depending on the nature of the digital advice service, filtering may occur as an initial screening process as well as later in the process. b. For example, the digital advice service may be programmed to ask appropriate filtering questions at the start of the process. This could help filter out clients for whom the digital advice service is not appropriate or who want advice on areas outside the scope of the advice service being offered. <ul data-bbox="913 970 2045 1426" style="list-style-type: none"> • This could include clear, concise disclosure of the nature and scope of the advice the digital advice service, and seek the client’s acknowledgement of this. • This could involve asking a series of initial questions about the client’s circumstances to see whether they fall within the scope of the advice being offered. For example, these questions could identify and apply filtering processes in the following circumstances: <ul data-bbox="1003 1136 2033 1426" style="list-style-type: none"> ○ A client who is seeking to invest to save for their child’s university fees, when the digital advice service only offers advice on a provider’s KiwiSaver funds. ○ A client who indicates they have a very low risk tolerance and would not be comfortable losing any of their initial capital, when the digital advice service only advises on products where an investor may lose some or all of their original investment. ○ A client who is seeking a comprehensive financial plan involving consideration of their tax obligations and existing debt, when the digital advice service only offers advice on specific products and does not take into account a client’s wider circumstances. ○ A client who is seeking advice on a replacement insurance policy, when the digital advice |

service is only suitable for those with no previous insurance cover.

- c. You could also have a process for flagging potentially inconsistent responses as a client moves through your digital advice tool. This may trigger filtering processes such as warnings, offering further information, or asking further questions to clarify whether the service is appropriate for the client. If not appropriate, the client may need to be filtered out.
- d. If a client is filtered out of the digital advice service, you may want to let them know if they have the option to speak to a human adviser (including whether there is an associated cost for that).



Final steps

This section covers finalising and submitting your application

Have you...

- Answered all the mandatory questions and given the answers you think best describe your digital advice service?
- Provided all the mandatory documents needed? Have you checked all the good character declarations are attached?
- Checked there's nothing you want to add, change or delete?
- Kept a copy of your application form and supporting documents?
- Arranged how you're going to pay?

Information for applicants

23. Certifying your application

- a. At the end of the application you will be asked to certify you are authorised to submit it and that, to the best of your knowledge, all relevant information has been included. You need to be sure the information you're providing is true, correct and complete – and that nothing important has been left out.
- b. Please attach a scanned copy of the signed signature page with your application.

24. Submitting your application

- a. Please e-mail the following documents to exemptions@fma.govt.nz:
 - Your completed application form
 - Copies of all supporting documents, including scanned copies of the signed good character declarations
- b. The subject line of the email should be: 'Personalised digital advice exemption – Provider application – *[name of provider]*'.
- c. We will acknowledge receipt of your application.

25. Making fee payments

- a. You will also need to pay a fee of **\$1,265** (incl. GST) before we process your application.
- b. You can pay this fee by electronic deposit, internet banking, or cheque. Payment can be made by applicants or by law firms making applications on behalf of their clients.
- c. Payment by credit card is not available for this application process.

| Payment option | How to pay | Additional information |
|--|---|---|
| Electronic deposit or internet banking | Where bill pay is available please select ' <i>Financial Markets Authority - Other</i> ' Otherwise our bank details are: Bank: Westpac Account name: Financial | To ensure we process your payment correctly please provide the following information: Particulars: Payor's name* Code: Exemptions |

| | | |
|---------|--|--|
| | Markets Authority Account number: 03-0584-0198005-000 | Reference: [Applicant's name] |
| Cheques | Send to: Exemptions Team FMA Level 2 1 Grey St PO Box 1179 Wellington 6140 | Please make the cheque out to 'Financial Markets Authority' Include a hard copy of your application with your cheque. |

26. Application processing

- a. We will only approve an application if we are satisfied you have met all of the application requirements, including meeting the minimum standards. We will process your application as quickly as possible. The more complete your application is, the quicker we are able to process it. Carefully reading this guide will help ensure your application is processed without unnecessary delays. We will contact you directly if we have any queries about your application.
- b. We will notify you when your application has been approved.

27. Updating exemption notice schedule

Once approved, your name will be added to the list of approved providers included in Schedule 1 of the exemption. You cannot provide any personalised digital advice service until you have been added to the list in Schedule 1. We will notify you when this has happened.

28. Submissions

Based on the information provided if we consider declining your application, we will contact you and give you the opportunity to make submissions supporting your application. You may also be given the opportunity to meet with us to discuss your submissions. Your lawyer can attend that meeting if you wish.

29. Application declined

If your application is declined, we will notify you of our decision and the reasons for it.

If you have any questions email exemptions@fma.govt.nz or call 0800 434 567 between 8.30am and 5pm, Monday to Friday. Overseas callers should call +64 3 962 2698.