FINANCIAL MARKETS AUTHORITY
TE MANA TĀTAI HOKOHOKO

June 2025

Standard Conditions for discretionary investment management service (DIMS) licences

If we grant you a DIMS licence, the licence will be subject to conditions. See section 402 of the Financial Markets Conduct Act 2013 (**FMC Act**).

Conditions will include:

- a condition that the licensee or authorised body may, under the licence, only provide the market services or class of market services to which the licence relates and for which each person is authorised under the licence (see section 402(1)(a) of the FMC Act)
- conditions imposed by the FMA under section 403 of the FMC Act – these will generally include:
  - the standard conditions (see **part A** below)
  - any specific conditions (see **part B** below).
- any conditions imposed by regulations (see **part C** below). As at 1 December 2014, the only relevant regulations are the Financial Markets Conduct Regulations 2014 (the **Regulations**).

We will consult with industry prior to changing the standard conditions in Part A.

A. Standard conditions

Where a DIMS licence refers to *standard conditions*, this means the following conditions, which will be effective on and from 1 April 2014:

1. Skills and expertise

Standard condition:

You, or any authorised body covered by your licence, must inform us whenever there is a change in your key people and managers.

Explanatory note: Your **key people and managers** means the people in your management team responsible for the main activities required for you to deliver the licensed service. Regulation 191 already requires you to inform the FMA as soon as practicable when there is any change to your directors or senior managers, or to the key personnel of your authorised bodies. Standard condition 1 applies to the other key people and managers you should have told us about when you first applied for a licence and requires you to keep that information

up to date. You can find details of who these people are in the capability section of the Licensing Application Guide.

2. Incidental financial advice

Standard condition:

If you provide incidental financial advice to retail investors, then you must maintain procedures for providing that financial advice. These procedures must ensure clients have a similar standard of consumer protection as that provided by a person who provides financial advice services in accordance with the Code of Professional Conduct for Financial Advice Services. These procedures must also ensure that you comply with the statutory duties in sections 431J, 431K and 431N of the FMC Act.

Until 15 March 2023, the competency requirements in Part 2 of the Code of Professional Conduct for Financial Advice Services do not prevent you from providing incidental financial advice if, immediately before 15 March 2021 when the new financial advice regime in the FMC Act came into force, you held a DIMS licence under the FMC Act and would have been permitted to provide that incidental financial advice. This is subject to any conditions on your licence.

Explanatory note: This condition relates to the standard of consumer protection that you must provide when giving financial advice in the ordinary course of, and incidentally to, providing a DIMS. This incidental financial advice is covered by your DIMS licence, and you do not need to separately meet any of the other obligations that apply to financial advice service providers under the FMC Act.

Incidental financial advice can only be given to existing DIMS clients and will include for example, advice to a client on the appropriate scope of an investment authority. Any financial advice to enter a DIMS must be provided by a financial adviser or financial advice provider.

3. Outsourcing

Standard condition:

If you outsource a process/system necessary to the effective and proper running of the DIMS (or any other market services licensee obligation) you must be satisfied that the provider is capable of performing the service to the standard required to enable you to meet your market services licensee obligations and you must have a legally binding agreement with the provider. You must also ensure that records pertaining to the DIMS are available for inspection when requested by the FMA.

Explanatory note: This condition only covers outsource arrangements related to the licensed business where you rely on the outsource provider to meet your market services licensee obligations. Important information that you may want to consider when conducting due diligence on a proposed outsource provider includes:

- 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.

You should regularly review your outsourcing arrangements (at a frequency appropriate to the risk involved) and you should monitor the ongoing performance of the outsource provider. For further information in relation to outsourced services see the outsourcing section of the Licensing Application Guide. You don't need to arrange for the FMA to have direct access to the outsource provider's records, provided we can promptly obtain the records through you.

4. Records

Standard condition:

You must have systems and procedures to maintain relevant records pertaining to your market service and you must provide us with the records we need to monitor your on-going capability to effectively perform the DIMS in accordance with the applicable eligibility criteria in the Act.

Explanatory note: This standard condition requires you to have arrangements in place so that we can inspect your records without unnecessary delays. We would expect this to involve reliable archival systems and getting client consents in advance. This also requires you to have appropriate arrangements in place with outsource providers (see standard condition 3 above).

