

Crowd funding

PART B1:

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.

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PART B5: How do I apply for a licence to provide **crowd funding** services?

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

PART A: Gives general guidance about the licensing process. This includes how to log in to the application portal and how to create a RealMe identity, if you don't already have one (you'll need one before you can apply). Here's [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 online application, in the same order you'll see them on your screen, 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 made online and you'll need to upload 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: There are tabs for each section of the online application. You can answer them in any order and edit your work as often as you need. All mandatory answers and documents must be supplied before you can submit your application. Once you've clicked submit you'll get a once-only chance to save and print a copy of your application, and we recommend you do this as you won't be able to access it again after submission.

We also strongly advise you to 'save and exit' frequently as you work through your application, as this is the only way your work will be saved online. You may also want to copy your answers to an offline document – but please note the online submission is the final and legal record of your application.

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 (the '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?

You're welcome to call our information line **0800 434 567** for anything to do with licensing. We're open for calls from 8.30am to 5pm, Monday to Friday. Overseas callers can reach us on +64 3 962 2698.

It's all done online

You apply for your licence online and upload any supporting documents straight into the application. We don't accept hard copy applications unless we specifically request them.

Who is this licence for?

Crowd funding service providers

A licence to provide crowd funding services is for businesses who want to act as an intermediary between companies making offers of shares and investors – by providing the facility through which offers can be made to investors.

When your service is licensed companies can offer shares through your service without having to supply product disclosure statements.

Please note you're not providing a crowd funding service under the FMC Act if your service is only used for charitable or rewards based fund raising, and the donors don't receive shares.

Things you need to know before you apply

Eligibility criteria

- a. To issue you with a licence to provide a **crowd funding service**, we must be satisfied that you meet the criteria set out in section [396](#) of the Financial Markets Conduct Act 2013 (FMC Act) and any eligibility criteria in regulation 186 of the Regulations.
- b. 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.
- c. 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) and have "fair, orderly and transparent systems and procedures for providing the service" (regulation [186\(1\)\(a\)](#) of the Regulations).
- d. 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.
- e. Your board, or governing body, is asked to confirm this in the certificate we ask you to provide with your application form.

Minimum standards

- a. 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.
 - For **smaller businesses**, this may mean some processes can be relatively simple and not fully documented (you'll still need to explain them in your application).
 - For **larger businesses**, we expect processes will usually be more detailed and documented.

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.

- b. 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.

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.

- 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 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 you with 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 and licence renewal).

We may undertake monitoring or enforcement action, or refer the matter to other agencies as appropriate.

» 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.

Or you can go to the 'Review' tab on the application form to see the full list of questions online.

Please remember

You can contact us for information at any time before you apply – and after you're licensed – just call **0800 434 567**.

Information for applicants

A. Getting started

This guide is divided into sections, following the order of the tabs in the online application. This 'getting started' section covers the first two tabs of the online 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 online application, including the things 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 apply online (B) and read our comments (C), then assemble what you need before you start your application.

You can answer in any order, and return to any section to add, alter or delete something right up until you click submit.

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.

Uploading documents

If you upload a document we'll 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 and only upload it once. And you can do this at the end or at any time by going to the upload documents tab.

B. What do we ask?

- » What is your FSP number? *(See comment 1)*
- » Is this a separate or related body application? If a related body, enter the parent FSP number and select the licence type.
- » Licence coverage: *(See comment 2)*
If you select 'For this FSP number and related body/s' please select the related bodies tab and tell us the related body's name, FSP number, key contact person and their position, phone number/s and email.
- » What type of licence are you applying for? You can select more than one. *(See comment 3)*

Applicant details

- » Entity name

Contact person details

- » Please tell us the name of the contact person, their position, address, phone number/s and email.
- » Please provide a certificate confirming you have authority to apply and the types of licence/s sought. *(See comment 4)*

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 comment 5)*
If YES, please list your relevant parties. You will also need to upload a declaration.

