

# Discretionary Investment Management Service (DIMS)

## PART B4:

### Your guide to applying for a market service licence under the Financial Markets Conduct Act

All the questions you'll be asked, the minimum standards you'll need to show you meet, and information about the details and supporting documents you'll need to provide.

Please make sure you read this guide in conjunction with our 'Part A' licensing guide.

NOTE: It is important to complete the application form using Adobe Reader only. This is due to other reader providers not being compatible with Adobe and the answers may not save permanently in the form.

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## PART B4: How do I apply for a **DIMS provider** licence?

To apply for a market service licence you need to read both PART A and PART B of our licensing application guide.

Email [licensing@fma.govt.nz](mailto:licensing@fma.govt.nz) for a copy of the application form.

**PART A:** Gives general guidance about the licensing process. Click the link to [PART A](#).

**PART B (this document):** Gives specific information for the type of licence you're applying for. It outlines the minimum standards for the licence, sets out all the questions you'll be asked in the application form, in the same order as the form, and gives guidance on what you might need to tell us and the types of supporting documents you'll need to provide. Your application can only be submitted via email using the Adobe editable pdf and you'll need to attach your supporting documents.

Please note these guides may be updated from time to time, so please check our website for the latest version before you apply.

**Important notes:** All answers and documents must be supplied before your application can be accepted

This guidance is of a general nature and does NOT replace your own careful reading of the requirements in the Financial Markets Conduct Act 2013 ('FMC Act'), applicable regulations, legal or other expert advice on your application. Applicable regulations include the Financial Markets Conduct Regulations 2014 (the 'Regulations') and any other regulations that are made pursuant to Part 9 of the FMC Act (together the 'Applicable Regulations').

### Any questions?

If you have any questions please call us on **0800 434 566**. We're open for calls from 8.30am to 5pm, Monday to Friday. Overseas callers can reach us on +64 3 962 2695.

#### It's all done by email

You apply for your licence using the Adobe editable pdf form and email, attaching any supporting documents, to

[licensing@fma.govt.nz](mailto:licensing@fma.govt.nz).

We don't accept hard copy applications unless we specifically ask for them.

If you have any questions please call us on  
**0800 434 566**.

## Who is this licence for?

### DIMS providers

*This licence is for people who want to provide a discretionary management service, or DIMS, to retail investors.*

A DIMS is an investment arrangement where you make buy–sell decisions on behalf of an investor, rather than the investor making those decisions.

It includes arrangements where the investor has the right to be consulted, or can change a decision you have previously made. DIMS cover a wide range of services and can vary considerably.

This guide covers the licensing process for DIMS under the FMC Act.

## Things you need to know before you apply

### Eligibility criteria

- To issue you with a DIMS provider licence, we must be satisfied you meet the criteria set out in section [396](#) of the FMC Act.
- If you want any related body corporates authorised under your licence (authorised bodies), both you and these bodies must (collectively) meet the criteria set out in section [400](#) of the FMC Act and regulation [188](#) of the Regulations.
- Some criteria set specific **requirements** you must meet, such as being registered on the Financial Service Providers Register. Others are more general and apply to all aspects of your business. For example you must be “capable of effectively performing the service” (section [396\(c\)](#) of the FMC Act).
- To help you understand these criteria, we have described the **minimum standards** we expect you to meet. However, these standards do not change or limit the criteria set out in the FMC Act or Applicable Regulations – the whole of your licensed business must meet these criteria at the time of licensing and during the course of your licence.
- Your board, or governing body, is asked to confirm this in the certificate we ask you to provide with your application.

### Minimum standards

- We expect all licensees to meet the minimum standards, but there is flexibility in how you meet them depending on the size and nature of your business. For example, if you need a process and controls for a function, we expect your approach will take into account how many people are involved, their expertise and the level of senior management oversight.

When you’re explaining how you will meet a minimum standard, you can also tell us why your approach is appropriate for the size and nature of your business.

- There are some minimum standards where you must demonstrate that you have a plan or process to meet them once you’re licensed. For example you may not need (or be able) to meet some legal requirements until after you’re licensed. Or you might be a start-up business, and can’t operate until you’re licensed, so can’t demonstrate the effectiveness of your systems, policies, procedures and controls when you apply.

In these situations you don’t have to prove you comply – instead you need to show us how you’ll meet the requirements once you’re licensed.

- c. When you've finished completing your application we suggest you look back over all the minimum standards. Check you've provided a level of information that would allow someone who doesn't know anything about your business to be comfortable you will meet each of the minimum standards.

### Ongoing obligations

- a. As a licensee you'll have ongoing obligations, including:
- Meeting all the relevant requirements of the FMC Act and Applicable Regulations
  - Meeting the criteria in the FMC Act
  - Maintaining the minimum standards for the duration of your licence
  - Meeting any standard or specific conditions imposed on your licence.
- b. The consequences for a breach of licence are set out in sections [406](#) and [414](#) of the FMC Act.

### Licence conditions

If we issue a licence it will contain conditions that support your licensee obligations. The [standard conditions](#) for the different types of licence are available on our website. We may also set extra licence conditions for individual entities on a case by case basis.

In your application you'll need to demonstrate that you can meet these conditions – or ask us for a limit on or variation in your licence.

### Other legal requirements

You may have other legal requirements that are not set out in the minimum standards. Non-compliance with any financial market legislation will be taken into account during our assessment of your application (and during ongoing supervision.) We may undertake monitoring or enforcement action, or refer the matter to other agencies as appropriate.

**Please note**  
After you submit your application, we may ask you to provide more information to help us make a final decision on your licence.

**The questions are in this guide**  
The questions we ask help us assess how you meet the minimum standards. Under Part B – What do we ask, we list all the questions, in the same order as they appear on the application form.

### Please remember

You can contact us for information at any time before you apply – and after you're licensed – just call **0800 434 566**.

## Information for applicants

**A. Getting started**

*This guide is divided into sections, following the order of the questions in the application form. This 'getting started' section covers the first two sections of the application form, which ask for details about you, your business, and your application.*

**What will we ask?**

In each section you'll find the list of all of the questions in the application form, including the documents we ask you to provide.

The guide has been designed so that you can read the minimum standards (A), see what you'll be asked when you complete the form (B) and read our comments (C), then assemble what you need before you start your application.

Many questions only need a YES/NO or similar short answer. If you're asked to explain something you can key your answer straight into the form, and/or supply a supporting document.

**Supporting documents**

If you will be attaching a supporting document we ask for a document name and the section you're referring us to. This means you can add one document (such as a policy manual) to support several answers.

**B. What do we ask?****1. Applicant details**

- » What is your FSP Number? *(See comments)*
- » What is the name of the entity or person applying?
- » Is this a separate or related body application?  
If a related body application, enter the FSP number of the parent licence applicant. then refer throughout the rest of the application form to the related body's name, FSP number, key contact person and their position, phone number/s and email.
- » Do you want related bodies included in your application?

**Prosecution details**

- » Does the entity applying for the licence have any past, current or pending: criminal prosecutions, civil litigations or administrative actions against or involving it? If YES, please provide details.

**Relevant parties**

- » Do you have any relevant parties, as defined in the Regulations? *(See comments)*  
If YES, please list your relevant parties. You will also need to attach a declaration.

**2. Application details****Special Limits**

- » Do you request any special limits on your licence? If YES, please provide brief details. *(See comments)*



**Here's a tip ...**  
If the answers don't fit in the application form, provide a summary and refer to the separate supporting document for the full answer.

#### **For a DIMS provider licence** *(See comments)*

- » What is the total value of the funds you expect to manage for all DIMS investors (wholesale and retail)?
- » What is the total value of the funds you expect to manage for just your retail DIMS investors?
- » How many retail DIMS investors do you expect to have?
- » Will you handle investor money and/or property as part of your DIMS business?
- » Do you provide a wrap platform, or have an agreement with a third party to provide a wrap platform service to your DIMS investors? If YES, what is the name of the platform and who provides it?
- » Please indicate the product type/s offered as part of your DIMS service. Select all those that apply from the list.

#### **Licensed Financial Service Provider**

- » Is your entity a licensed provider under the Financial Service Providers (Registration and Dispute Resolution) Act 2008?
- » Are any of your directors or senior managers licensed providers under the Financial Service Providers (Registration and Dispute Resolution) Act 2008? If YES, what are their names and FSP numbers?
- » Does your entity or any of your directors or senior managers hold a licence or registration, relevant to financial services, in any overseas jurisdiction? If YES, please give registration/licence details for each person or entity.

#### **Market services**

- » Is this licence application for a service that is incidental to another market service that is, or will be, covered by a licence? If YES, please provide details about your other services and licences.

