



Financial Advisers (Personalised DIMS) Regulations 2014

Jerry Mateparae, Governor-General

Order in Council

At Wellington this 3rd day of November 2014

Present:

His Excellency the Governor-General in Council

Pursuant to sections 29A, 42, 54(a)(iiia), and 154(1)(a), (ga), (gb), (gd), and (3) of the Financial Advisers Act 2008, His Excellency the Governor-General makes the following regulations, acting—

- (a) on the advice and with the consent of the Executive Council; and
- (b) on the recommendation of the Minister of Commerce and Consumer Affairs made in accordance with section 154(4) and (5) of that Act.

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Regulations

- 1 Title**
These regulations are the Financial Advisers (Personalised DIMS) Regulations 2014.
- 2 Commencement**
These regulations come into force on 1 December 2014.
- 3 Interpretation**
- (1) In these regulations, unless the context otherwise requires,—
- Act** means the Financial Advisers Act 2008
- address**, of a person (A), means—
- (a) the address (including an electronic address) specified by A for the relevant purpose; or
 - (b) the actual or last known address (including an electronic address) for A, if—
 - (i) paragraph (a) does not apply; or
 - (ii) the sender knows that the address referred to in paragraph (a) is not correct

custodial fee means a fee paid to a custodian for the safe keeping of an asset

disclosure year means, for a personalised DIMS provided to a client,—

- (a) a 12-month period starting on a date in each year that is—
 - (i) 1 April; or
 - (ii) another date that the authorised financial adviser determines before that other date and in respect of the client; or
- (b) if, as a result of the 2 latest specified or determined dates differing (*see* subclause (4)), the period ending on the last of those 2 dates is longer or shorter than 12 months, that longer or shorter period

individual action fees means fees charged to a client on an individual basis for client-specific decisions or actions

other charges—

- (a) means fees and costs charged by any person in respect of the provision of the service; and
- (b) includes fees charged by any person in respect of a fund—
 - (i) in which money is invested under the service; and
 - (ii) that is managed by the provider or by an associated person of the provider (with **associated person** having, in accordance with subclause (6) and section 6(1) of the Financial Markets Conduct Act 2013, the meaning set out in section 12(1) of that Act); but
- (c) does not include percentage-based charges, individual action fees, or trading expenses

percentage-based charges—

- (a) means fees and costs charged by any person in respect of the provision of the service that affect a client in proportion to the client's portfolio; and
- (b) includes fees charged by any person in respect of a fund that affects a client in proportion to the client's interest in the fund, being a fund—
 - (i) in which money is invested under the service; and

- (ii) that is managed by the provider or by an associated person of the provider (with **associated person** having, in accordance with subclause (6) and section 6(1) of the Financial Markets Conduct Act 2013, the meaning set out in section 12(1) of that Act); but
 - (c) does not include trading expenses
- return**, for the purposes of regulation 9(1)(b) and (c) and (2), in relation to a portfolio for a period,—
- (a) means the percentage change in the value of the portfolio over the period; and
 - (b) must be calculated using a method that disregards the effect on the value of the portfolio of money or property added to, or withdrawn from, the portfolio over the period by a client; and
 - (c) must be calculated in accordance with an applicable framework or methodology (if any) specified in a notice issued by the FMA under subpart 4 of Part 9 of the Financial Markets Conduct Act 2013 (if any); and
 - (d) if the period is more than 1 year, must be calculated as the average annual compound return
- trading expense**—
- (a) means the actual costs of buying and selling investments, such as brokerage fees and spreads; but
 - (b) does not include custodial fees.
- (2) The categories of assets for the purposes of regulation 9(1)(l) are the following:
- (a) cash and cash equivalents:
 - (b) New Zealand fixed interest (which includes only fixed-interest assets the country of which is New Zealand):
 - (c) international fixed interest (which includes all fixed-interest assets the country of which is not New Zealand):
 - (d) Australasian equities (which includes only those equities the country of which is Australia or New Zealand):
 - (e) international equities (which includes all equities the country of which is not Australia or New Zealand):
 - (f) listed property:
 - (g) unlisted property:
 - (h) commodities:

- (i) other.
- (3) The country of an asset is,—
 - (a) if the asset is approved for trading on 1 or more financial product markets, the country of the financial product market that has primary jurisdiction for the listing requirements for the asset; and
 - (b) if the asset is not approved for trading on a financial product market but is issued by an entity that is incorporated, the country in which the entity is incorporated; and
 - (c) in any other case, the country in which the issuer or asset is located.
- (4) For the purposes of the definition of disclosure year in subclause (1), the 2 latest specified or determined start dates may differ so long as the period between them does not exceed 15 months.
- (5) An end date for the purposes of the definition of quarter in regulation 8(4) may be determined at the same time as, or after, a start date is determined for the purposes of the definition of disclosure year in subclause (1).
- (6) Any term or expression that is defined in the Act or (as the case requires) the Financial Markets Conduct Act 2013 and used, but not defined, in or by these regulations has the meaning given by the Act or (as the case requires) the Financial Markets Conduct Act 2013.

