



# Standard Conditions for full financial advice provider licences

If we grant you a full financial advice provider (FAP) licence, the licence will be subject to conditions. See section [402](#) of the [Financial Markets Conduct Act 2013](#) (**FMC Act**).

Conditions will include:

- a condition that the licensee or authorised body may, under the licence, only provide the market services or class of market services to which the licence relates and for which each person is authorised under the licence (see section [402\(1\)\(a\)](#) of the FMC Act)
- conditions imposed by the FMA under section [403](#) of the FMC Act – these will generally include:
  - the standard conditions (see **part A** below); and
  - any specific conditions (see **part B** below)
- any conditions imposed by regulations (see **part C** below). As at November 2020 the relevant regulations are the [Financial Markets Conduct Regulations 2014](#) (the **FMC Regulations**)

The standard conditions apply in respect of a regulated financial advice provided to retail clients. We will consult with industry prior to changing the standard conditions in Part A.

## A. Standard conditions

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

### 1. Record keeping

**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 that for records kept in a language other than English, if required by us, you provide in a timely manner 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;
- (d) must be readily available to you, and in any event within 10 working days or as otherwise agreed by us when requested; and
- (e) 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; and
  - iv. the date of the conclusion of the life of the financial advice product that the financial advice relates to.

**Explanatory note:** 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 retail clients by you or on your behalf, met the requirements relating to financial advice and financial advice services in the FMC Act, FMC Regulations and the Code of Professional Conduct for Financial Advice Services.

Your records should include (without limitation):

- a record of all regulated financial advice given to retail clients, by you or on your behalf
- records relating to how you, and any person engaged by you, has complied with the financial advice duties.

Records available for inspection and review may be reviewed by us at your premises or elsewhere. For example, we may request copies of records and review these at our offices. Your arrangements must ensure that your retail clients consent to us viewing or obtaining your records.

Records may be kept by another person (including any outsource provider) on your behalf providing you ensure that person complies with this condition and that you can retrieve the records if required.

## 2. Internal complaints process

**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:
  - i. each complaint was received; and
  - ii. any action was taken in relation to that complaint.

**Explanatory note:** 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.

Any disclosure requirements relating to your internal complaints process are set out in the FMC Regulations.

Where no action is taken in respect of a complaint received, the record should include the reason(s) for not taking any action. If a complaint cannot be resolved or is in deadlock, the complainant must be informed about taking the matter to your dispute resolution scheme.

### 3. Regulatory returns

**Condition:** You must provide us with the information we need to monitor your ongoing capability to effectively perform the financial advice service in accordance with the applicable eligibility criteria and other requirements in the FMC Act. This will include updated information on the nature, size and complexity of your financial advice provider service.

Information must be provided in accordance with any Regulatory Return Framework and Methodology we issue under subpart 4, part 9 of the FMC Act.

**Explanatory note:** You will be asked to provide information to the FMA on a periodic or ongoing basis, or on request, in accordance with the requirements set out in a Regulatory Return Framework and Methodology.

Under section [412](#) of the FMC Act you have obligations to report various matters to the FMA as soon as practicable, including any material change of circumstances. This standard condition is in addition to those reporting obligations in the FMC Act and any other reporting obligations that may be imposed in regulations.

The regulatory returns will help the FMA to understand the profile of your business and to focus its resources appropriately. The regulatory returns are likely to require reporting of factual business information, such as business volumes and service types, numbers of customers, numbers and types of breaches, and complaints information. The FMA will consult with industry prior to publication of the Regulatory Return Framework and Methodology that will form part of the standard conditions.

## 4. Outsourcing

**Condition:** If you outsource a system or process necessary to the provision of your financial advice service you must be satisfied that the provider is capable of performing the service to the standard required to enable you to meet your market services obligations.

**Explanatory note:** This condition only covers those outsource arrangements where you rely on the outsource provider to meet your market services licensee obligations as they relate to your financial advice service (licensee obligations).

Important matters that you should consider when conducting due diligence on a proposed outsource provider include:

- the outsource provider's previous experience
- public reports and information about their service
- reported complaints about them, and their complaints handling procedures
- their operating jurisdiction and any protections/controls imposed in that jurisdiction
- the business continuity and critical technology system arrangements the outsource provider has in place to meet the standard in standard condition 5.

Other important information you should consider in respect of your outsource arrangements includes:

- being satisfied that each provider is, and remains, capable of performing the service to the standard required to enable you to meet your financial advice service licensee obligations
- having contractual arrangements with each provider that enable you to effectively monitor their performance and take appropriate action for non-performance, and having suitable termination provisions to enable you to continue to meet your financial advice service licensee obligations at all times
- ensuring that any records held by providers pertaining to your financial advice service obligations are readily available to you and to us in accordance with standard condition 1 – Record keeping
- regular reviews of your outsource arrangements, at a frequency appropriate to the risk involved
- recognising that outsource arrangements and business continuity and technology systems are often interrelated. (Refer to standard condition 5 – Business continuity and technology systems)

## 5. Business continuity and technology systems

**Condition:** You must have and maintain a business continuity plan that is appropriate for the scale and scope of your financial advice service.

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

You must notify us within 10 working days of you discovering any event that materially impacts the information security of your critical technology systems and provide details of the event, the impact on your financial advice service and clients, as well as your remediation activity.