Application details

Licence types

- » Do you request any special limits on your licence? If YES, please provide brief details. *(See comment 6)*

Licensed financial service provider

- » Is your entity a licensed provider under the Financial Service Providers (Registration and Dispute Resolution) Act 2008?

Here's a tip...

You can check out the questions first and create a document offline with all your narrative answers.

Then you can cut and paste your answers in – or just upload the whole document and refer us to the different sections as you answer the questions.

That way your work is also saved and safe!

Have you got an FSP?

You'll need a Financial Services Provider number to apply – and any related bodies you want to include will need their own FSP.

It can take up to five working days to get one, so we suggest you and the related bodies apply in advance.

QFE groups

- » Is your entity a QFE or a member of a QFE group under the Financial Advisers Act 2008? If YES, what is the name of your group? 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.

Your business

- » Please describe your business. (*See comment 7*)

C. Our comments

1. FSP registration number

This is your financial service provider number and you must have one **before** you can start your licence application.

- To **get an FSP number** you need to register on the FSP register at www.fspr.govt.nz
- As this process can take up to five working days we suggest you apply for your FSP number in advance.
- If you're including related bodies in your application, they'll need their own FSP number, and should also apply in advance if they don't have one, as you'll need to provide their FSP number in your application.
- If you're **already registered as an FSP**, you need to log in to your FSP Register account and select the financial market service/s you want to be licensed for (we can't issue a licence until you do this). The licensed service won't be publicly visible on the register until we issue your licence.

2. 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're making a separate 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.

Are you the licensee?

If you're the one granted the licence, you're the licensee.

You'll be responsible for the provision of the licensed service, including any part delivered by someone else.

Numbered comments

Our comments are numbered sequentially throughout the document, so if you call us about something we've said you can just quote the comment number.

c. Do you want related bodies authorised under your licence?

If you're the intended licensee, under the 'licence coverage' drop down box you can select if you want related bodies authorised under your licence/s. If you do we ask you for their contact details. We do this in a separate 'Related bodies' tab that will appear at the top of the application form. After you've started your application the related body can go into the system and start their own application.

d. The steps involved for each party

If you're the **licensee**:

- In your application you list the related body you want to include and provide some details about them (including their FSP number)
- After you submit your application you see a PDF copy of it with your application number – you need to give this number to your related body.

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

- Log in using your own RealMe identity
- Enter the 'parent FSP' – this is the licensee FSP
- Enter the application number and your own FSP number, and select 'Related body'
- Answer all the questions relevant to the licensed activities you will perform (if a question is not relevant just answer 'not applicable')
- Once you're ready to submit, get the licensee application number from your 'parent' company – you'll need this before you can submit your own application.

Licensee applicants and related bodies fill in separate application forms. These are linked by the licence application number, but you can only see your own answers. If you're the related body, you should liaise with the applicant to ensure your answers reflect what the applicant has submitted. You can log in and work on your application as often as you want until you submit. When you submit you can print a PDF copy of your answers, but can't access the form again.

3. Type of licence

You can apply for more than one type of licence at the same time – this means generally you won't be asked to supply duplicated information. The exception is if you are applying for an independent trustee licence – you can't apply for any other licence type at the same time.

4. 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 Applicable Regulations (see regulations [185](#) and [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 online application form but doesn't have to be. However note, the invoice for the application will be to the attention of the 'contact person'.

Any questions?

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

0800 434 567

8:30am – 5:00pm
Monday to Friday

You must upload the signed certificate to your application and retain the original, as we may ask for it later.

The certificate 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.

5. Relevant parties

You are asked to name any 'relevant parties' and provide a declaration (*refer to comment 10*). 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.

6. 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.

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.

7. 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 clients 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)?

We also want to know:

- How you'll ensure the principal purpose of your facility is to match companies wanting to raise money with many investors seeking to invest relatively small amounts – see regulation [185\(1\)\(a\)\(ii\)](#) of the Regulations.
- How you've designed the facility so that it is primarily used for offers by people other than you or your associated parties – see regulation [186\(1\)\(b\)](#) of the Regulations.