#### **Consultation**

- » Please confirm that your entity (or any related body) does NOT have a provision in its constitution/s which allows directors to act against the best interests of the licensed entity or related body when they perform their duties or exercise their powers. *(See comments)*

#### **Your business**

- » Please describe your business. *(See comments)*

### Have you got an FSP?

You'll need an FSP number to finalise your application – and any related bodies you want to include will need their own FSP number. It can take up to five working days to get one, so we suggest you and the related bodies apply in advance.

## C. Our comments

### FSP registration number

This is your financial service provider number. (FSP) Refer to Part A Guide, Page 6, 'You'll need an FSP number to select the financial service.' You must have completed this before the licence can be issued.

### Related bodies

- a. You may apply for a licence that covers related body corporates (related bodies) who will provide part or all of the licensed service with you. If we issue a licence, you'll be the licensee and they'll be an authorised body.
  - Under the FMC Act a related body corporate generally means a company in the same corporate group as the main applicant.
  - An authorised body is named on your licence and can perform the licensed service, or any part of it. If you're applying for several licences, you can specify different related bodies to be authorised under each licence.
  - If you have related bodies authorised 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.
- b. At the start of your application we ask if you are applying for a licence in your own right or related body application. It's important to select the right option:
  - **Separate** means you are applying for a licence for yourself or your entity, in your own right, and will be the licensee (called 'applicant' in the application form)
  - **Related body** means another company in your corporate group has already applied for the licence and, if approved, you'll become an authorised body under their licence. We ask you for the FSP number of the separate parent licence applicant.
- c. **The steps involved for each party**

If you're the **licensee**:

  - In your application you tell us if you want a related body. If so, we ask you to name any related body you want to include and to provide their FSP number.

If you're the **related body** you:

  - You will need your own FSP number
  - Select "related body" in the application form
  - Enter the Licensee's FSP number in 'Parent FSP Number'
  - Select the market service licence type which the Licensee has applied for
  - Answer all the questions relevant to the licensed activities you will perform (if a question is not relevant just answer 'not applicable')
  - Then email your related body application to [licensing@fma.govt.nz](mailto:licensing@fma.govt.nz)



### Any questions?

Please remember you can contact us for information at any time before you apply – and after you're licensed.  
Just call

**0800 434 566**

8:30am – 5:00pm  
Monday to Friday

Licensee applicants and related bodies fill in separate application forms. As a related body, you should liaise with the applicant to ensure your answers reflect what the applicant has submitted in its licence application. You need to obtain the applicant's FSP number to be entered in your application as the 'Parent FSP Number'.

### Relevant parties

You are asked to name any 'relevant parties' and provide a declaration (see *comments*). Relevant parties are defined in regulation [189](#) of the Regulations and include anyone who is able to exert a substantial degree of influence over your activities. It is also anyone whose wishes you act, or are accustomed to act in accordance with.

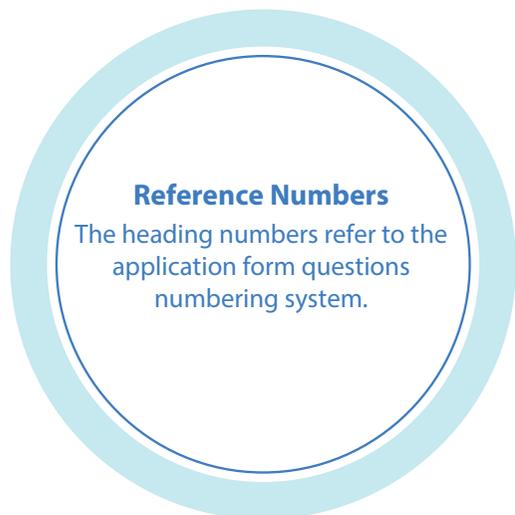
### Limits on your licence

You may ask for a special limit on your licence if you only want to provide certain aspects of the market service, or want other limits noted, for example on the types or amounts of investments you'll make for an investor. This may make it easier for some smaller providers to meet certain minimum standards.

Please note, even if you don't ask for a limit, we may place one on your licence if you can only demonstrate the capability and resources to provide a limited market service. But we will consult with you before issuing a licence that is more restricted than you applied for.

### Specific questions about your DIMS business

- a. You're asked to complete a section with some specific details about your DIMS business, so we can better understand the size and nature of your operation.  
Where we ask about the value of funds you manage, please give your best estimate in NZ dollars rounded to the nearest million (you enter \$101,100,000 as 101,000,000).
- b. The FMC Act defines what is meant by:
  - A wholesale investor is defined in [Clause 36\(b\) of schedule 1](#)
  - A retail investor (anyone who is not a wholesale investor) is defined in [Clause 35\(1\) of Schedule 1](#)
  - Investor money and/or property is defined in section [444](#)
  - Debt security has the meaning set out in section [8\(1\)](#)
  - Derivative has the meaning set out in section [8\(4\)](#)
  - Equity security has the meaning set out in section [8\(2\)](#).
- c. **A wrap platform** is a service that enables various financial products to be held or viewed in the same administrative account rather than as separate holdings. Different wrap platforms provide different services such as custody and execution services. Use the section where you describe your business to tell us what services are provided by any wrap platform you use. If you provide a wrap platform for your DIMS investors please tick 'YES' and tell us:
  - If you created it in-house, enter 'in-house' and the platform name, or
  - If it is provided by a third party, enter the third party name and the platform name.



d. When we ask about the DIMS products you provide you can select as many as apply.

The list you'll see includes:

- **Debt:** Investment grade bonds, below investment grade bonds, warrants, perpetual or subordinated debt, structured debt issues (such as collateralised debt obligations (CDOs) and mortgage backed securities), capital guaranteed and capital protected investments
- **Equity:** Ordinary and preference shares, private equity
- **MIS:** Managed investment funds, KiwiSaver schemes, superannuation, hedge funds, property investment schemes/ land investment products
- **Derivatives:** Derivatives or futures contracts, including contracts for difference (CFDs) and forward foreign exchange contracts
- **Exchange traded funds (ETFs)**
- **Other** – please specify.

#### Your constitution

If there is any provision in your constitution that allows directors to act against your best interests when they perform their duties or use their powers, you'll need to change your constitution before we can grant you a licence. This also applies to the constitution of any related body you want authorised under your licence. Refer to section [396\(f\)](#)

#### Describe your business

Your comments should cover the general nature and scale of the business, including ownership and corporate structure and any other information you think relevant. For example:

- What is the legal form of your business (such as a company or partnership)?
- Give a high-level description of your business structure. If you're part of a corporate group, please provide a group structure diagram which shows your shareholders, relevant parties and related bodies. If the group is listed or widely held, please provide information on significant shareholders.
- What is the nature of the business you're seeking the licence/s for? Include an overview of the types of products or services you provide (or will provide under the licence) and the types of investors you cater for.
- How will any related bodies authorised under your licence be involved in providing the licensed service?
- What other businesses or services do you or your corporate group provide (other than the proposed licensed business)?

## Minimum standards

### A. Fit and proper

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

#### Minimum standards

- Your directors and senior managers (current or proposed), and any other relevant parties, must be fit and proper persons to hold their position. This requirement broadly covers the tests of:
  - Good character** – covering integrity, probity, trustworthiness and reputation
  - Capability** – competence, skills and experience for the position they hold (the next section on capability asks for more information about this).
- You must have processes to ensure directors and senior managers undergo a character assessment – and their competence, skills and experience are assessed before they assume their roles.
- 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.

## Information for applicants

### B. What do we ask?

#### 3. Fit & Proper

- » Please explain how you ensure your directors and senior managers (current or proposed) meet and maintain the minimum standards of 'fit and proper'.
- » How many directors and senior managers are you supplying details for in relation to this application?
- » For each of these directors and senior managers please provide full name, date of birth, gender, position, role.
- » You must attach a declaration completed by each person listed. The declaration form also asks for their consent for third party checks.

#### Consultation

- » Are you a registered bank, non-bank deposit taker or licensed insurer?

#### Conduct

- » Please outline how you ensure your directors and senior managers do NOT cause detriment to your investors, gain improper advantage, or make improper use of their position.

### C. Our comments

#### Who should you include in your application?

This section relates to those who lead the licensed business. You need to include your:

- **Directors** – current or proposed
- **Senior managers** – current or proposed
- **For related bodies** – executive directors and senior managers (the related body is asked to list these people in their part of the application)
- **Relevant parties** – such as business owners, or people who indirectly control the applicant, or directors and senior managers of those people – will be asked to provide some details (see regulation [189](#) of the Regulations for a definition of 'relevant party').

#### Who is a senior manager?

The title senior manager means different things in different organisations. There is a definition of 'senior manager' in section [6](#) of the FMC Act to guide you. It means you only need to list people who have a significant influence over the management or administration of the relevant entity.

### Minimum standards

The minimum standards in this guide apply at the time you seek your licence – and on an ongoing basis.

