

# Shaping the future of our markets

**13 November 2013**

## Consultation: Licensing DIMS providers

### Draft minimum standards and licence conditions for Discretionary Investment Management Service (DIMS) providers

The Financial Markets Conduct Act 2013 (the Act) introduces licensing for providers offering certain types of financial services.

In future, you may need a licence if you want to provide DIMS to retail clients – and will need to meet, and maintain, minimum standards across key areas of your business.

This paper summarises the proposed minimum standards for a DIMS licence. We invite you to review these and share your feedback with us. This is our chance to work together to shape the new future for our industry.

**Submissions close on 12 December 2013.** The form at the back provides more details.

## Quick guide

<b>1. Overview</b>	P 2
What are DIMS   Minimum standards   FYI	
<b>2. Fit and proper</b>	P 4
<b>3. Capability</b>	P 5
<b>4. Operational infrastructure</b>	P 6
New clients   Investment objectives & authority   Investment selection	
Monitoring & reporting   Material issues & complaints   Custody   Outsourcing	
Resources   Staff & supervision   IT systems   Records   Termination of service	
<b>5. Financial resources</b>	P 14
Financial resources   Professional indemnity insurance	
<b>6. Governance</b>	P 16
Governance   Culture   Compliance	
<b>7. Licence conditions</b>	P 19
<b>8. Frameworks and methodologies</b>	P 21
<b>9. Contact details</b>	P 22
<b>10. Consultation form and details</b>	P 23

## Part 1. Overview

### A. What are DIMS?

A Discretionary Investment Management Service (DIMS) is an arrangement where you are authorised by your client to make buy-sell decisions about their investment portfolio, often without needing to refer to them about every transaction or investment decision. A service may still be a DIMS if your client has the right to be consulted on, or to countermand your decisions.

DIMS can vary considerably and may range from a personalised service (**personalised DIMS**) to a class service (**class DIMS**) which is more like a managed investment scheme. Section 392 of the Act provides the formal definition of DIMS.

---

### B. Will you need a licence?

A licence is only needed to provide DIMS to retail clients – not for wholesale clients. And if you're an AFA you won't need a licence to provide personalised DIMS (see note 1).

You need a DIMS licence if you are:

1. An Authorised Financial Adviser (AFA) and want to provide **class DIMS** to retail clients.
2. Not an AFA and want to provide **any type** of DIMS to retail clients.

**Note 1:** AFAs will still be able to provide personalised DIMS to retail clients under the Financial Advisers Act (FAA) 2008 without a DIMS licence. **BUT** please note the DIMS must be a truly personalised service designed to suit the individual investor. It is not considered 'personalised' if the service is customised from an investment strategy that applies to a class of clients – for example, if you select options from a model portfolio, or make minor changes to the class strategy or authority. Any DIMS that is not a personalised DIMS is a class DIMS.

At a glance		
Can I provide....	Under FAA?	Under FMC Act?
Personalised DIMS for retail clients?	<b>YES</b> – if you are an AFA and the service is within the scope of your authorisation under FAA <b>NO</b> – everyone else must be licenced	<b>YES</b> – with a DIMS licence
Class DIMS for retail clients?	<b>NO</b>	<b>YES</b> – with a DIMS licence
Any DIMS for wholesale clients?	<b>YES</b> – a licence is not compulsory	<b>YES</b> – a licence is not compulsory

## C. Minimum standards – five key areas

To become a DIMS licence holder your business must meet a range of minimum standards. We propose that providers will need to meet minimum standards in five key areas:

- Fit and proper – ‘fit and proper’ directors, senior managers and other relevant parties
- Capability – the skill and experience of your directors, senior team and staff
- Operational infrastructure – the proper functioning of your DIMS business, including your client services, investment activities and business operations
- Financial resources – financial resources and professional indemnity insurance
- Governance – governance and compliance culture.

You must meet the minimum standards at the time of licensing and on an on-going basis. These proposed standards do not cover all your obligations under the Act or regulations.

---

## D. For your information

### Related bodies

You may apply for a licence that covers any related companies who will provide part or all of the licensed service with you. Where we refer to ‘related bodies’ it means any related body corporate we include on your licence under Section 400 of the Act.

If you have related bodies under your licence, they must comply with all licence obligations, and you need to provide oversight to ensure your group as a whole meets the minimum standards. Where you use a related body to provide part of your DIMS operations it is usually more appropriate to include them in your licence application than to ‘outsource’ the activity to them.