You may choose to provide us with access to a working test-version of your facility, so we can test the functionality using a simulated investor and issuer. You can then refer us to the parts of your facility that demonstrate how you meet certain minimum standards.

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 appointment, recruitment and human resource 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?

- » 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 upload a declaration completed by each person listed. The declaration form also asks for their consent for third party checks. (*See comment 10*)

Consultation

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

C. Our comments

8. 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').

9. 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.

- 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.

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.

Supporting information

The narrative fields on the form only allow for 4000 characters but 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.

10. What do you need to supply?

- a. Each person you list has to complete and sign a declaration, which you need to scan and upload 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.

11. 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 your 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.

12. 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').

13. 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.

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) has 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?

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, position, position description, CV).

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

14. 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 upload these to your application. These people do **NOT** need to complete a declaration.

Here's a really important tip!

Remember to save your work frequently.

When you go back to a section it will indicate which questions you still need to answer.

You can do this as often as you like and you can work on any section in any order.

- 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. When you're providing a new type of service, such as **crowd funding**, we understand you may not be able to demonstrate depth and breadth of experience in that particular business. However, you'll need to explain how the experience of your directors and managers, as a whole, provides sufficient capability to deliver and manage that service.

15. Roles and responsibilities

- a. 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.
- b. 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.

16. 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.

17. 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

Your procedures for bringing new clients (both issuers and investors) 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 clients on board, with processes and controls to ensure you meet all your legal requirements.
2. You ensure investors receive required information to allow them to make informed decisions about using the licensed service.
3. You provide investors with disclosure statements and client agreements that can be easily understood by the intended audience.

Here's an example...

If you want to attract new clients 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.

Information for applicants

B. What do we ask?

- » Please explain or demonstrate how you meet the minimum standards for bringing clients on board.

C. Our comments

18. Please describe how your procedures for bringing clients on board will work, including how you intend to attract clients to your service, such as using advertising or referrals.

19. Account opening process

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

- The requirement for a written client agreement with investors in sections [430](#) and [431](#) and regulations [223-229](#) of the Regulations
 - Fair dealing obligations in [Part 2](#) of the Act (also see the example on the left)
 - The obligation to provide a disclosure document to investors in sections [423-427](#) and regulations [213-220](#) of the Regulations (we will pay particular attention to disclosure in respect of the nature and extent of due diligence conducted on issuers and the use of the facility by you or people associated with you)
 - The obligation to provide a warning statement to investors, and to get their confirmation they've seen this – see regulations [196](#) and [197](#) of the Regulations.
20. 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.
 21. There are restrictions on providing financial advice under the Financial Advisers Act 2008 – staff involved in bringing clients on board should be aware of these restrictions and adequately trained in your new client procedures.

Minimum standards

A. Assessing issuers

You must have anti-fraud and fair dealing policies that enable you to assess issuers, and if needed, exclude them from using your facility.

Minimum standards

1. You have an anti-fraud policy that, at a minimum, confirms the identity and character of the issuer's directors and senior managers from publicly available and readily assessable information.
2. You have a fair dealing policy that enables you to exclude an issuer from using the service in certain circumstances.
3. You have adequate systems and procedures for implementing these policies.

Information for applicants

B. What do we ask?

- » Explain or demonstrate how you will meet the minimum standards for assessing issuers.
- » You must provide a copy of your anti-fraud policy and your fair dealing policy.
- » You may choose to provide a link to relevant documents in a test facility.

C. Our comments

22. Your anti-fraud policy

Your anti-fraud policy should provide for checks of the issuers' directors and senior managers. This should include searching relevant public registers (such as the Companies Register and Insolvency Register) and the Internet (for relevant news articles or other commentary) to identify evidence of:

- Bankruptcy or involvement with insolvent companies
- Information that may question the identity of directors or senior managers
- Convictions for fraud or dishonesty – or involvement in litigation or other disputes.

These matters may not, in themselves, determine the outcome – your policy should set out criteria to help you assess the information and to make decisions about allowing issuers to use the service.

