

Transitional provisions for AFAs providing personalised DIMS

Changes to the way DIMS are regulated came into force on 1 December 2014. These include changes to the regulation of personalised DIMS provided to retail clients under the Financial Advisers Act 2008 (**FA Act**). This information sheet explains the transitional provisions that apply to AFAs who only intend to offer personalised DIMS under the FA Act.

What are the transitional provisions?

The FA Act transitional provisions enable Authorised Financial Advisers (**AFAs**) who are only providing personalised DIMS to retail clients (ie, not class DIMS at all), to extend the period available to update their client documentation until 1 December 2015. To take advantage of this, AFAs must provide an updated ABS to the FMA by 31 May 2015.

Who is eligible for the transitional provisions?

The FA Act transitional provisions are available to AFAs who were authorised to provide DIMS under the FA Act at the close of 30 November 2014 and who intend to only provide personalised DIMS to retail clients.

If you are currently an AFA authorised to provide DIMS and intend to provide class DIMS, or a mix of class and personalised DIMS to retail clients, the FA Act transitional provisions won't apply. Instead you will need to review the transitional provisions in Schedule One of the Financial Markets Conduct Regulations 2014. These are not covered in this information sheet.

What are personalised DIMS?

DIMS are an arrangement you have with your client where you are authorised to make buy-sell decisions about his or her investment portfolio, often without needing to refer to the client for a decision about every transaction or investment. A service may still be DIMS if your client has the right to be consulted on, or to countermand your decisions.

Personalised DIMS focus on the way you decide what investment decisions to make for that particular client.

If you have discretion to make investment decisions for your client and you have a bespoke investment strategy specific to his or her financial position and goals, you will be providing personalised DIMS. It is important to note that personalised advice around investment strategy designed for a class of investors is not personalised DIMS.

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

What do I have to do to rely on the transitional provisions?

You must only be providing personalised DIMS. If you provide class DIMS to even a single client you cannot rely on these transitional provisions.

To rely on the transitional provisions, you will need to send us an updated Adviser Business Statement (ABS) on or before 31 May 2015. Your ABS must be updated based on the requirements of the updated AFA ABS Guide, and Appendix One of the updated AFA Authorisation Guide issued in January 2015.

Provided you were authorised to provide DIMS under the FA Act, the timeline for transition to personalised DIMS under the new requirements of the FA Act will then be as follows:

1 Dec 2014 – 31 May 2015	<ul style="list-style-type: none">• Continue to provide DIMS as you have done.• Send your updated ABS to the FMA on or before 31 May 2015
1 June 2015 – 30 November 2015	<ul style="list-style-type: none">• Ensure all client assets held under personalised DIMS are held by the client or an independent custodian.• Ensure any personalised DIMS provided to your retail client are:<ul style="list-style-type: none">- personalised DIMS as defined in the FA Act- governed by a legally enforceable written client agreement entered into before or at the same time as the investment authority- governed by a written investment authority granted by the client.• Ensure you:<ul style="list-style-type: none">- act honestly and in the best interest of the client in providing personalised DIMS- do not use information acquired in providing personalised DIMS improperly or to the detriment of the client- comply with the professional standard of care in the provision of the service- provide the service in accordance with the client agreement and investment authority- meet the eligibility criteria to be authorised for personalised DIMS.• Transition your existing clients by providing them a notice (see below).
1 December 2015 onwards	<ul style="list-style-type: none">• Ensure any documents you provide to new retail personalised DIMS clients comply with the new FA Act provisions.

What do I need to include in the notice to my existing clients?

You must transition your existing clients on or before 30 November 2015 by providing them with a notice. This needs to include the following information:

- A summary of the significant features of the service
- A description of how the financial products that are acquired under the service will be held
- A statement of how to grant and terminate the investment authority
- A statement as to whether the client may give instructions or be consulted on any decision relating to the financial products



- A description of the consequences of terminating the client agreement.

What do I need to do to update my documents?

From 1 December 2015, any documents you provide to new retail personalised DIMS clients will need to comply with the new FA Act provisions. You will need to:

- Amend your standard client agreements to ensure they comply with the FA Act. They will need to include information about custodial services provided to the client (if relevant), how your investment authority may be changed, and information communicating the client's right to terminate the agreement without any penalty.
- Amend your standard investment authorities to clearly disclose the scope of your investment authority, and any limits imposed on it. Or, if no limits are imposed, or the authority can be changed without the client's prior written agreement, a statement to that effect. Your investment authorities must also comply with our frameworks and methodologies. For information on these, refer to our website at www.fma.govt.nz.
- Amend your disclosure statements to ensure they comply with the changes in the Financial Advisers (Disclosure) Amendment Regulations 2014.
- Comply with the new ongoing reporting requirements and provide specified information at the end of every three-month reporting period. This will include information about all transactions made during that period and on the financial products then held by the client.
- Provide specified information to clients at the end of every year. This will include a description of the client's investment strategy and any changes to it over the last year as well as other information about the financial products held by that client over the course of the year.

