

# Consultation: Proposed standard conditions for financial advice provider full licences and classes of financial advice service

## About this consultation

The Financial Services Legislation Amendment Act 2019 (FSLA Act) will introduce a new regulatory regime for financial advice. If you currently give financial advice or you may do so in the future, this will affect you.

Once the new regime comes into force you will need to operate under a financial advice provider licence issued by the FMA in order to give regulated financial advice to retail clients in New Zealand. Obligations under the new regime will apply to financial advice providers and others giving financial advice on their behalf. If you only give regulated financial advice to wholesale clients you will need to be registered, but not licensed, and some obligations under the new regime will still apply to you.

There are two licensing phases to the implementation of the new financial advice regime – transitional and full. This consultation relates to financial advice provider full licences and different classes of financial advice service that the FMA is proposing to create for full licensing.

We are considering imposing eight standard conditions for full licences. All financial advice provider full licence holders and each of their authorised bodies will need to comply with the standard conditions.

We welcome your feedback on the proposed standard conditions and licence classes of service discussed in this paper. Please use the feedback form to provide us with any comments. We are seeking general feedback, as well as responses to the specific questions in this paper. If you have questions, please email [questions@fma.govt.nz](mailto:questions@fma.govt.nz) or call us on 0800 434 567 (+64 3 962 2698).

**Submissions close at 5pm on Friday, 7 August 2020**

After this date, we will consider all submissions and publish any standard conditions we may impose, along with the full licence classes of service.

### About this consultation:

This consultation paper is for potential full licence applicants, their authorised bodies and interested parties.

It seeks feedback on proposed standard conditions for financial advice provider full licences and classes of financial advice service.



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# 1 New financial advice regime

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## 1.1 Background

The FSLA Act will introduce a new regulatory regime for financial advice and revoke the Financial Advisers Act 2008. If you currently give financial advice or may do so in the future, this will affect you.

Individuals and businesses who will be affected include:

- Authorised financial advisers
- Registered financial advisers
- Qualifying Financial Entities (QFEs)
- QFE advisers
- Businesses providing class advice, whether through staff or digital systems
- Individuals or businesses who plan on joining the financial advice industry.

## 1.2 What is changing?

### 1.2.1 New licensing requirement

When the new regime commences you will need to hold, or operate under, a financial advice provider licence to give regulated financial advice to retail clients in New Zealand. A financial advice provider licence will be issued by the FMA under the Financial Markets Conduct Act 2013 (FMC Act).

You can hold your own financial advice provider licence or you may, if you are not an individual, be authorised (as an authorised body) to provide a financial advice service under another entity's financial advice provider licence.

Alternatively, if you will not be licensed or be an authorised body, as an individual you can provide advice as a financial adviser or nominated representative on behalf of a licensed financial advice provider, or an authorised body. If you do that, you do not require a licence yourself. Financial advisers must be registered on the Financial Service Providers Register and engaged by a licensed financial advice provider in order to provide regulated financial advice to retail clients.

### 1.2.2 New duties and code of conduct

All persons providing regulated financial advice will be required to meet the new financial advice duty provisions of the FMC Act. Financial advice providers will have additional duties if they engage others to give regulated financial advice on their behalf.



All persons providing regulated financial advice to retail clients in New Zealand will be subject to the new Code of Professional Conduct for Financial Advice Services (the new code). The new code outlines the standards of ethical behaviour, conduct, client care, competence, knowledge and skill you need to meet.

### 1.2.3 New disclosure requirements

All persons providing regulated financial advice to retail clients will be required to disclose information to their clients to ensure their clients are making informed decisions. The disclosure requirements will be prescribed in regulations. Additional information is available from the [Ministry of Business Innovation & Employment](#).

### 1.2.4 Further information

You should refer to the FMC Act (as amended by the FSLA Act) and regulations made under the FMC Act (FMC Regulations) for further details of the obligations that will apply to you.

You can find further information about the new regime on our [website](#).



## 2 Financial advice provider full licensing

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### 2.1 Overview

The FSLA Act enables a transition to the new regime. There are two phases to financial advice provider licensing – transitional and full.