5. Regulatory returns

Standard condition:

You must provide us with the information we need to monitor your on-going capability to effectively perform the DIMS in accordance with the applicable eligibility criteria in the Act. This will include updated information on the nature, size and complexity of your DIMS. Information must be provided in accordance with any Regulatory Return Framework and Methodology we issue under subpart 4, part 9 of the Act.

Explanatory note: In future, all licensees will be asked to provide information to the FMA on a periodic or ongoing basis, or on request, in accordance with the requirements set out in a Regulatory Return Framework and Methodology. Under section 412 of the FMC Act you have obligations to report various matters to the FMA as soon as practicable, including any material change of circumstances. This standard condition is in addition to those reporting obligations and any other reporting obligations that may be imposed in regulations. The regulatory returns will help the FMA to understand the profile of your business and to focus its resources appropriately. This is likely to require reporting of factual business information, such as business volumes and services types, numbers of customers, numbers and types of breaches, and complaints information. FMA will consult with industry prior to publication of

the Regulatory Return Framework and Methodology which will form part of the standard conditions.

6. Compliance

Standard condition:

You must have, at all times, adequate and effective systems, policies, processes and controls that are likely to ensure you will meet your market services licensee obligations in an effective manner.

Explanatory note: This condition requires you to keep your systems, policies, processes and controls up to date to ensure you are always likely to be able to meet your market services licensee obligations in an effective manner. Changes may be needed over time as the size or scope of your business changes or due to changes in the market as a whole. You should consider whether your systems, policies, processes and controls are sufficient in to meet the requirements of the FMC Act and Regulations by reference to the minimum standards set out in the relevant Licensing Application Guide.

7. Governance arrangements

Standard condition:

Your governance and compliance arrangements must be substantially the same as, or better than, those in place, or which the FMA was advised of, at the time you applied for your licence (or any subsequent change advised to the FMA). You must notify the FMA of material changes to your governance and compliance arrangements as soon as practicable.

Explanatory note: This condition requires you to maintain your compliance and governance arrangements to at least the standard you have told us about, but it allows flexibility for these arrangements to be improved. This condition also requires you to notify us of material changes to your governance and compliance arrangements, which includes any material change to your outsource arrangements, as soon as practicable (which we would ordinarily consider to be within five working days after the change takes effect). For further information in relation to the requirements of your governance and compliance arrangements see the governance and compliance sections of the Licensing Application Guide.

8. Financial resources

Note: this condition (*Financial Resources*) will not apply to you if you are a registered bank, a non-bank deposit taker (NBDT) (as defined in the FMC Act), or a licensed insurer.

Standard condition:

1. You must calculate your **net tangible assets (NTA)** at least monthly, including as at your balance date each year on the basis of your audited financial statements. You must also calculate your NTA on any other date on which there is a reason to suspect that your NTA is not positive. If your calculation shows that you did not have positive NTA, you must notify the FMA as soon as practicable and explain:
    a) the circumstances that cause you to have NTA that is not positive, including the nature of any significant intangible assets or related party receivables
    b) whether you consider having NTA that is not positive adversely impacts on your ability to carry out the market service effectively on an ongoing basis and why.
2. You do not need to provide the notification referred to above if:
    a) you have previously notified the FMA that your NTA was not positive and provided an explanation as set out above
    b) the FMA has advised in writing that you do not need to provide further notifications in respect of having NTA that is not positive arising from those circumstances
    c) there has been no material change from the position and circumstances described to the FMA in your most recent previous notification.
3. If you are not eligible to rely on the Financial Markets Conduct (Financial Reporting – DIMS Licensees) Exemption Notice 2025 (**Exemption Notice**) or any exemption notice that replaces the Exemption Notice, or upon request from the FMA, you must:
    a) engage a qualified auditor to perform agreed upon procedures (**AUP**) and provide you with a report (the **Report**) in respect of the calculation of your NTA during your accounting period, including the calculation of your NTA as at your balance date performed on the basis of your audited annual financial statements
    b) Send the FMA a copy of the Report, including a copy of your NTA calculation as at your balance date, by the earlier of:
        i. five working days after the audit report on your annual financial statements is signed
        ii. four months and five working days after the end of your accounting period.
4. If you are a market participant requiring capital under the NZX Participant Rules (the **NZX Rules**), then you do not need to comply with the requirements in paragraphs 1, 2 and 3 of this standard condition, provided that:
    a) you are not exempt from the capital adequacy requirements in the NZX Rules (the NZX capital adequacy requirements)
    b) you comply with the NZX capital adequacy requirements
    c) you provide the FMA with copies of any notification given by you to NZX if your NTCA (net tangible current assets as defined in the NZX Rules) is at any time