4 Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in the Schedule have effect according to their terms.

Eligibility criteria for being authorised for providing personalised DIMS

5 Eligibility criteria prescribed

- (1) This regulation prescribes criteria for the purposes of section 54(a)(iiia) of the Act for a person (A) to be authorised (under section 55(1)(b) or (d), or section 55(1)(b) and (d), of the Act) in respect of providing a personalised DIMS.
- (2) The eligibility criteria are—

- (a) A is capable of performing effectively the personalised DIMS (having regard to—
 - (i) the proposed conditions of A's authorisation; and
 - (ii) the arrangements of any other person involved in the provision of the personalised DIMS); and
- (b) there is no reason to believe that A is likely to contravene all or any of A's obligations under the Act or the regulations.

*Client agreements governing personalised
DIMS provided to retail clients*

6 Client agreements must provide for certain matters

- (1) A client agreement required by section 41 of the Act must, in accordance with section 42(1) of the Act, provide adequately for the following matters:
 - (a) if client money or client property is to be held under the service on behalf of clients,—
 - (i) how custodial services will be provided under the service and the process for appointing and removing a custodian; and
 - (ii) whether and, if so, how the client may give instructions to exercise rights over the client's financial products (for example, a right to vote at meetings of product holders); and
 - (iii) the consequences of the termination of the client agreement, including whether any financial products held by a custodian on behalf of the client under the service will be transferred to the client, will continue to be held by the custodian, or will be sold; and
 - (iv) how holdings of wholesale products (if any) will be dealt with on termination of the client agreement:
 - (b) how the investment authority may be changed:
 - (c) a right for the client to terminate the client agreement without penalty:
 - (d) how the right under paragraph (c) may be exercised within a reasonable notice period.

- (2) **Wholesale products**, in subclause (1)(a)(iv), means financial products that the client is eligible to acquire only by virtue of the client acquiring the products through a discretionary investment management service.

Compare: LI 2014/50 r 44

*Further information to be made available to
retail clients provided personalised DIMS*

7 Ongoing reporting information

- (1) An authorised financial adviser who provides a personalised DIMS to a retail client is required under section 29A of the Act to make available to the client, as regulation 8 prescribes, the information prescribed in subclauses (2) to (4).
- (2) The information is a record of all transactions made by the adviser on behalf of the client under the service during the reporting period, including for each transaction (to the extent applicable)—
- (a) the name of the issuer and the number and class of financial products to which the transaction relates; and
 - (b) the price per financial product; and
 - (c) the total amount of the transaction; and
 - (d) the date of the transaction.
- (3) The information is also the following as at the reporting time:
- (a) the name of each class of financial products in the client's portfolio, the name of the issuer of those products, and the number of those products in the client's portfolio; and
 - (b) the cash held for the client under the service.
- (4) The information is also the following in respect of the client's portfolio:
- (a) all dividends paid, all interest paid, and other distributions or income received during the reporting period:
 - (b) all percentage-based charges paid during the reporting period:
 - (c) all other charges paid during the reporting period:
 - (d) all individual action fees paid during the reporting period:

- (e) other information that the authorised financial adviser reasonably believes the client needs in order to have a reasonable understanding of any corporate action that affects the client's portfolio (for example, bonus issues).
- (5) If the information required under subclause (2), (3), or (4) is made available to a client by a person (A) on behalf of the authorised financial adviser (for example, by a custodian), the information must be accompanied by a statement to that effect (and the statement must include A's name and role).
- (6) An authorised financial adviser who provides a personalised DIMS to a retail client is required under section 29A of the Act to make available to the client, within 5 working days after receiving a request, the following requested information to the retail client who makes the request:
 - (a) the current value or the most recent valuation of any of the financial products in the client's portfolio and a statement of—
 - (i) the basis on which that value is assessed or the valuation is carried out (for example, the value of quoted products is the market price); and
 - (ii) the date on which the value is assessed or of the valuation; and
 - (b) the total value of the financial products in the client's portfolio (based on the values disclosed under paragraph (a)).
- (7) The information under subclause (6) must be made available by giving it to the client or delivering or sending it to the client's address.
- (8) In this regulation, financial products are of the same **class** if those financial products have attached to them identical rights, privileges, limitations, and conditions (including, in the case of debt securities, the same redemption date and interest rate).