### Systems, processes and procedures

Throughout this paper we talk about the need for systems, processes and procedures, or arrangements. We cannot be more specific because regulations and standards are still being finalised and, importantly, because what will be required will depend to some degree on the nature of your business. We will take the size, complexity and nature of your business into account when we assess your application.

### Terms

- AFA Authorised financial adviser
- DIMS Discretionary investment management service
- FAA Financial Advisers Act 2008
- FMC Financial Markets Conduct Act 2013 ('the Act')

### Please note

This paper is intended to give you a high level overview of the proposed minimum standards and licence conditions for market service licensees that will come into effect under the Act, so that you have the chance to comment. Regulations are still being developed and there may be changes. A licence application guide will be published after regulations are finalised.

## Part 2. Fit and proper

### Fit and proper

Your directors and senior managers must be fit and proper persons to hold their respective positions.

#### Minimum standards

1. Your directors and senior managers (current or proposed) must be fit and proper persons to hold their position. This requirement broadly covers the tests of:
  - **Good character** covering integrity, probity, trustworthiness, character and reputation (see note 1)
  - **Capability** – competence, skills and experience – the next section on capability provides more details.
2. You must have recruitment and human resources processes to ensure that directors and senior managers undergo a character assessment – and that their competence, skills and experience are assessed before they assume their roles.
3. Your directors and senior managers must not obtain an improper advantage, cause detriment to your clients, or make improper use of their position (see section 434 of the Act).
4. If you have related bodies under your licence, each entity's executive directors and senior managers who are responsible for the licensed service must meet these minimum standards.

**Note 1:** We will assess **good character** based on various factors including (but not limited to) 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; and adverse information from other public bodies including other regulators and Inland Revenue.

We must also consider whether your owners or other relevant parties have had any convictions or successful disciplinary actions taken against them. The regulations will provide more details about what we must take into account.

## Part 3. Capability

### Capability

You need to show you have the right mix of people, with the right skills and experience, in the right roles, to run your DIMS business properly and effectively.

#### Minimum standards

1. Your senior management team (collectively) must have an appropriate breadth and depth of relevant financial industry know-how (relevant to DIMS), whether in New Zealand or elsewhere.
2. Roles are documented and include clear responsibility and accountability for:
  - Effective operation of the DIMS key activities (see note 1)
  - Strategic development and direction of your business
  - Risk management
  - Financial management
  - Compliance with product-specific laws and regulatory requirements
  - Compliance assurance/internal audit to ensure controls and procedures are effective
  - Customer complaints.
3. Your recruitment and human resources processes ensure that directors and senior management's present and past skills and experience enable them to perform their roles.  
You will have considered:
  - Present or past roles and length of time in those roles
  - Relevant qualifications (formal qualifications will be particularly relevant when a person is to fill a key financial control role)
  - Amount of assets under management in current and past roles (if relevant to the specific role they will undertake)
  - If their current role is not relevant – when the last relevant role was held, and for how long.
4. Your business has access to any necessary professional advice (for example legal or tax advice) either through internal appointments or external consultants.

**Note 1:** For example key activities may include client on-boarding, client liaison/relationship management, investment selection, client reporting, oversight of outsourced activities, and management of custody relationship/s.

## Part 4. Operational infrastructure

New clients | Investment objectives & authority | Investment selection | Monitoring & reporting | Material issues & complaints | Custody | Outsourcing | Resources  
Staff & supervision | IT systems | Records | Termination of service

### A. New clients

Your procedures for bringing clients on board must ensure they get sufficient information to make informed decisions about the financial services offered – and that these services are not inappropriately marketed.

#### Minimum standards

1. You must maintain adequate and effective systems to bring clients on board with processes and controls to ensure the requirements of the Act are met, including the:
  - Fair Dealing obligations in Part 2 of the Act
  - Disclosure obligations in Section 423 of the Act
  - Requirement for a written client agreement in Section 430 of the Act.You may also have other legal requirements to meet (for example under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009, and the Privacy Act 1993).
2. You have effective procedures to identify if a client is a retail or wholesale client, and to ensure they are informed about their status.
3. You have effective procedures to identify failures in any system or process for bringing a client on board.
4. Staff are aware of their professional obligations and are adequately trained in the systems and processes for bringing clients on board.
5. You promote and maintain an honest and professional culture, which puts the best interests of the client first.

