

# Standard Conditions for **transitional financial advice provider** licences

If we grant you a transitional financial advice provider (FAP) licence, the licence will be subject to conditions. See section [402](#) of the [Financial Markets Conduct Act 2013 \(FMC Act\)](#) and [Part 6 of Schedule 4](#) of the FMC Act.

Conditions will include:

- A condition that the licensee or authorised body may, under the licence, only provide the market services or class of market services to which the licence relates and for which each person is authorised under the licence (see section [402\(1\)\(a\)](#) of the FMC Act).
- A condition that the licensee or an authorised body may nominate an individual as a nominated representative of the licensee or authorised body under section 431T of the FMC Act only if, immediately before 9 April 2019, the licensee or authorised body (as the case may be) was:
  - a QFE or a member of a QFE group (under the [Financial Advisers Act 2008 \(FA Act\)](#)); or
  - an entity that is registered under the [Financial Service Providers \(Registration and Dispute Resolution\) Act 2008 \(FSP Act\)](#) in respect of a financial adviser service and engages 1 or more individuals, who are not registered under the FSP Act, to provide a “class service” (as defined in the FA Act) on that registered entity’s behalf. In this circumstance, the licence will be subject to a further condition that limits the type of advice a nominated representative can provide on behalf of that registered entity.

(see [clause 75 of Schedule 4](#) of the FMC Act).

- Depending on whether the licensee (or its authorised body) (P) had, immediately before 9 April 2019, arrangements in place with another specified person (E)<sup>1</sup> to allow E to provide financial advice to P’s retail clients on P’s behalf (including by E engaging 1 or more individuals to provide that advice), a condition (on P’s licence) that enables those arrangements to continue (see [clause 76 of Schedule 4](#) of the FMC Act).
- Conditions imposed by the FMA under section [403](#) of the FMC Act – these will generally include:
  - The standard conditions (see **part A** below), and
  - Any specific conditions (see **part B** below).
- Any conditions imposed by regulations (see **part C** below). As at November 2019, the only relevant regulations are the [Financial Markets Conduct Regulations 2014](#) (the **FMC Regulations**).

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<sup>1</sup> See clause [76\(1\)\(b\)](#) of Schedule 4 of the FMC Act for the requirements for “E”.

## A. Standard conditions

Where we refer to the transitional FAP licence *standard conditions*, this means the following conditions, which will be effective on and from 15 March 2021:

### 1. Record keeping

**Standard condition:**

You must create in a timely manner and maintain adequate records in relation to your financial advice service.

Your records:

- (a) must be kept in a form (which may be electronic) and manner that ensures the integrity of the information and enables it to be conveniently inspected and reviewed by us;
- (b) may be in any language providing you create and keep an accurate summary of the record in English and, if required by us, provide a full translation of the record into English by a translator approved by us;
- (c) must be available for inspection by us at all reasonable times; and
- (d) must be kept for a period of at least 7 years from the later of:
  - (i) the date the record is made; and
  - (ii) the date the financial advice to which the record relates is given; and
  - (iii) the date any later record is made that refers to or relies upon information in the record.

**Explanatory note:** In this condition 'you' means the person who holds the licence and each of the licence holder's authorised bodies and 'us' means the FMA. Records will be adequate if they clearly demonstrate (together with your systems, process and controls) how you, and any person engaged by you, and the regulated financial advice given to your retail clients by you or on your behalf, met the requirements relating to financial advice and financial advice services in the Financial Markets Conduct Act 2013, the Financial Markets Conduct Regulations 2014 and the Code of Professional Conduct for Financial Advice Services. Your records should include a record of all regulated financial advice given to retail clients by you or on your behalf. Records may be kept by another person on your behalf providing you ensure that person complies with this condition.

### 2. Internal complaints process

**Standard condition:**

You must have an internal process for resolving client complaints relating to your financial advice service that provides for:

- (a) complaints to be dealt with in a fair, timely and transparent manner; and
- (b) records to be kept of all complaints and any action taken in relation to them including the dates on which each complaint was received and any action was taken in relation to that complaint.

