

15 December 2017

Financial Markets Authority

By email: [consultation@fma.govt.nz](mailto:consultation@fma.govt.nz)

**Feedback: Exemption to enable personalised digital advice**

The Financial Services Council of New Zealand Incorporated (**FSC**) thanks the Financial Markets Authority (**FMA**) for the opportunity to provide feedback on the draft exemption notice and accompanying documents.

The FSC represents New Zealand's financial services industry having 32 members at 15 December 2017. Companies represented in the FSC include the major insurers in life, disability, income, and trauma insurance, and some fund managers and KiwiSaver providers plus law firms, audit firms, and other providers to the financial services sector.

Our submission has been developed through consultation with our members, and represents the views of our members and our industry. There are a number of areas within the consultation documents where our members have requested clarification or further guidance. We have expanded on these areas in the 'Specific Responses' section. We acknowledge the time and input of all our members in contributing to this submission.

The FSC strongly supports initiatives that are designed to deliver:

1. Strong and sustainable consumer outcomes;
2. Sustainability of the financial services sector; and
3. Increasing professionalism and trust of the industry.

We continue to support the class exemption, recognising that it is a pragmatic solution to a consumer-need.

We are pleased to note that our earlier recommendations to include personal insurance and to remove value limits are reflected in the draft exemption. Generally, we believe the draft exemption notice (and supporting documents) achieve a good cost-benefit balance and will create a framework that encourages innovation while safeguarding the consumer.

However, we repeat our view from our submission of 19 July, that the exemption will only promote market integrity if the FMA has the capability to effectively regulate robo-advice providers who rely on the exemption. This may require additional resources who specialise in automated decision engines, and specialists in products such as fire and general insurance, life insurance and mortgages.

If you have any questions, please contact me on 021 0233 5414 or [richard.klipin@fsc.org.nz](mailto:richard.klipin@fsc.org.nz).

Yours sincerely

Richard Klipin

Chief Executive Officer

## Specific Responses

### 1. Do you have any comments on the draft exemption notice?

#### *Disclosure*

We support flexible disclosure – however our members request additional guidance from the FMA on how it will evaluate compliance with the disclosure requirements.

#### *Ongoing obligations*

It is not clear in the draft exemption notice or information sheet how compliance with the obligations will be enforced and managed. A potential option is to build in an extra layer of assurance through an annual report requirement, as this may enable the FMA to collect data on conduct, consumer, customer, provider and product information trends. This suggestion would need consideration of cost/benefit before progressing and is not supported by all FSC members.

#### *Clause 7 (3) (b)*

We submit that the requirements in clause 7 (3) (b) should be aligned where possible with similar requirements under the FMCA. This will ensure consistency and reduce duplication.

#### *Clause 7 (3) (b) (iii)*

Our members request clarification on clause 7 (3) (b) (iii), specifically whether all adverse findings are to be reported, or whether there will be a materiality threshold. For example, if a dispute resolution scheme upholds a complaint that has nothing to do with digital advice, does the provider need to report it? Clarity is also requested on whether the FMA should be notified if there is an adverse finding against a related party of the digital advice provider, for example a parent company.

One member tells us that an issue many applicants have had with existing licensing guides is that each section the applicant must evidence is divided into (a) minimum standards, (b) the questions they ask, and (c) what to think about. It is possible for an applicant to answer all of the questions, and still fail to evidence all of the minimum standards. The questions should be created so that likely answers together will address the minimum standards.

#### *Clause 8*

There are specific requirements in the exemption about record-keeping, applying code standards and disclosure. There are no minimum standards in the guide or application form that require applicants to evidence that they meet these requirements.

#### *Clause 8 (c)*

Our members request clarification about whether ‘written records’ include digital logs, as well as written communication.

### 2. Do you have any comments on the draft information sheet?

Our members have requested clarification on the scope of the ‘digital advice service’. Specifically, does the service end when the tool/service has returned a result based on information entered? Or does the service include the recording of personal identifiable information or have to result in a sale of a product?

#### *Application process – good character references*

We note that licensing under the FMCA waives the requirements to submit documents on directors and senior management. We submit that licensing under the Insurance (Prudential Supervision) Act 2010 should provide the same exemption. IPSA requires providers to have conducted and submitted ‘fit and proper’ checks on directors and senior management to the Reserve Bank of New Zealand (**RBNZ**) already. Therefore, there should be no requirement to provide documents on directors and senior management for IPSA- licensed entities.

### *Record keeping*

Our members highlight that, if the tool is used as a quote service where no identifiable information is entered up front, it will be possible to record the outcome but it will not be possible to identify the user or any further action with regard to the use of the 'advice'. We submit that the information sheet should expand on this scenario and clarify whether a provider is compliant if client information is not captured/held.

Further, the length of time that individual providers retain information on quotes varies, with one member advising that they retain quote information for 14 days. Our members request clarification on the required timeframe for keeping a record where there is no identifiable information related to the 'advice'.

### **3. Do you have any comments on the draft application form?**

#### *Good character*

Per our response to Q2, we submit that Question 13 of the application form should ask 'Are you Licensed under IPSA by the RBNZ?'

### **4. Do you have any comments on the draft declaration form?**

No

### **5. Do you have any comments on the draft application guide?**

#### *Financial standing*

To ensure that consumers are able to obtain adequate redress if inappropriate advice is provided, we submit there should be a condition around appropriate financial resources or a requirement to hold appropriate insurance cover.

#### *Ongoing obligations*

While the application guide identifies 'ongoing obligations' as one of the three things to know before application, we request further guidance on how a provider can meet and maintain ongoing obligations. We also submit that the application should include a section on how a provider will meet the ongoing obligations.

#### *Capability, risk management, auditing*

A member has highlighted that at the time of application, third party providers or technical experts may not yet have been engaged, and therefore their details will not be available for the application. We request clarification of whether a description of the scope of service to be met by the third party will be sufficient for the purpose of the application.

### **7. Do you have any other feedback or comments?**

Our members highlight that in order to complete the application, providers will need to be well advanced in build and development. As any software release will be dependent on FMA approval, our members ask for an estimate of the turnaround time for review of an application.

Further, if an initial application is rejected, our members ask whether an entirely new application is required (including a new fee) or whether there is a resubmission process.