Financial advice provider transitional licences come into effect on the start date of the new regime, indicated to be in early 2021. Transitional licences will expire two years after that start date, unless cancelled or superseded by a full financial advice provider licence. A financial advice provider operating under a transitional licence must ensure that a financial advice provider full licence is obtained before the expiry of their transitional licence if they intend to continue providing regulated financial advice to retail clients.

Financial advice provider full licences may be applied for when the new regime takes effect. Anyone not operating under a transitional licence issued by that date may not provide regulated financial advice to retail clients until either their transitional licence has been granted (if it was applied for prior to the new regime commencing and is still being assessed) or they have been issued a full licence that was applied for on or after the new regime commencing, or they are providing advice under another financial advice provider's licence.

### 2.2 Full licensing and classes of financial advice service

The criteria we will assess in full licensing will be more comprehensive than for transitional licensing. In addition to the matters considered for transitional licensing, we will consider whether applicants and authorised bodies are capable of effectively performing the financial advice service. The capabilities that we will assess at full licensing will depend upon the scope of financial advice service of each financial advice provider included in the application, as well as the licence class applied for.

To allow for more streamlined licence applications and assessment criteria, we are going to specify different classes of financial advice service for the purposes of licensing, as we are permitted to do by section 395(2) of the FMC Act. This means that applicants can apply for (and be assessed for) the class of licence that best suits their particular circumstances and the nature of the service they and their authorised bodies intend to provide.

We are proposing to specify **three** licence classes for financial advice providers: Class A, Class B and Class C. Licence classes apply to the *manner* in which regulated financial advice may be provided but do not limit the *types* of financial advice that may be provided under the licence, as the latter is addressed by the competency requirements in the new code. Licence classes are incremental from A to C. Each incremental class of licence incorporates and permits all service classes below it, as described below. All standard conditions proposed in this document apply to each licence class equally.



### 2.2.1 Class A

A Class A licence covers the service of the *licence holder* providing regulated financial advice to retail clients:

- on the licence holder's own account; and/or
- through a sole adviser practice structure.

A **sole adviser practice structure** is a structure where:

- the licence holder is an entity; and
- the licence holder engages only one financial adviser, who must be engaged directly, and is (and must remain) either the sole director, or one of two directors, of the licence holder.

#### *What does this mean in practice?*

A Class A licence effectively covers the service of providing advice as a sole adviser business (whether incorporated or unincorporated). It does not permit the use of interposed persons, authorised bodies, multiple financial advisers, or nominated representatives. It allows:

- an individual licensee to provide advice on his or her own account
- a corporate licensee to provide advice on its own account (e.g. through a digital channel) and/or to provide advice through one financial adviser, who must be the director (or one of only two directors) of the corporate licence holder.

Holding a Class A licence means that the licence holder can only provide the type of service covered by the licence. For example, under a Class A licence:

- a corporate licence holder cannot have an interposed person arrangement. – i.e. the licence holder must directly engage the sole financial adviser
- an individual licence holder cannot engage any financial advisers to provide advice on their behalf
- the licence holder cannot have authorised bodies on the licence
- the licence holder cannot engage nominated representatives to provide advice on its behalf
- the licence holder cannot engage any entities to provide advice on its behalf.

### 2.2.2 Class B

A Class B licence covers the service of a *financial advice provider* (whether the licence holder or any authorised body) providing regulated financial advice to retail clients:

- on the financial advice provider's own account; and/or
- through one or more financial advisers.

#### *What does this mean in practice?*

A Class B licence permits the licence holder and any authorised bodies to engage any number of financial advisers, but it does not allow the licence holder or any authorised bodies to engage nominated representatives. Those advisers may be directly or indirectly engaged, however no person can use an interposed person arrangement without specific approval from the FMA on a case-by-case basis.



Under a Class B licence, the licence holder and any authorised body can provide any service covered by a Class B licence (subject to the terms of each authorisation).

A Class B licence also covers all of the services covered by a Class A licence. For example, an entity that only provides advice on its own account may wish to apply for a Class B licence if it intends to engage a number of financial advisers in future. In this case it would be assessed for its capability to provide a Class B licence service, and will also need to notify us when the financial advisers are engaged (as per standard condition 8: *Notification of material changes*).

