

OCTOBER 2024

Consultation: Renewal of class exemption for DIMS licensees from certain financial reporting requirements

About this consultation

The Financial Markets Authority – Te Mana Tātai Hokohoko (**FMA**) is reviewing whether to renew for a further five years an existing class exemption notice for certain providers of discretionary investment management services (**DIMS**) who are licensed to provide DIMS under Part 6 of the Financial Markets Conduct Act 2013 (**the Act**). The exemption provides relief to small- and medium-sized DIMS licensees from certain financial reporting and audit requirements required under Part 7 of the Act.

We invite your feedback to support our review of this exemption notice. Please use the feedback form provided.

Submissions close at 5pm on Friday 29 November 2024.

Next steps

After considering submissions, we will finalise our policy proposals and aim to have any exemption in place prior to the expiry of the existing notice.

If you have any questions, please email consultation@fma.govt.nz or call us on 0800 434 566.

This consultation is for DIMS licensees, investors, auditors and other interested stakeholders.

It asks for feedback on whether the current exemption notice should be renewed and, if so, what changes (if any) should be made.

Review timing and process

We plan to complete our review of the *Financial Markets Conduct (Financial Reporting—DIMS Licensees) Exemption Notice 2020* and have any replacement notice in place before the existing exemption expires on 4 June 2025.

Our process and timeline will vary depending on the significance of issues under consideration. An indicative timetable is noted below; this is subject to change.

Date	Step
29 November 2024	Consultation period closes
By early 2025	Decision whether to renew the exemption notice made
April – May 2025	If the decision is made to renew the exemption notice, we will draft a replacement notice to give effect to the policy decision. We may seek further feedback on any technical drafting issues that arise. We will have the notice in place in advance of the expiry date of the existing notice.
5 June 2025	Replacement notice (if granted) comes into effect

FMA's power to grant class exemptions

We have powers to exempt persons from compliance with requirements in the Act and associated regulations.

Before we do so, we must be satisfied that the exemption is necessary or desirable to promote one or more of the following purposes of the Act:

- to promote the confident and information participation of businesses, investors, and consumers in financial markets
- to promote and facilitate the development of fair, efficient and transparent financial markets
- to provide for timely, accurate and understandable information to assist investment decisions
- to ensure appropriate governance arrangements apply to financial products and services, and allow for effective monitoring and reduce governance risks
- to avoid unnecessary compliance costs
- to promote innovation and flexibility in the financial markets.

We must also be satisfied that the exemption is not broader than is reasonably necessary to address the matters that gave rise to it.

We can only renew exemptions where we are satisfied that the statutory requirements are met. We need information from you to support our decision-making, so we encourage you to provide feedback.

Overview of existing class exemption

Background

A discretionary investment management service (**DIMS**) is where a provider manages an investor's portfolio on their behalf and is authorised to make investment decisions in line with authority granted by the investor. Section 432 of the FMC Act provides the definition of DIMS.

Anyone providing a DIMS in New Zealand must be licensed by the FMA. Licensed providers of DIMS are Financial Market Conduct (**FMC**) reporting entities. Under Part 7 of the Act, such entities must prepare, have audited, and lodge financial statements that comply with generally accepted accounting practices (**GAAP**).

Existing exemption notice – key effects and reasons

The existing exemption notice, the *Financial Markets Conduct (Financial Reporting—DIMS Licensees) Exemption Notice 2020*¹, provides relief for small- and medium-sized licensed providers of DIMS from certain financial reporting and audit obligations under the Act as follows:

- Level 1 licensees (licensees with less than \$100 million retail² funds under management (**FUM**)) are exempt from almost all the financial reporting requirements in Part 7 of the Act. They are not required to prepare financial statements that comply with GAAP, have them audited by a licensed auditor or lodge them with the Registrar. They are still required to keep accounting records and comply with any financial reporting and audit obligations under other legislation (for example, the Companies Act 1993 or the Tax Administration Act 1994).
- Level 2 licensees (licensees with between \$100 million and \$250 million retail FUM) are exempt from the requirement to have their financial statements audited by a licensed auditor but must prepare financial statements that comply with GAAP and lodge them with the Registrar. They are still required to comply with any audit requirements under other laws (such as the Companies Act 1993).

Appendix 1 specifies the relevant sections of the Act that licensees are exempt from.

The exemptions do not apply if a DIMS licensee is an FMC reporting entity for any other reason, does not have an independent custodian, or the licensee has more than \$250 million in retail FUM.

The policy reasons for granting the exemption can be summarised as follows:

- Requiring DIMS licensees to have audited financial statements creates little benefit for monitoring investor money or property when investor money or property is held directly by the investor or by an independent custodian with separate reporting obligations under the Act.

¹ <https://www.legislation.govt.nz/regulation/public/2020/0081/latest/whole.html>

² The financial reporting and audit obligations apply to those DIMS providers managing retail funds; therefore DIMS providers should give due consideration to the classification of their retail vs wholesale funds.

