

Shaping the future of our markets

13 November 2013

Consultation: Licensing derivative issuers

Draft minimum standards and licence conditions for derivative issuers

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

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

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

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

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A. Who is a derivative issuer?

If you are in the business of entering into derivatives, you are a derivatives issuer. The Financial Markets Conduct Act 2013 (FMC Act) has a broad definition of a derivative. It includes futures, forwards, options (except options to acquire an equity security, a debt security, or a managed investment product by way of issue), swaps, contracts for difference, margin contracts, rolling spot contracts, caps, collars, floors or spreads. The definition is also wide enough to catch new derivative products as they are developed (see [Section 8\(4\)](#) for more details).

Will you need a licence?

Derivative issuers must be licenced to make a regulated offer of derivatives. A regulated offer includes any offer of derivatives when disclosure must be made to investors, for example, because they are a retail investor.

B. Minimum standards – five key areas

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

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

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

C. For your information

Related bodies

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

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

Systems, processes and procedures

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

Terms

FMC Act	Financial Markets Conduct Act 2013
NZ IFRS	New Zealand equivalents to International Financial Reporting Standards
NTA	Net tangible asset
PDS	Product disclosure statement

Please note

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

Fit and proper

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

Minimum standards

1. Your directors and senior managers (current or proposed) must be fit and proper persons to hold their position. This requirement broadly covers the tests of:
 - **Good character** covering integrity, probity, trustworthiness, character and reputation (see note 1)
 - **Capability** – competence, skills and experience – the next section on capability provides more details.
2. You must have recruitment and human resources processes to ensure that directors and senior managers undergo a character assessment – and that their competence, skills and experience are assessed before they assume their roles.
3. If you have related bodies under your licence, each entity's executive directors and senior managers who are responsible for the licensed service must meet these minimum standards.

Note 1: We will assess **good character** based on various factors including (but not limited to) past non-compliance; convictions or involvement in dishonesty, deceit, theft or fraud; failure to manage business or personal financial affairs; dismissal from a position of trust; and adverse information from other public bodies including other regulators and Inland Revenue.

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

Capability

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

Minimum standards

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

Note 1: For example key activities may include client on-boarding, client liaison/relationship management, client reporting, handling client money, and oversight of outsourced activities.

Part 4. Operational infrastructure

**New clients | Dealing | Hedging | Margining client positions | Client money
Advertising & disclosure | Staff & supervision | Material issues & complaints
Outsourcing | Resources | IT systems | Records**

A. New clients

You must have adequate and effective arrangements for opening client accounts and administering them on an on-going basis.

Minimum standards

1. You have appropriate account opening procedures, including to:
 - Undertake appropriate client due diligence
 - Assess the suitability of the product you are offering for the client and providing appropriate warnings (see Standard conditions section)
 - Ensure you have a written agreement with your client that governs the issue of derivatives before you enter into any derivative with them (section 247A).
 - Client agreements must be:
 - a. In writing and legally enforceable
 - b. Consistent with the Act, regulations, conditions of your licence, and any product disclosure statement (PDS) for products offered to that client
 - c. Address anything set out in the regulations.
 - Processes for giving clients a copy of the relevant product disclosure statement (PDS) in accordance with Part 3 of the FMC Act and Regulations made in relation to that part. This will include processes to:
 - a. Identify which clients you must make disclosure to and ensure they receive it
 - b. If disclosure is not required, complying with any requirements relating to documenting that disclosure was not given and the basis for this.
2. You have appropriate account maintenance procedures, which include processes or mechanisms to provide your client with:
 - Supplementary documents and replacement product disclosure statements (PDS) as required (also see the section on advertising and disclosure).
 - Account information, including details of open positions and related price details, margin requirements, account balances, and transaction history. If you:
 - a. **Use an online platform** to provide the information we will consider security of the arrangements and how the client can retain/access copies of the information
 - b. **Don't use an online platform**, we will look at how you provide the information and comply with the regulations, including the timing requirements.

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).

B. Dealing conduct

Your dealing is fair and transparent. You carry it out in an accurate and efficient manner – and your controls prevent illegal or disruptive trading.