They apply to your business – and to any related body you want authorised under your licence.

- In **smaller organisations** this means you'll probably need to list all or most of your senior people.
- In **larger organisations** it means you may not need to list everyone who has a senior manager title. You only need to list people with significant influence on the management or administration of the entity such as the CEO or CFO.

### What do you need to supply?

- a. Each person you list has to complete and sign a **declaration**, which you need to scan and attach to your application. You must retain the original signed hard copy as we may ask for this later. The declaration asks your directors and senior managers to tell us about their background and past conduct, provide details of their employment and qualifications, and give us consent to make checks with third parties such as the Ministry of Justice.  
**Related bodies** to be authorised under your licence are required to do the same for executive directors, and any senior managers responsible for the licensed service.  
**Relevant parties** will need to complete a more limited declaration with details of their relationship with the applicant and give us consent to make checks with third parties such as the Ministry of Justice.
- b. You'll find the templates for these [declarations](#) on our website. The form numbers are:
  - **Applicants:** declaration SD1.1 for current/proposed directors, or SD1.2 for current/proposed senior managers
  - **Related bodies:** declaration SD2.1 for executive directors of related bodies, or SD2.2 for senior managers of related bodies
  - **Relevant parties:** declaration SD3.1 for directors of relevant parties, SD3.2 for senior managers of relevant parties, or SD3.3 for other individual relevant parties.
- c. **How will we assess good character?**  
Good character means the integrity, probity, trustworthiness and reputation of the people leading your licensed business. Our assessment is based on factors including (but not limited to):
  - Information in the declarations provided with your application
  - Feedback from checks made with third parties
  - Conduct indicating 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
  - Adverse information from other government agencies and regulators.We must also consider whether the applicant's owners or other relevant parties have had any convictions or successful disciplinary actions taken against them (in New Zealand or overseas). Regulation 189 of the Regulations provides further details.

### **Supporting information**

If the narrative fields on the form do not allow sufficient space you can attach a supporting document as well.

When answering a question refer to the supporting document by name and the specific part you want us to read in relation to that question.

### **How will we assess capability?**

We assess the information supplied by directors and senior managers in their CVs and position descriptions in relation to the requirements of their roles (we ask for more information about roles and responsibilities in the next section on 'capability').

### **How will you meet and maintain the fit and proper standard?**

We need to know you have appropriate arrangements to ensure your directors and senior managers are fit and proper people to be involved with the licensed service – when they take up their roles, and on an ongoing basis. Please describe how you determine someone is fit and proper.

You'll also need to describe the controls and procedures you use to ensure standards are maintained on an ongoing basis. Your arrangements may differ depending on the size and nature of your business.

Please tell us how you monitor the conduct of your directors and senior managers in their interactions with investors to ensure they don't cause detriment to your investors, gain improper advantage, or make improper use of their position (see section [434](#) of the FMC Act).

## Minimum standards

### A. Capability

*Your organisation must have the right mix of people, with the right skills and experience, in the right roles, to manage your licensed business properly and effectively.*

#### Minimum standards

1. Your management team (collectively) must have an appropriate breadth and depth of relevant financial services know-how, whether gained here or overseas, to effectively manage the licensed business.
2. Management roles include clear responsibility and accountability for:
  - Effective operation of the key activities of the licensed business
  - 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/investor complaints.
3. Your arrangements ensure that your directors and management team have the skills and experience to perform their roles effectively.
4. Your business has access to any necessary expert professional advice (for example legal or tax advice) either through internal appointments or external consultants.

## Information for applicants

### B. What do we ask?

#### 4. Capability

##### Skills and experience of your management team

- » Explain or demonstrate how your management team collectively has the right skills and experience.
- » Please provide details for each management team member who is not already listed in the 'Fit and Proper' section (name, date of birth, title and position).

##### Roles and responsibilities

- » Explain or demonstrate how you document the roles, responsibilities and accountabilities of your management team.

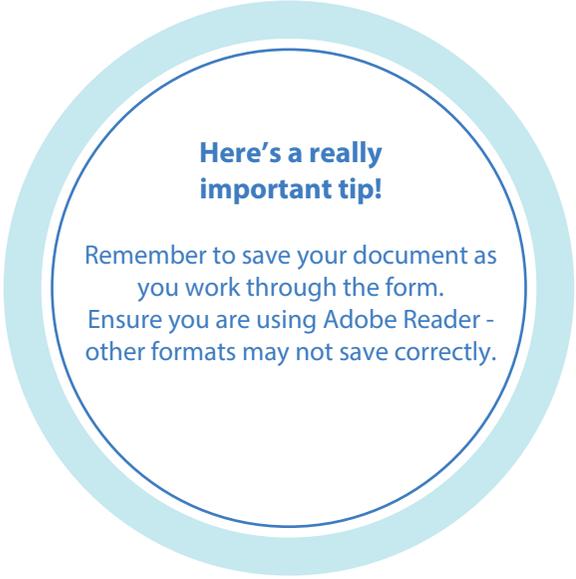
##### Capability

- » Explain or demonstrate the recruitment and human resource processes you use to ensure your management team have the right skills and experience for their roles.
- » Explain or demonstrate how you access external advice when your management team's capabilities don't cover an area of expertise needed by your business.

### C. Our comments

#### Your management team

- a. We need to assess whether your directors and management team, **as a whole**, have the right skills and experience to manage the licensed business.  
So here, your management team means all those key people who are responsible for the main activities required to deliver the licensed service. This includes:
  - Your directors and senior managers already covered in the previous section
  - Other senior key people and managers you haven't told us about yet, for example someone heading a key business unit who doesn't meet the definition of 'senior manager' in the FMC Act (because they don't have a significant influence on the management or administration of the entity as a whole).
- b. For your **directors and senior managers**, if you've already provided this information under 'fit and proper' you don't need to do so again.
- c. For your **other key people and managers**, you need to list each one and ask them to complete the [curriculum vitae template](#) provided (form SD1.3) and then attach them to your application. These people do **NOT** need to complete a declaration.



**Here's a really important tip!**

Remember to save your document as you work through the form. Ensure you are using Adobe Reader - other formats may not save correctly.

- d. We're not implying you need a separate manager for each key position or area of responsibility in minimum standard 2. It depends on the size and nature of your business. For example you might have one or two managers covering most of these areas – or a dedicated manager for each one.
- e. If you're providing a new type of service, you may not be able to demonstrate depth and breadth of experience in that particular business. However, you'll need to explain how the directors' and managers' experience, as a whole, provides sufficient capability to deliver and manage that service.

### **Roles and responsibilities**

You must provide an organisation chart showing how your licensed business will be structured.

This chart should show:

- Your management structure, the key positions and how these roles relate to each other (please include your directors)
- The names of the people filling the key positions
- The number of FTE (full-time equivalent) staff in each area of responsibility.

For large organisations with several management layers you don't need to include:

- All your subordinate managers or departments (if any)
- Details of lower level managers and staffing, apart from an indication of numbers
- Parts of your business not connected to the licensed activity.

### **Your processes**

We need to see that you have appropriate processes to ensure all members of your management team are capable of performing their role, on commencement and on an ongoing basis. This requirement also applies to your directors, who are ultimately responsible for the business.

We require this information for your business and for any related bodies to be authorised under your licence.

### **Professional advice**

Please comment on whether and how you ensure you have ready access to key **expert advice** when you need it (such as legal, accounting, tax, financial, business or IT advice). We're not implying that you need to keep advisors on a retainer, just that you can access advice as and when required.

If you outsource part of your work and have a formal agreement, you don't need to include that arrangement here – we cover outsource providers later in the application form.

## Minimum standards

### A. New clients/Investors

*Your procedures for bringing new investors/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 maintain adequate and effective systems to bring investors on board, with processes and controls to ensure the requirements of the FMC Act are met.
2. You have effective procedures to identify if a investor is a retail or wholesale investor, and to ensure they are informed about their status.
3. Staff involved in bringing clients on board are aware of their obligations under the FMC Act, and are adequately trained in the systems and processes for bringing investors on board.

## Information for applicants

### B. What do we ask?

#### 5. Operational infrastructure

- » Please explain or demonstrate how you will meet the minimum standards for bringing a new investor on board.

### C. Our comments

Please describe how your procedures for bringing investors on board will work, including how you intend to attract investors to your service, such as using advertising or referrals – and how you'll ensure you meet your legal obligations. You can provide supporting documents, such as your investor agreement and disclosure templates.

You need to demonstrate how your procedures will ensure you meet your obligations under the FMC Act and Applicable Regulations, including:

- The requirement for a written client agreement with investors in sections [430](#) and [431](#) of the Act and regulations [225](#) and [226](#) of the Regulations
- Fair dealing obligations in Part of the Act (also see the example below)
- The obligation to provide a disclosure document to investors in sections [423–427](#) of the Act, and any future regulations.

