

Exemption from DIMS licensing requirements for AFAs providing a contingency DIMS

This information sheet explains the exemption from the licensing requirements of the Financial Markets Conduct Act 2013 available to AFAs where Discretionary Investment Management Services (DIMS) are provided to a retail client on a contingency basis.

Changes to the way DIMS are regulated came into force on 1 December 2014. These changes require anyone who provides DIMS to a retail client to be licensed under the Financial Markets Conduct Act 2013 (**FMC Act**). There are exceptions and exemptions, and one exemption allows AFAs to provide DIMS on a contingency basis without the need to be licensed.

What is DIMS?

DIMS is an investment arrangement where you make buy-sell decisions about your client's portfolio, rather than your client making those decisions. It includes arrangements where the client 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.

See our [Guidance Note on Discretionary Investment Management Services](#) for more information on DIMS.

What is the contingency exemption?

The contingency exemption enables an AFA to provide DIMS to a retail client, without holding an FMC Act licence, in limited circumstances (**contingency DIMS**).

When can I provide contingency DIMS?

Each of the following must apply before you can provide contingency DIMS:

- the DIMS must be incidental or secondary to other financial services you provide to your client
- your client must not have given you an authority (**investment authority**) to regularly manage his or her portfolio (unless given for the provision of personalised DIMS under the Financial Advisers Act 2008 (**FA Act**))
- your client must have given you an investment authority that is limited to temporary management of his or her portfolio in situations of absence or incapacity or unexpected contingencies:
 - during a *known temporary period*; or
 - in *urgent situations*.

How do I know whether the DIMS are incidental to other financial services provided?

DIMS will be incidental to the financial services you are already providing the client if the client's portfolio of financial products is usually managed through you providing financial advice or an investment planning service, and not DIMS. In



other words, your client normally makes the decisions about their portfolio acting on your recommendations, rather than you making the decisions for your client. You *may* have a standing authority to make decisions on behalf of your client in unexpected situations (which would be DIMS), but as long as this doesn't become the normal method of managing your client's assets the DIMS would be incidental or secondary to the other financial services you provide to your client.

What is a known temporary period?

A known temporary period is a specified length of time that has been pre-agreed between you and your client. For example, your client could be going on holiday overseas for three weeks from 2 June to 24 June. The investment authority would state that you have the authority to provide DIMS during those dates.

When will there be urgent situations?

Urgent situations will arise when you reasonably consider it urgent to act under the authority in your client's best interests and you aren't reasonably able to get instructions from your client within the timeframe that would enable you to act. For example, your client may suffer a medical crisis and you are unable to receive instructions from as your client is incapacitated. The investment authority would need to state that you have the authority to provide DIMS for any temporary period to cover any absence, incapacity or contingency when you cannot reasonably obtain instructions from the client.

The period for which you use the DIMS authority must not be longer than reasonably necessary to cover the period of the client's absence, incapacity or contingency.

What else do I need to know about the contingency exemption?

If you choose to offer contingency DIMS to a client, there are a few requirements which must be met.

Only provide DIMS for less than six months in total

You must make sure you don't provide contingency DIMS to the client for a total of more than six months over any 12-month period. This limitation applies even if your client wishes to extend this.

You can still have a standing authority allowing you to make decisions in urgent situations when you cannot reasonably obtain instructions from the client, and this authority can last longer than 6 months. It is the periods when you are making decisions for your client in reliance on the authority (i.e. the periods when you are actually providing DIMS) that cannot extend beyond 6 months in any 12-month period and cannot become the main way the client's portfolio is managed.

You can't provide contingency DIMS if you, or someone associated with you, is already providing DIMS to that client

If you, or someone you are associated with, is generally managing the client's portfolio through DIMS, then the contingency exemption is not relevant – the client is receiving the service in more than just contingency situations, so the person providing the service needs to be appropriately authorised or licensed. The exception is if a client is receiving personalised DIMS under the FA Act. An AFA can provide contingency DIMS to a person receiving personalised DIMS under the FA Act.

You are 'associated' with your relatives, people you have a director/senior manager professional relationship with, or where you can exercise a substantial degree of influence over the activities of the other person (or vice versa). For example, if you are a director of a financial adviser company and your senior manager has investment authority to provide DIMS to that client, you won't be able to provide contingency DIMS to the same client.



The client's portfolio must be held by the client or an independent custodian

The client's portfolio must be held by the client or an independent custodian. It can't be held by you.

The client agreement must meet specific requirements

You must enter into an agreement with the client that allows you to provide contingency DIMS to him or her.

The agreement must be in writing and must:

- state that in acting under your contingency aspect of the investment authority you agree to comply with the duties that would apply under the Financial Advisers Act 2008 if you were authorised to provide personalised DIMS. These include the duty to act honestly and the duty to comply with a professional standard of care
- cover how you will report on any transactions entered into during your provision of contingency DIMS, including when you will report and what information will be in your report. Where you have provided contingency DIMS in an urgent situation, your report must include an explanation of why you considered it necessary to act urgently without the client's authority
- allow the client to immediately revoke your contingency investment authority by giving you written or oral notice.

The investment authority must meet specific requirements

Before you provide contingency DIMS to a client, your client must authorise you to provide contingency DIMS to manage some or all of his or her portfolio for a known temporary period and/or in urgent situations.

The contingency investment authority must:

- be in writing
- clearly describe the scope of your investment authority, including whether you have authority to provide a contingency DIMS for a known temporary period and/or in an urgent situation. It must also describe any limits on the investments you can make and on the proportion of each type of financial product you can invest in. If there are no limits, the investment authority must say so
- not be changed without the client's prior written agreement.

What do I need to do if I want to provide contingency DIMS to my clients?

If you want to provide contingency DIMS to your clients, you will need to do the following:

- Make sure you have an independent custodian. A client's assets will need to be held by an independent custodian or by the client. They can't be held by you.
- Review and amend your client agreements and investment authorities to make sure:
 - Your documents don't give you an authority to manage all or some of your client's assets permanently
 - Your client agreements meet the content requirements listed above
 - You have authority to provide DIMS for a known temporary period and/or in urgent situations and your investment authority meets the requirements outlined above.
- Update your Adviser Business Statement and any other disclosure documents as necessary to reflect what type of DIMS you are willing to provide.



- Monitor the use of each investment authority to ensure you do not use contingency DIMS as a regular way of managing a portfolio and that you do not exceed the six-month timeframe within 12 months.
- Ensure you can provide adequate reporting to clients as detailed in your client agreement.