## **B. Client objectives and investment authority**

A client should be given sufficient information to enable them to fully understand the scope of any investment authority they grant – and the investment authority should be appropriate for their circumstances.

### **Minimum standards**

1. You must record if your client receives investment advice or not before they grant their investment authority (this applies to advice from your business or another source).
2. If your business provides a client with investment advice, it must be given by someone permitted to provide such advice under the Financial Advisers Act 2008.
3. You have effective procedures to record the client’s objectives and investment authority – and to ensure the financial service you provide aligns with their objectives and investment authority.
4. You keep a written copy of your client’s investment authority, and that authority meets the requirements of Section 437 of the Act.
5. You ensure the proposed investment authority is appropriate for the client’s investment objectives.
6. Staff know their professional obligations – including their obligation to act in the client’s best interest – and they are adequately trained in your DIMS systems and processes.

## C. Selecting investments

You must exercise a professional standard of skill and care when selecting investments.

### Minimum standards

1. You must have effective procedures to collect all relevant investment information, including information about any proposed investments that are exempt from the disclosure obligations in Part 3 of the Act.
2. Staff involved in investment decisions must have sufficient relevant skills, experience and training to meet the ‘professional standard of care’. You will have considered their:
  - Relevant qualifications for the role (see note 1)
  - Knowledge and/or experience of the types of investments covered by the investment authority
  - Present or past roles involving relevant investment duties, and time spent in the roles
  - Amount of assets under management in current and past roles
  - Training received and on-going training planned.
3. You ‘stress test’ your investment strategies. The stress testing scenarios should cover a range of factors that can create extraordinary losses or make the control of risk within the investment strategy difficult.
4. You maintain efficient procedures to identify conflicts (or potential conflicts) of interest and deal with them appropriately.

**Note 1:** The **minimum qualification** standard for staff providing DIMS under a licence depends on the nature of the service provided. For example if you provide a:

- **Personalised DIMS service** similar to that an AFA could provide under the Financial Advisers Act 2008 – the person providing the service must meet the same minimum qualification standard required of AFAs under the Code of Professional Conduct for Authorised Financial Advisers.
- **Class DIMS service** – your decision making team as a whole must have the right mix of skills and oversight controls. The team must have input from people with higher qualifications, such as chartered financial analysts.

## D. Investment monitoring and client reports

Your systems and processes enable you to monitor investment portfolios and take appropriate action when necessary.

### Minimum standards

1. Your portfolio monitoring systems and processes must enable you to measure and report performance against the client's investment objectives – and the client agreement sets out the frequency and methodology for reporting to them.
2. You regularly recommend to your clients that they get updated financial advice or reconsider their investment objectives (as appropriate). If the DIMS service is a:
  - **Personalised service** – you should review your client's circumstances and the portfolio allocations at least annually
  - **Class service** – you should encourage your client to get updated financial advice when their personal situation changes (or is likely to change) or every two to three years if there is no material change in their circumstances.
3. Your systems, controls and procedures ensure:
  - Your client's investment strategy is developed and amended when appropriate
  - Financial advice is only provided by people permitted to provide financial adviser services (under the Financial Advisers Act 2008). In particular you distinguish between 'incidental financial advice' and other financial advice (see note 1)
  - Corporate actions relating to investments (such as dividend payments or stock splits) are appropriately dealt with in the best interests of your client
  - No one can conduct unauthorised trading in relation to your client's property.
4. You have adequate and effective systems and procedures that enable you to:
  - Identify, and report where necessary, breaches of the investment authority
  - Escalate, analyse and follow-up any breaches
  - Identify breach trends and put in place protections to avoid future breaches.

**Note 1:** You must maintain procedures for ensuring clients that receive incidental financial advice have the same level of consumer protection as they would receive from advisers under the Code of Professional Conduct for Authorised Financial Advisers.

---

## E. Material issues and complaints

You have effective processes and procedures to identify and deal with material issues in your business.

### Minimum standards

1. You maintain effective methods for identifying and reporting to FMA any material change of circumstance or breach of your licensee obligations, as defined in the Act (section 410).
2. You monitor client complaints to ensure they are dealt with fairly and in the best interests of the client. You have systems and procedures to identify trends in complaints – and you investigate and address any issues identified.
3. You are a member of a dispute resolution scheme, as required under the Financial Service Providers (Registration and Dispute Resolution) Act 2008.

## F. Custody

Client money and property must be held at arm's length.