23. Fair dealing policy

Your fair dealing policy should set out the:

- Reviews and assessment of marketing materials and pitch documentation you complete to check compliance with regulation [186\(1\)\(e\)](#) of the Regulations
- Steps you'll take if you identify actual or suspected evidence of misconduct of the type set out in the same regulation
- Process you'll use to exclude an issuer, and how that exclusion will be given effect to, for example through appropriate provisions in agreements with issuers.

Minimum standards

A. Disclosure arrangements

You must ensure investors receive information on offers to assist them with investment decisions.

Minimum standards

1. You have adequate disclosure arrangements so investors can receive timely and understandable information on offers to assist them with their investment decisions.
2. You publish and maintain eligibility criteria that issuers are generally expected to meet to be able to make offers on your facility.
3. You maintain clear and transparent information about what due diligence you have and have not carried out on issuers, so investors can make reasonable judgments about the risks of investing.
4. The provision of information about offers provided on or through your facility is fair and transparent, so all potential investors have access to the same information.
5. You provide information to investors about all transactions they have made using your service.

Information for applicants

B. What do we ask?

- » Please explain or demonstrate how you meet the minimum standards for disclosure to investors.
- » You may choose to provide a link to relevant documents in a test facility.

C. Our comments

24. What should you provide?

Please provide a summary of your disclosure arrangements.

25. What are disclosure arrangements?

Disclosure arrangements are the ways used to get information about offers to investors. These could include:

- Using your facility to directly or indirectly supply information, such as the initial disclosure of information, a Q&A function, links to other information sources
- Doing checks on issuers and disclosing this to investors
- Having arrangements with issuers about the type of information they'll provide to you or to investors directly on or via your facility.

26. Our assessment

When we assess your arrangements we are required to consider:

- Limits (if any) on the amount that retail investors may invest
- Amounts that issuers may raise.

We may also consider other matters – this will depend on the particular features of your facility. For example, we may consider any checks you state you make on issuers and disclose to investors.

27. Are there minimum disclosure arrangements?

- a. We'd usually expect your disclosure arrangements will include (as a minimum):
 - A dedicated webpage on your facility for each offer, which is simple to access and navigate and available to all investors
 - Disclosure of a description of the business and the purpose of the fund raising
 - Disclosure of the terms of the offer, including:
 - Price
 - Minimum funding sought



Will the audience understand it?

The information provided needs to be understandable and available to any investor.

- Duration of the offer
 - Amounts raised (updated regularly)
 - Investor caps (if any)
 - Rights attaching to the shares (and details of any other securities of the issuer).
 - Information about how shares can be sold, including about any available secondary markets
 - The names and positions of the issuer's directors and senior managers (you could also consider requiring disclosure of their education, skills and experience)
 - Arrangements with issuers to supply required information.
- b. You might also consider including:
- A Q&A function on your website
 - Information from the Companies Office about issuers, or links to the Companies Office 'Company Summary' webpages for issuers
 - If you don't impose investor caps (or they are high) or the issuer is trying to raise significant amounts of capital, we'd usually expect your arrangements to include extra disclosure such as providing a business plan, details of how funds will be used, key risks and key financial information, such as financial statements.
- c. We also expect your disclosure arrangements to cover how you'll review the information issuers' supply to check it is understandable and timely (when disclosed) or tell us how you'll rely on the issuer to do this.

Minimum standards

A. Conflict of interest

You identify and deal with conflicts of interest in a fair, orderly and transparent way.

Minimum standards

1. You must have adequate systems and procedures for handling conflicts between your commercial interests and the need to have fair, orderly and transparent systems and procedures.
2. You must clearly and prominently disclose:
 - If you, or anyone commercially associated with you, has a direct or indirect interest in any offer made through your facility
 - This includes disclosing the nature and extent of the interest (or intended interest) and any fees the issuer pays you above the standard disclosed amount
 - All fees paid by issuers in connection with the offer, whether direct or indirect and however described. These fees must be clearly and prominently displayed.

