

Derivatives issuer

PART B5:

Your guide to applying for a market service licence under the Financial Markets Conduct Act

All the questions you'll be asked, the minimum standards you'll need to show you meet, and information about the details and supporting documents you'll need to provide.

Please make sure you read this guide in conjunction with our 'Part A' licensing guide.

NOTE: It is important to complete the application form using Adobe Reader only. This is due to other reader providers not being compatible with Adobe and the answers may not save permanently in the form.

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PART B5: How do I apply for a licence to issue **derivatives**?

To apply for a market service licence you need to read both PART A and PART B of our licensing application guide.

Email licensing@fma.govt.nz for a copy of the application form.

PART A: Gives general guidance about the licensing process including what you need to get started. Click the link to [PART A](#).

PART B (this document): Gives specific information for the type of licence you're applying for. It outlines the minimum standards for the licence, sets out all the questions you'll be asked in the application form, in the same order as the form and gives guidance on what you might need to tell us and the types of supporting documents you'll need to provide. Your application can only be submitted via email using the Adobe editable pdf, and you'll need to attach your supporting documents.

Please note these guides may be updated from time to time, so please check our website for the latest version before you apply.

Important notes: All answers and documents must be supplied before your application can be accepted.

This guidance is of a general nature and does NOT replace your own careful reading of the requirements in the Financial Markets Conduct Act 2013 (FMC Act), applicable regulations, legal or other expert advice on your application. Applicable regulations include the Financial Markets Conduct Regulations 2014 (the 'Regulations') and any other regulations that are made pursuant to Part 9 of the FMC Act (together the 'Applicable Regulations').

Any questions?

If you have any questions please call us on 0800 434 566. We're open for calls from 8.30am to 5pm, Monday to Friday. Overseas callers can reach us on +64 3 962 2695.

It's all done by email

You apply for your licence using the Adobe editable pdf form and email, attaching any supporting documents, to

licensing@fma.govt.nz.

We don't accept hard copy applications unless we specifically ask for them.

If you have any questions please call us on 0800 434 566.

Who is this licence for?

Derivatives issuer

If you're in the business of entering into derivatives, you are a derivatives issuer. You must be licensed to make a regulated offer of derivatives.

A regulated offer includes any offer of derivatives when disclosure must be made to investors, for example, because they are a retail investor.

The Financial Markets Conduct Act 2013 (FMC Act) has a broad definition of a derivative.

It includes futures and forwards, options (except options to acquire an equity security, a debt security, or a managed investment product by way of issue), swaps and contracts for difference, margin contracts, rolling spot contracts, caps, collars, floors and spreads.

The definition is also wide enough to catch new derivative products as they are developed (see section [8\(4\)](#) of the FMC Act for more details).

Things you need to know before you apply

Eligibility criteria

- To issue you with a licence to **offer derivatives**, we must be satisfied you meet the criteria set out in section [396](#) of the Financial Markets Conduct Act 2013 (FMC Act).
- If you want any related body corporates authorised under your licence (authorised bodies), both you and these bodies must (collectively) meet the criteria set out in section [400](#) of the FMC Act and regulation [188](#) of the Regulations.
- Some criteria set specific **requirements** you must meet, such as being registered on the Financial Service Providers Register. Others are more general and apply to all aspects of your business. For example you must be "capable of effectively performing the service" (section [396\(c\)](#) of the FMC Act).
- To help you understand these criteria, we have described the **minimum standards** we expect you to meet. However, these standards do not change or limit the criteria set out in the FMC Act or Applicable Regulations – the whole of your licensed business must meet these criteria at the time of licensing and during the course of your licence.
- Your board, or governing body, is asked to confirm this in the certificate we ask you to provide in your application.

Minimum standards

- We expect all licensees to meet the minimum standards, but there is flexibility in how you meet them depending on the size and nature of your business. For example, if you need a process and controls for a function, we expect your approach will take into account how many people are involved, their expertise and the level of senior management oversight.
 - For **smaller businesses**, this may mean some processes can be relatively simple and not fully documented (you'll still need to explain them in your application).
 - For **larger businesses**, we expect processes will usually be more detailed and documented.

When you're explaining how you will meet a minimum standard, you can also tell us why your approach is appropriate for the size and nature of your business.

- There are some minimum standards where you must demonstrate that you have a plan or process to meet them once you're licensed. For example you may not need (or be able) to meet some legal requirements until after you're licensed. Or you might be a start-up business, and can't operate until you're licensed, so can't demonstrate the effectiveness of your systems, policies, procedures and controls when you apply. In these situations you don't have to prove you comply – instead you need to show us how you'll meet the requirements once you're licensed.

Please note

After you submit your application, we may ask you to provide more information to help us make a final decision on your licence.

Numbered comments

Our comments are numbered sequentially throughout the document, so if you call us about something we've said you can just quote the comment number.

