

Wednesday, 19 July 2017

Financial Markets Authority

By email: consultation@fma.govt.nz

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

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

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

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

Please contact me on 021 0233 5414 to discuss our submission.

Yours sincerely

Richard Klipin
Chief Executive Officer

Who we are:

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

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

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

Our purpose is to:

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

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



POLICY AND ADVOCACY

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



INDUSTRY LEADERSHIP & INSIGHT

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



INDUSTRY BEST PRACTICE

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



COMMUNITY OF PROFESSIONALS

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



DEVELOP THE FSC

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

Responding to the Consultation Paper - our approach

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

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

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

Specific Responses - our approach

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

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

Key Themes

Theme One – we support the class exemption

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

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

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

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

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

Theme Two – the exemption should promote market integrity

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

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

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

Theme Three – the exemption should align with licensing

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

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

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

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

Theme Four – generally we disagree with the proposed limitations

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

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

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

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

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

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

Theme Five – we support flexible disclosure requirements

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

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

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

Specific Questions

Question 1: Do you support the proposed exemption from the requirement for personalised advice to retail clients to be provided by a natural person, provided this is subject to the proposed limits and conditions to provide consumer protection safeguards? Please give reasons for your view.

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

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

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

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

Question 2: Do you agree it is appropriate for us to consider using our exemption powers to facilitate the provision of personalised robo-advice in advance of the law reform, or do you believe that we should wait for the law reform to come into effect? Please give reasons for your answer.

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

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

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

Question 3: Do you think the costs for robo-advice providers to comply with the ‘natural person’ requirement (if no exemption is granted):

- **Would be unreasonable? Or**
- **Would not be justified by the benefit of compliance?**

Please give reasons for your answer.

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

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

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

Question 4: Do you support the proposed approach of granting a class exemption, or do you consider that granting individual exemptions would be more appropriate – in either case subject to limits and conditions? Please give reasons for your view.

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

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

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

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

Question 5: What impact would this exemption have if granted? We are particularly interested in any risks, costs, or other impacts this may have for consumers; as well as any risks, costs or other impacts this may have on providers (including robo-advice providers and other advice providers).

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

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

Impacts on consumers of providing the class exemption:

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

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

Impacts on providers of providing the class exemption:

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

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

Risks associated with robo-advice in general:

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

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

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

Question 6: What would be the impact if no exemption is granted (status quo)? We are interested in any risks, costs, or other impacts this may have for consumers; as well as any risks, costs or other impacts this may have on providers. (For providers) we are also interested in whether you would provide class robo-advice services if no exemption is granted.

If no exemption is granted, impacts on consumers include:

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

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

If no exemption is granted, impacts on providers include

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

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

Question 7: Do you agree that there is an advice gap which means consumers are not able to access financial advice? What do you believe is the approximate balance a consumer would need for a provider or an AFA to be willing to provide advice to them?

Yes, we agree that there is an advice gap.

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

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

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

Question 8: (For providers) Do you intend to rely on the proposed exemption? Why or why not? If we granted an exemption in late 2017, when would you expect to be able to launch your personalised robo-advice service? Which products would your robo-advice service provide advice on? We are interested to hear more about proposed robo-advice services, so it would be helpful to have a brief description of your proposed model.

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

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

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

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

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

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

Question 10: Are any of the limits or conditions in this paper likely to cause your business unreasonable costs or make providing a personalised robo-advice service unworkable for your business? If so, please indicate which limit(s) or condition(s) do this, and what those costs or impracticalities are. Please also propose alternative conditions that would provide a similar level of protection, if possible.

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

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

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

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

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

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

Question 11: Do you agree that the exemption should be available for financial advice or an investment planning service, or do you think it should be limited to financial advice only (excluding investment planning services)? Do you agree that discretionary investment management service (DIMS) should not be covered by the exemption? Please give reasons for your view.

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

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

Question 12: Do you agree with our proposed list of eligible products? Please indicate if there are products that should be included or excluded from this list.

We do not support excluding personal insurance and mortgage products from the proposed list of eligible products. We do not understand the FMA's position regarding these products being difficult to exit, particularly personal insurances.

Products, such as life insurance, are increasingly available through direct means without the need for consumers to obtain financial advice. Greater accessibility to advice through personalised robo-advice should lead to better outcomes for consumers.

While the consequences of consumers failing to disclose material information in the case of personal insurances can be high, we do not consider that robo-advice will necessarily increase this risk as that still exists when consumers deal with human advisers.