Under a Class B licence:

- a financial advice provider cannot engage nominated representatives to provide advice on its behalf
- a financial advice provider cannot engage any entities to provide advice on its behalf.

### 2.2.3 Class C

A Class C licence covers the service of providing regulated financial advice to retail clients in any manner, subject to the limitations in the FMC Act.

#### *What does this mean in practice?*

A Class C licence covers all of the services covered by a Class A and Class B licence, and permits the licence holder and any authorised bodies to engage any number of nominated representatives, along with any other type of structure permitted by the Act and not covered by licence Class A or B.

This means that a Class C licence permits a financial advice provider to provide regulated financial advice to retail clients:

- on a financial advice provider's own account;
- through one or more financial advisers;
- through one or more individuals nominated as nominated representatives under section 431T of the FMC Act; and/or
- if permitted by a specific licence condition, through an engaged entity.

If a financial advice provider wishes to engage nominated representatives, it must hold, or be an authorised body under, a Class C licence.

Any financial advisers or nominated representatives may be directly or indirectly engaged. However, no person can use an interposed person arrangement without specific approval from the FMA on a case-by-case basis.

### 2.2.4 Financial advice provider full licence class of service

Applicants for a financial advice provider full licence will be asked to select the licence class they wish to apply for.

A licence holder and any authorised body may only provide the class of service to which the licence relates. This means applicants need to choose the class that accommodates the type of financial advice business they, and each of their authorised bodies, plan to provide. For example, if an authorised body wishes to have nominated representatives, then the licence holder would need to apply for (and be granted) a Class C licence, even if the licence holder itself does not intend to have nominated representatives.



Subject to complying with the FMC Act and regulations (including the standard conditions), financial advice providers may change the manner of how they provide their financial advice service at any time (for example by commencing to provide digital advice), but must stay within the limitations of the licence class.

If a licence holder or any authorised body wishes to provide a type of service not covered by their current licence, the licence holder will need to apply for a new class of licence. To avoid unnecessary licence costs, applicants should give consideration to their future plans, and those of any authorised bodies, and select the appropriate licence class of service at the outset.

The relevant licence fee as set in [regulations](#) will be applied, based on the class of licence applied for.

## 2.3 Timing

We will start accepting full licence applications when the new legislation takes effect, which is anticipated to be no earlier than March 2021. Once a specific date is known this will be communicated.

We are currently developing the full licensing application form and preparing a guide with details on how to apply. Once the form and guide are finalised we will publish these on our website.

If you will be operating under a transitional licence we recommend you allow sufficient time when submitting your full application for us to process it before your transitional licence expires. We will provide further guidance on the timeframe in due course. If you are issued with a full licence during the two-year transitional period your transitional licence will cease to cover any type of regulated financial advice that is covered by your full licence.



## 3 Proposed standard conditions

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### 3.1 Overview

Licence conditions can be imposed by legislation or by the FMA when we issue a licence. Conditions are obligations that licence holders, and those authorised under a licence, must comply with. Licence conditions can be standard (i.e. apply to all licences) or specific (i.e. apply to an individual licence holder or authorised body).

### 3.2 Why licence conditions are necessary

Licence conditions may be imposed on licences in relation to the licensing assessment requirements. Conditions are necessary to ensure that licence holders continue to meet requirements, and to help us effectively monitor the licensed population. We have commented more specifically below on why we think these proposed standard conditions are needed.

### 3.3 Proposed standard conditions for financial advice provider full licences

In the following proposed standard conditions, unless the wording specifically indicates otherwise, 'you' and 'your' means the person who holds the licence and each of the licence holder's authorised bodies. In all instances 'us' and 'we' means the FMA.

We are considering imposing eight standard conditions on financial advice provider full licences relating to the following:

1. Record keeping
2. Internal complaints process
3. Regulatory returns
4. Outsourcing
5. Professional indemnity insurance
6. Business continuity and technology systems
7. Ongoing eligibility
8. Notification of material changes

You can see the full details of the proposed conditions below.



## 1. Record keeping

**Condition:** You must create in a timely manner and maintain adequate records in relation to your financial advice service.