The questions are in this guide

The questions we ask help us assess how you meet the minimum standards. Under Part B – What do we ask, we list all the questions, in the same order as they appear on the application form.

- c. When you've finished completing your application we suggest you look back over all the minimum standards and check that you've provided a level of information that would allow someone who doesn't know anything about your business to get comfortable that you will meet each of the minimum standards.

Ongoing obligations

- a. As a licensee you'll have ongoing obligations, including:
- Meeting all the relevant requirements of the FMC Act and Applicable Regulations
 - Meeting the criteria in the Act
 - Maintaining the minimum standards for the duration of your licence
 - Meeting any standard or specific conditions imposed on your licence.
- b. The consequences for a breach of licence are set out in sections [406](#) and [414](#) of the FMC Act.

Licence conditions

If we issue a licence it will contain conditions that support your licensee obligations. The [standard conditions](#) for the different types of licence are available on our website. We may also set extra licence conditions for individual entities on a case by case basis.

In your application you'll need to demonstrate that you can meet these conditions – or ask us for a limit on or variation in your licence.

Other legal requirements

You may have other legal requirements that are not set out in the minimum standards. Non-compliance with any financial market legislation will be taken into account during our assessment of your application (and during ongoing supervision). We may undertake monitoring or enforcement action, or refer the matter to other agencies as appropriate.

Please remember

You can contact us for information at any time before you apply – and after you're licensed – just call **0800 434 566**.

Information for applicants

A. Getting started

This guide is divided into sections, following the order of the questions in the application form. This 'getting started' section covers the first two sections in the form, which ask for details about you, your business, and your application.

What will we ask?

In each section you'll find the list of all of the questions in the application form, including the documents we ask you to provide.

The guide has been designed so that you can read the minimum standards (A), see what you'll be asked when you complete the form (B) and read our comments (C), then assemble what you need before you start your application.

Many questions only need a YES/NO or similar short answer. If you're asked to explain something you can type your answer straight into the form, and/or supply a supporting document.

Supporting documents

If you will be attaching a supporting document we ask for a document name and the section you're referring us to. This means you can add one document (such as a policy manual) to support several answers.

B. What do we ask?

- » What is your FSP number? (*See comment 1*)
- » Is this a separate or related body application? If a related body, enter the parent FSP number
- » Licence coverage: (*See comment 2*)
If you select 'For this FSP number and related body/s' please tell us the related body's name, FSP number, key contact person and their position, phone number/s and email.
- » What type of licence are you applying for? (*See comment 3*)

Applicant details

- » Entity name.

Contact person details

- » Please tell us the name of the contact person, their position, address, phone number/s and email.
- » Please provide a certificate confirming you have authority to apply and the types of licence/s sought. (*See comment 4*)

Prosecution details

- » Does the entity applying for the licence have any past, current or pending criminal prosecutions, civil litigations or administrative actions involving it? If YES, please provide details.

Relevant parties

- » Do you have any relevant parties, as defined in the Regulations? (*See comment 5*)
If YES, please list your relevant parties. You will also need to attach a declaration.

Application details

Licence types

- » Do you request any special limits on your licence? If YES, please provide brief details. (*See comment 6*)

Here's a tip...

If the answers don't fit in the application form, provide a summary and refer to the separate supporting document for the full answer.

For a Derivatives Issuer licence *(See comment 7)*

- » Do you adhere to capital requirements from any of the following? Select all that apply from the list: APRA, ASIC, CFTC, RBNZ, NZX, UK BIPRU, None, Other – please specify
- » Please tell us the different types of derivatives you offer.
- » How many wholesale derivatives clients do you have?
- » How many retail derivatives clients do you have?
- » How many full time equivalent employees do you have in your derivative business?
- » When did you start issuing derivatives? Please give month and year.
- » Which supervisors oversee your derivatives business?
 - » If you're **regulated**, select all that apply from the list: APRA, ASIC, FCA, RBNZ, NZX, CFTC, Other – please specify
 - » If you're not regulated, select the Other option and enter 'NONE'
- » What standard measures do you use to assess financial risk? Select all that apply from the list: Value at Risk (VaR), Expected shortfall, Stress testing, Monte Carlo simulation, Other – please specify
- » What was your entity's total notional value turnover for the last financial year?
- » At the end of your last financial year, what was the total notional value of your open contracts?
- » How much client money do you hold in total?

Licensed financial service provider

- » Is your entity a licensed provider under the Financial Service Providers (Registration and Dispute Resolution) Act 2008?
- » Are any of your directors or senior managers licensed providers under the Financial Service Providers (Registration and Dispute Resolution) Act 2008? If YES, what are their names and FSP numbers?
- » Does your entity or any of your directors or senior managers hold a licence or registration, relevant to financial services, in any overseas jurisdiction? If YES, please give registration/licence details for each person or entity.