Minimum standards

You must have adequate and effective arrangements to:

1. Ensure your conduct is consistent with the provisions in your product disclosure statements and client agreements, including your contractual duty of care.
2. Ensure client orders are processed promptly, accurately and without any improper bias.
3. Ensure prices quoted to clients are accurate and current – and you have (and adhere to) clear and transparent rules on when/how prices can be re-quoted.
4. Prevent and detect potentially misleading or deceptive conduct by you or your staff.
5. Prevent and detect insider trading, market manipulation and other market misconduct, and unfair or disruptive trade practices (including those specifically prohibited under Part 2 of the FMC Act) by you or your staff.

You must also have:

6. Clear and appropriate policies on proprietary trading by the derivative issuer (if permitted), including:
 - Separation between proprietary trading activities and dealings with clients
 - Appropriate limits on proprietary risk positions.
7. Clear and appropriate policies on staff having trading accounts, either with your business or a competitor. These should include any requirements for prior approval, and processes for monitoring trading activities.
8. Adequate and effective supervision and oversight of dealing activities.
9. Systems to identify and report transactions that are suspicious or may involve money laundering activities (see the AML Act and guidance for more details).

C. Hedging

You must have adequate and effective arrangements for managing the financial risks associated with trading derivatives, including both market risk – and credit risks from institutional counterparties.

Minimum standards

1. You have a hedging strategy that effectively addresses both market risk, and the credit risk associated with the institutional counterparties. This will take into account:
 - The nature of the instruments being hedged, and the choice of instruments used to hedge risk
 - The liquidity and volatility of the market for the instruments being traded
 - Your business model – including if you use a ‘straight through processing’ model or take more of a ‘market maker’ role
 - The risk tolerances of your business, directors, senior managers and shareholders
 - Your financial position and ability to meet any losses arising from adverse market movements on unhedged client positions
 - If you carry out the hedging directly, or through a related company
 - The number and nature of the counterparties you trade with for hedging purposes.
2. You have adequate and effective arrangements to implement your hedging strategy, including:
 - Policies and processes to assess (both initially and on an on-going basis), the counterparties you hedge with, and to manage the residual risk of dealing with that counterparty. These will take account of:
 - a. The risk profile of counterparties, including their operational capacity, financial resources, creditworthiness, and regulatory status (and obligations)
 - b. Any exposure limits you have on the level of business through a particular counterparty.
 - Processes for managing margins lodged with counterparties, including the use of client money (any use of client money must comply with regulations)
 - Monitoring and controls to ensure you follow your hedging strategy in your dealing activities, and the residual market/counterparty risks stay within approved limits.
3. Where you use client money for hedging, you must comply with all regulations about derivative issuers receiving and holding client money and property (see the Client Money, section E on the next page).

D. Margining of client positions

You manage the financial risks associated with trading derivatives, including credit risk from contracting with clients.

Minimum standards

You have adequate and effective arrangements to manage credit risk from clients, including:

1. Appropriate processes for setting margin requirements, which take into account factors including (but not limited to):
 - The volatility of each contract type and its underlying asset, index, rate or other reference amount or value
 - The liquidity in the market and your ability to close out a client's position
 - If there is any means for you to collect intraday margins from your client.
2. Policies and processes relating to collecting and maintaining margins, including:
 - Collecting any initial margin, and whether your client can enter positions before you receive it
 - If, as security for a margin obligation, you accept anything other than major currencies and whether the value of 'other' types of security is discounted
 - Making margin calls – the thresholds, method and timing to be used
 - If you close out a client's positions if they don't have sufficient margin and don't meet a call on time.
3. Any other mechanisms to manage risk, such as placing position limits on clients' accounts.

Note 1: If you hold client money and property as a margin for derivative contracts, you must comply with the client money part of the regulations (see the client money, section below).

E. Client money

You comply with all regulations about handling client money or property – and keep proper records of all transactions related to client money and derivative contracts.

Minimum standards

You have adequate and effective arrangements to:

1. Receive, hold, use and disburse client money in compliance with the regulations (see note 1).
2. Comply with all procedural, record keeping, and audit requirements for the handling of client money.

Note 1: Regulations about derivative issuers holding and handling client money and property are still being developed – and we may need to develop further minimum standards around client money once the details are known.

F. Advertising and disclosure

You have up-to-date product disclosure documents and registry entries – the information is not false or misleading and your advertising complies with the fair dealing part of the Act.

