

Response to submissions

Consultation paper: Personalised DIMS under the Financial Advisers Act 2008

19 December 2014

The table in this paper summarises the submissions made on our Consultation paper: Personalised DIMS under the Financial Advisers Act 2008 (“the Act”) released on 19 November 2014.

Five written submissions were received. The FMA has considered all submissions and our response to the main issues is set out in the table below.

Issues raised	Response
<p>Some submitters were concerned about potential overlap and conflict between the minimum standards and Code of Professional Conduct for Authorised Financial Advisers (“the Code”). Can the FMA set minimum standards when the FA Act makes it clear minimum standards are to be provided for in the Code. Overlap with NZX Participant Rules was also noted.</p>	<p>We have met with the Code Committee Chair to discuss this further.</p> <p>Where appropriate the FMA will ensure that the minimum standards for personalised DIMS providers recognise the standards that exist already under the Code. This mapping will be clearly set out in the AFA Authorisation Guide.</p> <p>We do not consider that a partial exemption for NZX participant firms is required – to comply with the law participants need to meet both minimum standards and NZX participant rules.</p>
<p>One submitter had concerns that there is still a lot of confusion about what are and what aren’t personalised DIMS.</p>	<p>Further guidance on the definition of what is and isn’t personalised DIMS is already available. See Understanding the regulation of DIMS</p>

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<p>A submission queried whether, as part of the assessment of eligibility to be undertaken by the FMA for existing AFAs authorised to provide personalised DIMS in accordance with Part 1, E paragraphs 20 and 21, if the FMA is proposing to review and assess the investment strategies of the clients to receive personalised DIMS.</p> <p>Another submission noted some potential confusion in the sentence about what is an investment strategy.</p>	<p>Frequently asked questions.</p> <p>No, the FMA would not review the investment strategies as part of assessing eligibility. Instead we review your capability to design bespoke investment strategies for each of your personalised DIMS clients. Investment strategies used could be reviewed during any monitoring visit.</p>
<p>One submitter queried where eligibility criteria, requirements such as updating an ABS, and dates are covered in Regulations. This submitter also queried whether AFAs authorised to provide DIMS as at 30 November 2014 could continue to provide personalised DIMS after 1 June 2015, providing they complied with new rules.</p>	<p>We note that the eligibility criteria are set out in section 54 of the Act. Further to this, section 59 of the Act provides that authorisation may be cancelled if the adviser ceases to be eligible. The most efficient way for the FMA to ascertain whether an AFA is eligible is to receive an updated ABS. However, for existing AFAs holding a DIMS FAS Scope there is no specific requirement to do so, although all AFAs have an obligation to keep their ABS up to date.</p> <p>To confirm, an AFA can continue to provide personalised DIMS post 1 Dec 2014. However, they must meet the new eligibility criteria from 1 June 2015. In order to make use of the transitional provisions of the Act, AFAs currently providing DIMS must provide an updated ABS to the FMA before 1 June 2015.</p>
<p>A submitter asked to be advised on what detail the FMA will be looking for to evidence access to necessary expert professional advice and the rationale for the same. The submitter noted the requirement for additional expert professional advice seems to be excessive given the qualifications of the individual adviser.</p>	<p>This standard is to ensure that the Adviser has access to specific advice where this is considered necessary or appropriate, for example legal advice in drafting client agreements.</p>
<p>A submitter made the comment that it is the portfolio that should be stress-tested, not the strategy. Also that the terms "Stress test...as appropriate" is</p>	<p>We agree that different AFAs can apply different tests; this is expected as each adviser will run their business differently. Stress testing is about how</p>

Issues raised	Response
<p>a very vague" standard. Related questions included who will determine what is appropriate? Can different AFAs apply different stress tests and still comply?</p>	<p>you test how you came up with the decision, not a test of the portfolio. Further information on stress testing is already available in the Quick Guide to licence applications for small businesses providing DIMS.</p>
<p>A submitter commented that since it is the individual AFA who will be authorised, and most AFAs probably act in corporate form, it is unlikely that a Personalised DIMS-authorised AFA will themselves have any staff. Staff will most likely be employed by the AFA's entity.</p>	<p>Staff may do the reporting, research or filing and there needs to be clear line that only the AFA with Personalised DIMS authorisation can make the decision.</p>
<p>A submission raised a point that given that the assets will be held either in the client's own name or by an independent custodian, then it was not clear why the adviser's financial position was important. Also the authorisation will be held in a personal capacity, yet the financial resources appear to be determined at the entity level. Terms such as 'sufficiently strong' are unclear.</p>	<p>The intention of the financial resources standards is to ensure business continuity and should there be a business failure, that there are likely to be sufficient resources to ensure an orderly wind down.</p> <p>We acknowledge that in most circumstances an AFA will operate through a company construct so it is relevant to assess the financial stability of the vehicle through which the AFA operates.</p> <p>We note that the terms used in detailing the financial resources standards will be described in the AFA Application Guide.</p>
<p>A submitter commented in Part 3 that this seems to be applied in the context of the AFA's business entity when it is the individual AFA who will be authorised as an individual. They noted they would be surprised if any advisers have individual GAAP compliant accounts. Also, that most AFAs do not currently have their entity's accounts audited and that they did not think it would be possible to get a limited audit of NTA, as accountants would want a full set of audited accounts to confirm the NTA calculation. They were concerned about the benefits to advisers given the additional cost.</p> <p>However another submitter made a general observation that they supported the intention to minimise opportunities for arbitrage between the various ways DIMS are regulated.</p>	<p>As one submitter observed, we need to maintain alignment between requirements under the FMC Act and FA Act to avoid any potential for arbitrage between the regimes.</p> <p>Where possible we have streamlined requirements under FA Act DIMS regulation to reduce cost and regulatory burden for advisers.</p> <p>The FMA will consider the audit requirement as part of the finalisation of the additional personalised DIMS standard conditions.</p>

Issues raised	Response
Two submitters raised issues with specific words: “all” and “best”.	We have removed these words so that their use aligns with the Act and ensure advisers can easily demonstrate that they are meeting the minimum standards.
Two submitters asked for clarification of what is required by 31 May 2015, and a timetable of next steps.	Updated ABS and AFA application guides incorporating this information have now been released.
<p>One submitter noted an overarching general concern that the regulations shoe-horn AFAs’ implementation procedures into a fund manager model. This is a different model to the way in which most AFAs implement a portfolio.</p> <p>However another noted they had no objection regarding the general nature of the conditions being contemplated.</p>	<p>In both the FMCA and the FAA regimes for DIMS, the FMA has ensured that the standards can be applied to both large and small business structures. This concept has been documented in the FMCA DIMS application guide and further described in the [DIMS for Small Business] and the AFA Authorisation guide.</p>

List of submitters

- Murray & Company Wealth Management Limited
- Professional Advisers Association
- SIFA Incorporated
- Code Committee
- Institute of Financial Advisers