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.

For information on your obligation to warn wholesale investors that the service is not a retail service, please refer to regulation 194 of the Regulations.

There are restrictions on providing regulated financial advice – staff involved in bringing investors on board should be aware of these restrictions and adequately trained in your new client procedures. We ask about providing financial advice in the next section.

#### Here's an example...

If you want to attract new clients/investors by advertising the benefits of your service, please tell us about the process you'll use to ensure your advertisements are not misleading or deceptive.

Minimum standards	Information for applicants
<p><b>A. Investment objectives and investment authority</b></p> <p><i>An investor should be given sufficient information to enable them to fully understand the scope of any investment authority they grant.</i></p> <p><i>The investment authority should be appropriate for the relevant investment objectives.</i></p> <p><b>Minimum standards</b></p> <ol style="list-style-type: none"> <li>1. If your business provides an investor with financial advice, it is given by someone permitted to provide such advice under the FMC Act.</li> <li>2. You have effective procedures to record the investment objectives and investment authority.</li> <li>3. You keep a written copy of your investor's investment authority, and that authority meets the requirements of Section 437 of the Act.</li> <li>4. You ensure the proposed investment authority is appropriate for the investor's investment objectives.</li> <li>5. Staff know their professional obligations – including their obligations to act in the investor's best interest – and are adequately trained in your DIMS systems and processes.</li> </ol>	<p><b>B. What do we ask?</b></p> <ul style="list-style-type: none"> <li>» Please explain how you will meet the minimum standards relating to investor objectives and investment authority?</li> <li>» Do you/will you provide financial advice to investors on whether they should use the DIMS service? If YES, who will provide the financial advice and what is their FMC Act status?</li> <li>» Please provide a copy of a template of your investment authority/s.</li> </ul> <hr/> <p><b>C. Our comments</b></p> <p>For information about the need to record your investment objectives and investment authority see section Sub-part 5</p> <p>You must ensure the investor's investment authority provides adequately for the investment objectives (see section <a href="#">437(2)</a> of the FMC Act). Please explain how you:</p> <ul style="list-style-type: none"> <li>• Ensure the investment authority reflects the investor's investment objectives</li> <li>• Match the investment strategy to the investor's investment objectives and authority</li> <li>• Describe the investment strategy to them</li> </ul> <p>All investors using the same class of DIMS should have the same investment objectives. So for investors with the same class of DIMS you'll need to:</p> <ul style="list-style-type: none"> <li>• Explain the objectives in relation to the DIMS investment strategy</li> <li>• Ask each investor to confirm they agree with those objectives.</li> </ul> <p><b>Acting in the investor's best interests</b></p> <p>The meaning of acting in the investors best interests is determined by what is reasonable in the circumstances. If you don't provide financial advice to investors this won't necessarily breach your obligation to act in their best interests – as long as it is clear to the investor that you're not providing them with financial advice.</p> <p><b>For further information</b></p> <p>See the <a href="#">DIMS licensing section</a> of our website which provides links to guidance and frequently asked questions.</p>

## Minimum standards

### A. Selecting investments

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

#### Minimum standards

1. You 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. You have adequate and effective processes to select assets/instruments to comply with the investment authority – including an investment strategy, supported by up-to-date research and analysis.
3. Staff involved in investment decisions collectively have sufficient relevant skills, experience and training so you meet the ‘professional standard of care’.
4. You ‘stress test’ your investment strategies as appropriate to the particular investment strategy. For example, a minimum level of stress testing may involve looking at how your investment strategy would perform if an organisation issuing investments or *holding* investor funds failed.
5. You maintain efficient procedures to identify transactions involving related party benefit and deal with them appropriately.
6. You maintain efficient procedures to identify conflicts (or potential conflicts) of interest and deal with them appropriately.

## Information for applicants

### B. What do we ask?

- » Please explain how you will meet the minimum standards for selecting investments.
- » Please describe your procedures for collecting all relevant investment information, including about proposed investments that are exempt from the disclosure obligations in [Part 3](#) of the FMC Act.
- » Describe your investment decision making process.
- » Who is involved in this process and what are their qualifications and relevant skills?
- » What stress testing do you conduct on your investment strategies? (*See comments*)
- » What are your procedures for identifying and dealing with conflicts, or potential conflicts, of interest?

### C. Our comments

#### Researching and selecting assets

Please explain how you’ll meet the minimum standards for selecting investments. Your approach will depend on the nature and size of your business, and we’re interested in learning about the systems, processes and procedures you’ve set up for the different steps involved.

#### Your investment team

We’ll look at your staff skills and experience ‘as a whole’, rather than requiring any one individual to meet a certain level of qualification or experience. When you’re placing staff in investment focused roles, we expect you to consider their:

- Relevant qualifications for the role (see below)
- Knowledge and/or experience of the types of investments covered in the DIMS investment authority/s
- Present or past roles involving relevant investment duties, and the time spent in those roles
- Amount of assets under management in current and past roles
- Training received and ongoing training planned.

### Minimum qualifications

The collective **minimum qualification** standard for staff involved in investment decisions depends on the nature of the DIMS provided. For example if you provide a:

- **DIMS personalised for an individual investor** – investment decisions must be made by, or have sufficient input from, someone who meets (at least) the same minimum qualification standard required of a Financial Advice Provider (FAP) / Financial Adviser (FA) under the Code of Professional Conduct for Financial Advice Services. This is because the service is similar to what a FAP/FA can provide under the FMC Act.
- **DIMS for a class of investors** – your decision making team as a whole must have the right mix of skills and oversight controls. There must be input from people with appropriate qualifications and experience – this will usually involve people with a higher level of qualification than that required of a FAP/FA providing a DIMS service that is personalised to individual investors. For example, if a DIMS for a class of investors implements an active investment strategy (as opposed to a passive strategy such as an index tracker) we expect a Chartered Financial Analyst, or someone with an equivalent qualification and/or experience, to be involved in the investment decisions

### Stress testing

You'll need to show us that you've conducted appropriate stress testing based on the nature of your service. A minimum level of stress testing may involve looking at how your investment strategy would perform if an organisation issuing investments or holding investor funds failed.

During the stress testing process you should also consider:

- Steps you can take to mitigate (if possible) risks highlighted by your stress testing, including how you will manage portfolio liquidity.
- Whether you've adequately disclosed the risks to investors.

**Related party benefits and conflicts of interest** You're required to act in the best interests of investors

– and there are restrictions on transactions which result in related party benefits. See sections [439–441](#) of the FMC Act.

Please explain your processes for:

- Identifying transactions involving related parties and conflicts of interests
- Ensuring that you adhere to restrictions on transactions which may benefit a related party (so any related party benefits can only be as a result of transactions permitted under [section 441](#) of the FMC Act).

## Minimum standards

### A. Investment monitoring and investor reports

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

#### Minimum standards

1. Your portfolio monitoring systems and processes enable you to measure and report performance against the investor's investment objectives – and the Investment agreement sets out the frequency and methodology for reporting to them.
2. You regularly recommend to your investors that they get updated financial advice or reconsider their investment objectives (as appropriate). If the DIMS service is a:
  - **DIMS personalised for an individual investor** - you should review the investor's circumstances and the portfolio allocations at least annually
  - **DIMS for a class of investors** - you should encourage your investor 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 investment strategy is developed and amended when appropriate
  - You distinguish between 'incidental financial advice' and other financial advice and ensure that investors who receive incidental financial advice have a similar standard of consumer protection as they would if they deal with advisers under the [Code of Professional Conduct for Financial Advice Services](#)
  - Corporate actions relating to investments (such as rights entitlements, dividend payments or stock splits) are appropriately dealt with in the best interests of your investor
  - No one can conduct unauthorised trading in relation to your investor's property.
4. You have adequate and effective systems and procedures to:
  - Identify (and report if required) breaches of the investment authority
  - Escalate, analyse and follow up any breaches
  - Identify any trends in breaches, and introduce measures to prevent reoccurrence.

## Information for applicants

### B. What do we ask? .

- » Please explain how you will meet the minimum standards for investment monitoring and reporting to investors.
- » Please describe your systems, procedures and controls for monitoring investment performance against investor objectives.
- » How often do you report to investors (frequency)?

### Our comments

Please describe how you manage investments, monitor performance against the DIMS investor investment objectives, and report to investors.

#### DIMS for a class of investors and investment authorities

As noted earlier, all investors using the same DIMS for a class of investors should have the same investment objectives. Reporting for a DIMS for a class of investors can be against these agreed class objectives rather than against separate goals of individual investors.

#### Investor reviews

Any review of the suitability of the DIMS for your investor's personal circumstances is NOT covered by your DIMS licence. This is financial advice and must meet the requirements in the FMC Act.