- Where investor money and property are held by the investor or by an independent custodian, investors are less likely to place reliance on the level of financial resources that a DIMS licensee has, when assessing whether it is able to provide the service, and financial statements and audit requirements for the DIMS licensee's business are consequently likely to be of limited benefit for investors.
- The level of financial resources required to provide a DIMS depends on the nature and scale of the business. Greater resources are likely to be required for large DIMS licensees to ensure that appropriate systems, controls, and oversight are in place. Financial reporting and audit requirements are therefore less relevant for investors where a DIMS licensee's business is not large.
- DIMS providers that are not large are unlikely to carry on other activities that would otherwise require them to produce audited GAAP-compliant financial statements, and the costs of complying with financial reporting and audit requirements are therefore likely to be relatively high for this group. This may act as a barrier to becoming licensed and ultimately may lead to increased market concentration and higher costs for investors.

We seek your feedback on whether the policy reasons for granting the exemption remain relevant and valid, which would support the renewal of the notice.

Reliance on notice and support for renewal

Q1	Are you a DIMS provider and/or licensee? If you rely (or have previously relied) on the existing exemption notice, are (or were) you a level 1 or level 2 licensee? Please provide the total amount of retail FUM at the end of your last reporting period.
Q2	Do you support renewal of the notice? What are the reasons for your view? (For example, is there available information, other than audited GAAP financial statements, that may help investors make decisions in relation to the DIMS provider?)
Q3	Do you think the original policy reasons for granting the exemption remain relevant and valid? Are you aware of anything that has changed since the notice was granted that would affect or alter these reasons (for example any particular benefits or risks to investors)? Are there any additional policy reasons that would support granting, or not granting, the exemption?
Q4	If you are a level 1 or level 2 licensee, what impact would <i>non-renewal</i> of the notice have on you? Include a description of any risks and compliance costs (including monetary and time costs) that would then be incurred, and why you think those costs are unnecessary. Please quantify the impact with as much detail as possible. (Also see Q7, which specifically asks about monetary compliance costs.)
Q5	What impact would <i>non-renewal</i> of the notice have on investors, compared to renewal? Include any benefit or detriment to the protection of investors' interests, information available to investors or competition in the market. Please quantify the impact with as much detail as possible.

Exemption eligibility

The exemptions in the existing notice apply according to whether a DIMS licensee falls into one of two levels (as stated above). The levels are based on the amount of retail funds under management.

The levels were set in 2015 after two rounds of consultation with existing DIMS providers and other stakeholders. Submitters were concerned that the levels proposed in the initial consultation paper for the

(then) three classes of DIMS providers were too low. They noted that the proposed levels were unlikely to provide the appropriate relief to address the market's needs, and questioned whether DIMS providers could viably operate from the income generated under the proposed levels. Based on this feedback, the levels in the notice were set at a higher level than initially proposed, and reflect the policy reasons above. The levels were reviewed in 2020, and it was considered they remained appropriate.

Regulatory return data shows that as at June 2024, there were 49 active licensed DIMS providers.

- <\$100 million retail FUM: 15 DIMS providers
- Between \$100 million to \$250 million retail FUM: 14 DIMS providers
- >\$250 million retail FUM: 20 DIMS providers

<i>Amendments needed</i>	
Q6	If the notice is renewed, do you think the level 1 and/or level 2 thresholds need to be amended? If so, please specify the reasons for this and any evidence, and the impact of the amended levels on DIMS licensees and investors.
Q7	Please provide evidence of the actual or estimated monetary costs related to: <ul style="list-style-type: none"> • preparing financial statements that comply with GAAP, and • having these GAAP-compliant financial statements audited by a licensed auditor.
Q8	If the notice is renewed, do you think any other amendments are needed to the existing notice? If so, please specify the amendments you propose, the reasons for these and any evidence, and the impact of the amendments on DIMS licensees and investors.
Q9	If you believe the existing notice has not effectively minimised the compliance costs it aims to address or could go further to address unnecessary compliance costs not identified when the notice was made, please explain why. Quantify the costs with as much detail as you are able. Please tell us how the notice could be amended to address this.

<i>Other</i>	
Q10	Do you have any other comments?

Please note: If we cannot obtain evidence and data that supports the continued need for the exemption and confirms that the statutory test for granting the exemption is met, we may not be able to renew the notice. Your feedback is appreciated.

Appendix

Appendix 1

The existing notice exempts level 1 licensees from:

- being required to keep accounting records that enable the DIMS provider to ensure its financial statements comply with GAAP (section 455(1)(c) of the Act)
- being required to keep accounting records that enable their financial statements to be audited (section 455(1)(d))
- the requirement to keep certain documents in New Zealand to enable preparation of financial statements (section 456(2))
- being required to prepare financial statements that comply with GAAP (section 460)
- being required to prepare group financial statements that comply with GAAP (section 461)
- being required to have financial statements audited by a qualified auditor (section 461D), and
- being required to lodge financial statements (section 461H).

The existing notice exempts level 2 licensees from:

- being required to keep accounting records that enable its financial statements to be audited (section 455(1)(d))
- being required to have financial statements audited by a qualified auditor (as defined in the Act) (section 461D), and
- being required to lodge financial statements (to the extent that it requires a copy of an auditor's report to be delivered to the Registrar) (section 461H).

Feedback form

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Please submit this feedback form electronically in both PDF and MS Word formats and email it to us at consultation@fma.govt.nz with 'Renewal of class exemption for DIMS licensees from certain financial reporting requirements: [your organisation's name]' in the subject line. Thank you. **Submissions close on 29 November 2024.**

Date: Number of pages:

Name of submitter:

Company or entity:

Organisation type:

Contact name (if different):

Contact email and phone:

Question number	Response

Feedback summary – *if you wish to highlight anything in particular*

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.