Information for applicants

B. What do we ask?

- » Explain or demonstrate your systems and procedures for handling conflicts between your commercial interests and the need to provide a fair, orderly and transparent service.
- » Please give details of where you describe your fees and charges.
- » Do you wish to allow parties associated with you to use the service? If YES, what nature and types of associated parties?
- » Do you wish to invest in offers made using the service? If YES, provide details of the likely nature and extent of such investment (if known).
- » You may choose to provide a link to relevant documents in a test facility.

C. Our comments

If you want to use the service, or allow associated persons to use it, please explain how your systems and procedures for handling conflicts of interest will ensure your other clients are not prejudiced. You must also ensure the potential conflicts are disclosed clearly and prominently on your facility and tell us where this will be.

If we consider your systems and procedures are not adequate to manage a conflict of interest we may impose conditions on your licence about the use of the service by your business or associated persons.

28. **If you don't want to use the service** or allow associated persons to use it, we may make this a condition of your licence.
29. We will consult you before we issue a licence with these restrictions.

Who is an associated person?

An associated person is someone who is connected with you, for example through common ownership or management. See section 12 of the FMC Act for a definition.

Minimum standards

A. Investor funds and secondary markets

You must ensure issuers don't exceed fund raising limits, and comply with the relevant broker obligations. Any secondary market you may operate must be fair, orderly and transparent.

Minimum standards

1. You maintain adequate systems and procedures to ensure that issuers do not exceed the limits in the Applicable Regulations for raising funds.
2. If you receive, hold, pay or transfer funds from investors to pay for investments, you must comply with the broker obligations in the Financial Advisers Act 2008 – this means the funds must be held in trust.
3. If you provide a secondary market in the shares offered through your facility, you must ensure the market is fair, orderly and transparent.

Information for applicants

B. What do we ask?

- » Please explain how you will meet the minimum standards for handling investor funds.
- » Will you receive and hold, or transfer funds on behalf of investors?
If YES, are you or will you be registered on the Financial Service Providers Register for broking services?
- » Will you provide a secondary market in the shares offered through your facility?
If YES, how will you manage that market?

C. Our comments

30. Fund raising limits

You need to show how you have adequate systems and procedures to ensure that an issuer doesn't raise more than \$2 million in any 12 month period using your service.

31. What are the obligations of brokers?

If you receive and hold, pay or transfer client money you are providing a broking service under the Financial Advisers Act 2008 (FAA).

For information on the obligations of brokers, as defined in section [77A](#) of the Financial Advisers Act, and under the Financial Advisers (Custodians of FMCA Financial Products) Regulations 2014, please see the information on our [website](#).

32. Secondary markets

When we assess if a **secondary market** is 'fair, orderly and transparent', we'll take into account factors including (but not limited to) whether you:

- Have clear rules about how the market will operate for participants (buyers and sellers)
- Treat all participants fairly, for example by having equal access to information.

Secondary markets

Any market you operate that allows lenders to trade the loans they acquire through your facility is part of your licensed business.

Minimum standards

A. Termination of service

You must have a business termination plan to protect your clients' interests in case you cease business.

Minimum standards

1. You have effective plans and procedures for the orderly administration of current and recently closed offers if you cease business.

Information for applicants

B. What do we ask?

- » Please explain how you meet the minimum standards for termination of the service.
- » Please provide a copy of your business termination plan.

C. Our comments

33. Your business termination plan

Your business termination plan could include, for example:

- A model of income and expenses during the period required to complete the settlement of accepted offers – and funds set aside to pay for the administration costs
- A service agreement with a reputable third party to complete settlement of accepted offers (where you normally provide this service) and a guarantee from a reputable surety, such as a bank, to pay for the service.

You'll need to provide sufficient evidence that your business termination plan and related procedures will be effective even if you become insolvent. For example if your plan relies on funds set aside to complete the administration of current or recently closed offers, these funds must be ring fenced so they can't be distributed to creditors if you are insolvent.