less than 120% of your prescribed minimum capital adequacy (at the same time this information is provided to NZX)

d) you provide the FMA with copies of the final version of any reports from NZX relating to the compliance or non-compliance with the NZX capital adequacy requirements

e) you notify the FMA if you cease to be subject to regulation by NZX as soon as reasonably practicable after becoming aware of the same.

If you cease to be subject to the NZX capital adequacy requirements or to regulation by NZX, you must comply with the requirements set out above in paragraphs 1, 2 and 3 of this standard condition.

Explanatory note: Net tangible assets (NTA) has the meaning set out in appendix 1 of this document.

Qualified auditor has the meaning set out in section 461E of the FMC Act. The qualified auditor must comply with APS-1: Statement of agreed-upon procedures standards issued by the New Zealand Society of Accountants (now known as Chartered Accountants Australia and New Zealand) (and/or any standard that replaces all, or any relevant part, of that standard, regardless of the entity issuing any such standard) in providing the Report.

If your calculations show that you did not have positive NTA, you must notify the FMA as soon as practicable which, ordinarily, we would consider to be within five working days from the date of the relevant NTA calculation.

The purpose of the AUP is to assist the FMA in determining whether you are complying with this condition. Ordinarily the AUP should include the procedures set out below. Procedure 1 is a simple check that you have performed the NTA calculations during the accounting period.

Procedure 2 is a more detailed check of some aspects of your calculation based on your audited financial statements.

1. Obtain all NTA calculations performed by you during the accounting period and for each calculation include in the report:
   a) the date that the calculation relates to
   b) the date the calculation is recorded as having been prepared
   c) the value of the NTA calculated.
2. For the calculation of NTA as at your balance date on the basis of the audited financial statements, the agreed upon procedures engagement should include the following procedures (or such procedures to achieve the same outcome):
   a) re-perform your NTA calculation in accordance with Appendix 1
   b) check each component of the NTA calculation agrees with the relevant information in your audited financial statements or where the information is not included in those financial statements, agrees to appropriate accounting records or other relevant documentation
   c) if you have intangible assets or related party receivables in your audited annual financial statements, determine whether an adjustment has been made for those in the NTA calculation

d) for any adjustment for subordinated debt made when calculating adjusted liabilities, check that:

   i. an executed deed of subordination exists

   ii. the amount that has been classified as subordinated debt is not repayable within one year from the date of the NTA calculation

e) enquire with you whether any guarantees have been provided by you during the accounting period and note any that have not been included in the NTA calculation.

9. Business continuity and technology systems

Standard Condition: *(This standard condition will be effective from 1 July 2024)*

You must have and maintain a business continuity plan that is appropriate for the scale and scope of your licensed market service.

If you use any technology systems, which if disrupted would materially affect the continued provision of your market service (or any other market services licensee obligation), you must at all times ensure the operational resilience of those systems – being the preservation of confidentiality, integrity and availability of information and/or technology systems – is maintained.

You must notify us as soon as possible and, in any case, no later than 72 hours, after discovering any event that materially impacts the operational resilience of your critical technology systems, and provide details of the event and impact on your licensed market service and recipients of the service.

Explanatory note: This condition requires you to have suitable arrangements in place to be able to manage disruptions to your business. This is intended to provide recipients of your licensed market service with the security of continuity of relevant services and associated products they receive from you.

Your *business continuity plan* includes the documented procedures that guide you to respond, recover, resume and restore a predefined level of operation following disruption. This plan should provide for the continuity of your licensed market service generally – not just the recovery of your technology systems. It should also encompass any outsource arrangements.

