



Financial Markets Conduct (Financial Reporting—DIMS Licensees) Exemption Notice 2020

Pursuant to section 556 of the Financial Markets Conduct Act 2013, the Financial Markets Authority, being satisfied of the matters set out in section 557 of that Act, gives the following notice.

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Notice

1 Title

This notice is the Financial Markets Conduct (Financial Reporting—DIMS Licensees) Exemption Notice 2020.

2 Commencement

This notice comes into force on 5 June 2020.

3 Revocation

This notice is revoked on the close of 4 June 2025.

4 Application

- (1) An exemption granted by this notice applies to the following accounting periods of a DIMS licensee:
 - (a) an accounting period of the DIMS licensee that commences before the exemption is granted (including an accounting period that ends before the exemption is granted) if the exemption is granted before the financial statements or group financial statements for that period would, but for the exemptions contained in this notice, be required to be delivered to the Registrar for lodgement under section 461H of the Act; and
 - (b) subsequent accounting periods.
- (2) However, an exemption granted by this notice does not apply to a DIMS licensee in respect of an accounting period if—
 - (a) the DIMS licensee is an FMC reporting entity in that accounting period for any reason other than because it holds a DIMS licence; or
 - (b) at any time during that accounting period, the custodian is an associated person of the DIMS licensee (other than by virtue of the custodianship).
- (3) If the DIMS licence is issued to the DIMS licensee during the accounting period, the period of time before the DIMS licence is issued must be disregarded for the purposes of subclause (2)(b).
- (4) Clauses 7 and 10 are subject to this clause.

5 Licence for acting as provider of financial advice service must be disregarded

- (1) This clause applies on and after the commencement of section 16 of the Financial Services Legislation Amendment Act 2019 (which inserts section 388(ba) into the Act).
- (2) The fact that a DIMS licensee holds a licence that covers the service referred to in section 388(ba) of the Act must be disregarded for the purposes of clause 4(2).

6 Interpretation

- (1) In this notice, unless the context otherwise requires,—
Act means the Financial Markets Conduct Act 2013

custodian, in relation to the DIMS provided by a DIMS licensee, means the person who holds the investor money and investor property under the service on behalf of the investors and to whom section 445 of the Act applies

DIMS licence means a licence that covers the service referred to in section 388(c) of the Act

funds under management means funds under management as calculated under clause 13

level 1 licensee has the meaning set out in subclause (2)

level 2 licensee has the meaning set out in subclause (3)

Regulations means the Financial Markets Conduct Regulations 2014.

- (2) A DIMS licensee is a **level 1 licensee** in respect of an accounting period if, in respect of the DIMS provided by the DIMS licensee and as at the first day of the accounting period, the DIMS licensee has less than \$100 million of funds under management.
- (3) A DIMS licensee is a **level 2 licensee** in respect of an accounting period if, in respect of the DIMS provided by the DIMS licensee and as at the first day of the accounting period, the DIMS licensee has not less than \$100 million, but not more than \$250 million, of funds under management.
- (4) The following apply to an example used in this notice:
 - (a) the example is only illustrative of the provisions to which it relates and the example does not limit those provisions:
 - (b) if an example and a provision to which it relates are inconsistent, the provision prevails.
- (5) Any term or expression that is defined in the Act or the Regulations and used, but not defined, in this notice has the same meaning as in the Act or the Regulations.

Exemptions for level 1 licensees

7 Application of exemptions for level 1 licensees

The exemptions in clause 8 apply to a DIMS licensee and an accounting period if the DIMS licensee is a level 1 licensee in respect of that accounting period.

8 Exemptions for level 1 licensees

A DIMS licensee to which the exemptions in this clause apply is exempted from sections 455(1)(c) and (d), 456(2), 460, 461, 461D, and 461H of the Act.

9 Condition of exemptions for level 1 licensees

- (1) The exemptions in clause 8 are subject to the condition that the DIMS licensee, in relation to each accounting period in respect of which it relies on the exemp-

tions, complies with the financial reporting requirements (if any) that would have applied to the DIMS licensee had it not been an FMC reporting entity.

- (2) For the purposes of subclause (1) and a financial reporting requirement to have financial statements or group financial statements audited, the fact that the DIMS licensee is an FMC reporting entity must be disregarded when considering whether a person is qualified to be appointed or to act as the auditor of the DIMS licensee.
- (3) In this clause, **financial reporting requirements** means the requirements imposed by an enactment (other than the Act) to keep accounting records, to prepare financial statements or group financial statements, to have those statements audited, and to register or lodge those statements (or to otherwise make those statements available to members, shareholders, or other persons).