#### Breaches of investment authorities

Please describe how you will ensure you identify any breaches of an investment authority and how these will be dealt with.

Your description should cover what steps you'll take if an investment authority is breached, and your procedure for reviewing and amending processes to minimise the risk of re-occurrence.

For more information on regulation of DIMS, investment authorities, investor reviews, and the scope of incidental advice, please see our [DIMS guidance](#).

Minimum standards	Information for applicants
<p><b>A. Custody</b></p> <p><i>Investor money and property must be held at arm's length.</i></p> <p><b>Minimum standards</b></p> <ol style="list-style-type: none"> <li>1. You do not hold any investor money or investor property yourself.</li> <li>2. Any custodian you use is independent.</li> <li>3. Any custodian used is an appropriate entity to hold and safeguard money and property.</li> <li>4. You keep your due diligence on any custodian up-to-date.</li> </ol>	<p><b>B. What do we ask?</b></p> <ul style="list-style-type: none"> <li>» Please explain your due diligence process for selecting a custodian.</li> <li>» How do you ensure they are an appropriate entity to hold and safeguard money and property?</li> <li>» Please provide details for each custodian you use. (For each custodian we ask for their name, and if they are 'associated' with you, as defined in section <a href="#">12(1)</a> of the FMC Act.)</li> </ul> <hr/> <p><b>C. Our comments</b></p> <p>Investor money must be held either by the investor themselves, or by an independent custodian. An independent custodian is a person who is not 'associated' with you as defined in section <a href="#">12(1)</a> of the FMC Act.</p> <p><b>Your due diligence process</b></p> <ol style="list-style-type: none"> <li>a. Please explain your due diligence process for selecting a custodian. Here are some suggestions for important information you may want to consider: <ul style="list-style-type: none"> <li>• The custodian's previous experience</li> <li>• The amount of assets under control</li> <li>• Public reports and information about their service</li> <li>• Reported complaints about them, and their complaint handling procedures</li> <li>• Operating jurisdiction, and any protections/controls imposed in that jurisdiction</li> <li>• Appropriate registration on the Financial Service Providers Register (or equivalent overseas registration)</li> <li>• If they have a programme that complies with the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (or equivalent overseas legislation)</li> <li>• The good character of directors and controllers (particularly in the case of small or new custodians).</li> </ul> </li> <li>b. We're also interested in knowing how you actually go about doing the due diligence and making your decision – and how you keep the information updated once you've selected a custodian. How often you update your due diligence should be appropriate to the level of risk involved.</li> <li>c. Please also tell us about your <b>custodial agreement</b>. For example how you monitor the custodian and handle any breaches, and whether FMA will have access to records as required?</li> </ol>

**Is the custodian  
'associated' with you?**

If you want to use an associated custodian please contact us **before** you submit your licence application.

There is some extra information we'll need you to include in your application.

***Please call us on  
0800 434 566***

**Associated custodians**

In limited circumstances we may allow you to use a custodian 'associated' with you (section [12\(1\)](#) of the FMC Act defines 'associated').

If you want to use an associated custodian you'll need to prove you have controls that will ensure the custodian always acts in the investors' best interests – even if there is a conflict with your interests as the DIMS provider.

There'll also be some extra information we'll need you to provide with your application – so please contact us before you submit a licence application.

Please note if we do allow you to use an associated custodian, we may add conditions to your licence. For example we may require regular independent audits of your controls to ensure they are effective.

Minimum standards	Information for applicants
<p><b>A. Termination of service</b></p> <p><i>You must act in the best interests of your investor when their client agreement ends.</i></p> <p><b>Minimum standards</b></p> <ol style="list-style-type: none"> <li>1. Your client agreement allows the investor to terminate the service without penalty – and take control of the assets, or realise their value, within a reasonable period.</li> <li>2. Your client agreement explains clearly: <ul style="list-style-type: none"> <li>• How assets will be dealt with when the service is terminated</li> <li>• Any risks associated with the assets that could arise when the service is terminated.</li> </ul> </li> <li>3. You have effective procedures to deal with any wholesale assets held when the service is terminated (this also applies to any other assets that can't be transferred directly to the investor(s)).</li> <li>4. You have effective procedures to ensure the orderly termination or transfer of services provided to investor(s) if your business ceases.</li> </ol>	<p><b>B. What do we ask?</b></p> <ul style="list-style-type: none"> <li>» What are your procedures for dealing with assets on termination of the DIMS, and how are these described to investors?</li> <li>» Can your investor terminate the service without penalty?</li> </ul> <hr/> <p><b>C. Our comments</b></p> <p><b>Termination procedures</b></p> <p>Please tell us about your termination procedures, and how you deal with the investor's assets – especially if the assets are non-liquid and/or can't be held directly by the investor, for example wholesale assets.</p> <p>Please also explain how you cover termination (and dealing with assets) in your DIMS client agreement.</p> <p><b>Termination without penalty</b></p> <p>Your DIMS investors must be able to terminate their DIMS client agreement with you without penalty (see regulation <a href="#">226</a> of the Regulations). However, you may still pass on the reasonable costs you actually incur to terminate the service – providing you disclosed to the investor the type of costs and approximate amount they would incur in the client agreement at the start of the DIMS service.</p>

Minimum standards	Information for applicants
<p><b>A. Material issues and complaints</b></p> <p><i>You have effective processes and procedures to identify and deal with material issues in your business.</i></p> <p><b>Minimum standards</b></p> <ol style="list-style-type: none"> <li>1. You maintain effective methods for identifying and reporting to the FMA any material change of circumstance or breach of your market services licensee obligations.</li> <li>2. You monitor complaints to ensure they are dealt with fairly and in the best interests of the client.</li> <li>3. You have systems and procedures to identify trends in complaints – and you investigate and address any issues identified.</li> </ol>	<p><b>B. What do we ask?</b></p> <ul style="list-style-type: none"> <li>» Explain or demonstrate how you ensure material issues in your business are identified and appropriately dealt with.</li> <li>» Explain or demonstrate how you ensure you identify breaches of your market services licensee obligations, or material change of circumstances, and report them to FMA.</li> <li>» Explain or demonstrate how you ensure client complaints are dealt with fairly and promptly.</li> <li>» Explain or demonstrate the systems and processes you have for identifying any trends in complaints?</li> <li>» What is the name of your Dispute Resolution Scheme, your membership ID number, and the expiry date?</li> <li>» Who (what position) is responsible for monitoring: <ul style="list-style-type: none"> <li>○ Compliance with your market services licensee obligations?</li> <li>○ Material changes of circumstance?</li> <li>○ Reporting material changes of circumstances, or breaches of your market services licensee obligations, to FMA?</li> </ul> </li> </ul> <hr/> <p><b>C. Our comments</b></p> <p><b>Material issues</b></p> <ol style="list-style-type: none"> <li>a. Under the FMC Act (section <a href="#">412</a>) you must have effective methods to: <ul style="list-style-type: none"> <li>• Monitor compliance with your market services licensee obligations and identify material changes in circumstance (by you or any authorised body)</li> <li>• Report to the FMA any breach or material change of circumstance that has happened, may have happened, or is likely to happen in relation to your licensed business (by you or any of your authorised body/s).</li> </ul> </li> <li>b. You'll also need to provide certain specific notifications and reports to the FMA, as set out in the FMC Act and conditions of your licence. Please tell us how you will achieve this.</li> <li>c. A <b>market services licensee obligation</b> is defined in section <a href="#">6</a> of the FMC Act and generally covers any obligation imposed by the: <ul style="list-style-type: none"> <li>• Conditions of your licence</li> <li>• The FMC Act and Regulations</li> <li>• Terms of any financial product you offer, or financial service you provide (or any court order related to your products and services).</li> </ul> </li> </ol>

d. A material change of circumstance is defined in section [410](#) of the FMC Act and includes:

- One that adversely affects your (or any authorised body's) capacity to perform the licensed business effectively
- Any change that means you/your authorised body no longer satisfy all the requirements of sections [396\(a\)–\(f\)](#) or [400\(1\)\(a\)–\(e\)](#) of the FMC Act.

### Complaints

- a. We expect you to have a complaints process which covers how you handle complaints and identify and monitor any trends. Please tell us about:
- Your complaints process
  - How many unresolved complaints you have when you apply for your licence
  - How many unresolved complaints you had 12 months before that.
- b. Dealing with complaints in the 'best interest of the client' does not mean that all complaints must be resolved in the client's favour –but it does mean the solution must be fair and reasonable for them.
- c. Please note you must belong to a dispute resolution scheme, as required under the [Financial Service Providers](#) (Registration and Dispute Resolution) Act 2008. This is one of the requirements of registering to become a financial service provider to retail investors (and getting your FSP registration number).