Conditions will apply equally to providing personalised robo-advice across products. Therefore providers will need to be comfortable that advice given on these products will be provided in a way that leads to good outcomes for consumers, including replacement business.

Also see response to question 13.

Question 13: Should personal insurance products be included in the eligible product list? If so, should these products be capped at a certain value or have a duration limit? For example, should advice on personal insurance products be limited to products where the sum insured would not exceed \$100,000 per product, or where the duration is one year or less? Please give reasons for your view. If you consider a different value cap or duration limit would be appropriate, please specify what this should be.

Personal insurance products should be included in the eligible product list.

Generally most members do not think that any value limits are appropriate for personal insurance products and imposing limits would likely lead to poor outcomes for consumers by reducing access to financial advice. Feedback from members indicates that a smaller proportion of life insurance policies are below the proposed limit, which means that robo-advice would not be available for most these consumers.

A value cap will also not mitigate the consumer risk that they take out a personal insurance product which was not best suited for their needs, and health developments over time then make them ineligible for more appropriate products. We do not consider that robo-advice will necessarily increase this risk as that still exists when consumers deal with human advisers.

This is likely to have the unintended consequence that many consumers will purchase the maximum amount when their requirements are higher, leaving them underinsured.

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

Duration limits have unintended consequences in insurance products. Life insurance policies are usually longer than one year duration. During the policy term, the insured has the right but not the obligation to continue the policy on the same terms. To limit robo-advice to one year durations has no benefit to the insured.

To ensure consumers receive good outcomes, providers would need to develop robo-advice solutions that factor in various aspects in a consistent way, like health changes and aging.

Also see response to question 12.

Question 14: Should we also apply a value cap and/or duration limit on some or all of the other proposed eligible products? Please give reasons for your view. If you consider a value cap and/or duration limit would be appropriate, please specify what this should be.

Generally, we do not support any value cap or duration limits because they would have unintended consequences. See responses to questions 13,15 and 16.

Our members have a range of views as to whether individual limits (if any) should apply for life insurance products. See our response to question 9, above.

Question 15: Should we impose an individual client investment limit (a requirement that advice only be provided to clients seeking advice on investment amounts or investable assets of (for example) \$100,000 or less per client)? Do you think there are any practical difficulties or unintended consequences that may arise from this? Please give reasons for your view. If you consider a monetary limit would be appropriate, please specify what this should be.

Generally, most members do not support limits of this nature as they seem arbitrary.

There could be unintended consequences if upper limits were reached, that would have the potential to lead to poor outcomes for consumers. For instance, where an existing user wants to get further advice when their circumstances change. There may also be difficulty monitoring these sorts of limits to ensure compliance. For instance, would limits be based on the initial product value or amount invested, and how would fluctuation in returns or value of the product over time be treated?

We are also not clear what the intention is around non-investment products i.e. general insurance products. Imposing these sorts of limits simply would not make sense in most cases e.g. home insurance.

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

Question 16: Should we impose a limit on the total investment amount of products advised on through the robo-advice service? Or should we impose two limits, a higher limit for QFEs and a lower limit for non-QFEs? Are there any practical difficulties or unintended consequences you can see from imposing a limit? Please give reasons for your view. If you consider a monetary limit would be appropriate, please specify what this should be.

We do not support limits of this nature as there will be unintended consequences if upper limits are reached. It would limit the growth of innovative providers and impact the provision of advice to consumers.

Question 17: Should we prescribe the form that the status disclosure statement (that the provider is providing a personalised robo-advice service in reliance on the FMA exemption notice; and that this has not been endorsed, approved or reviewed by us) must take? Yes or no? If not, why not?

The FMA should be clear on the purpose of a status disclosure in terms of consumer benefit. If a status disclosure is required, it should be meaningful to consumers and not detract from the consumer experience. There should also be flexibility in the timing and manner of provision so as not to stifle innovation or preclude the proactive provision of personalised robo-advice.

Although not essential, there could be benefit in a standard form of status disclosure, if that is required. A reference or hyperlink to FMA's website where the list of robo-advice providers relying on the exemption is displayed could be included. See response to question 26.

Question 18: Do you think providers should have flexibility to decide how to comply with the disclosure condition, or do you think we should prescribe the form and method of disclosure - such as through a prescribed form of disclosure statement? Please give reasons for your view. For providers - what form and methods would you propose to use to comply with the disclosure condition?

Providers should have flexibility to decide how to comply with the disclosure condition, assuming they are required to disclose in a manner that is clear, concise and effective. This will enable innovation and wider implementation of personalised robo-advice.

