NEW ZEALAND BANKERS ASSOCIATION

Submission

to the

Financial Markets Authority

on the

Consultation Paper: Proposed exemption to facilitate personalised robo-advice

19 July 2017

NEW ZEALAND BANKERS ASSOCIATION
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About NZBA

1. NZBA works on behalf of the New Zealand banking industry in conjunction with its member banks. NZBA develops and promotes policy outcomes that contribute to a strong and stable banking system that benefits New Zealanders and the New Zealand economy.

2. The following sixteen registered banks in New Zealand are members of NZBA:
   - ANZ Bank New Zealand Limited
   - ASB Bank Limited
   - Bank of China (NZ) Limited
   - Bank of New Zealand
   - Bank of Tokyo-Mitsubishi, UFJ
   - Citibank, N.A.
   - The Co-operative Bank Limited
   - Heartland Bank Limited
   - The Hongkong and Shanghai Banking Corporation Limited
   - Industrial and Commercial Bank of China (New Zealand) Limited
   - JPMorgan Chase Bank, N.A.
   - Kiwibank Limited
   - Rabobank New Zealand Limited
   - SBS Bank
   - TSB Bank Limited
   - Westpac New Zealand Limited.

Background

3. NZBA welcomes the opportunity to provide feedback to the Financial Markets Authority (**FMA**) on Consultation Paper: Proposed exemption to facilitate personalised robo-advice (**Consultation Document**).

4. If you would like to discuss any aspect of the submission further, please contact:

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General

5. NZBA commends the FMA for its proactive stance on this issue, and supports the general approach to the proposed exemption outlined in the Consultation Document.

6. NZBA considers that the exemption will benefit consumers by increasing access to personalised financial advice for those who are not currently well served by the financial adviser market (ie plugging the “advice gap”), as well as allowing consumers to receive financial advice in the way they want it.

7. NZBA agrees that it is appropriate to implement the proposed exemption in advance of the reform of the Financial Advisers Act 2008; technology and consumer expectations are evolving rapidly, and delaying the proposed exemptions would risk disadvantaging the New Zealand financial services industry, as well as needlessly preventing consumers from accessing the financial advice they want.

Exemption should apply to a wider range of products (Q 12 & 13)

8. The Consultation Paper states that eligible products should be limited to those which are easy to exit on the basis that such a limit is likely to reduce any potential harm arising from the provision of robo-advice; consumers should be able to unwind an investment decision if they have received poor or unsuitable robo-advice.

9. NZBA considers that such a limit is not necessary. While the ability to easily redeem or transfer a product may have the potential to minimise harm in some cases, it may not do so in every case, for example, where the relevant product has significantly declined in value.

10. NZBA submits that the exemption for robo-advice should apply to a wider range of products as that will contribute to achieving the FMA's aim of enhancing innovation and creating opportunities for consumers who may not otherwise have access to financial advice.

11. In particular, NZBA considers there would be significant consumer benefit to be gained by extending the exemption to apply, for example, to mortgages and personal insurance:

    a. *Mortgages:* the market for online advice on mortgage products is already well developed, with sophisticated tools and calculators available. Extending the exemption for robo-advice to include mortgage products would improve the quality of advice that New Zealanders are already seeking online, from providers whom they already trust. QFEs have strong institutional control systems and processes already in place to help mitigate any risks arising from the provision of robo-advice on mortgage products, in addition to a comprehensive regulatory overlay (eg the responsible lending provisions of the Credit Contracts and Consumer Finance Act 2003).

    b. *Personal insurance:* in New Zealand there is clear evidence that levels of life insurance cover are often poorly chosen, indicating household considerations about insurance cover levels are inadequate, and that New Zealanders are underinsured for non-life personal risk (eg inability to work). Given the existing evidence, and FMA's goal of addressing the "advice gap", NZBA considers that the robo-advice exemption should be extended to personal insurance products.

12. NZBA also considers that there is good justification for extending the exemption to all products Authorised Financial Advisers (**AFAs**) are permitted to advise on. NZBA expects that robo-tools should be able to provide advice to the same standard as an AFA, and, accordingly, a QFE operating a properly monitored robo-advice tool should be permitted to provide the same advice.

13. Our members have reviewed the position in other jurisdictions and have been unable to identify any examples of equivalent exclusions.

Limits on amount of client investments and/or total amount of investments are unworkable (Q 15 & 16)

14. NZBA opposes the individual client investment limit and the limit on total investment amount of products, as set out in the Consultation Document (**Caps on Investment**).