See our Information Sheet on '[Changes ahead for AFAs who provide DIMS](#)' or visit our website at www.fma.govt.nz and see information under the headings 'Help me comply' and 'Financial Advisers' for more information on your obligations under the FA Act.

Will the FMA be reviewing my updated ABS?

Yes. We will be checking your updated ABS to assess whether you meet the eligibility criteria for providing personalised DIMS under the FA Act. The transitional provisions only provide relief for the period available to update your documentation. You must meet the new minimum standards from 1 June 2015. Please see the ABS Guide and AFA Authorisation Guide, (issued in January 2015) for details on what we expect to see in your ABS if you provide personalised DIMS.

We will contact you following our assessment.

What happens if I don't send my ABS by 31 May 2015?

If you have not sent the FMA your updated ABS, you will not be eligible for the transitional provisions. This means that from 1 June 2015, any personalised DIMS provided to a retail client must:

- be governed by a client agreement that complies with the Financial Advisers (Personalised DIMS) Regulations 2014
- be governed by an investment authority that complies with the Financial Advisers (Personalised DIMS) Regulations 2014

Furthermore you will need to have:



- updated your disclosure statement to comply with the changes in the Financial Advisers (Disclosure) Amendment Regulations 2014
- provided the updated disclosure statement to your client before the investment authority is granted and before any exercise of discretion under the investment authority
- provided further information to your client if requested.

You also need to meet the eligibility criteria for authorisation to provide personalised DIMS.

If we have not received an updated ABS from you by close of business 31 May 2015 and you have not applied for (or are not associated with someone who has applied for) an FMC Act licence we will engage with you to assess whether you remain eligible to be authorised to provide DIMS. Our initial step would be to request that you provide us with a copy of your ABS.

What if I want to provide a mix of class and personalised DIMS to retail clients?

The FA Act will not apply. If you intend to continue providing class or a combination of class DIMS and personalised DIMS to retail clients after 31 May 2015 you must have applied for a licence to do so under the FMC Act by close of business 31 May 2015.

If you do not apply by this date you cannot provide class DIMS to retail clients after 31 May 2015 (to even just one client just once unless on a contingent basis in reliance of the contingency exemption).

What if I don't want to provide any DIMS after 30 November 2014?

You need to cancel your authorisation or you will be expected to comply with the new requirements. Contact us on AFAapplications@fma.govt.nz to discuss removing DIMS from your Financial Adviser Service scope. You will also need to review all your documents to check they don't give you discretion to provide DIMS when you don't intend to do so.



At a glance

Scenario	Requirement
A person applying to be an AFA for the first time and wishing to provide personalised DIMS after 1 December 2014	From 1 December 2014: <ul style="list-style-type: none"> • Must meet new eligibility criteria and be capable of effectively performing the service • Must have compliant client agreements, investment authorities and disclosure statements • Must comply with the FA Act when providing the service.
An AFA who at 30 November 2014 was not authorised for DIMS and wants to provide personalised DIMS after 1 December 2014	From 1 December 2014: <ul style="list-style-type: none"> • Must apply to vary his or her FAS scope and pay the variation fee • Must meet new eligibility criteria and be capable of effectively performing the service • Must have compliant client agreements, investment authorities and disclosure statements • Must comply with the FA Act when providing the service.
An AFA authorised to provide DIMS at 30 November 2014 and wishes to provide just personalised DIMS and provides the FMA with an updated ABS by 31 May 2015	From 1 June 2015: <ul style="list-style-type: none"> • Must meet new eligibility criteria and be capable of effectively performing the service • Must have written client agreements and investment authorities • Must: <ul style="list-style-type: none"> - act honestly and in the best interest of the client in providing personalised DIMS - not use information acquired in providing the personalised DIMS improperly or to the detriment of the client - comply with the professional standard of care in the provision of the service - provide the service in accordance with the client agreement and investment authority • Must ensure client assets held under personalised DIMS are held by the client or an independent custodian • Must send a notice, as prescribed, to existing clients by 30 November 2015 • Has until 1 December 2015 to update client agreements, investment authorities and disclosure statements for new clients.
An AFA authorised to provide DIMS at 30 November 2014 and wishes to provide just personalised DIMS and does not provide the FMA with an updated ABS by 31 May 2015	From 1 June 2015: <ul style="list-style-type: none"> • Must meet new eligibility criteria and be capable of effectively performing the service • Must have compliant client agreements, investment authorities and disclosure statements for all clients • Must comply with the FA Act when providing the service.



Scenario	Requirement
An AFA authorised to provide DIMS at 30 November 2014 and does not wish to provide any DIMS after 31 May 2015	Before 1 June 2015 email the FMA at AFAapplicaitons@fma.govt.nz and request that DIMS be removed from their authorisation.