### Minimum standards

1. You must not hold any client money or client property yourself.
2. Any custodian you use must be independent (see note 1).
3. Any custodian used must be an appropriate entity to hold and safeguard money and property. You may use a risk-based approach to your due diligence on the proposed custodian. Your considerations might include:
  - The custodian's previous experience
  - The amount of assets under control
  - Public reports and information about their service
  - Reported complaints about them, and their complaint handling procedures
  - Operating jurisdiction, and any protections/controls imposed in that jurisdiction
  - Appropriate registration on the Financial Service Providers Register (or equivalent overseas registration)
  - If they have a programme that complies with the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (or equivalent overseas legislation)
  - The good character of directors and controllers (particularly in the case of small or new custodians).
4. You must keep your due diligence on any custodian up-to-date. This should be appropriate to the level of risk involved.

**Note 1:** In limited circumstances we may permit you to use a custodian related to you or your business. We will only consider this if you have sufficient controls to ensure the custodian will act independently for the duration of any licence. Substantive independence can be achieved in different ways. For example controls might include:

- Different directors
- Clear duties for custodial directors to ensure the custodian acts at arm's length
- Separation between the staff performing DIMS and custodial services (especially back-office staff)
- Incentives built into the relationship to encourage independence, rather than enhancement of the DIMS interests.

If we grant permission to use a related custodian, we may impose conditions including (but not limited to) regular independent audits of the controls set up to ensure substantive independence.

## G. Outsourcing (*excluding custody*)

You must ensure all outsourced functions are adequate, effective and comply with your licence obligations.

### Minimum standards

1. You must conduct due diligence before outsourcing to ensure the provider is an appropriate entity and capable of effectively performing the outsourced function to an acceptable service level. Your considerations may include:
    - The outsource provider's previous experience
    - Public reports and information about their service
    - Reported complaints about them, and their complaint handling procedures
    - Their operating jurisdiction and any protections/controls imposed in that jurisdiction.
  2. You have a proper legal arrangement with the provider, including provisions that enable you to effectively monitor their performance and take appropriate action for non-performance.
  3. Records and information the provider holds are available for inspection by FMA at any time.
  4. You regularly review the outsource arrangement (at a frequency appropriate to the risk involved).
  5. Your performance monitoring programme includes:
    - Checks that the provider's performance meets required standards
    - Triggers for non-performance
    - A plan for steps you will take in the event of non-performance.
  6. **Related bodies** - if you are using a related body to provide part of your DIMS operations these outsourcing minimum standards may not be applicable. However, you must have oversight over the related body to ensure your group as a whole meets the minimum standards.
- 

## H. Resources and infrastructure

You must have the necessary technological and human resource capacity to provide DIMS.

### Minimum standards

1. You must have effective processes and procedures to maintain sufficient technological and human resources to deliver DIMS.
2. You regularly review resourcing levels and anticipate any increase in demands, so that resource levels remain appropriate for the scale and complexity of your DIMS business (reviews should include outsourced functions).

## I. Staffing and supervision

You have adequate and effective arrangements to manage and supervise staff and core processes. Your staff are fit for their roles and act professionally.

### Minimum standards

Your arrangements ensure:

1. Staff have the right skills and experience for their roles, and a clear job description that sets out their responsibilities (including authorisation/delegation levels).
2. Roles are designed to support key controls (for example by segregating duties between roles) and enough time is allowed for key processes including compliance activities.
3. Staff are appropriately trained, managed and supervised – you address poor performance and recognise professional conduct.
4. You have appropriate supervisory arrangements, including:
  - Sufficient resources are allocated to supervision
  - Supervisory staff with the right knowledge and experience (including understanding the functions of the roles they supervise)
  - Supervisory staff have the support and authority they need to do the role effectively
  - Any issues identified by supervisory staff are acted on appropriately.

---

## J. IT systems

Your IT systems used to deliver the DIMS must be secure and reliable. Your arrangements ensure they perform efficiently and the associated risks are managed.

### Minimum standards

1. Your IT systems include all necessary functionality to provide your service, and perform the intended processes effectively.
2. You have effective safeguards and controls over the IT systems (and the underlying processes) whether they are built into, or external to, the system.

These include processes:

- To ensure data and system security – and prevent errors or system failure
  - Which take into account risk from human error, technical failure and malicious conduct.
3. You maintain an appropriate (and tested) business continuity plan – including procedures for data back-up and disaster recovery.
  4. You have proper legal arrangements with any third party software providers, including licences for software and contracts for any required maintenance and support.