**Explanatory note:** In this condition 'you' means the person who holds the licence and each of the licence holder's authorised bodies. A complaint relating to your financial advice service is an

expression of dissatisfaction made to you or to a person engaged by you, relating to your financial advice service (including any regulated financial advice given to a retail client by you or on your behalf), or the complaints handling process itself, where a response or resolution is explicitly or implicitly expected. A complaint includes a complaint about a failure to provide a service or give advice. Any disclosure requirements relating to your internal complaints process are set out in the Financial Markets Conduct Regulations 2014.

## B. Specific conditions

We may also put additional conditions on a licence on a case-by-case basis.

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

## C. Conditions imposed under Regulations

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

As at November 2019, the only regulation that imposes an additional licence condition on a transitional FAP licence is regulation [191](#) of the FMC Regulations. Appendix 1 sets out this regulation, but you should refer to the FMC Act and FMC Regulations in full to understand your market service licensee obligations.

The FMC Act and regulations also contain many obligations that you will need to comply with when you have a licence even though they are not called licence conditions. For example section [412](#) of the FMC Act requires you to report various matters to the FMA as soon as practicable, including any breach (or likely breach) of your market services licensee obligations and any other material changes of circumstances.<sup>2</sup> You will also need to comply with the new duties for giving regulated financial advice set out in Subpart 5A of Part 6 of the FMC Act.

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<sup>2</sup> Note, for a transitional FAP licence, the definition of a “material change of circumstances” set out in section [410](#) of the FMC Act is modified in part so that it relates back to the matters the FMA assessed when granting the transitional FAP licence – see clause [77\(1\)\(c\)](#) of Schedule 4 of the FMC Act.

## Appendix 1

### Conditions imposed by regulations as at November 2019

Extract from the Financial Markets Conduct Regulations 2014:

#### *Conditions of licences*

##### **191 General reporting condition**

- (1) A market services licence is subject to a condition that, if any of the following occurs, the licensee or an authorised body must, as soon as practicable, send a report containing details of the matter to the FMA:
  - (a) the licensee or an authorised body becomes aware or has reasonable grounds to believe that—
    - (i) the licensee or an authorised body is, or it is likely that the licensee or authorised body will become, subject to an insolvency event; or
    - (ii) a director or senior manager of the licensee, or any of the key personnel of an authorised body, is adjudicated bankrupt or it is likely that that person will be adjudicated bankrupt (whether in New Zealand or overseas); or
  - (b) the licensee or an authorised body becomes aware that a relevant proceeding or action has been commenced or taken against any of the following:
    - (i) the licensee:
    - (ii) an authorised body:
    - (iii) a director or senior manager of the licensee:
    - (iv) any of the key personnel of an authorised body; or
  - (c) a director or senior manager of the licensee, or any of the key personnel of an authorised body,—
    - (i) resigns, is removed, or otherwise ceases to hold the office or position; or
    - (ii) is appointed, employed, or engaged; or
  - (d) an auditor of the licensee or an authorised body—
    - (i) resigns or otherwise ceases to hold the office; or
    - (ii) is appointed (other than by way of reappointment); or
  - (e) the licensee or an authorised body proposes to change its name or its legal structure (for example, by virtue of an amalgamation); or
  - (f) the licensee or an authorised body proposes to enter into a major transaction (within the meaning of section 129 of the Companies Act 1993 applied to a licensee or an authorised body whether or not it is a company); or
  - (g) the licensee or an authorised body becomes aware that a transaction or an arrangement has been entered into, or it is likely that a transaction or arrangement will be entered into, that will result or has resulted in a person obtaining or losing control of the licensee or the authorised body.
- (2) In subclause (1)(b), **relevant proceeding or action**—
  - (a) has the same meaning as in regulation 5(1); and
  - (b) includes a criminal proceeding for a crime involving dishonesty; but
  - (c) does not include any proceeding commenced, or action taken, by the FMA.
- (3) In subclause (1)(g), **control** has the same meaning as in clause 48 of Schedule 1 of the Act.