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Financial Markets Policy  
Ministry of Business, Innovation & Employment  
PO Box 3705  
Wellington  
New Zealand

**Options Paper - Review of the Financial Advisers Act 2008 and the Financial Service Providers (Registration and Dispute Resolution) Act 2008**

Thank you for the opportunity to submit on the Options Paper.

**Views expressed are personal**

I am on the boards of several entities that have an interest in the financial advice industry in New Zealand (including the Financial Markets Authority, Mint Asset Management Limited and Westpac Life-NZ-Limited). However, please note that the views expressed in this paper are entirely personal.

**Summary of submission**

This submission relates to providing advice through technological channels i.e. so-called “robo-advice”. It therefore principally relates to questions 9, 10 and 11.

In summary, I am conscious of the international momentum behind robo-advice. I am also optimistic about the scope for some robo-advice business models to assist to address a number of key issues such as access, professionalism and conflicts of interest.

I therefore submit that the review should adopt a pro-active and broad-ranging approach to understanding the regulatory issues associated with robo-advice. This should draw on the increasing amount of very contemporary international material that is available. It should also carefully consider New Zealand’s specific circumstances (including a possible lack of scale).

This approach may reveal regulatory issues in addition to those identified in the Options Paper. It will enable consideration of whether a bespoke policy response over and above that proposed is warranted.

## **An outcome we don't want**

In the Australian context a commentator has said:

*“The current legal framework [for robo-advice] in particular is a minefield – the result of laws not keeping up with technology.”<sup>1</sup>*

It is important that this cannot be said of New Zealand after the review is completed.

## **International momentum behind robo-advice**

There is much anecdotal evidence to suggest that momentum is rapidly increasing. Specific support for this proposition includes:

1. The UK Financial Conduct Authority's statement on 5 October 2015 that:

*“39 firms have sought assistance from the Innovation Hub on their potential implementation of ‘robo-advice’ systems/technology/services in the retail investment market from the launch of Project Innovate until and including 19 August 2015.”<sup>2</sup>*

2. In a 5 November 2015 speech, Greg Medcraft, Chairman, Australian Securities and Investments Commission (**ASIC**) said:

*“Now, turning to robo-advice. In the last three years, robo-advice has been growing in popularity in the United States and the United Kingdom.*

*Australian licensees and some start-ups have observed the growing popularity of robo-advice models offshore. They are now actively looking to develop, or are developing, their own robo-advice models.”<sup>3</sup>*

I believe that the regulation of robo-advice should be viewed as an important current issue rather than an issue for the future.

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<sup>1</sup> Corrs Chambers Westgarth article entitled *The Computer Will See You Now – Six Considerations for Deploying Robo-Advice in Australia*, 24 November 2015.

<sup>2</sup> FCA Freedom of Information Act response FOI4214, published 2 January 2016.

<sup>3</sup>The Regulators Panel, FINSIA (Sydney, Australia), 5 November 2015

## **Potential benefits of robo-advice**

The Issues Paper recognizes the opportunity associated with robo-advice (and the challenges).<sup>4</sup> This is also referred to in the Options Paper.

This is echoed by Greg Medcraft in the speech referred to above:

*“ASIC is very supportive of the automated provision of advice. We see it has the potential to offer a convenient, low-cost advice service to consumers. We also see benefits such as improved compliance and record keeping; and the potential to reduce conflicts of interest.”*

## **International regulatory analysis**

Because of the international momentum behind robo-advice, a number of initiatives are underway to understand the business models and analyse the regulatory implications. The momentum is so great that these initiatives have added to the body of knowledge available as at the release of the Issues Paper in May 2015.

These include:

1. The UK Financial Conduct Authority held a three day robo-advice forum in September 2015 that was launched by Harriett Baldwin MP, Economic Secretary to the Treasury.
2. In late 2015, ASIC established a Robo-advice Taskforce to look at robo-advice issues.
3. ASIC’s upcoming 2016 Annual Forum includes digital innovation as a theme and has a workshop session on robo-advice. I will be attending that Forum.

These initiatives provide a rich source of information regarding the regulatory implications of robo-advice.

## **Potential regulatory issues**

The Options Paper identifies the key issue that, under the Financial Advisers Act 2008, personalised advice can only be provided by a natural person. It proposes a licensing regime incorporating flexibility regarding conditions.

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<sup>4</sup> Issues Paper - Review of the Financial Advisers Act 2008 and the Financial Service Providers (Registration and Dispute Resolution) Act 2008, paras 172-178.

I support such an approach. In particular, a high level of flexibility is essential in a rapidly evolving environment. For this reason, I strongly prefer Option 1 over Option 2 – requiring providers to give customers an ability to speak to an individual may exclude some legitimate business models.

However, I believe that the proposal should be tested against international thinking to ensure that it appropriately addresses all issues that have been identified to date (as well as having flexibility to accommodate future issues).

In the speech referred to above, Greg Medcraft states that robo-advice raises some interesting regulatory issues and challenges. Issues under consideration by ASIC include:

1. How robo-advice providers comply with the best interests duty.
2. How robo-advice providers develop and test their algorithms.
3. The training and competency requirements for those sitting behind robo-advice models.
4. The adequacy of a robo-advice operator's compensation arrangements.

Corrs Chambers Westgarth also identify issues associated with the application of the Australian Financial Services Licensing regime.<sup>5</sup>

### **New Zealand specific issues**

One potential issue for New Zealand is the lack of scale associated with our small market size. Although I have no empirical evidence to support this, it seems likely to me that scale will be an important aspect of robo-advice business models (especially those most likely to deliver low costs and reduce conflicts).

If this is correct, then possible approaches would include:

1. Thinking creatively about how we can minimise entry barriers for international platforms as far as possible (while maintaining appropriate consumer protections).
2. Possibly, establishing a framework for mutual recognition.
3. Generally, being seen as pro-active and forward-looking in relation to robo-advice.

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<sup>5</sup> Corrs Chambers Westgarth article entitled *The Computer Will See You Now – Six Considerations for Deploying Robo-Advice in Australia*, 24 November 2015.

## **Conclusion**

In conclusion, I submit that the review provides an important and timely opportunity to ensure that New Zealand is best positioned to capture the benefits that technology may deliver in this area. My sense is that this may turn out to be at least as important as addressing the issues within the traditional adviser market.

Thank you again for the opportunity to submit.

Yours sincerely

*[Mark Todd]*

**Mark Todd**