## K. Records

You must maintain adequate records and provide information to FMA in a timely manner.

### Minimum standards

1. You must have systems and procedures to maintain proper client records (including information about investment decisions made and the reasons for those decisions) and about your DIMS services generally.
  2. You are required to retain these records for at least seven years – and they must be available for immediate inspection by FMA at any time.
- 

## L. Termination of service

You must act in the best interests of your client when their client agreement ends.

### Minimum standards

1. Your client agreement must let the client terminate the service without penalty and take control of assets within a reasonable period – so they can transfer or liquidate their portfolio.
2. The client agreement must clearly explain how assets will be dealt with when the service is terminated, and any risks associated with those assets.
3. You have effective procedures to deal with any wholesale assets held for a client when the service is terminated.
4. You have effective procedures to ensure the orderly termination/transfer of client services should your business cease.

## Part 5. Financial Resources

Financial resources | Professional indemnity insurance

### A. Financial resources

You must, at all times, have adequate financial resources to effectively perform the market service covered by the licence – and to ensure there is sufficient money for the orderly termination/transfer of clients' portfolios should your business cease.

#### Minimum standards

1. You must have positive net tangible assets (see note 1).
2. You must be able to pay your debts as they become due in the normal course of business (see note 2).
3. At all times, you must maintain an appropriate level of liquid assets for your business – three months of actual or projected outgoings, on a rolling basis, with allowance for contingencies (see note 3).
4. You must have adequate and effective systems, policies, procedures and controls to:
  - Constantly monitor your financial resource levels
  - Consistently calculate an appropriate level of liquid assets to hold for your business
  - Assess the risk of your financial resources not being adequate to continue to provide the service, or a serious financial problem occurring
  - Notify FMA if a material change of circumstance occurs, or is likely to occur, in relation to the licence – as required in section 410 of the Act (see note 4).

**Note 1:** Your **net tangible assets (NTA)** means your total net assets as they appear in your balance sheet (calculated according to NZ IFRS). Your NTA calculation can't include intangible assets, any client funds you hold, and any related party receivables except those resulting from a transaction done in the ordinary course of business, at arms-length. For the purpose of this calculation we propose to limit related party receivables to no more than 20% of NTA.

**Note 2:** To satisfy yourself you can continue to meet this standard, we expect you to use a suitable **forecasting** mechanism.

**Note 3:** For this purpose, **liquid assets** are defined as cash or cash equivalents, trade receivables realisable within the next three months (on a rolling basis), and financial assets that have a ready market and are valued at current market prices. You must not include any client funds you hold, or any investments you have in the portfolios you manage.

**Note 4:** A **material change** of circumstance includes becoming aware that you will have insufficient liquid assets to meet your liabilities as they fall due.

## **B. Professional indemnity insurance**

You must maintain an adequate minimum level of professional indemnity insurance cover.

### **Minimum standards**

1. You must maintain professional indemnity insurance to cover risks related to your market service.
2. Your level of professional indemnity insurance cover should be adequate and appropriate for the nature, scale and complexity of the market service you are licensed for – there is no set minimum cover, it depends on your business.
3. You must have sufficient resources to meet any policy excess.

## Part 6. Governance

Governance | Culture | Compliance

### A. Governance

You have a high-level body responsible for overseeing compliance with your obligations as a market services licensee, and ensuring appropriate risk management and fair treatment of clients.

#### Minimum standards

1. You must have a clear reporting and governance framework covering all key aspects of the DIMS business (or proposed business) including compliance obligations and key risks of the business.
2. You have an ‘oversight body’ responsible for overseeing compliance – compliance should not solely be the responsibility of risk, compliance or internal audit functions (see note 1).
3. You have appropriate arrangements to ensure your oversight body and other senior managers and directors get timely, sufficient good-quality governance and management information to allow for proper oversight and decision making.
4. Your oversight body considers the adequacy and robustness of its governance and compliance arrangements at least annually.
5. Your constitution must not have any provision which would allow your directors to Act contrary to the DIMS provider’s best interest when they are exercising their powers or performing their duties. This also applies to directors of related bodies under your licence. (See Section 396(f) of the Act for more details).
6. **Related bodies** – your oversight body is able to direct and oversee the provision of market services by any related body operating under your licence (see note 2).