34. Assurance review

Depending on the complexity of your business termination plan we may make it a condition of your licence to obtain an assurance review about its effectiveness.

For example, if your plan includes implementing controls, we may ask you to get auditors assurance reports on the design and effectiveness of the controls (under International Standard on Assurance Engagements (New Zealand) 3402).

Minimum standards

A. Material issues and complaints

You must 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 the FMA any material change of circumstance or breach of your market services licensee obligations.
2. You monitor 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.

Information for applicants

B. What do we ask?

- » Explain or demonstrate how you ensure material issues in your business are identified and appropriately dealt with.
- » 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.
- » Explain or demonstrate how you ensure client complaints are dealt with fairly and promptly.
- » Explain or demonstrate the systems and processes you have for identifying any trends in complaints.
- » What is the name of your Dispute Resolution Scheme, your membership ID number, and the expiry date?
- » Who (what position) is responsible for monitoring:
 - » Compliance with your market services licensee obligations?
 - » Material changes of circumstance?
 - » Reporting material changes of circumstances, or breaches of your market services licensee obligations, to FMA?

C. Our comments

35. Material issues

- a. Under the FMC Act (section [412](#)) you must have effective methods to:
 - Monitor compliance with your licensed market services obligations and identify material changes in circumstance (by you or any authorised body)
 - 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).
- 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.
- c. A **market services licensee obligation** is defined in section [6](#) of the FMC Act and generally covers any obligation imposed by the:
 - Conditions of your licence
 - The FMC Act and Regulations
 - Terms of any financial product you offer, or financial service you provide (or any court order related to your products and services).

- 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.

36. 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, and
 - How many unresolved complaints you had 12 months before that.
- b. 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 clients (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

37. 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

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 to:
 - » 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 process 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

39. 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.


40. How will you select providers?

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

41. 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.



**You can outsource
any aspect of your licensed
business.**

However, you remain responsible
for any functions you outsource,
as if they were performed
by you.

42. 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.

43. 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

A. Records

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

Minimum standards

1. You have systems and procedures to maintain proper records.
2. You are required to retain these records for at least seven years – and they are available for inspection by the FMA on request.

Information for applicants

B. What do we ask?

- » Describe how your processes ensure you will meet the minimum standards.
- » How do you ensure your business records will be readily accessible for at least seven years, and available for inspection by FMA on request?

C. Our comments

44. What records must you keep?

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:

- Records of key decisions and activities, so we can confirm your compliance
- Files for each client (and past clients) with all relevant documents, such as client agreements and disclosure documents.

You must ensure your client agreement and other arrangements will include client consent for us to view their records.

45. What are your arrangements?

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.

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.

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?

- » Describe the IT systems you use in providing the market service.
- » How do you ensure that your 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.
- » Explain the processes in place to ensure your system is and remains reliable.
- » Please provide a Business Continuity Plan.

C. Our comments

46. 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.

47. 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.

48. Reliability of your facility

You'll need to provide an assessment of the risks that may impact on reliability of your facility, and details of what you have done to address those risks.

You don't need to guarantee continuous operation. But we expect you to have considered all events that can be reasonably anticipated and would impact on your system's reliability – and to have implemented measures to appropriately mitigate the potential effect of such events.

49. 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) 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 must have a sufficiently strong balance sheet.
2. You must be able to pay your debts as they become due in the normal course of business.
3. You must at all times maintain an appropriate level of liquid assets to cover reasonably expected contingencies in your business.
4. You must 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?

- » 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 asset? (NTA – *see comment 51*)
- » 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 comment 54*).
- » 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

50. 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.