Your plan should consider the loss of availability of your key resources, including staff, records, systems, suppliers and premises. The extent of your business continuity plan should reflect the size and complexity of your market service, operational arrangements and exposure to disruptive events.

A small market services licensee with simple processes and technology may only need a relatively brief plan covering a more limited range of likely disruptive events. A larger or more complex market services licensee, relying more extensively on technology systems and possibly operating from multiple locations, will need to consider a wider range of disruptive events and reflect this in a more comprehensive business continuity plan.

Irrespective of the size or complexity of your circumstances, it is important that your business continuity plan is maintained, reviewed and regularly tested – at least annually.

Your business continuity plan must also be updated immediately if there is a material change in business location, structure, or operations.

Critical technology is that which supports any activity, function, process, or service, the loss of which would materially affect the continued provision of your market service or your ability to meet your licensee obligations.

This condition requires that you maintain the operational resilience of your critical technology. This includes:

- regularly identifying and reviewing your operational risks, including cyber risk and threats; and
- implementing measures that maintain the level of operational resilience necessary for your risk profile; and
- having effective processes that monitor and detect activity that impacts your operational resilience; and
- setting out in your business continuity plan your predetermined procedures for responding to, and recovering from, events that impact on your operational resilience.

The operational resilience of your critical technology systems should be managed within the risk tolerance set through your governance processes. We recommend that you use an appropriate, recognised framework for this purpose.

You must have arrangements in place to notify us after discovering any event that materially impacts the operational resilience of your critical technology systems. This includes any technological or cyber security event that materially disrupts or affects the provision of your market service, or has a material adverse impact on recipients of the service. You do not need to notify us of minor events, such as receiving a ‘phishing’ email that is not successful i.e. has not materially disrupted or affected the provision of your market service, and has not had a material adverse impact on recipients of the service.

You need to provide details of the event including the affected systems, and the impact on your market service and recipients of the service. This should also include projected recovery timelines and remediation activity. If some of the details are not available at the time you discover the event, you will need to provide these details to us as soon as possible. We may also request additional information about the event. We may also specify the format or additional requirements for notifying events to the FMA.

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.

Any specific conditions will be notified to you at the time we grant you your licence.

C. Conditions imposed under Regulations

Regulations made pursuant to the FMC Act may impose additional conditions on your licence. These regulations may change from time to time, so you will need to keep abreast of any new regulations.

The FMC Act and regulations also contain many obligations that you will need to comply with when you have a licence even though they are not called licence conditions. For example section 412 of the FMC Act requires you to report various matters to the FMA as soon as practicable, including any breach (or likely breach) of your market services licensee obligations and any other material changes of circumstances. Also, section 438 of the FMC Act requires you to report material breaches of certain limits under your investment authority (limit breaks) to the FMA. FMA has consulted on a proposed framework and methodology concerning when limit breaks must be considered to be material and have published guidance on this issue in early 2015.

As at 1 December 2014, the regulations that impose additional licence conditions on a DIMS licence are regulations 191, 193 and 194 of the Regulations. Appendix 2 sets out these regulations, but you should refer to the FMC Act and Regulations in full to understand your market service licensee obligations.

Appendix 1

Net tangible assets (NTA)

For the purposes of Standard Condition 8 (*Financial Resources*) **Net tangible assets** (**NTA**) has the following meaning:

1. If a market services licensee has notified the FMA it is licensed as a financial services licensee by the Australian Securities and Investments Commission (**ASIC**), and it is required to calculate its net tangible assets (NTA) in accordance with the methodology published by ASIC, then net tangible assets (NTA) shall have the same meaning in that methodology published by ASIC.
2. In all other circumstances, NTA shall mean the market services licensee's **adjusted assets** minus **adjusted liabilities**.
3. **Adjusted assets** means, in relation to a market services licensee, the value of total assets as they would appear on a balance sheet at the time of calculation that has been prepared on the same basis as the market services licensee's financial statements required under part 7 of the FMC Act, minus any **excluded assets**.
4. **Excluded assets** means:
   a) the value of any intangible assets (i.e. non-monetary assets without physical substance), plus
   b) the value of any **associated party receivables** except **permitted associated party receivables.**