15. NZBA agrees that there is an "advice gap" which means that consumers may not be able to access personalised financial advice. However, if the proposed Caps on Investment were introduced, NZBA considers that the ability of robo-advice tools to plug the "advice gap" would be significantly diminished:

    a. *Individual client investment limit:* this has the potential to be unnecessarily restrictive, particularly for KiwiSaver where sums invested are likely to exceed the proposed $100,000 limit.

       Further, home insurance policies and life insurance policies will rarely be less than $100,000, which poses a practical barrier to having robo-advice address the "advice gap" for these products. We note, however, that it is not clear whether the individual client investment limit would also cover insurance products or if it would be limited to "investments" only.

    b. *Limit on total investment amount of products:* again, NZBA considers that this limit has the potential to be unnecessarily restrictive. Additionally, there would be practical hurdles associated with withdrawing individuals from the tool as their asset values increase.

16. Additionally, NZBA considers that Caps on Investment would create significant workability issues, as well as arbitrariness with respect to the implementation of the limits.

17. The rationalisation for imposing Caps on Investment seems to be the concern that errors will go undetected (eg failures in filtering mechanisms, errors in algorithms, etc) and, over time, large numbers of consumers could be affected. NZBA considers that position does not take into account the efficacy of control mechanisms that QFEs are required to implement as part of their registration conditions (whether for advice provided by humans or robo-tools).

Clarification regarding disclosure requirements is necessary (Q 18)

18. The Consultation Document provides some guidance regarding the nature and extent of the proposed disclosure requirements for robo-advice.

19. Methods of delivering automated advice will evolve rapidly, meaning that prescribed methods of disclosure may quickly become unworkable for the new technologies. As such, NZBA considers that providers should have flexibility to decide how to comply with the FMA's disclosure requirements as this will provide greater flexibility and enable providers to convey the relevant information in the way that it is most appropriate for each particular digital advice tool.

20. NZBA also notes that prescribing the form and method of disclosure would be contrary to the approach taken by other regulators in this area, where the trend is towards providing flexibility and enabling innovative and engaging ways of providing financial product and service disclosures.

21. It is also important that disclosure requirements are not duplicative of existing disclosure, reporting and accountability mechanisms that are in place for QFEs as duplication will likely create confusion for consumers.

22. Finally, NZBA submits that members would benefit from further guidance on the following:

    a. how the disclosure requirements under the Financial Advisers Act 2008 and the Financial Advisers (Disclosure) Regulations 2010 will apply where personalised robo-advice is provided under the exemption; and

    b. how disclosure requirements for QFEs will apply in the context of robo-advice.

Active confirmation condition unnecessary (Q 19)

23. The Consultation Document queries whether providers should be required to obtain active confirmation that their clients have read the disclosures and agree to receive advice through the robo-advice service.

24. NZBA's view is that this condition may be unduly restrictive. In particular, it may prevent providers from pro-actively providing personalised robo-advice to their customer, which providers may be positioned to do as they continue to develop their data and analytics capabilities. Additionally, providers may wish to provide calculators and other tools on websites or mobile devices, which can provide personalised advice to prospective customers, without a formal agreement or defined customer/adviser relationship being in place.

25. The disclosure conditions could accordingly be clarified to explicitly permit proactive provision of advice.

Clarification regarding record keeping requirement is necessary

26. The consultation document states that a provider must ensure that it keeps up-to-date records about its personalised robo-advice service, including adequate information about the advice provided to the client and the algorithms used by the robo-advice service.

27. NZBA seeks clarification on this requirement; in particular, we query whether the FMA's expectation is that a record of every customer engagement with a robo-tool must be retained. The requirement seems to assume that customers will always use the full end-to-end automated advice service in a linear way, and, as such, record keeping should be straightforward. However, NZBA considers that customer engagement with robo-tools is unlikely to be that simple.

28. Whilst it is possible to retain a record of customer engagement in circumstances where a customer completes a purchase (ie is provided advice), retaining records where they have engaged with a robo-tool but have not completed a purchase may be problematic for some providers. The reason being that customers are likely to interact with robo-tools in a non-linear way; before a customer makes a decision they are likely to return to a single tool on a number of occasions over a period of time as they explore different parts of/paths through the tool, different financial options (eg different investment amounts and risk profiles), and become familiar with the terminology and process. They are likely to complete only part of the tool at some visits and may also visit several providers' tools. This behaviour supports good

decision-making. For some providers, it will be unduly onerous to require record keeping of all part-complete visits, particularly where the customer has not been required to provide personal details.

29. Additionally, customers are likely to see a requirement that they provide personal identifying information every time the robo-tool is used as a barrier to use. To encourage customers to explore tools, providers should be able to leave provision of identifying information until later in the process.