

**FINANCIAL MARKETS CONDUCT BILL
SUBMISSION ON EXPOSURE DRAFT
NEW ZEALAND ASSETS MANAGEMENT**

Clause Number	Clause heading	Submission
Part 1	Preliminary provisions	
		No comment
Part 2	Misleading or deceptive conduct or false or misleading representations	
		No comment
Part 3 and schedules 1 and 2	Disclosure offers of financial products	
		No comment
Part 4 and schedule 3	Governance of financial products	
		No comment
Part 5	Dealing in financial products on markets	
		No comment
Part 6	Licensing and other regulation of market services	
	About us	<p>We are an investment and funds management company specialising in the management of global investments. We target, and for twenty years have been successful in, achieving absolute or positive returns each year. We have both wholesale and retail clients and the proposed DIMS regulations would apply to us.</p> <p>The comments in this submission relate only to the DIMS proposals in the draft FMC legislation.</p>
	Rationale for regulation	<p>Our submission is made subject to these introductory remarks:</p> <ul style="list-style-type: none"> The explanatory material supporting the final Bill should contain a business case that sets out why retail DIMS are to be regulated. In our view, in the absence of evidence of loss or harm to NZ investors caused by mismanaged DIMS, regulation is not warranted. Your explanatory material appears to justify DIMS regulation on the basis that a DIMS would provide a mechanism to circumvent the proposed managed investment provisions. In our view, the existing provisions of the Financial Advisers Act (FAA) are sufficient to prevent such abuse. However, please note our comments below on the AFA Code which currently does not adequately address the needs of our sector.

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Clauses 370 and 415(1)	Meaning of provider of DIMS	<p>415(1) read with FAA s12, confuses the concepts of “DIMS”, “provider of a DIMS” and – in the FAA – “a person provides a DIMS”. The effect is that the definitions are circular, consequently making it unclear whether “acting as provider of a DIMS” in 370(1)(c) captures precisely the same group of persons as FAA s12.</p> <p>A neater approach might be to narrow 370(1)(c) and 415(1) to “provider of a <u>class</u> DIMS for retail* clients”. This could be mirrored in the FAA with FAA s19 restricting permission for class DIMS for retail clients to registered persons holding a market services licence. This would make it clear that the FMC legislation applies only to class DIMS for retail clients.</p> <p>(*Using the FAA wholesale/retail definitions)</p>
Subpart 4	Service disclosure obligations	<p>We support the concept of providing service disclosure to retail investors so they can “decide whether ... to proceed with the [DIMS]”. We support the proposal to permit service disclosure to be combined with other disclosure statements.</p>
Subpart 5	Client agreements	<p>We support the concept of client agreement for retail investors and encourage you to develop the regulations for this using a principles-based approach.</p>

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Clause 415(2)	Personalised/class DIMS	<p>The draft definitions of “personalised” and “class” do not reflect the reality of the DIMS market. In practice, there are few if any pure “class” DIMS. Many businesses, including ours, occupy a middle ground, where the investment strategy offered to clients is a house strategy adjusted at the margins to suit individual requirements (for example, the need for early withdrawals or the need to avoid certain investments because of a client’s conflict of interests).</p> <p>While we appreciate the challenge you face in drawing the boundary between personalised and class, in our view it would be unduly onerous for us, and unnecessarily costly for our clients, to impose AFA licensing and the provisions of the Code (especially the suitability and basis of advice standards) where it is made clear to the client that the underlying investment strategy is a class service but that adjustments can be made to that to facilitate withdrawals or specific requests.</p> <p>For that reason, we suggest:</p> <ul style="list-style-type: none"> • Limb (b) of the definition of “personalised DIMS” be deleted in 415(2). • Delete reference to “investment authority” in limb (c). • The definition of “investment mandate” be clearly restricted to the scope of authority only in respect of investment strategy (and not in respect of client servicing generally). A corresponding adjustment of 420 would also be required. • For clarity, you might prefer to use the term “service authority” rather than “investment authority”. Thus the “service authority” is the authority granted under the DIMS and it contains an “investment mandate” that sets out the scope of authority in respect of investment strategy. • FAA s15 be amended accordingly.
Clause 416	Duties of a DIMS licensee	<p>We suggest:</p> <ul style="list-style-type: none"> • For clarity, the DIMS duties be contained in one place and incorporated by reference elsewhere. So for example they could be set out in the FMC legislation and incorporated by reference into the FAA and where appropriate, the AFA Code, rather than duplicated in those places. • The law should set out who has responsibility for the DIMS duties when an AFA is working for a DIMS licensee – by analogy see FAA s20F.
Part 7	Enforcement and liability	
		No comment
Part 8	Regulations and exemptions	
		No comment

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Part 9 and schedule 4	Miscellaneous provisions	
Un-numbered	Intention to extend FAA to cover financial advice on whether to obtain or withdraw from a DIMS	The exemption in FAA s10(3)(a) should be extended by adding after “product” the words “or a DIMS service”.
Un-numbered	AFA Code	<p>Whatever the outcome of the DIMS changes proposed in the draft FMC legislation, the AFA Code could be strengthened by specifically:</p> <ul style="list-style-type: none"> including client care provisions for DIMS (in line with the duties set out in 416-424), and offering competence options that are relevant to the funds management / DIMS sector. <p>The current client care and competence provisions in the Code are tailored for financial planning, consequently making compliance for our sector challenging. The creation of documentation to satisfy the six-step financial planning elements that are embedded in the Level 5 qualification distort the reality of this sector and of what constitutes good professional conduct in the context of funds management and DIMS.</p> <p>The success of regulation of DIMS – if it is to happen – rests not with definitions of class, personalised, wholesale and retail but with adjustments to the AFA Code that are appropriate for the circumstances of this sector. The bulk of the consultation process for the Code had concluded by the time DIMS was introduced into the legislation. With these further changes proposed, it is essential that the Code be revisited for DIMS with sufficient lead-time for our sector to gain appropriately tailored AFA qualifications and meet relevant conduct standards.</p>