51. 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 the 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 balances 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 issue 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:

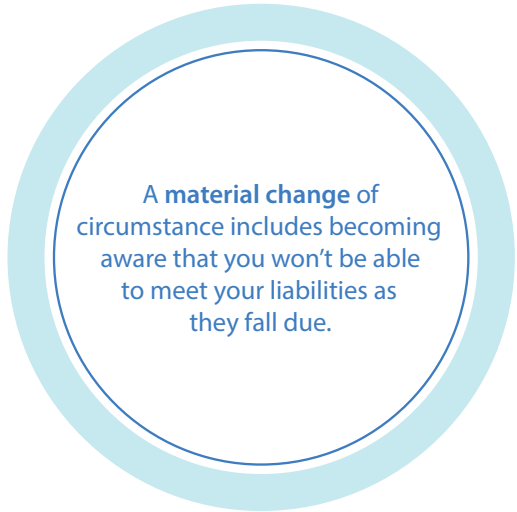
- Receivables from a related party or associate unless 'permitted'
- For the avoidance of doubt, intangible assets, any client funds you hold, or any investments you have in the portfolios you manage.

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).



A material change of circumstance includes becoming aware that you won't be able to meet your liabilities as they fall due.

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.

52. 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 balance.

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

53. 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 client funds you hold, or any investments you have in the portfolios you manage.

54. 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're 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

- 55.** Please tell us the level and scope of cover you think is necessary for your business, 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.

- 56.** 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.

- 57.** Please also advise if there are any claims currently notified under your policy that relate to your licensed business.

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 must 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 – compliance should not solely be 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. **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?

- » 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

58. Your oversight body

- a. You must have an oversight body responsible for overseeing compliance with your market services licensee obligations.
- b. Arrangements may vary depending on your business. 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.

59. 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 other details about your board here, as you'll supply these under 'fit and proper'
- The source of the body's authority. Please include 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.

60. 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.

61. 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 clients 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?

- » 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

62. 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 specifically to 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.

63. How do you demonstrate it?

In answering the questions in this section you may want 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

64. Testing your compliance

- a. 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.
- b. **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.
- c. **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.
- d. 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.

65. 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 last three tabs of the application – upload, end of form (where you self-certify), and review.

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

Review everything, click 'Submit' and you're nearly done!

But before you hit that submit button...

Have you...

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

Information for applicants

Our comments

66. Uploading documents

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

- You can go to the 'Upload Documents' tab at any time – to upload new items, see a list of items already uploaded, or to remove items
- You'll be asked for certain mandatory documents – they can be uploaded at the time we ask for them or later by going to 'Upload Documents'
- If you consider you have valid reasons for not having or providing a mandatory document, you can instead upload a document explaining your reasons for not supplying it
- Many questions allow you to upload supporting material – you'll be asked to give a document name and specific section we should read, then you need to go to the 'Upload Documents' tab to add your supporting document (you can do this at any stage)
- 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.

67. Certifying your application

When you mark the 'self-certification' box in the 'End of form' tab, you're signing the application – and certifying that to the best of your knowledge you have included everything material to the licence/s 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.


68. Review before submitting

You can review all the questions and your answers before you submit on the 'Review' screen. You can also download a PDF of your pending licence application before you submit.

69. Making fee payments

Once you've clicked the 'submit' button you'll be asked to pay the application fee. You may pay by credit card, or arrange pre-payment with us (direct payment).

The application system will tell you the total amount to pay once you've reached that stage – you can also find the application fees on our website. For more about how to pay your fees please see [PART A](#).




Once you've submitted your application you can't access it again – so you can't view it or change anything.

70. Submitting your application

These are the main things you need to know:

- You won't be able to submit your application until you've answered all the mandatory questions, and attached any mandatory documents (and if you're the related body, you won't be able to submit your application until the licensee has submitted theirs)
- Once you've paid, you'll also be asked if you want a PDF copy of your application, as a record of the questions and your answers – this is the last time you'll be able to save or print off a PDF copy
- If for some reason later on you need another copy, please get in touch with us
- If you log in at a later date you'll see the record of your application and the date it was submitted – with a status next to it
- While we're still assessing your application the status will show as 'review'
- If for some reason we may need to place limits on your licence, or decline your application, we'll 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.



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.

Any questions?

If you have any questions about applying for a licence please call the FMA helpline.
0800 434 567. 8:30am – 5:00pm. Monday to Friday.