Your records:

- (a) must be kept in a form (which may be electronic) and manner that ensures the integrity of the information and enables it to be conveniently inspected and reviewed by us;
- (b) may be in any language providing you create and keep an accurate summary of the record in English and, if required by us, provide a full translation of the record into English by a translator approved by us;
- (c) must be available for inspection by us at all reasonable times; and
- (d) must be kept for a period of at least 7 years from the later of:
  - (i) the date the record is made; and
  - (ii) the date the financial advice to which the record relates is given; and
  - (iii) the date any later record is made that refers to or relies upon information in the record.

**Explanatory note:** Records will be adequate if they clearly demonstrate (together with your systems, process and controls) how you, and any person engaged by you, and the regulated financial advice given to your retail clients by you or on your behalf, met the requirements relating to financial advice and financial advice services in the FMC Act, FMC Regulations and the Code of Professional Conduct for Financial Advice Services.

Your records should include (without limitation):

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

Your records should be readily available to you, and in any event within 10 working days when requested by us.

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

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

### Our comments

The record keeping standard condition for full licences is the same standard condition wording applicable to transitional licences. The explanatory note for this standard condition has been expanded from that which accompanied the condition on transitional licences. The expansion is to provide additional guidance on our expectations, based on questions we have received and our findings from monitoring activities to date.

Businesses already need to keep adequate records. Keeping adequate records is a standard requirement for a good business and key to ensuring good conduct and culture. Given this, the condition is necessary to promote access to quality advice.

The licence condition will promote transparency about the advice services provided by financial advice providers, for monitoring and enforcement purposes.



## 2. Internal complaints process

**Condition:** You must have an internal process for resolving client complaints relating to your financial advice service that provides for:

- (a) complaints to be dealt with in a fair, timely and transparent manner; and
- (b) records to be kept of all complaints and any action taken in relation to them including the dates on which:
  - (i) each complaint was received; and
  - (ii) any action that was taken in relation to that complaint.

**Explanatory note:** A complaint relating to your financial advice service is an expression of dissatisfaction made to you or to a person engaged by you, relating to your financial advice service (including any regulated financial advice given to a retail client by you or on your behalf), or the complaints handling process itself, where a response or resolution is explicitly or implicitly expected.

A complaint includes a complaint about a failure to provide a service or give advice. Any disclosure requirements relating to your internal complaints process are set out in the FMC Regulations.

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

### Our comments

The requirement to have an internal process for resolving client complaints is the same standard condition wording applicable to transitional licences. The explanatory note for this standard condition has been expanded from that accompanying the condition on transitional licences to provide additional guidance on our expectations.

Effective handling of client complaints is a key aspect of good conduct, as it improves the quality of financial advice and services. The purpose of this standard condition is to ensure that client complaints are adequately dealt with and there is a record of any issues arising in relation to the financial advice service. It will also enable us to effectively monitor whether licence holders and authorised bodies are complying with their obligations. Having this as a licence condition (even though external dispute resolution schemes may also require it) means we can take appropriate regulatory action against the licence holder and any authorised body if they do not comply. An internal process for resolving client complaints does not have to be complex or expensive. How you comply with this condition will depend on the nature and scale of your business.

The licence condition will provide certainty that customers have access to a fair, timely and transparent process for resolution of complaints. This will promote fair, efficient and transparent financial markets.



### 3. Regulatory returns

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

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

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

Under section [412](#) of the FMC Act you have obligations to report various matters to the FMA as soon as practicable, including any material change of circumstances. This standard condition is in addition to those reporting obligations and any other reporting obligations that may be imposed in regulations. The regulatory returns will help the FMA to understand the profile of your business and to focus its resources appropriately. This is likely to require reporting of factual business information, such as business volumes and services types, numbers of customers, numbers and types of breaches, and complaints information. FMA will consult with industry prior to publication of the Regulatory Return Framework and Methodology that will form part of the standard conditions.

#### Our comments

This standard condition wording is the same as that applied to other licences issued under the FMC Act. The purpose of the condition is to enable us to obtain updated information from financial advice providers from time to time – for example annually – to identify any changes in risk profile after licensing. Authorised financial advisers will be familiar with annual regulatory returns required under the Financial Advisers Act 2008.