Examples

Example 1

ABC Limited (a DIMS licensee) is a company that would have had financial reporting obligations under subpart 2 of Part 11 of the Companies Act 1993 had it not been an FMC reporting entity. ABC Limited is not a large company. ABC Limited has 10 or more shareholders. See section 196(1)(c) of the Companies Act 1993.

If ABC Limited relies on an exemption for an accounting period, it must, in accordance with subpart 2 of Part 11 of the Companies Act 1993, prepare financial statements or group financial statements and have those statements audited (unless the shareholders of the company opt out of compliance in accordance with that subpart).

In considering who is a qualified auditor in respect of an audit of those statements, the fact that the DIMS licensee is an FMC reporting entity is disregarded (and, accordingly, the auditor is not required to be a licensed auditor as referred to in section 36(2) of the Financial Reporting Act 2013).

Example 2

XYZ Limited (a DIMS licensee) is a company that would have had financial reporting obligations under section 21B of the Tax Administration Act 1994 had it not been an FMC reporting entity.

If XYZ Limited relies on an exemption for an accounting period, it must prepare financial statements in accordance with the applicable minimum requirements prescribed in the Tax Administration (Financial Statements) Order 2014.

Exemptions for level 2 licensees

10 Application of exemptions for level 2 licensees

The exemptions in clause 11 apply to a DIMS licensee and an accounting period if the DIMS licensee is a level 2 licensee in respect of that accounting period.

11 Exemptions for level 2 licensees

- (1) A DIMS licensee to which the exemptions in this clause apply is exempted from—
 - (a) section 455(1)(d) of the Act; and
 - (b) section 461D of the Act; and
 - (c) section 461H of the Act to the extent that it requires a copy of an auditor's report to be delivered to the Registrar for lodgement.
- (2) However, the exemptions in subclause (1)(a) and (c) do not apply in respect of an accounting period if the financial statements or group financial statements prepared under subpart 3 of Part 7 of the Act for that period are required to be audited under clause 12.

12 Condition of audit exemption for level 2 licensees

- (1) This clause applies to a DIMS licensee, in relation to a relevant period, if the DIMS licensee would, in respect of that period, have been subject to auditing requirements had it not been an FMC reporting entity.
- (2) The exemption in clause 11(1)(b) is subject to the condition that the DIMS licensee, in relation to the relevant period, complies with the auditing requirements (where the statements that are audited under those requirements are the financial statements or group financial statements prepared under subpart 3 of Part 7 of the Act).
- (3) For the purposes of subclause (2), the fact that the DIMS licensee is an FMC reporting entity must be disregarded when considering whether a person is qualified to be appointed or to act as the auditor of the DIMS licensee.
- (4) In this clause,—

auditing requirements means the requirements imposed by an enactment (other than the Act) to have financial statements or group financial statements audited

relevant period means an accounting period in respect of which the DIMS licensee relies on the exemption in clause 11(1)(b).

Example

ABC Limited (a DIMS licensee) is a company that would have had financial reporting obligations under subpart 2 of Part 11 of the Companies Act 1993 had it not been an FMC reporting entity. ABC Limited is a large company. See section 206(1)(a) of the Companies Act 1993.

If ABC Limited relies on an exemption for an accounting period, it must, in accordance with section 207 of the Companies Act 1993, have its financial statements or group financial statements that are prepared under the Financial Markets Conduct Act 2013 audited by a qualified auditor (unless the shareholders of the company opt out of compliance with section 207 in accordance with subpart 2 of Part 11 of the Companies Act 1993).

In considering who is a qualified auditor, the fact that the DIMS licensee is an FMC reporting entity is disregarded (and, accordingly, the auditor is not required to be a licensed auditor as referred to in section 36(2) of the Financial Reporting Act 2013).

The auditor's report must be lodged with the financial statements (the lodgement exemption in clause 11(1)(c) does not apply because the statements are audited under the condition in this clause).