8 How ongoing reporting information to be made available

- (1) This regulation applies for the purposes of regulation 7(1) to (5).
- (2) The information must be made available to the client (A)—

- (a) through an electronic facility on a substantially continuous basis (but only if A has agreed to this method); or
 - (b) by giving it to A or delivering or sending it to A's address not later than 20 working days after the last day of each reporting period in each year.
- (3) In the case of subclause (2)(b), the information must cover the most recently completed reporting period.
- (4) In this regulation and regulation 7,—

quarter means each 3-month period of a disclosure year (where each quarter ends on the date that the authorised financial adviser determines before that year)

reporting period means,—

- (a) in the case of subclause (2)(a), the period starting when regulation 7 first applies to the authorised financial adviser in respect of A and ending at a stated time (the **stated time**) that is not earlier than 48 hours before the information is made available:
- (b) in the case of subclause (2)(b),—
 - (i) each of the 4 quarters of a disclosure year; or
 - (ii) any period shorter than a quarter of a year that is agreed with A

reporting time means,—

- (a) in the case of subclause (2)(a), the stated time;
- (b) in the case of subclause (2)(b), the end of the reporting period.

9 Annual reporting information

- (1) An authorised financial adviser who provides a personalised DIMS to a retail client is required under section 29A of the Act to make available to the client, as regulation 10 prescribes, the following information in respect of the most recently completed disclosure year:
- (a) a description of—
 - (i) the investment strategy to which the information provided under this regulation relates (including the investment objectives and a diagram or other description summarising the target investment mix under the strategy); and

- (ii) the material changes to the investment strategy that have been made during the disclosure year (if any):
- (b) the return on the client's portfolio before tax but net of fees and trading expenses—
 - (i) over the disclosure year; and
 - (ii) over the 5-year period ending on the close of the disclosure year:
- (c) a bar graph showing the return on the client's portfolio before tax but net of fees, indicated by a bar on the graph and as a figure near the corresponding bar, that has been generated for the client for—
 - (i) each complete disclosure year since the date on which the client first started using the service; or
 - (ii) each of the last 10 complete disclosure years, if the client has been using the service for 10 or more complete disclosure years:
- (d) the name of each class of financial products in the client's portfolio, the name of the issuer of those products, and the number of those products in the portfolio (as at the end of the disclosure year):
- (e) the current value of each of those financial products (as at the end of the disclosure year) or the most recent valuation of each of those financial products that was available at the end of the disclosure year, and a statement of—
 - (i) the basis on which that value is assessed or the valuation is carried out (for example, the value of quoted products is the market price); and
 - (ii) the date on which the value is assessed or of the valuation:
- (f) the total value of the client's portfolio at the beginning and the end of the disclosure year (based on the values disclosed under paragraph (e) and in the previous annual disclosure made under this regulation):
- (g) the cash held for the client under the service at the end of the disclosure year:

- (h) the total of all dividends paid, all interest paid, and other distributions or income received, in respect of the client's portfolio during the disclosure year:
 - (i) the total percentage-based charges paid during the disclosure year in respect of the client's portfolio, expressed as a percentage of the client's portfolio:
 - (j) the total amount of other charges paid during the disclosure year in respect of the client's portfolio:
 - (k) the individual action fees of each type paid during the disclosure year in respect of the client's portfolio:
 - (l) a pie graph showing the composition of the financial products in the client's portfolio at the end of the disclosure year, according to the asset categories specified in regulation 3(2):
 - (m) a reminder that the client may request past quarterly reports or obtain further information from the electronic facility referred to in regulation 8, as applicable.
- (2) The following apply in relation to that information:
- (a) the information under subclause (1)(b) or (c) may also include return information for the same periods net of trading expenses but before all other fees and tax:
 - (b) subclause (1)(b) and (c) applies only in respect of disclosure years that start on or after 1 December 2014:
 - (c) information about a disclosure year under subclause (1)(b) is not required if the client did not have a client's portfolio over the whole of that period:
 - (d) the information under subclause (1)(c) may be provided in a table (instead of a bar graph):
 - (e) information under subclause (1)(f) about the beginning of a disclosure year is not required if—
 - (i) the client does not have a client's portfolio at the beginning of that disclosure year; and
 - (ii) the information provided under subclause (1) contains a statement of the reason why information about the beginning of the disclosure year is not included:
 - (f) the information may be combined in a document that includes ongoing reporting information under regulation 7.

- (3) The information specified in subclause (1)(l) must be based on the information that the provider judges to be the most appropriate to produce an accurate representation of the assets.

10 How annual reporting information to be made available

- (1) This regulation applies for the purposes of regulation 9.
- (2) The information must within 20 working days after the end of each disclosure year be made available to the client (A)—
- (a) through an electronic facility (but only if A has agreed to this method); or
 - (b) by giving it to A or delivering or sending it to A's address.

11 Obligations under Financial Advisers (Disclosure) Regulations 2010

Regulations 7 to 10 do not limit the adviser's obligations under the Financial Advisers (Disclosure) Regulations 2010.

