



# Standard Conditions for Authorised Financial Advisers (AFAs) incorporating explanatory notes

The standard conditions for AFAs were published on 28 October 2010. This version incorporates explanatory notes issued by the Financial Markets. This version incorporates:

- additional standard conditions for AFAs authorised to provide personalised DIMS. The additional standard conditions take effect from 1 June 2015;
- amended standard condition 3, which was amended to reflect that the Securities Act 1978 and Securities Markets Act 1988 were repealed on 1 December 2014;
- updated contact information for the FMA in standard condition 3;
- updated explanatory note for standard condition 1 regarding annual confirmation of current ABS.

## Introduction

AFAs are authorised by the Financial Markets Authority (**the FMA**)<sup>1</sup> to provide the financial adviser services specified in their individual Certificates of Authorisation, subject to terms and conditions. While some AFAs may have some additional individual conditions, all AFAs are subject to Standard Conditions 1 to 7. Standard conditions 8 and 9 apply only to those authorised to provide personalised DIMS.

The explanatory notes are intended to assist AFAs in interpreting and complying with the Standard Conditions in practice in their financial adviser services. For ease of reference the relevant Standard Condition precedes each explanatory note.

The conditions follow a principles-based approach. This approach is intended to assist AFAs in seeing the substance of the requirement. The FMA expects an AFA to take into account the objectives of the Financial Advisers Act (**the Act**) and the obligations imposed by the Code of Professional Conduct (**the Code**) for AFAs in interpreting the requirements in the context of its business.

The FMA expects to have an open and constructive relationship with AFAs. The conditions relating to reporting, notifications and provision of records, for example, allow the FMA to engage in a dialogue with AFAs during the term of their licence, to understand how they comply with their obligations and how they will continue to fulfil their responsibilities as their businesses change, and as any issues arise and are dealt with.

The FMA may refer to these explanatory notes in discussing matters with AFAs.

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<sup>1</sup> All authorisations issued prior to 1 May 2011 should be read as issued by the FMA by virtue of section 73 FMA Act 2011

# 1. Requirement to have and maintain an adviser business statement (ABS)

## Standard condition

The AFA must maintain and keep current a written Adviser Business Statement (**ABS**) in accordance with the most current published version of the AFA ABS Guide. The AFA must ensure this accurately reflects the AFA's business and compliance arrangements. The AFA must provide annual confirmation to the FMA that the AFA's ABS is current and must provide a copy of the ABS to FMA on request and within the time period requested.

## Explanatory notes

Having and maintaining an ABS is a core requirement of authorisation and provides the FMA, if a request is made to see it, with important information about the AFA's business and the systems and processes the AFA has in place to ensure business is conducted in a professional way. The AFA ABS Guide can be found on the FMA's website [www.fma.govt.nz](http://www.fma.govt.nz)

This condition requires AFAs to keep their ABS up to date. The ABS is intended to be a living document that will evolve over time as the AFA's business, or circumstances change. The FMA recognises that an ABS can not be revised instantaneously in response to changes to an adviser's practice or circumstances; however, the ABS should be updated as soon as reasonably practical after changes take place to ensure the document remains an accurate representation of the adviser's business.

The FMA expects AFAs to review their ABS at least annually, even where there have been no material changes to the business. An AFA satisfies the requirement in this condition to provide an annual confirmation to the FMA that the AFA's ABS is current when completing the annual information return. No other confirmation is necessary unless requested by the FMA.

Employed AFAs and AFAs who are nominated representatives are individually responsible for their ABS. Employers may assist AFAs by providing a template however the FMA expects an ABS to provide information regarding the AFA's clients, advice process etc whether or not this is the same as the employer's processes. The FMA will hold individuals accountable for meeting the requirements relating to their ABS.

# 2. Reporting

## Standard condition

The AFA must report in accordance with the periodic and other reporting, accounting and notification requirements contained in the Regulatory Reporting Guide for AFAs.

## Explanatory notes

In future, all AFAs 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 reporting guide. The obligation to provide information will be in addition to the notification obligations and will help the FMA to understand the profile of advisers in the industry and to focus its resources appropriately. This is likely to require reporting of factual business information, such as business volumes for different product groups and services types, numbers of customers, numbers and types of breaches, and complaints information.