**Explanatory note:** Your *business continuity plan* includes the documented procedures that guide you to respond, recover, resume and restore a pre-defined level of operation following disruption. This plan should provide for the continuity of your financial advice service generally – not just the recovery of your technology systems. It should also encompass any outsource arrangements, such as your client data provider.

Your plan should consider the loss of availability of your key resources, including staff, records, systems, suppliers and premises. The extent of your business continuity plan should reflect the size and complexity of your financial advice service, operational arrangements and exposure to disruptive events. A small business with simple processes and technology may only need a relatively brief plan covering a more limited range of likely disruptive events, but the plan is more likely to include locum arrangements.

A larger or more complex business, relying more extensively on technology systems and possibly operating from multiple locations, will need to consider a wider range of disruptive events and reflect this in a more comprehensive business continuity plan.

Irrespective of the complexity of your circumstances, it is important that your business continuity plan is maintained, reviewed and regularly tested – at least annually. Your business continuity plan must also be updated immediately if there is a material change in business location, structure or operations.

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

This condition requires that you maintain the information security of your critical technology. This includes:

- a) regularly identifying and reviewing your risks and cyber threats; and
- b) implementing measures that maintain the level of information security necessary for your risk profile; and

- c) having effective processes that monitor and detect activity that impacts your information security; and
- d) including in your business continuity plan your predetermined procedures for responding to, and recovering from, events that impact on your information security.

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

You must have arrangements in place to notify us in the event of a material information security breach. A material event is one where the confidentiality, integrity or availability of your information and/or your technology systems has been compromised. You do not need to notify us of minor events, such as receiving a 'phishing' email.



## 6. Ongoing requirements

**Condition:** You must at all times continue to satisfy the requirements set out in section 396 and, if applicable, section 400 of the FMC Act.

**Explanatory note:** Sections 396 and 400 of the FMC Act specify the requirements in respect of which the FMA must be satisfied in order to grant a licence, or authorise an entity as an authorised body. For example, the FMA must be satisfied that:

- any prescribed criteria are met
- your directors and senior managers are fit and proper persons
- you are capable of effectively performing the service
- there is no reason to believe you are likely to contravene your obligations
- you are registered on the Financial Service Providers Register.

There are similar requirements for authorised bodies, including that arrangements are or will be in place to ensure that you, as the licence holder, will maintain appropriate control or supervision over the provision of the service by the authorised body. These requirements are elaborated in the Financial Advice Provider Full Licence Application Guide.

This condition confirms that the licensing requirements must continue to be satisfied at all times while you hold the licence, not just at the time the licence is issued. Given that there is no expiry date for your licence, it is critical that the requirements continue to be satisfied at all times. This condition does not prevent you from making changes to your business or the scope of your service (subject to your applicable licence class), provided you can continue to meet the requirements.

You will need to ensure that you keep your policies, processes, systems and controls up to date and that they reflect any changes you may make to your business or service arrangements.

You will also need to ensure that your directors and senior managers, and any other relevant parties, are and remain fit and proper persons to hold their respective positions.

If you have authorised bodies under your licence, you (as the licence holder) must also continue to have suitable arrangements in place to ensure that you have appropriate control or supervision over the services those authorised bodies provide.

For further information in relation to licensing requirements see the Financial Advice Provider Full Licence Application Guide.

## 7. Notification of material changes

**Condition:** You must notify us in writing within 10 working days of implementing any material change to the nature of, or manner in which you provide, your financial advice service.

**Explanatory note:** Sections 410 to 412 of the FMC Act and regulation 191 of the FMC Regulations require certain matters to be notified to us. This applies to all FMC Act licences.

This standard condition is in addition to those statutory notification obligations. It applies where you materially change the *nature of your financial advice service* or *manner in which you provide your financial advice service*.

The purpose of this standard condition is to ensure that we are informed of any material changes that you make to your business, whether or not they may have an adverse effect on your ability to provide your financial advice service and whether or not they may relate to the requirements for issue of a licence being satisfied.

By the *nature of your financial advice service*, we mean how you, or any of those engaged by you, meet the competency requirements of the Code of Professional Conduct for Financial Advice Services. An example of a material change in this context would be changing your compliance approach to relying on your procedures, systems and expertise (rather than individual qualifications) for demonstrating competence, as contemplated by the code. Another example of a material change in this context would be implementing a digital advice service.

You are not required to notify us if you change the types of financial advice you provide, or the types of financial advice products you advise on.

By *manner in which you provide your financial advice service*, we mean the way in which you provide regulated financial advice to retail clients. For example, a material change would include commencing to (where you did not previously, and are permitted to within your relevant licence class):

- engage any financial advisers to provide regulated financial advice on your behalf; or
- engage any nominated representatives to provide regulated financial advice on your behalf; or
- in respect of an individual Class 1 licence holder, engage a locum for a period of 3 continual months or longer, to provide regulated financial advice on your behalf; or
- provide regulated financial advice directly to your clients, for example through automated digital systems.

You are not required to notify us if you change the number of financial advisers/nominated representatives you engage, or you cease to engage financial advisers/nominated representatives, or you cease providing advice directly to your retail clients.

## **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 2020, the only regulation that imposes an additional licence condition on a 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 FMC 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. 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.

## Appendix 1

### Conditions imposed by regulations as at November 2020

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.