**Note 1:** We expect that the **oversight body** will be the board or a risk committee of the board – or in larger organisations, a committee comprised of senior executives responsible for the DIMS services plus representatives from legal, risk and compliance areas.

**Note 2:** For **related bodies** this is likely to include the ability to approve, or require changes to, key processes and controls, and effective processes to ensure that the oversight body is provided with sufficient good-quality governance and management information.

## B. Culture

You have governance and compliance arrangements that promote a culture of compliance with your obligations as a licensee, and ensure appropriate risk management and fair treatment of clients.

### Minimum standards

1. You have a good compliance culture, supported by systems, policies, procedures and controls.
2. We expect a good compliance culture to include the following:
  - You clearly communicate your conduct expectations to staff, for example through a code of conduct or code of ethics
  - Management actively supports professionalism in their messages to staff
  - Remuneration, reviews, promotions and other incentives recognise professionalism and compliance, not just the achievement of revenue, cost or profit targets
  - You have processes to identify and manage conflicts between the interests of the licensee (or individual staff) and clients' interests – and you quickly resolve any issues in a way that is fair to clients and reasonable for the licensed business
  - You allocate adequate time and resources for training, supervision and compliance activities
  - Management encourages staff to report breaches or inappropriate behaviour, and deals appropriately with staff who report matters (for example through an independent whistle-blowing policy)
  - Management willingly engages with relevant regulators in an open and honest manner, and are responsive to any regulatory concerns they may raise.
3. **Any related bodies** operating under your licence must also promote a culture of compliance, appropriate risk management and fair treatment of clients.

## C. Compliance

You have adequate and effective arrangements for challenging and testing your own compliance, the compliance framework and the outcomes.

### Minimum standards

#### 1. Compliance assurance

You must have adequate and effective arrangements to challenge and test the design and operation of processes and controls, and the adequacy of governance and management information (your compliance assurance programme).

Your compliance **assurance programme** goes beyond the day-to-day controls for key processes, by including more in-depth testing of processes and controls including:

- The testing (and the design of the testing) is done independently of those involved in day-to-day processes and oversight – for example testing is done by a separate compliance or internal audit function, or by an external operation
  - You allocate sufficient, appropriate resources to planning and carrying out the programme, and ensure those involved have the skill and experience to carry out the work
  - Your compliance assurance programme is approved by your oversight body
  - Your oversight body is kept updated about progress against the compliance programme – you also report significant findings to them and follow up on remedial action taken.
2. Your compliance monitoring covers both substantive outcomes and procedural correctness.

#### 3. Related bodies

If you have related bodies operating under your licence, they must also have a compliance assurance programme, and your oversight body should:

- Be responsible for, or have significant input into approval of, these programmes (at least to the extent they relate to the licensed service)
- Have adequate information and sufficient authority to monitor progress, consider significant findings, and ensure appropriate remedial action is taken.

## Part 7. Licence conditions

### A. Standard conditions

If we grant you a DIMS provider licence, it will contain conditions that support your licensee obligations. These are the standard conditions we are proposing to include. The regulations may contain further standard conditions.

#### 1. Skills and expertise

You, or any related body covered by your licence, must inform us whenever there is a change in the senior management team.

#### 2. Monitoring and reporting investment performance

You must maintain procedures for providing incidental financial advice to retail investors. These procedures must ensure clients have the same level of consumer protection as that provided by advisers under the Code of Professional Conduct for Authorised Financial Advisers.

#### 3. Outsourcing

If you outsource a process/system necessary to the effective and proper running of the DIMS (or any other licensee obligation) you must have a legally binding agreement with the provider. This must allow both you and FMA access to all the information needed for monitoring.

#### 4. Regulatory returns

You must provide us with the information we need to monitor your on-going capability to effectively perform the DIMs service in accordance with the applicable eligibility criteria in the Act. This will include updated information on the nature, size and complexity of your DIMS business. Information will need to be provided in accordance with any regulatory return framework and methodology we issue under subpart 4 of part 8 of the Act.

#### 5. Financial resources

You must continue to satisfy the minimum standards for financial resources, and an external qualified auditor will need to review and confirm your compliance annually.

#### 6. Governance

You must have, at all times, adequate and effective systems, policies, processes and controls that are reasonably likely to ensure you will perform the market services you are licensed for in an effective manner.