## Minimum standards

### A. Staffing and supervision

*You must have adequate and effective arrangements to manage and supervise staff. Your staff need to be suitable 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).
3. Enough time is allowed for key processes including compliance activities.
4. Staff are appropriately trained, managed and supervised – you address poor performance and recognise professional conduct.
5. You have appropriate supervisory arrangements, including:
  - Sufficient resources are allocated to supervision
  - Supervisory staff have 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.

## Information for applicants

### B. What do we ask?

- » Explain or demonstrate how you meet the minimum standards for staffing and supervision.

### C. Our comments

#### What do we need to know?

- a. You need to demonstrate that you have appropriate staffing and an adequate staff supervision structure to ensure you can maintain minimum standards for the course of your licence.
 

The question in this section asks for the information we need to assess your policies and processes for deciding what staff you need, how you recruit them, and how you manage their performance.

Please note we ask about outsourcing arrangements in the next section.
- b. How you structure your business and decide what skills and people you need to meet the minimum standards is up to you.
 

We don't need to know about the character or capability of individual staff or particular teams. Nor do we need to know the details of your financial bonus schemes, if any.

You only need to describe any business processes or staffing structures that are relevant to the licensed activity. You don't need to describe how you ensure staff have the right skills and experience for roles that are not relevant to the licensed activity.

## Minimum standards

### A. Outsourcing (excluding custody)

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

#### Minimum standards

1. You have appropriate processes to ensure, before you outsource a function, that the provider is an appropriate entity and capable of effectively performing the outsourced function to an acceptable service level.
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 will be available for inspection by the FMA on request.
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 identifying non-performance
  - A plan for steps you will take in the event of non-performance.

## Information for applicants

### B. What do we ask?

- » Do you or will you outsource any functions required for you to effectively perform the licensed service applied for? If YES, you will be asked:
  - » Describe the functions you will outsource and your arrangements (such as who will perform the functions, how and where).
  - » Explain or demonstrate how you have the appropriate processes to ensure the provider/s are appropriate and can effectively perform the outsourced function.
  - » Explain or demonstrate how you will monitor performance and ensure the outsource providers perform to an acceptable level.
  - » Do you have formal legal agreements with outsource providers? If YES, do these agreements provide for information to be available to FMA as required?

### C. Our comments

#### Who are the standards for?

These standards apply to any functions outsourced by you or any of your authorised bodies.

You only need to explain your **core outsource arrangements** – these relate to the licensed business and where you rely on the outsource provider to meet the minimum standards or your licence obligations.

If you're a registered bank subject to RBNZ's Outsourcing Policy BS 11, you may already meet some of these requirements, but you still need to explain how you'll meet our minimum standards for the licence/s you're seeking.

#### How will you select providers?

Please explain how you determine the outsource provider can perform the outsourced functions to the required standard.



### **What functions will you outsource?**

Please list your core outsource arrangements, name the outsource providers and confirm that you have an outsourcing agreement with them.

For each outsourced function please describe the assurance processes you have in place to ensure the provider can effectively perform the outsourced function and how you monitor their performance. If you have the same approach for all outsourced functions you only need to describe this once.

### **What records are required?**

The level and nature of records the outsource provider must keep should be at least equivalent to what you would keep if you performed the function yourself (see the records section of this guide).

We also expect to be able to view them within a few days of our request, depending on the nature and volume of the records.

Explain what records the outsource provider will keep, and your arrangements for us to have access to them. You don't need to arrange for direct access, providing we can obtain the records through you.

### **Authorised body or outsource provider?**

If a related body corporate will perform part of the licensed service, you can choose to either set up a formal outsourcing agreement with them – or include them as an authorised body under your licence.

If you decide to include them as an authorised body, the minimum standards in this outsourcing section don't apply.

However, you must have oversight over the authorised body to ensure your group as a whole meets the minimum standards.

Minimum standards	Information for applicants
<p><b>A. Records</b></p> <p><i>You must maintain adequate records and provide information to the FMA in a timely manner.</i></p> <p><b>Minimum standards</b></p> <ol style="list-style-type: none"> <li>1. You have systems and procedures to maintain proper records.</li> <li>2. You retain these records for at least seven years – and they are available for inspection by the FMA on request.</li> </ol>	<p><b>B. What do we ask?</b></p> <ul style="list-style-type: none"> <li>» Describe how your processes ensure you will meet the minimum standards.</li> <li>» How do you ensure your business records will be readily accessible for at least seven years and available for inspection by FMA on request?</li> </ul> <hr/> <p><b>C. Our comments</b></p> <p><b>What records must you keep?</b></p> <p>You must retain all documents required to be kept by law under the FMC Act and applicable Regulations. You'll also need to be able to produce appropriate records about your licensed business, including:</p> <ul style="list-style-type: none"> <li>• Records of key decisions and activities, so we can confirm your compliance</li> <li>• Files for each client (and past clients) with all relevant documents, such as client agreements and disclosure documents. You must ensure your client agreements or other arrangements will include client consent for us to view their records.</li> </ul> <p><b>What are your arrangements?</b></p> <p>Please describe your approach to record keeping, including the types of records you keep and how you ensure they will be available for at least seven years.</p> <p>Please also describe the arrangements you've made so we can inspect your records without unnecessary delays, such as having reliable archival systems and getting client consents in advance.</p>

## Minimum standards

### A. IT systems and business continuity

*Your IT systems used to deliver the licensed market service 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
  - That 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 backup 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.
5. You regularly review your IT systems and anticipate increase in demand, so that your resource remains appropriate for the scale and complexity of your licensed business (reviews should include outsourced functions).

## Information for applicants

### B. What do we ask?

#### 6. IT Systems (and Business Continuity)

- » Describe the IT systems you use in providing the market service.
- » How do you ensure your key IT infrastructure: is fit for purpose, performs effectively and has all the necessary functionality? Is stable and secure? Is used according to legal agreements?
- » How do you manage IT risks, including from human error, technical failure, or malicious conduct?
- » Explain how you review your IT systems in order to anticipate increases in demand and maintain sufficient resources
- » Please provide a Business Continuity Plan.

### C. Our comments

#### Your IT systems

You are free to choose how you implement IT solutions in your business. Where you integrate processes into IT systems, the processes performed by that system must be effective.

For example, your IT systems must have built in parameters consistent with the terms of your service, and controls to ensure the integrity of external data feeds and their accurate use in calculations.

#### Key information

Please tell us about the IT systems you rely on to deliver the licensed service. You don't need to provide details on every aspect of your systems, but please tell us about:

##### a. Fit for purpose/functionality

- The functionality of your systems – what function/s they perform for the licensed business (an overall architecture design map might be useful)
- Key risks and the controls/safeguards in place (internal and external)
- Any third party verification you obtain for your IT systems.

##### b. Stability and security

How you manage the risks associated with the use of your IT systems, including:

- Data security and integrity (such as a security audit)
- Disruptions from IT system failures and outages.

c. **Legal agreements**

Your legal rights to use the software and if it is currently under support.

**Business continuity plan**

- a. Your business continuity plan should include the documented procedures that guide your organisation to respond, recover, resume and restore to a pre-defined level of operation following disruption. This plan should provide for the continuity of your business operations generally – not just the recovery of your IT systems.
- b. The size and complexity of your plan is likely to be based in part on the size and complexity of your business and organisational arrangements. It should cover all aspects of your business (not just IT systems) that are necessary to meet the minimum standards or your licence obligations.
- c. Please provide evidence you have completed a business impact analysis – and have management support, and resources, to implement and maintain your business continuity plan. We also need to know when you last did an impact analysis and last tested your business continuity plan.

## Minimum standards

### A. Financial resources

*You must, at all times, have adequate financial resources to effectively perform the licensed service.*

#### Minimum standards

1. You have a sufficiently strong balance sheet.
2. You are able to pay your debts as they become due in the normal course of business.
3. You maintain an appropriate level of liquid assets at all times to cover reasonably expected contingencies in your business.
4. You have adequate and effective systems, policies, procedures and controls to:
  - 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 the FMA if a material change of circumstance occurs, or is likely, in relation to the licence, as required in FMC Act section [410](#).

## Information for applicants

### B. What do we ask?

#### 7. Financial Resources

- » Are you prudentially regulated by RBNZ?
- » Are you subject to prudential regulation or capital adequacy requirements in any jurisdiction? If YES, please provide details.
- » What is your balance date?
- » Who is your auditor?
- » What are your net tangible assets? (NTA – *see comments*)
- » Was your latest audit opinion modified, unmodified, or not applicable?
- » Please provide a copy of your latest audited full year financial statements or financial plan. If they are over 8 months old, please also provide your management accounts for the first 6 months of the current financial year.