Rather than have one long disclosure for clients to read, providers should have flexibility to separate disclosure into smaller parts, and disclose each part at a point in their process that is most relevant. They may be able to rely on other disclosures that have been made, if applicable e.g. Qualifying Financial Entity disclosure statements.

Creative providers may use this as an opportunity to educate their clients about the products. They may use video, diagrams, gamification, or other methods that will enhance customer understanding.

Question 19: Should we impose a condition that requires the provider to obtain active confirmation from the client that they have read the disclosures and agree to receiving advice through the robo-advice service on the basis described? Please give reasons for your view.

Members have differing views regarding whether active confirmation should be obtained or not and this will largely depend on the robo-advice solution implemented.

Some members argue requiring active confirmation will stifle innovation. For example, providers who have access to detailed client data may offer personalised robo-advice proactively and requiring active confirmation will restrict this solution.

Other members envisage solutions that can easily accommodate active confirmation as part of the solution. However, we note that this is not currently required to provide other forms of advice. We question imposing this higher standard when the general consensus is that regulation should be technology neutral.

Question 20: Do you agree with the proposed conduct obligations? Please give reasons for your view, including whether there may be any difficulties or unintended consequences from applying these to a robo-advice service.

We generally support the proposed conduct obligations.

In addition, the proposed exemption should be structured, as far as practicable, in a way that enables a smooth transition to the full licensing regime under the eventual law reforms.

Question 21: Are there any other conduct obligations that should apply? For example, other modified versions of the Code Standards. Please tell us why any additional obligations would be appropriate and provide proposed wording for these, if possible.

We would support the following Code Standards being reflected in the conditions:

- **Code Standard 1**
We would support inclusion of a requirement to act with integrity as this supports the professionalism of the wider financial services industry. For robo-advice, this applies to designing tools and algorithms.
- **Code Standard 6**
Depending on where the disclosure condition lands, it may be useful to include a “clear, concise and effective” requirement in relation to wider communications.
- **Code Standard 13**
The proposed record-keeping condition does not achieve the same thing as the requirement to keep records for a minimum of 7 years.
- **Code Standard 15**
Robo-advice providers must have a knowledge of the Act, the class exemption, and other legal obligations relevant to operating the robo-advice platform.
- **Code Standard 17**
Just as an AFA must continue his or her education to provide appropriate advice, robo-advice platforms should be regularly reviewed to ensure that they remain fit-for-purpose as products and client needs change.
- **Standard Condition 2**
We submit that the FMA should require providers who rely on the exemption to report specific data periodically. The FMA can use these data for risk-based monitoring.

Question 22: Do you have any feedback on the table set out in the Appendix which maps the proposed exemption conditions to the Code Standards, Standard Conditions for AFAs and FA Act requirements for AFAs? Are there modified versions of any of these requirements that are not currently reflected in the proposed exemption conditions that should apply? Please give reasons for why any additional conditions would be appropriate and provide proposed wording for this, if possible.

See response to question 21.

Question 23: Should the conditions be applied in a manner that is proportionate to the size and scale of the robo-advice service offered? Please give reasons for your answer.

No, we generally do not support conditions based on proportionality of size and scale. We submit the conditions should be applied proportionate to the risk and complexity of the advice provided.

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

Yes.

The FMA should have a mechanism to test the integrity of any robo-advice system at any time. If the robo-advice solution has a consumer log-on, providers should be required to provide a free test login to the FMA.
FSC - Review of the FMA’s Consultation Paper: Proposed exemption to facilitate personalised robo-advice. July 2017

The FMA could use the tool and determine whether it meets the other conditions of the class exemption appropriately.

The FMA could also consider self-audits as a necessary requirement to ensure the on-going integrity of each robo-advice system.

Question 25: As well as the exemption notice, would you find an information sheet explaining the exemption and providing guidance on how to comply with it helpful? Yes, or if not, why not?

Yes, we would find it helpful if the FMA provided an information sheet explaining the exemption notice and providing guidance on how to comply with it.

We also believe that other members of the industry, including the advisers who advise on our products, would find the information sheet helpful.

Question 26: Would you like to see a list of providers relying on the exemption, if granted, on our website? If not, why not?

Yes, we would support a list of providers who rely on the exemption on the FMA website.

The FMA should also require robo-advice providers to register on the FSPR.

Question 27: Do you think we should continue to use the term ‘robo-advice’, or should we use a different term such as ‘digital advice’ or ‘automated advice’?

We are ambivalent on this point and have no comment. The definition of any term used should be sufficiently flexible to accommodate further technological change.

Question 28: Do you have any other feedback or comments?

We have no further comments.