### 3. Notifications

#### Standard condition

The AFA must notify the FMA in writing within five business days of any significant matter concerning the AFA's authorisation, or financial adviser activities including:

- changes to the AFA's financial services business or activities, including any changes that may affect the AFA's financial adviser service or services (**FAS scope**) authorised by the FMA
- changes that may impact upon the Certificate of Authorisation, the period of authorisation, or any exemption granted to the AFA by the FMA
- any serious breach by the AFA of any of the following: the Act or any regulations made under the Act, the Code of Professional Conduct for Authorised Financial Advisers, the standard conditions (or any other terms and conditions) of authorisation
- any adverse findings, convictions, or rulings by any regulator, professional body or any court or tribunal in New Zealand or overseas, relating to the AFA where any such finding or ruling would have been a matter required to be disclosed in the AFA's initial application for registration and authorisation
- any changes to the AFA's relationship with a Qualifying Financial Entity (**QFE**) or employer, such as joining or leaving a QFE or changing employers
- any other matter that has arisen since the date of grant of authorisation, which would have been required to be disclosed at the time of the AFA's application to be authorised.

#### Explanatory notes

The notifications are ongoing obligations and must be made to the FMA within five business days of the AFA becoming aware of any of the events listed (in Standard Condition 3) occurring. In circumstances where full information is not able to be provided within five days, an initial report could be made and followed with more detailed information. Notification within five days enables the FMA to engage in a dialogue with the AFA, with further details provided as they become available, if necessary in the circumstances.

The FMA will decide the extent of its own enquiries or actions based on the information provided with the notification.

Over time the FMA will publish guidance on the sorts of matters that are expected to be reported, for example, guidance on what amounts to a serious breach. We may also publish information on matters that are being reported.

The obligation to report is personal to the AFA and can not be discharged (in the case of employed AFAs) by their employers (QFE or otherwise). In some cases both the AFA and the employer will have an obligation to report the same matter to the FMA.

The FMA may, in future, issue requirements relating to the form of notifications. In the absence of these requirements, matters can be reported either by e mail to [compliance@fma.govt.nz](mailto:compliance@fma.govt.nz) or in writing to 'AFA Notification', Supervision Team, Financial Markets Authority, PO Box 106 672, Auckland City 1143

## 4. Records

### Standard condition

The AFA must ensure that all records pertaining to his or her financial adviser business are available for inspection by the FMA at any time. This includes:

- the AFA's client files containing the records required by Code Standards 12 and 13,
- the continuing professional development records and personal professional development plan required by Code Standards 17 and 18,
- and any other records required to be kept under the Act or any regulations.

### Explanatory notes

This condition imposes record keeping requirements on AFAs. Records are necessary to demonstrate the AFA's compliance with the Act, regulations and the Code, to enable FMA to perform its regulatory duties and functions and for consumers in the event of a dispute. (AFAs should set out their approach to record keeping in their ABS in accordance with the principle in the ABS Guide.)

AFAs should be able to produce files relating to each of their clients, including previous clients. The Code also prescribes the types of information that an AFA must keep in relation to personalised services to retail clients (Code Standard 12) and prescribes a minimum period of 7 years. The FMA will expect to see sufficient evidence to demonstrate that those minimum requirements are being met.

Generally the FMA will give an AFA notice when requesting records for inspection. Typically, FMA will require records to be made available within a few days. Routine visits will be made during business hours; reasonable notice will be provided to AFAs.

This condition applies to AFAs who are part of a QFE or who may rely on their employer to keep records. The FMA expects employers/QFEs and AFAs to work together to fulfil any request for records. The AFA should take steps to ensure that records pertaining to his/her financial adviser business are kept and can be accessed in a timely manner.

## 5. Client money

### Standard condition

Where the AFA acts as an intermediary for a client in the receipt, holding, payment or transfer of client money or client property, the AFA must act in accordance with the brokers' conduct and trust accounting obligations in Part 3A of the Financial Advisers Act 2008 (even if the obligations would not otherwise apply to the AFA).