Minimum standards

You have adequate and effective arrangements to ensure:

1. You have compliant disclosure documents and register entries for each derivative product you issue and you keep these up-to-date.
2. Your disclosure documents and advertising meet all your legal obligations – you don't omit any material information and they are not misleading or deceptive.
3. Your advertising complies with fair dealing provisions and advertising provisions of the Act.

Your systems and processes will cover:

4. Ensuring those who prepare your disclosure and advertising materials understand the requirements of the Act and regulations.
 5. Appropriate processes for approving advertising and disclosure materials, and for ensuring your staff do not use them before they you have approved them.
 6. A review process to ensure disclosure materials and registry entries are kept up-to-date and don't become misleading or deceptive – this must be done periodically and after any significant event.
 7. Keeping a record of disclosure and advertising materials produced and their approval.
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G. Staffing and supervision

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

Minimum standards

Your arrangements ensure:

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

H. Material issues and complaints

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

Minimum standards

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

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

Minimum standards

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

J. Resources and infrastructure

You must have the necessary technological and human resource capacity to provide derivative issuer services.

Minimum standards

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

Your IT systems used to deliver the derivatives 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
 - Which take into account risk from human error, technical failure and malicious conduct.
 3. You maintain an appropriate (and tested) business continuity plan – including procedures for data back-up and disaster recovery.
 4. You have proper legal arrangements with any third party software providers, including licences for software and contracts for any required maintenance and support.
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L. Records

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

Minimum standards

1. You must have systems and procedures to maintain proper client records (including account opening documents, client trading records, and records relating to client money and property) and about your derivative issuer services generally.
2. You are required to retain these records for at least seven years – and they must be available for immediate inspection by FMA at any time.

Part 5. Financial Resources

Financial resources | Professional indemnity insurance

A. Financial resources

To get a licence you must meet capital adequacy requirements under the Act. This includes having the resources to provide the derivatives service and meet your contractual obligations – plus effective arrangements for managing those resources.

Minimum standards

1. You must be solvent and have positive net assets.
2. You must be able to pay your debts as they become due in the normal course of business.
3. At all times your net tangible assets must be (at least) the greater of \$1,000,000 or 10% of your average revenue (see note 1).
4. You must hold half of the required net tangible assets in cash and cash equivalents – and the other half must be in liquid assets (see note 2).
5. You must prepare a rolling projection of your cash flows for the 12 months ahead. This must be done at least every six months and approved by your board of directors.

Your forecast should demonstrate that you will:

- Have access to enough financial resources to meet your liabilities over the projected period, including any extra liabilities that may arise
 - Hold sufficient in cash or cash equivalents to meet or exceed the net tangible asset requirements.
6. You have adequate and effective systems, policies, procedures and controls to:
 - Monitor your financial resource levels at all times
 - Consistently calculate the level of liquid assets you need to hold
 - Assess the risks of not having enough financial resources to provide the service, or of a serious financial problem occurring
 - Notify FMA if a material change of circumstance occurs, or is likely to occur, in relation to the licence in accordance with section 410 of the Act (see note 3).

7. Financial resources

You must notify FMA if your net tangible assets (NTA) fall below the required level.

- a. **If your NTA falls below 110%** of the required level, you must:
 - Report immediately to FMA and provide the reasons for the drop, and
 - Continue to report weekly to FMA weekly until it is back above 110%.
- b. **If your NTA falls below 100%** of the required level, you must:
 - Report it immediately to FMA, and provide a plan to bring it back up to at least 110%
 - Continue to report daily to FMA until it is back to 100%, then weekly after that until it reaches 110%.
- c. **If your NTA falls below 90%** of the required level, or you are below 100% for three or more consecutive days - you must:
 - Report immediately to FMA
 - Not enter into any new contracts.

8. You have appointed an auditor, and entered into agreed upon procedures with them. This engagement must provide for the auditor to receive, check and test every six months:
- A log of your net tangible asset and liquidity calculations
 - Your semi-annual cash flow forecast, prospective financial statements, and historic interim financial statements.

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

Average revenue means the average of three years revenue (calculated according to NZ IFRS), being your current financial year to date (with reasonable forecast for the rest of the year) plus your previous two financial years.