Recurring reporting to us will be based on a Regulatory Return Framework that describes the ongoing information to be provided for the licensed service.

At this stage we do not believe that recurring regulatory returns will be required within the first two years of the new regime, as full licensing will progressively replace transitional licensing data before a measure of sector stability is likely to be achieved.



## 4. Outsourcing

**Condition:** If you outsource a system or process that is material to the provision of your financial advice service you must ensure that your arrangements enable you to meet your market service licensee obligations at all times.

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

Important matters that you should consider in respect of your outsource arrangements:

- Being satisfied that each provider is, and remains, capable of performing the service to the standard required to enable you to meet your financial advice service licensee obligations.
- Having contractual arrangements with each provider that enable you to effectively monitor their performance and take appropriate action for non-performance, and having suitable termination provisions to enable you to continue to meet your licensee obligations at all times.
- Ensuring that any records held by providers pertaining to your financial advice service obligations are readily available to you and to us in accordance with standard condition 1 (Record keeping).
- Regular reviews of your outsource arrangements, at a frequency appropriate to the risk involved.

### Our comments

Financial advice providers may enter into, and change, outsourcing arrangements. The purpose of this condition is to ensure that financial advice providers monitor and regularly review their outsource providers and associated arrangements, as responsibility for meeting licence obligations remains with the financial advice provider.

Examples of arrangements captured by this condition include outsourcing:

- hosting of technology that supports digital financial advice
- scanning of advice documents into a customer relationship management record keeping system
- the review of compliance processes to a professional services company.

Outsourcing of non-related services, such as office cleaning, are not covered by this condition.



## 5. Professional indemnity insurance

**Condition:** You must have and maintain a level and scope of professional indemnity insurance that is adequate and appropriate for the provision of your financial advice service to retail clients in New Zealand.

**Explanatory note:** This condition requires that you must have adequate professional indemnity cover continuously in place for all activities related to the provision of regulated financial advice to your retail clients in New Zealand, including the activities of all those you engage to provide financial advice on your behalf.

We are not prescribing a specific level of cover in this condition as we believe that it requires each financial advice provider to consider their particular scope of advice, financial advice product mix, client demographics, and advice operating structure.

Suitable professional indemnity insurance:

- (a) has limits of indemnity, in aggregate and for any one claim, that are adequate and appropriate for the nature, scale and complexity of the financial advice service you provide to retail clients in New Zealand, and the extent to which the indemnity limits of your insurance are individually accessed or shared with others; and
- (b) has a level of policy excess or deductible that you are able to meet with your financial resources; and
- (c) provides cover for all activities undertaken for your financial advice service to retail clients in New Zealand including, where necessary, past activities; and
- (d) includes those you engage to provide regulated financial advice to retail clients on your behalf.

We expect you to be able to demonstrate how you have determined that your professional indemnity insurance meets the requirements of this condition.

### Our comments

The purpose of this standard condition is to ensure that retail clients can be compensated for financial loss as a result of a breach of a professional duty by a financial advice provider and those they engage. We understand that many product providers already require those holding agency or distribution agreements to have access to professional indemnity Insurance cover, and we wish to obtain feedback on the level of additional regulatory burden that would be created by this condition (if any).

We intend to ask for information regarding professional indemnity cover at the time of licence application. Where an applicant demonstrates that they are unable to obtain appropriate cover, or has other valid reasons for not having cover, then we intend applying a specific licence condition waiving this standard condition. The specific condition will require the disclosure to retail clients that the financial advice provider does not have professional indemnity cover. This approach will ensure that retail clients are fully informed regarding the status of their financial advice provider with regard to professional indemnity cover.



## 6. Business continuity and technology systems

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

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

You must notify us within 5 working days of you discovering any event that materially impacts the cybersecurity of your critical technology systems and provide details of the event, the impact on your financial advice service and clients, as well as your remediation activity.

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

Your plan should consider the loss of availability of your key resources, including staff, records, systems, suppliers and premises. The extent of your business continuity plan should reflect the size and complexity of your financial advice service, operational arrangements and exposure to disruptive events. A small business with simple processes and technology may only need a relatively brief plan covering a more limited range of likely disruptive events. A larger or more complex business, relying more extensively on technology systems and possibly operating from multiple locations, will need to consider a wider range of disruptive events and reflect this in a more comprehensive business continuity plan.