#### If you are NOT prudentially regulated by RBNZ you must also provide

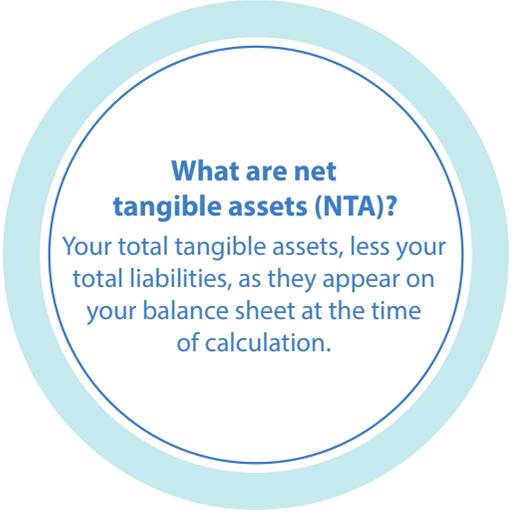
- » Details of the systems, policies, and controls you use to meet the minimum standards for financial resources. (*see comments*)
- » A copy of your cash flow forecast for the next 12 months (with assumptions).
- » A copy of the balance sheet used as the basis for your NTA calculation.

### C. Our comments

#### Your audited financial statements

The questions ask you to provide your most recent audited financial statements. You'll need to tell us if your audit opinion was modified or unmodified. By 'modified' we mean an audit report containing a qualified audit opinion, an adverse opinion or a disclaimer of opinion.

If you have financial statements for the most recent year, but they have not been audited, or if you only have interim financial statements, please still provide them and tick not applicable (n/a) on the audit opinion question. If you are a new business and have not prepared any financial statements, please provide a financial plan in the form of your prospective balance sheet and P&L for each month end for the next 12 months.



### What are net tangible assets (NTA)?

Your total tangible assets, less your total liabilities, as they appear on your balance sheet at the time of calculation.

#### Your balance sheet

a. **Are your net tangible assets positive?**

Generally, we require licensees to have positive net tangible assets (NTA). The NTA you submit with your application should be calculated as at your most recent month end. Please also provide the balance sheet used as the basis for your calculation.

**If your NTA is negative** we may still consider issuing a licence. You'll need to explain the reasons behind your negative NTA and why you think it shouldn't prevent you from getting a licence. For example you may have a high level of intangible assets that provide a significant income stream, or related party transactions that cause an issue. We'll assess your reasons and take into account your cash flow forecasts and steps you're taking to return to a positive NTA. We won't grant a licence if your balance sheet indicates your business is at risk of failure, or your NTA is negative because your shareholders haven't committed the investment needed for the business.

b. **What are your net tangible assets?**

They're your total tangible assets, less your total liabilities, as they appear on your balance sheet at the time of calculation. The calculation must not include any:

- Receivables from a related party or associate unless 'permitted'
- For the avoidance of doubt, intangible assets, any investor funds you hold, or any investments you have in the portfolios you manage.

This is only a summary of the test you must apply – the full test is set out in the standard licence conditions.

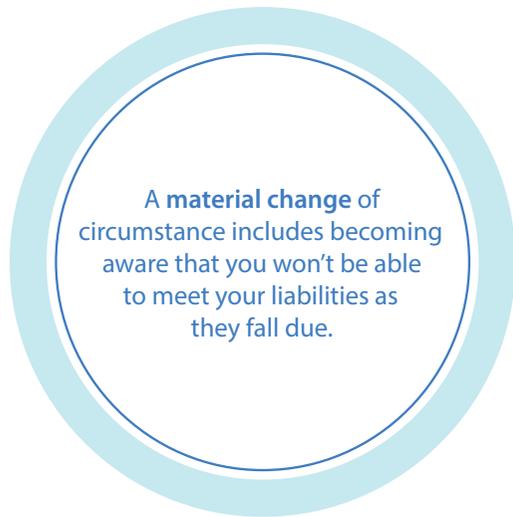
Your balance sheet must be prepared on the same basis as your audited annual financial statements.

c. **What is a 'permitted' related party receivable?**

Permitted related party receivables are those resulting from a transaction done in the ordinary course of business, on standard commercial terms, and at arm's length. Your total permitted related party receivables can't exceed 20% of your net assets (total assets less total liabilities).

d. **Shareholder loans** can be excluded from your total liabilities for the NTA calculation, if you have a written agreement with the relevant shareholder to subordinate the debt. This agreement must:

- Provide that repayment of the debt will be subordinate to all the claims, demands, rights and causes of action of all unsubordinated creditors
- Provide that the debt is not repayable within one year
- Be available to your auditor and the FMA on request
- You must calculate your NTA at least monthly, and report to us if your NTA becomes negative. These will be conditions of your licence.



### Cash flow forecasting

- You must be able to pay your debts as they fall due, plus have a buffer for reasonably foreseeable contingencies. There are no set thresholds for liquid assets.
- To satisfy yourself you can meet the minimum standards, we expect you to use a suitable forecasting mechanism. Your forecasts should show that you have access to sufficient financial resources over the projected term to meet your liabilities as they fall due in the normal course of business.
- In your application you must provide cash flow forecasts for the 12 months ahead, and explain how cash flow forecasting (or other cash flow management practices) fits into your systems and controls for managing your financial resources. This cash flow should be broken down by month, showing each month's closing cash balance.

You need to document the calculations and assumptions used in your forecast, and explain why they are appropriate.

### Liquid assets

Your liquid assets are:

- Cash (cash on hand and demand deposits)
- Cash equivalents (short term, highly liquid investments that are readily convertible to known amounts of cash and which are subject to an insignificant risk of changes in value)
- Trade receivables realisable within the next three months
- Assets you can reasonably expect to realise for their market value within three months
- Your liquid assets must not include any investor funds you hold, or any investments you have in the portfolios you manage.

### Your systems, policies and controls

If you are not prudentially regulated by RBNZ you'll need to:

- Tell us how you'll undertake your NTA calculations and cash flow management
- Provide an overview of how you manage your financial resources more generally
- Provide a copy of your cash flow forecast for the next 12 months (with assumptions)
- Provide a copy of the balance sheet used as the basis for your NTA calculation.

## Minimum standards

### A. Professional indemnity

*You must maintain an appropriate level of professional indemnity insurance cover for your business.*

#### Minimum standards

1. You maintain an appropriate level of professional indemnity insurance to cover risks related to your market service (if cover is available).
2. Your level of professional indemnity insurance cover is 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 have sufficient resources to meet any policy excess.

## Information for applicants

### B. What do we ask?

- » Please show you have adequate professional indemnity cover for your business, and explain how you assessed this was adequate.
- » Please tell us about any material exclusions or conditions in your policy/s.

### C. Our comments

Please tell us the level and scope of cover you think is necessary for your role, and explain how you assessed this and why you think that level and scope is adequate.

We expect you to have cover at or above that level and scope:

- If you don't think you need cover please explain why
- If you can't get suitable cover please explain the steps you took to try and get cover.

Your description of material exclusions or conditions in your policy/s should include any policy excess. We only require information on exclusions or conditions that could affect cover for your licensed business. For example, there could be other parts of your business, not within the scope of your licence, that are covered by the same policy. We don't need to know about exclusions that would have no impact on the cover for the licensed business.

Please also tell us if there are any claims currently notified under your policy.

## Minimum standards

### A. Governance

*You must have a high-level body responsible for overseeing compliance with your market services licensee obligations – and ensuring appropriate risk management.*

#### Minimum standards

1. You have a clear reporting and governance framework covering all key aspects of your business (or proposed business) including compliance obligations and key risks of the business.
2. You have an 'oversight body' responsible for overseeing compliance – it should not be solely the responsibility of risk, compliance or internal audit functions.
3. You have appropriate arrangements to ensure your oversight body and other senior managers and directors get timely, and sufficient, high 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 does not have any provision which allows your directors to act contrary to the best interests of the licensed business 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 details.)
6. **Related bodies** – your oversight body is able to direct and oversee the provision of market services by any related body authorised under your licence (authorised body).

## Information for applicants

### B. What do we ask?

#### 8. Governance

- » Please name your oversight body.
- » Explain or demonstrate how your oversight body will oversee your (and your included related bodies) compliance with your market services licensee obligations.
- » Explain or demonstrate how your oversight body will ensure they receive sufficient and timely high quality information.

### C. Our comments

#### Your oversight body

- a. You must have an oversight body responsible for overseeing compliance with your market services licensee obligations. Arrangements may vary depending on your business.
- b. In **smaller organisations**, the oversight body will often be the board of directors. If a company has only one director, they might perform this duty on their own.
- c. In **larger organisations** with more diverse operations, the oversight function may be performed by a committee composed of senior managers and representatives from legal, risk and compliance areas, with the board providing a high level of oversight across the licensed business. In that case we'd like to know about the committee (we'll already have details of your board from earlier questions).
- d. We haven't restricted the types of arrangement considered acceptable – but you need to demonstrate that your arrangements ensure your business governance is effective.