Schedule

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Transitional, savings, and related provisions

Arrangements for
specified existing DIMS providers

1 Application

Clauses 2, 3, and 4 apply to a person (A) who—

- (a) at the close of 30 November 2014 was permitted by sections 17(1)(a) and 18 to 20 of the Act to provide a financial adviser service that is a discretionary investment management service (even if not a personalised DIMS); and
- (b) is therefore also a person to whom the Financial Markets Conduct Regulations 2014, Schedule 1, clause 5 (existing DIMS providers not subject to licensing until either 31 May 2015 or 1 December 2015) applies.

2 Existing DIMS provider can be exempt from client agreement requirement, but prescribed provisions are implied into client agreement

- (1) A is not required by section 42(1) of the Act (even for a personalised DIMS first provided to the client concerned after 30 November 2014) to comply with regulation 6(1)(a) to (d)—
- (a) on and after 1 June 2015, if A, on or before 31 May 2015, gives the FMA an up-to-date version of the adviser business statement (if any) required by the terms and conditions (if any) of the FMA's current authorisation (if any) under section 55 of the Act in respect of the provision of the service; and
 - (b) on and after 1 December 2015, if A, on or before 30 November 2015, sends to the client (**B**) at B's last known address a written notice that contains, or is accompanied by, a description of how the service works, being a description that includes the information specified in paragraph 1A(a) to (f) and (h) of Schedule 2 of the Financial Advisers (Disclosure) Regulations 2010.
- (2) If a written notice is sent to B under subclause (1), the following provisions must be treated as being implied into the client agreement in respect of the DIMS provided to B (unless or until the client agreement expressly provides otherwise):
- (a) the investment authority may be changed only by written agreement between A and B:
 - (b) B may terminate the client agreement, without penalty, by giving 2 days' written notice to A.

3 Existing DIMS provider can be exempt from investment authority requirements

A is not required (even for a personalised DIMS first provided to the client concerned after 30 November 2014) to comply with section 43(2) of the Act—

- (a) on and after 1 June 2015, if A, on or before 31 May 2015, gives the FMA an up-to-date version of the adviser business statement (if any) required by the terms and conditions (if any) of the FMA's current authorisation (if any) under section 55 of the Act in respect of the provision of the service; and

- (b) on and after 1 December 2015, if A, on or before 30 November 2015, sends to the client (**B**) at B's last known address a written notice that discloses the scope of the investment authority, including the matters referred to in section 43(2) of the Act.

4 Existing DIMS provider who meets condition need not comply before 1 December 2015 with further information requirements

- (1) A need not (even for a personalised DIMS first provided to the client concerned after 30 November 2014) comply before 1 December 2015 with regulations 7 to 10.
- (2) However, this clause ceases to apply to A on and after 1 June 2015 unless A has on or before 30 May 2015 given the FMA an up-to-date version of the adviser business statement (if any) required by the terms and conditions (if any) of the FMA's current authorisation (if any) under section 55 of the Act in respect of the provision of the service.

Michael Webster,
Clerk of the Executive Council.

Explanatory note

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations, which come into force on 1 December 2014, are made under the Financial Advisers Act 2008 (the **FA Act**) and relate to authorised financial advisers (**AFAs**) who provide a personalised discretionary investment management service (**DIMS**).

These regulations prescribe—

- eligibility criteria for a person to be authorised as an AFA in respect of a personalised DIMS (whether provided to retail clients or wholesale clients):

- matters to be contained, or that must be provided for adequately, in a client agreement governing a personalised DIMS provided to a retail client:
- further (ongoing or annual reporting) information an AFA is required by section 29A of the FA Act to make available to retail clients provided a personalised DIMS by the AFA.

These regulations do not limit the AFA's obligations under the Financial Advisers (Disclosure) Regulations 2010.

Transitional arrangements in these regulations, and that apply to specified existing DIMS providers,—

- must be read together with the Financial Markets Conduct Regulations 2014, Schedule 1, clause 5, which—
 - exempts specified existing DIMS providers, until either 31 May 2015 or 1 December 2015, from the requirement to hold a DIMS licence under the FMC Act; and
 - ensures the FA Act and regulations made under that Act, as in force immediately before 1 December 2014, continue to apply to a DIMS provided by them while they are excepted from that requirement:
- enable them to be exempt, on and after 1 June 2015, from the requirement that the client agreement provide adequately for prescribed matters, but ensure that prescribed provisions are implied into the client agreement:
- enable them to be exempt, on and after 1 June 2015, from complying with section 43(2) (which imposes investment authority requirements) of the FA Act:
- ensure (if, before 1 June 2015, they meet the specified condition) they need not comply before 1 December 2015 with the further information requirements.

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*: 4 November 2014.

These regulations are administered by the Ministry of Business, Innovation, and Employment.