### Explanatory notes

This condition is to ensure that employee AFAs meet the same standards required of registered brokers (likely to be their employers) under Part 3A of the Act where those AFAs carry out any of the services covered in the definition of broking services. Inclusion of this condition will ensure the FMA can take direct action (for a breach of this condition) against any adviser who is not separately registered as a broker but who has dealt with client money in a manner inconsistent with the requirements of Part 3A and his or her professional obligations.

The condition is not intended to require employed AFAs to have separate systems to those operated by the employers to manage client money. However, employed AFAs will need to take reasonable steps to satisfy themselves that their employer's systems are not in breach of Part 3A. This is consistent with the approach taken in the Code where obligations of the AFA may in practice be undertaken by the AFA's employer.

The Act also allows the FMA to impose specific terms and conditions in relation to broking services (s55). In future, conditions may be developed either as a remedial response or as more specific broking obligations for all AFAs.

## 6. Supervising trainee advisers

### Standard condition

Where the AFA is responsible for supervising trainee financial advisers, the AFA must act professionally and must always ensure there is an appropriate level of supervision of the trainee including during any client interaction. The supervising AFA must ensure the trainee does not provide services to clients that can only be provided by AFAs.

### Explanatory note

This condition is designed to encourage high standards of professionalism when mentoring and supervising those entering the profession and training to become authorised. It recognises that real-life client interaction is an important part of building competence and one of the assessment components in attaining AFA status.

A supervising AFA must ensure that consumers who are in contact with trainees have an adequate level of protection. This may entail, for example, accompanying the trainee adviser to client meetings and validating all advice-related documentation completed by the trainee adviser. While the trainee can 'shadow' the entire process and develop their own client files, the supervisor will need to ensure that any advice provided to a client is provided by an appropriately qualified adviser.

## 7. No endorsement

### Standard condition

The AFA must not at any time state or imply that the FMA has endorsed or approved the AFA's business, advice, or solvency, or any other agreements or business arrangements of the AFA.

### Explanatory notes

An AFA is able to refer factually to his/her AFA status. For example, in the disclosure statement prescribed by the Financial Advisers (Disclosure) Regulations a description of 'What sort of Adviser am I' must be provided.

An AFA should take care not to make claims about the implication of his/her authorisation or refer to it in a way that may mislead clients or potential clients.

Any statement about the role of the FMA should be factual, bearing in mind that:

- the AFA's authorisation is based on meeting minimum levels of competency, knowledge and skills specified in the Code as well as a good character assessment

- FMA’s consideration does not extend to an assessment of an adviser’s compliance arrangements or any other business arrangements including solvency

An AFA should not imply that AFA status means that the FMA endorses the financial advice or the financial products provided.

## 8. Outsourcing

Standard condition 8 applies only to those authorised to provide personalised DIMS.

### Standard condition

If the AFA outsources any process/system necessary for the effective and proper running of the personalised DIMS (or any other authorisation obligation) the AFA must be satisfied the provider is capable of performing the service to the standard required to enable the AFA to meet the AFA’s authorisation obligations. The AFA must have a legally binding agreement with the provider. The AFA must also ensure that records pertaining to the DIMS are available for inspection when requested by the FMA.

### Explanatory notes

This condition only covers outsource arrangements related to the authorised business where the AFA relies on the outsource provider to meet the AFA’s authorisation obligations. Important information that AFA may want to consider when conducting due diligence on a proposed outsource provider includes:

- The outsource provider’s previous experience
- Public reports and information about their service
- Reported complaints about them, and their complaint handling procedures
- Their operating jurisdiction and any protections/controls imposed in that jurisdiction.

The AFA should regularly review the AFA’s outsourcing arrangements (at a frequency appropriate to the risk involved) and the AFA should monitor the ongoing performance of the outsource provider. For further information in relation to outsourced services see the outsourcing section Appendix One of the AFA Authorisation Guide. AFA’s don’t need to arrange for the FMA to have direct access to the outsource provider’s records, providing the FMA can promptly obtain the records through the AFA.

## 9. Financial resources

Standard condition 9 applies only to those authorised to provide personalised DIMS.