***Explanatory note**: In this context, "intangible assets" includes any intangible assets within the definition of NZ IAS 38 Intangible Assets such as brands, goodwill and management rights as well as deferred tax assets recognised under NZ IAS 12 Income Taxes.*

5. **Associated party receivables** means any receivables, or other obligations, owed to the market services licensee by any person who:
   a) is an associated person (as defined in the FMC Act) of the market services licensee or
   b) was or, if the FMC Act had been in force at the time, would have been an associated person (as defined in the FMC Act) of the market services licensee at the time the liability was incurred or the investment was made.
6. **Permitted associated party receivables** means an associated party receivable to the extent that:
   a) it is adequately secured or
   b) is owed by a registered bank regulated by the Reserve Bank of New Zealand or an authorised deposit-taking institution (ADI) authorised under the Australian Banking Act 1959 or
   c) the following conditions all apply:
      i. it is receivable as a result of a transaction entered into by the market services licensee in the ordinary course of its business on its standard commercial terms applicable to persons that are not associated with the market services licensee on an arm's length basis
      ii. no part of the consideration for the transaction is, in substance, directly or indirectly invested in the market services licensee

iii. the value of the receivable (before any discount is applied) is not more than 20% of the assets less liabilities as they would appear on the market services licensee's balance sheet at the time of calculation.

7. **Adequately secured** means, in relation to an associated party receivable, that receivable is:

   a) secured by an enforceable security interest over financial products (other than financial products issued by the market services licensee or its associate) if:

      i. the financial products are regularly traded on an **acceptable financial product market** or are interests in a registered scheme for which withdrawal prices are regularly quoted by the manager of the scheme, and the market services licensee believes on reasonable grounds that withdrawal may be effected within 5 working days

      ii. the market value of these financial products is at least 120% of the amount owing, or at least 109% of the amount owing if the financial products are debt securities or

   b) secured by a registered first mortgage over real estate that has a fair market valuation of at least 120% of the amount owing or

   c) secured by an enforceable security interest over amounts owing to another market services licensee which themselves are adequately secured.

8. **Acceptable financial product market** means any registered market registered market within the meaning of section 2(1) of the Securities Markets Act 1988 or any licensed market within the meaning of section 6 of the Financial Markets Conduct Act 2013 and each of American Stock Exchange, Australian Securities Exchange, Borsa Italiana, Bursa Malaysia Main Board and Bursa Malaysia Second Board, Euronext Amsterdam, Euronext Paris, Frankfurt Stock Exchange, Hong Kong Stock Exchange, JSE (Johannesburg), London Stock Exchange, NASDAQ Stock Market, New York Stock Exchange, Singapore Exchange, SWX Swiss Exchange, Tokyo Stock Exchange and Toronto Stock Exchange.

9. **Adjusted liabilities** means, in relation to a market services licensee, the amount of total liabilities as they would appear on a balance sheet at the time of calculation that has been prepared on the same basis as the market services licensee's financial statements required under part 7 of the Act:

   a) minus the amount of any liability under any subordinated debt agreement (a copy of which must be provided to the FMA or your auditor upon request), where the obligation to repay the debt is subordinate to all other claims, demands, rights and causes of action of all unsubordinated creditors and the debt is not repayable within one year of the date to which the NTA calculation relates

   b) plus the maximum potential liability under any guarantee provided by the market services licensee [other than a guarantee limited to an amount recoverable out of any scheme property of a managed investment scheme operated by the licensee] **Note: the language in square brackets in this paragraph b) only applies if the FMA licenses you as a managed investment scheme manager**.

Explanatory note*: We consider it acceptable if the loan agreement allows for partial repayment within one year. However the loan agreement will need to clearly document the amount of the loan which is not repayable within a year. Only the amount that is not repayable within a year can be excluded from liabilities when calculating NTA. Any amount that is repayable or could be repaid within one year will not be subordinated debt and cannot be excluded from your liabilities for the purposes of*

your NTA calculation. For example, if there is a shareholder loan of $3m, the loan agreement could provide that:

- a clearly quantified amount of the loan is repayable on demand (eg $2m) – this amount cannot be classified as subordinated debt

- a clearly quantified amount of the loan is not repayable until a certain date, that is not within a year of the NTA calculation (eg $1m) – this portion of the loan could be classified as subordinated debt and excluded from liabilities in the NTA calculation.