Note 2: Your liquid assets are your cash and cash equivalents, and any assets you can reasonably expect to realise for their market value within six months.

You must not include: any client funds you hold; any money a related party or associate owes you (loan, advance or debt); or the value of any asset used to secure a liability, or held in a trust you are a trustee of, or which funds an investment in or loan to you (directly or indirectly).

Your liquid assets must be calculated on a daily basis.

Note 3: We would consider a material change of circumstance to include becoming aware that you will have insufficient liquid assets to meet your liabilities as they fall due.

B. Professional indemnity insurance

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

Minimum standards

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

Part 6. Governance

Governance | Culture | Compliance

A. Governance

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

Minimum standards

1. You must have a clear reporting and governance framework covering all key aspects of the derivative issuer business (or proposed business) including compliance obligations and key risks of the business.
2. You have an 'oversight body' responsible for overseeing compliance – compliance should not solely be the responsibility of risk, compliance or internal audit functions (see note 1).
3. You have appropriate arrangements to ensure your oversight body and other senior managers and directors get timely, sufficient good-quality governance and management information to allow for proper oversight and decision making.
4. Your oversight body considers the adequacy and robustness of its governance and compliance arrangements at least annually.
5. **Related bodies** – your oversight body is able to direct and oversee the provision of market services by any related body operating under your licence (see note 2).

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

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

B. Culture

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

Minimum standards

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

C. Compliance

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

Minimum standards

1. Compliance assurance

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

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

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

3. Related bodies

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

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

Part 7. Licence conditions

A. Standard conditions

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

1. **Suitability of products for clients**

We may set conditions relating to product suitability. These are the conditions we are considering setting in some cases – a requirement for issuers to:

- Provide potential clients with a statement about the uses, and types of clients, the product is suitable for
- Assess the suitability of a product for a prospective client before they sell the product to them – and to clearly warn clients who may be considering unsuitable products.

2. **Prohibition on dealing with unregulated financial service providers**

You must take reasonable steps to ensure that any broker, introducing broker, or white-label derivative issuer who does business using products you issue has the required authorisations, licences or registrations for the jurisdictions it operates in.

3. **Outsourcing**

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

4. **Regulatory returns**

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

5. **Governance**

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

6. **Compliance**

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

Your compliance governance document will need to:

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

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

7. **Financial resources**

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

8. **No endorsement**

You (or any related body under your licence) must not state or imply that we have endorsed or approved your business, products, service, solvency, or any of your agreements, documents or business arrangements – or those of any related body.

B. Specific conditions

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

1. **Limits**

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

2. **Minimum margins**

We may set minimum margins. At this stage, we do not intend to apply minimums on all, or most products. But we may set minimum margin requirements on a case by case basis for individual derivative issuers or for issuers who offer certain types of derivative products.

Part 8. Frameworks and Methodologies

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

Financial resources

We propose to issue a framework and methodology setting out capital adequacy conditions for derivative issuers. This will define the:

- Levels of capital and liquid assets a derivative issuer must maintain
- Requirements for the calculation of those levels
- Processes you must follow to monitor compliance with capital adequacy requirements
- Reporting requirements for capital adequacy.

The proposed framework and methodology will be based on the requirements discussed above and in the financial resources section of this paper after considering submissions made.

The next step

How do I make a submission?

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

Alternatively, you can make an online submission on our engagement site www.talktous.fma.govt.nz. You need to register to be able to use the site.

Submissions close on 12 December 2013.

Where can I get more information?

You’ll find more information about the changes on our website www.fma.govt.nz, or at the Ministry of Business Innovation and Employment site www.mbie.govt.nz

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

Simon Smith

Manager Compliance Monitoring Framework

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04 474 2440

Feedback: Licensing derivative issuers Draft minimum standards and licence conditions

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

Date: _____ Number of pages: _____
 Name of submitter: _____
 Company or entity: _____
 Organisation type: _____
 Contact name (if different): _____
 Contact email and Phone: _____

Part#	Section#	Paragraph#	Comment	Recommendation
<i>You don't need to quote from the consultation document if you use part & paragraph numbers. You may attach extra pages - please label each page with your name & organisation.</i>				

Feedback Summary – if you wish to highlight anything in particular

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

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