### Standard condition

The AFA must calculate the AFA’s net tangible assets (**NTA**) at least monthly, including as at the AFA’s balance date each year. If the AFA’s calculation shows the AFA did not have positive net tangible assets at any time, the AFA must notify the FMA and provide an explanation, unless:

- (a) the AFA has previously notified the FMA that the AFA has negative net tangible assets and explained:
  - i. The circumstances that cause the AFA to have negative NTA, including the nature of any significant intangible assets or related party receivables’ and

- ii. Whether the AFA considers having negative NTA adversely impacts on the AFA's ability to provide DIMS effectively on an ongoing basis and why' and
- (b) the FMA has advised in writing that the AFA does not need to provide further notifications in respect of having negative NTA arising from those circumstances, and
- (c) there has been no material change from the position and circumstance described to the FMA in the most recent previous notification.

Upon request from the FMA the AFA must, within the time frame requested by the FMA, engage a qualified auditor and enter into agreed procedures to review the calculation of the AFAs NTA. The auditor's report must include a statement that, as at the NTA calculation date, in the auditor's opinion, the AFA calculated the AFAs net tangible assets correctly.

### Explanatory notes

An AFA's net tangible assets (NTA) has the following meaning:

1. NTA shall mean the AFA's **adjusted assets** minus **adjusted liabilities** of the corporate vehicle through which the AFA operates.
2. **Adjusted assets** means, in relation to an AFA, the value of total assets as they would appear on a balance sheet at the time of calculation that has been prepared under NZ GAAP, minus any **excluded assets**.
3. **Excluded assets** means:
  - a) the value of any intangible assets (i.e. non-monetary assets without physical substance), plus
  - b) the value of any **associated party receivables** except **permitted associated party receivables**.
4. **Associated party receivables** mean any receivables, or other obligations, owed to the AFA by any person who is an associated person (as defined in NZ IAS Investments in associates) of the AFA.
5. **Permitted associated party receivables** means an associated party receivable to the extent that:
  - a) it is **adequately secured**; or
  - b) is owed by a registered bank regulated by the Reserve Bank of New Zealand or an Australian Authorised Deposit-taking Institutions (**ADI**) authorised under the Australian Banking Act 1959; or
  - c) the following conditions all apply:
    - i. it is receivable as a result of a transaction entered into by the AFA in the ordinary course of its business on its standard commercial terms applicable to persons that are not associated with the AFA on an arm's length basis;
    - ii. the value of the receivable (before any discount is applied) is not more than 20% of the assets less liabilities as they would appear on the AFA's balance sheet at the time of calculation.
6. **Adequately secured** means, in relation to an associated party receivable, that receivable is:

- a) secured by an enforceable security interest over financial products if:
    - (i) the financial products are regularly traded on an **acceptable financial product market** or are interests in a registered scheme for which withdrawal prices are regularly quoted by the manager of the scheme, and the AFA believes on reasonable grounds that withdrawal may be effected within 5 business days; and
    - (ii) the market value of these financial products is at least 120% of the amount owing, or at least 109% of the amount owing if the financial products are debt securities; or
  - b) secured by a registered first mortgage over real estate that has a fair market valuation of at least 120% of the amount owing.
7. **Acceptable financial product market** means any licensed market within the meaning of section 6 of the Financial Markets Conduct Act 2013 and each of the American Stock Exchange, Australian Securities Exchange, Borsa Italiana, Bursa Malaysia Main Board and Bursa Malaysia Second Board, Euronext Amsterdam, Euronext Paris, Frankfurt Stock Exchange, Hong Kong Stock Exchange, JSE, London Stock Exchange, NASDAQ Stock Market, New York Stock Exchange, Singapore Exchange, SWX Swiss Exchange, Tokyo Stock Exchange and Toronto Stock Exchange.
8. **Adjusted liabilities** means, in relation to an AFA, the amount of total liabilities as they would appear on a balance sheet at the time of calculation that has been prepared on the same basis as NZ GAAP,
- a) minus the amount of any liability under any subordinated debt, where the obligation to repay the debt is subordinate to all other claims, demands, rights and causes of action of all unsubordinated creditors and the debt is not repayable within one year;
  - b) plus the maximum potential liability under any guarantee provided by the AFA.