Calculating funds under management

13 Calculating funds under management

- (1) This clause applies for the purpose of calculating the amount of the funds under management in respect of the DIMS provided by a DIMS licensee as referred to in clause 6(2) and (3).
- (2) The amount is the sum of the following:
 - (a) the total value of the investors' portfolios of all of the retail investors that use the DIMS as at the start of the relevant accounting period (based on the values referred to in subclause (3)):
 - (b) the cash held under the DIMS for all of the retail investors as at the start of the relevant accounting period.
- (3) The values of investors' portfolios must be based on—
 - (a) the current value of the financial products in the investors' portfolios (as at the time referred to in subclause (2)(a)); or
 - (b) the most recent valuation of those financial products that was available at that time.
- (4) If the date of a valuation is earlier than 3 months before the start of the relevant accounting period, the valuation may be used for the purposes of subclause (3)(b) only if the DIMS licensee is satisfied, on reasonable grounds, that the valuation is likely to be reasonably consistent with the actual current value of the financial products (as at the time referred to in subclause (2)(a)).

Dated at Auckland this 7th day of May 2020.

Nick Kynoch,
General Counsel,
Financial Markets Authority.

Statement of reasons

This notice comes into force on 5 June 2020 and is revoked on 4 June 2025.

This notice applies to certain providers of discretionary investment management services (**DIMS**) who are licensed to provide DIMS under Part 6 of the Financial Markets Conduct Act 2013 (the **Act**).

Exemptions currently apply to DIMS licensees under the Financial Markets Conduct (Financial Reporting—DIMS Licensees) Exemption Notice 2015 (the **2015 notice**), which is revoked on 4 June 2020. This notice renews the exemptions contained in the 2015 notice, with no substantive changes.

The exemptions in the notice apply according to whether a DIMS licensee falls into one of 2 levels. The levels are based on the amount of retail funds under management.

The exemptions do not apply if—

- a DIMS licensee is an FMC reporting entity for any reason other than because it holds a DIMS licence; or
- there is no independent custodian.

The fact that a DIMS licensee may also be licensed to act as a provider of a financial advice service must be disregarded.

The notice exempts level 1 licensees from certain financial reporting requirements under the Act relating to accounting records, the preparation of financial statements that comply with generally accepted accounting practice (**GAAP**), and the audit and lodgement of those financial statements. These DIMS licensees are still required to keep accounting records and meet company or tax financial reporting obligations that would apply to the DIMS licensee if it were not an FMC reporting entity.

The notice exempts level 2 licensees from the requirement under the Act to have financial statements audited by a qualified auditor. These DIMS licensees are still required to comply with any company or other audit requirements that would apply to the DIMS licensee if it were not an FMC reporting entity.

The Financial Markets Authority (the **FMA**), after satisfying itself as to the matters set out in section 557 of the Act, considers it appropriate to grant the exemptions because—

- requiring DIMS licensees to have audited financial statements creates little benefit for monitoring investor money or property when investor money or property is held directly by the investor or by an independent custodian with separate reporting obligations under the Act:
- where investor money and property are held by the investor or by an independent custodian, investors are less likely to place reliance on the level of financial resources that a DIMS licensee has when assessing whether it is able to provide the service, and financial statements and audit requirements for the DIMS licensee's business are consequently likely to be of limited benefit for investors:

- the level of financial resources required to provide a DIMS depends on the nature and scale of the business. Greater resources are likely to be required for large DIMS licensees to ensure that appropriate systems, controls, and oversight are in place. Financial reporting and audit requirements are therefore less relevant for investors where a DIMS licensee’s business is not large:
- DIMS providers that are not large are unlikely to carry on other activities that would otherwise require them to produce audited GAAP-compliant financial statements and the costs of complying with financial reporting and audit requirements are therefore likely to be relatively high for this group. This may act as a barrier to becoming licensed and ultimately may lead to increased market concentration and higher costs for investors:
- as such, the FMA is satisfied that the granting of the exemptions is desirable in order to promote the purposes of the Act, specifically to avoid unnecessary compliance costs and promote the confident and informed participation of businesses, investors, and consumers in the financial markets:
- the FMA is further satisfied that the extent of the exemptions is not broader than is reasonably necessary to address the matters that give rise to the exemptions, given that—
 - the exemptions will apply only where investor money and property are held by an independent custodian or by the investor; and
 - the exemptions will not apply if the DIMS licensee is an FMC reporting entity for any reason other than being a DIMS licensee; and
 - the DIMS licensee’s financial reporting obligations under other enactments will not be affected by the exemptions.

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*: 12 May 2020.

This notice is administered by the Financial Markets Authority.