Appendix 2

Conditions imposed by regulations as at 1 December 2014

Extract from the Financial Markets Conduct Regulations 2014:

Conditions of licences

191 General reporting condition

(1) A market services licence is subject to a condition that, if any of the following occurs, the licensee or an authorised body must, as soon as practicable, send a report containing details of the matter to the FMA:

(a) the licensee or an authorised body becomes aware or has reasonable grounds to believe that —

(i) the licensee or an authorised body is, or it is likely that the licensee or authorised body will become, subject to an insolvency event or

(ii) a director or senior manager of the licensee, or any of the key personnel of an authorised body, is adjudicated bankrupt or it is likely that that person will be adjudicated bankrupt (whether in New Zealand or overseas) or

(b) the licensee or an authorised body becomes aware that a relevant proceeding or action has been commenced or taken against any of the following:

(i) the licensee

(ii) an authorised body

(iii) a director or senior manager of the licensee

(iv) any of the key personnel of an authorised body or

(c) a director or senior manager of the licensee, or any of the key personnel of an authorised body —

(i) resigns, is removed, or otherwise ceases to hold the office or position

(ii) is appointed, employed, or engaged or

(d) an auditor of the licensee or an authorised body —

(i) resigns or otherwise ceases to hold the office

(ii) is appointed (other than by way of reappointment) or

(e) the licensee or an authorised body proposes to change its name or its legal structure (for example, by virtue of an amalgamation) or

(f) the licensee or an authorised body proposes to enter into a major transaction (within the meaning of section 129 of the Companies Act 1993 applied to a licensee or an authorised body whether or not it is a company) or

(g) the licensee or an authorised body becomes aware that a transaction or an arrangement has been entered into, or it is likely that a transaction or arrangement will be entered into, that will result or has resulted in a person obtaining or losing control of the licensee or the authorised body.

(2) In subclause (1)(b), **relevant proceeding or action** —

(a) has the same meaning as in regulation 5(1) and

(b) includes a criminal proceeding for a crime involving dishonesty but

(c) does not include any proceeding commenced, or action taken, by the FMA.

(3) In subclause (1)(g), **control** has the same meaning as in clause 48 of Schedule 1 of the Act.

…

193 Condition for DIMS providers and prescribed intermediary service providers to keep documents and to give documents on request

(1) A market services licence for a provider of a DIMS, a crowd funding service, or a peer-to-peer lending service is subject to a condition that the provider must, in respect of any document required by or for the purposes of the Act or these regulations in connection with the service —

(a) keep a copy of the document for a period of at least 7 years after the date on which the document comes into the possession of the provider

(b) provide, on request and on payment of the relevant fee, to an investor a copy of, or an extract from, a document that is relevant to the investor (and the copy or extract must be provided in accordance with subclause (3) within 10 working days after receiving the request).

(2) The condition in subclause (1) applies to a document only if the document is given, made, or provided by or to the provider.

(3) The document must be provided by giving it to the investor or delivering or sending it to the investor's address.

(4) In this regulation —

(a) a document is relevant to an investor if the investor has or had a right to access or obtain a copy of the document under the Act, regulations made under the Act, a governing document, or the terms of the offer of a financial product or a DIMS

(b) relevant fee means a reasonable printing and administration fee set by the provider.

...

194 Condition for DIMS providers to disclose if service is wholesale

(1) A market services licence for a provider of a DIMS that is not a retail service is subject to a condition that the provider must not acquire or dispose of a financial product under the service for an investor, or accept an investment authority from an investor, unless a warning statement has been provided to the investor before —

(a) the provider acquires or disposes of a financial product under the service for the investor or

(b) the investor grants an investment authority to the provider.

(2) A warning statement must be provided by giving it to the investor or delivering or sending it to the investor's address.

(3) The warning statement must —

(a) contain a statement to the effect that —

(i) the service is not a retail service

(ii) the service is not covered by the licence (and, accordingly, the protections and requirements of the Financial Markets Conduct Act 2013 may not apply)

(b) if it is included in another document, be in a prominent position in that document.