Irrespective of the complexity of your circumstances, it is important that your business continuity plan is maintained, reviewed, and regularly tested – at least annually.

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

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

- (a) regularly identifying and reviewing your risks and cyber threats; and
- (b) implementing measures that maintain the level of cybersecurity necessary for your risk profile; and
- (c) having effective processes that monitor and detect activity that impacts your cybersecurity; and
- (d) including in your business continuity plan your predetermined procedures for responding to, and



recovering from, events that impact on your cybersecurity.

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

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

#### **Our comments**

The purpose of this standard condition is to ensure that financial advice providers have suitable arrangements in place to ensure that they are able to manage disruptions to their business. By doing so, retail clients will have the security of continuity of the financial advice service they receive from providers.

The condition requires all financial advice providers to have an appropriate and regularly tested business continuity plan that enables them to respond to and recover from an event that disrupts their licensed service. The condition does not prescribe the scope of such a plan and allows for flexibility. The requirement to have a suitable business continuity plan is wider than just disruptions to technology systems. All financial advice providers must consider their own structures and arrangements, and the disruptive risks that could impact them.

Where a financial advice provider relies on technology systems as a core part of providing their service or to meet their licence obligations, the condition requires that those critical technology systems must be secure, reliable and addressed as part of business continuity planning.

Standard 5 of the new Code of Professional Conduct for Financial Advice Services requires that client information must be protected. We highlight that systems such as laptops holding client information, which might ordinarily be considered to be operationally less critical, are also at risk. To meet their obligations, financial advice providers will need to consider their risks across all of their technology.



## 7. Ongoing eligibility

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

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

This condition requires you to continue to meet those requirements at all times. It does not prevent you from making changes to your business or the scope of your service (subject to your applicable licence class), provided you can continue to meet those requirements.

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

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

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

For further information in relation to the eligibility and other requirements see the Financial Advice Provider Licensing Application Guide.

### Our comments

The FMA assesses eligibility at the time of licensing.

The purpose of this standard condition is to ensure that all financial advice providers continue to meet the eligibility and other requirements of the FMC Act.

When published, the Financial Advice Provider Licensing Application Guide will provide more information on this standard condition.



## 8. Notification of material changes

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

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

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

The purpose of this standard condition is to ensure that we are informed of any material changes that you make to your business, whether or not they may have a material adverse effect on your ability to provide your financial advice service, so that we can engage with you as necessary.

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

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

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

- engage any financial advisers to provide regulated financial advice on your behalf; or
- engage any nominated representatives to provide regulated financial advice on your behalf; or
- provide regulated financial advice directly to your clients, for example through automated digital systems.



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

### Our comments

After licensing, a financial advice provider may wish to make changes to their financial advice service, as permitted within their licence class. This condition requires FMA to be notified when a financial advice provider makes material changes to the manner in which regulated financial advice is provided to retail clients, or where in meeting the competency requirements of the new code reliance is placed on the financial advice provider's systems, processes and expertise. In these cases the financial advice provider will need to ensure that suitable new controls and oversight are in place – and these may not have been assessed by us at the time of licensing.

The notification will enable us to accurately maintain financial advice provider risk profiles and appropriately target our monitoring efforts to ensure that financial advice providers continue to be capable of effectively providing the financial advice service covered by their licence class. The proposed condition includes an explanation that certain less-significant changes are not required to be notified to FMA – as we anticipate these types of changes will be tracked through annual regulatory returns.



## 4 Questions

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### 4.1 Condition 1 – Record keeping

- (a) Do you agree or disagree with the proposed standard condition? Please provide your reasons.
- (b) What written records do you currently keep for your financial advice business?
- (c) Would the proposed standard condition create any additional compliance costs for your business? If so, please detail those costs.
- (d) Would the proposed standard condition have any other adverse impact on your business? If so, please describe what this would be.
- (e) Does this proposed standard condition create a barrier to enter the market? If so, please explain why this is the case.
- (f) Do you have any other comments on the proposed condition or how it is drafted?