#### 7. Compliance

You must maintain a compliance governance document. This must identify the principal risks and outline the key processes and controls relied on by your oversight body (and board, if different) to ensure you comply with your obligations and adequately manage the risks.

Your compliance governance document will need to:

- Be approved by the oversight body
- Be kept up to date, and periodically reviewed by the oversight body
- Reflect your business model and processes, compliance and governance arrangements.

Your governance and compliance arrangements must be substantially the same, or better than, those described in your compliance governance document at the time you applied for your licence (or any later version supplied to us).

## B. Specific conditions

We may also set extra licence conditions for individual entities on a case by case basis, for example:

**1. Limits**

If you request a limit on your licensed activity, or can only demonstrate the capacity to provide an effective service within certain parameters, we may set limits on your licence.

**2. Custody**

If we approve the use of an associated person as a custodian, we will specify which associated person/s may be used. There may also be other conditions based on the particular relationship.

## Part 8. Frameworks and methodologies

The Act allows us to issue ‘frameworks and methodologies’ to set out detailed or technical obligations. Initially, we won’t do this for everything we’re allowed to cover – for some things it may be better to provide non-binding guidance. See subpart 4, part 9 of the Act for more details.

### Material limit breaks

We propose to issue a framework and methodology under Section 438 of the Act, which deals with actions required if there is a material limit break under an investment authority.

In the box below are the limit breaks we propose you must always treat as material. You may also need to consider other limit breaks as material based on the circumstances – if in doubt a limit break should be considered a material one.

#### Proposed content of framework and methodology

These are examples of limit breaks that are always material. With any other type of limit break, you need to consider all the surrounding circumstances to decide if it is material – if there is any doubt we suggest you treat it as material.

##### Limit breaks:

- Any purchase of an investment of a type or nature prohibited under the investment authority, must be treated as a material limit break. For example, purchase of Australian shares if Australian equities exposure is not permitted.

##### Where the DIMS involves rebalancing of assets:

- If a **time period** has been clearly set out in the investment authority for rebalancing the proportion of each type of asset that may be invested in, failure to complete the rebalance within the specified period must be treated as a material limit break.
- If **no time period** has been set out in the investment authority for rebalancing the proportion of each type of asset that may be invested in, failure to complete the rebalance within five business days must be treated as a material limit break.

**Note:** If the investment authority specifies a period for rebalancing assets, we expect you to give the investor clear written disclosure of the risks. The prominence of that disclosure should be proportionate to the risk. For example, the longer the rebalancing period, or the greater the percentage variance allowed, the higher the risk and the more prominent the risk warning must be.

## The next step

### How do I make a submission?

Please use the form on the next page – this gives the details of what you need to do. Forms must be submitted electronically in both PDF and word formats and emailed to [consultation@fma.govt.nz](mailto:consultation@fma.govt.nz) – please put ‘Feedback DIMS standards and conditions’ in the subject line.

Alternatively, you can make an online submission on our engagement site [www.talktous.fma.govt.nz](http://www.talktous.fma.govt.nz). You need to register to be able to use the site.

**Submissions close on 12 December 2013.**

### Where can I get more information?

You'll find more information about the changes on our website [www.fma.govt.nz](http://www.fma.govt.nz), or at the Ministry of Business Innovation and Employment site [www.mbie.govt.nz](http://www.mbie.govt.nz)

If you have questions about the licensing consultation process, please get in touch.

**Simon Smith**

Manager Compliance Monitoring Framework

[simon.smith@fma.govt.nz](mailto:simon.smith@fma.govt.nz)

04 474 2440

## **Feedback: Licensing DIMS providers**

### **Draft minimum standards and licence conditions**

Please submit this feedback form electronically in both PDF and MS Word formats and email it to us at [consultation@fma.govt.nz](mailto:consultation@fma.govt.nz) with 'Feedback DIMS standards and conditions' in the subject line. Thank you. **Submissions close on 12 December 2013.**

Date: \_\_\_\_\_ Number of pages: \_\_\_\_\_

Name of submitter:

**Company or entity:**

### Organisation type:

Contact name (if di

Contact email and Phone:

**Please note:** Feedback received is subject to the Official Information Act 1982. We may make submissions available on our website, compile a summary of submissions, or draw attention to individual submissions in internal or external reports. If you want us to withhold any commercially sensitive or proprietary information in your submission, please clearly state this and note the specific section. We will consider your request in line with our obligations under the Official Information Act.

**Thank you for your feedback – we appreciate your time and input.**