#### How does it operate?

In explaining how your oversight body operates, you need to tell us:

- Who the members of your oversight body are and how they are selected. If this is your board, please tell us that – but we don't need any other details about your board here as you'll supply these under the 'fit and proper' section of your form
- The source of the body's authority (including any terms of reference, delegations and limits on its authority)
- How the oversight body's performance is assessed by the board
- How often it meets and the types of matters considered at the meetings
- What actions it can take to ensure the effective delivery and performance of the licensed market service/s, such as the ability to approve or require changes to key processes and controls.

### How do you keep them informed?

You'll also need to explain your processes for ensuring your oversight body gets the information they need to perform their role effectively, including comment on:

- Which matters are referred to the oversight body for consideration
- The nature of information provided to inform the oversight body's decisions
- When, and how often, that information is provided.

In **larger businesses**, reporting to the oversight body may be a formal process, carried out in advance of periodic meetings.

In **small businesses** where the oversight role is undertaken by the board or a single person, the process may be less formal. For example, your reports may be emails sent as matters arise and, if required, clarified by a relevant person – or you might attend meetings to report matters to your governing body.

### Any related bodies to be authorised under your licence?

If you will have any related bodies authorised under your licence (authorised bodies), please explain how your oversight body will oversee the licensed activities and ensure those bodies:

- Comply with the obligations of your licence
- Manage risks appropriately and treat investors fairly
- Provide sufficient good quality governance and management information
- Deliver and perform the market service/s effectively.

## Minimum standards

### A. 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 investors.*

#### 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 investors' interests – and you quickly resolve any issues in a way that is fair to investors
  - 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.

Any **related bodies** operating under your licence must also promote a culture of compliance, appropriate risk management and fair treatment of investors.

## Information for applicants

### B. What do we ask?

#### 9. Culture

- » How do you foster a good compliance culture – and ensure compliance with your obligations as a licensee, effective risk management and fair treatment of investors?

### C. Our comments

#### Do you have a good compliance culture?

You need to demonstrate that you (and any related bodies authorised under your licence) have a good compliance culture. This stems from an ongoing focus by management on culture and behaviours.

We want to specifically understand the compliance policies and processes you have that meet each of the points in minimum standard 2.

You should only include documents if they are necessary to demonstrate you are meeting the minimum standards.

#### How do you demonstrate it?

In answering the questions in this section you may wish to tell us about specific steps you have taken (or will take) to promote the right attitudes and behaviour from managers and staff across your business, and the effects of these steps.

## Minimum standards

### A. Compliance assurance

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

#### Minimum standards

1. **Compliance assurance** – you have adequate and effective arrangements to challenge and test the design and operation of your processes and controls, and the adequacy of your governance and management information. This is your compliance assurance programme.
2. Your **compliance assurance programme** goes beyond day to day controls for key processes, by including more in-depth testing of processes and controls including:
  - The testing (and the design of it) 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 organisation
  - 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 assurance programme – you also report significant findings to them and follow up on remedial action needed.

## Information for applicants

### B. What do we ask?

- » What are your (and included related bodies) arrangements for testing compliance with policies, procedures and controls?

### C. Our comments

#### Testing your compliance

You need to have processes to test your compliance – over and above the checks built into your operational systems and oversight of staff. The extent and type of testing you do depends on things like:

- The nature and size of your business
- How your systems and processes are designed
- The types and levels of risk in your business
- How involved your directors/oversight body are in overseeing day to day functions.

**Larger businesses** generally have more formal processes and a greater separation between the governing body and staff, so you'll probably need more extensive testing to ensure the processes and controls are working as intended.

**Smaller businesses** – if the people in your oversight body directly manage the staff performing key functions, or perform the key functions themselves, you may be able to rely more on their direct oversight or knowledge of the business and do less testing. You may be able to focus your testing on areas where there are particular risks, or where you have less ability to manage the day to day functions, instead of comprehensively testing all areas of your business.

You'll need to explain the nature and level of the testing undertaken, and why you consider this is appropriate for your business. You should also discuss how findings are reported – and followed up on, where needed.

### Compliance assurance

Your compliance assurance programme isn't a policy document, compliance plan or risk register – it's the programme of independent checks you do to test whether your policies, procedures and controls are effective in ensuring the compliance of your business.

#### Is your testing independent?

- a. Where practical, your compliance testing should be done independently of those responsible for undertaking, and directly managing, the functions to be tested.
- b. We expect **larger businesses** to have a separate compliance assurance and/or internal audit function responsible for creating a compliance assurance programme, undertaking the compliance testing, and reporting to the oversight body on progress and findings.

For **small businesses**, we appreciate it may not always be practical for the compliance assurance to be done by someone who is completely independent of the person or team performing the business function.

For example, the manager responsible for the business function may also have to do the compliance testing, or may directly oversee the compliance staff – or in very small businesses, compliance testing may be achieved by staff peer reviewing each other's work.

- c. You may outsource all or part of your compliance assurance programme – including establishing or reviewing your framework, and testing your compliance. This may be an appropriate option for small businesses that don't have the scale or structure to employ someone independent for the role.

## Final steps

*This section covers the finalisation of the application – end of form (where you self-certify), review, then email with attached supporting documents.*

At the end you're asked to **certify that you've told us everything material to the licence.**

**Review everything and you're nearly done!**

But before you hit that send email button...

### Have you...

- Answered all the questions – and given the answers you think best portray how your business meets the minimum standards?
- Attached all the declarations, CVs and other supporting documents needed?
- Checked there's nothing you want to add, change or delete?
- Arranged how you're going to pay?

## Information for applicants

### Our comments

#### Attaching documents

These are the main things you need to know: (also see [PART A](#) for more details)

- You'll be asked for certain mandatory documents – they can be attached to the email you send us with your application form. If the file size is too large, please email [licensing@fma.govt.nz](mailto:licensing@fma.govt.nz). They will supply you details to upload to a databox.
- If you consider you have valid reasons for not having or providing a mandatory document, you can instead attach a document explaining your reasons for not supplying it
- Many questions ask for supporting material – please include in the application form the document name and specific section we should read.
- You can refer to one document for several questions – but it is essential your documents are clearly named and the sections in them are numbered – so we can find the bits you want us to read.

### 10 , 11, 12 Approval to apply, Certification, Additional information

#### Approval to apply

You'll need to have your board or governing body complete and sign this [certificate \(SD1.0\)](#) which:

- Confirms the person or entity seeking the licence, and any related bodies to be authorised under the licence, meet all the criteria in the FMC Act (sections [396](#) and [400](#)) and regulation [188](#) of the Regulations
- Specifies the licence/s sought, and any related bodies to be authorised under any of those licences
- Names the person authorised to make the application. This may be the same person as the 'contact person' named on the application form but doesn't have to be. However note, the invoice for the application will be made out to the 'contact person'.

You must attach the signed [certificate \(SD1.0\)](#) to your application and retain the original, as we may ask for it later.

The certificate is a legal document and must be signed by two directors of your governing body; or by a sole director if you only have one; or for individual applicants by the individual. If none of these options apply it must be signed by person/s authorised to bind the Applicant in relation to the matters covered in the certificate.

If you have any questions,  
talk to us on 0800 434 566,  
or email us at  
[licensing@fma.govt.nz](mailto:licensing@fma.govt.nz)

**Was this guide helpful?**  
We welcome your feedback.  
If you have any comments or  
suggestions that might make it more  
useful, please [share them with us](#).  
Thank you.

### **Certifying your application**

When you select the 'self-certification' box you're signing the application – and certifying that to the best of your knowledge you have included everything material to the licence sought. It means you need to be sure the information you're providing is true, correct and complete – that nothing material has been left out. We also ask for the name of the contact person, their position, address, phone number/s and email.

### **Review before emailing**

Please review all the questions and your answers before you email to us.

### **Making fee payments**

We will send you an invoice once we have received your application form – you can also find the application fees on our website. For more about how to pay your fees how to pay your fees please see [PART A](#).

### **Submitting your application**

These are the main things you need to know:

- You need to have answered all the questions and attached any mandatory documents.
- The limit on email size is 153600 (kB)
- We will issue you with an invoice and instructions on how to pay the licence fee
- You need to pay the invoice before we will start assessment of the application
- We will tell you if not enough information has been provided with the application for us to accept it.
- If for some reason we may need to place limits on your licence, or decline your application, we will contact you first so you have the chance to discuss it with us
- If we issue a licence, we'll confirm it in writing and set out the conditions that apply.

### **Any questions?**

If you have any questions please call us on **0800 434 566**. We're open for calls from 8.30am to 5pm, Monday to Friday. Overseas callers can reach us on +64 3 962 2695.