### 4.2 Condition 2 – Internal complaints process

- (a) Do you agree or disagree with the proposed standard condition? Please provide your reasons.
- (b) Do you currently have an internal complaints process for your financial advice business that meets the requirements of the proposed standard condition?
- (c) Would the proposed standard condition create any additional compliance costs for your business? If so, please detail those costs.
- (d) Would the proposed standard condition have any other adverse impact on your business? If so, please describe what this would be.
- (e) Does this proposed standard condition create a barrier to enter the market? If so, please explain why this is the case.
- (f) Do you have any other comments on the proposed condition or how it is drafted?



### 4.3 Condition 3 – Regulatory returns

- (a) Do you agree or disagree with the proposed standard condition? Please provide your reasons.
- (b) Would the proposed standard condition create any additional compliance costs for your business? If so, please detail those costs.
- (c) Would the proposed standard condition have any other adverse impact on your business? If so, please describe what this would be.
- (d) Does this proposed standard condition create a barrier to enter the market? If so, please explain why this is the case.
- (e) Do you have any other comments on the proposed condition or how it is drafted?

### 4.4 Condition 4 – Outsourcing

- (a) Do you agree or disagree with the proposed standard condition? Please provide your reasons.
- (b) What core financial advice services do you currently outsource?
- (c) Would the proposed standard condition create any additional compliance costs for your business? If so, please detail those costs.
- (d) Would the proposed standard condition have any other adverse impact on your business? If so, please describe what this would be.
- (e) Does this proposed standard condition create a barrier to enter the market? If so, please explain why this is the case.
- (f) Do you have any other comments on the proposed condition or how it is drafted?

### 4.5 Condition 5 – Professional indemnity insurance

- (a) Do you agree or disagree with the proposed standard condition? Please provide your reasons.
- (b) Do you currently hold professional indemnity insurance covering financial advice service activities?
- (c) Would the proposed standard condition create any additional compliance costs for your business? If so, please detail those costs.
- (d) Would the proposed standard condition have any other adverse impact on your business? If so, please describe what this would be.
- (e) Does this proposed standard condition create a barrier to enter the market? If so, please explain why this is the case.
- (f) Do you have any other comments on the proposed condition or how it is drafted?



## 4.6 Condition 6 – Business continuity and technology systems

- (a) Do you agree or disagree with the proposed standard condition? Please provide your reasons.
- (b) Do you currently have a documented business continuity plan?
- (c) Do you currently rely on critical technology systems to deliver a financial advice service?
- (d) Would the proposed standard condition create any additional compliance costs for your business? If so, please detail those costs.
- (e) Would the proposed standard condition have any other adverse impact on your business? If so, please describe what this would be.
- (f) Does this proposed standard condition create a barrier to enter the market? If so, please explain why this is the case.
- (g) Do you have any other comments on the proposed condition or how it is drafted?

## 4.7 Condition 7 – Ongoing capability

- (a) Do you agree or disagree with the proposed standard condition? Please provide your reasons.
- (b) Would the proposed standard condition create any additional compliance costs for your business? If so, please detail those costs.
- (c) Would the proposed standard condition have any other adverse impact on your business? If so, please describe what this would be.
- (d) Does this proposed standard condition create a barrier to enter the market? If so, please explain why this is the case.
- (e) Do you have any other comments on the proposed condition or how it is drafted?



## 4.8 Condition 8 – Notification of material changes

- (a) Do you agree or disagree with the proposed standard condition? Please provide your reasons.
- (b) Would the proposed standard condition create any additional compliance costs for your business? If so, please detail those costs.
- (c) Would the proposed standard condition have any other adverse impact on your business? If so, please describe what this would be.
- (d) Does this proposed standard condition create a barrier to enter the market? If so, please explain why this is the case.
- (e) Are there any other material matters other than those detailed in the explanatory note that should be notified to FMA?
- (f) Do you have any other comments on the proposed condition or how it is drafted?

## 4.9 Financial advice provider full licence classes

- (a) Do you agree or disagree with our approach to divide a financial advice service into three distinct licence classes? Please provide your reasons.
- (b) Do the proposed licence classes create a barrier to enter the market? If so, please explain why this is the case.
- (c) Do you have any other comments on the proposed full licence classes?