Market services

- » Is this licence application for a service that is incidental to another market service that is, or will be, covered by a licence? If YES, please provide details about your other services and licences.

Your business

- » Please describe your business. *(See comment 8)*

Have you got an FSP?

You'll need a Financial Services Provider number to finalise your application – and any related bodies you want to include will need their own FSP.

It can take up to five working days to get one, so we suggest you and the related bodies apply in advance.

C. Our comments

1. FSP registration number

This is your financial service provider number. Refer to Part A Guide, Page 6, 'You'll need an FSP number to select the financial service.' You must have completed this before the licence can be issued.

2. Related bodies

- a. You may apply for a licence that covers related body corporates (related bodies) who will provide part or all of the licensed service with you. If we issue a licence, you'll be the licensee and they'll be an authorised body.
 - Under the FMC Act a related body corporate generally means a company in the same corporate group as the main applicant.
 - An authorised body is named on your licence and can perform the licensed service, or any part of it. If you're applying for several licences, you can specify different related bodies to be authorised under each licence.
 - If you have related bodies authorised under your licence, they must comply with all licence obligations and you need to provide oversight to ensure your group as a whole meets the minimum standards.
- b. At the start of your application we ask if you're making a separate or related body application. It's important to select the right option:
 - **Separate** means you are applying for a licence for yourself or your entity, in your own right, and will be the licensee (called 'applicant' in the application form)
 - **Related body** means another company in your corporate group has already applied for the licence and, if approved, you'll become an authorised body under their licence.
- c. **Do you want related bodies authorised under your licence?**

If you're the intended licensee, under the 'licence coverage' question you can enter if you want related bodies authorised under your licence. If you do, we ask you for their contact details. The related body will complete their own application.
- d. **The steps involved for each party**

If you're the **licensee**:

 - In your application you list the related body you want to include and provide some details about them (including their FSP number)

Are you the licensee?

If you're the one granted the licence, you're the licensee.

You'll be responsible for the provision of the licensed service, including any part delivered by someone else.

Tell us about your business...

No two businesses are the same. So early in your application form, we ask you to answer some specific questions about your derivatives business so we can better understand the size and nature of your operation.

If you're the **related body** you:

- You will need your own FSP Number
- Select "related body" in the application form.
- Enter the Licensee's FSP number in 'Parent FSP Number'.
- Select the market service licence type which the Licensee has applied for.
- Answer all the questions relevant to the licensed activities you will perform (if a question is not relevant just answer 'not applicable')
- Then email your related body application to licensing@fma.govt.nz.

Licensee applicants and related bodies fill in separate application forms. As a related body, you should liaise with the applicant to ensure your answers reflect what the applicant has submitted in its licence application. You should also obtain the applicant's FSP number to be entered in your application as the 'Parent FSP Number'.

3. Type of licence

You can apply for more than one type of licence at the same time – this means generally you won't need to supply duplicated information - refer to the answers provided in the other relevant licence application.

4. Approval to apply

You'll need to have your board or governing body complete and sign [this certificate \(SD1.0\)](#) which:

- Confirms the person or entity seeking the licence, and any related bodies to be authorised under the licence, meet all the criteria in the FMC Act (sections [396](#) and [400](#)), and regulation [188](#) of the Regulations
- Specifies the licence/s sought, and any related bodies to be authorised under any of those licences
- Names the person authorised to make the application. This may be the same person as the 'contact person' named on the application form but doesn't have to be. However note, the invoice for the application will be to the attention of the 'contact person'.

You must attach the signed certificate to your application.

The certificate is a legal document and must be signed by two directors of your governing body; or by a sole director if you only have one; or for individual applicants by the individual. If none of these options apply it must be signed by person/s authorised to bind the Applicant in relation to the matters covered in the certificate.

5. Relevant parties

You are asked to name any 'relevant parties' and provide a declaration (refer to comment 11). Relevant parties are defined in regulation [189](#) of the Regulations and include anyone who is able to exert a substantial degree of influence over your activities. It is also anyone whose wishes you act, or are accustomed to act in accordance with.

Any questions?

Please remember you can contact us for information at any time before you apply – and after you're licensed.

Just call

0800 434 566

8:30am – 5:00pm
Monday to Friday

6. Limits on your licence

You may ask for a special limit on your licence if you only want to provide certain aspects of the market service, or want other limits noted, for example on the types or amounts of investments you'll make for a client. This may make it easier for some smaller providers to meet certain minimum standards.

Please note, even if you don't ask for a limit, we may place one on your licence if you can only demonstrate the capability and resources to provide a limited market service. But we will consult with you before issuing a licence that is more restricted than you applied for.

7. Specific questions about your derivatives business

a. You're asked to complete a section with some specific details about your derivatives business, so we can better understand the size and nature of your operation.

b. What types of derivatives do you offer?

Please tell us all the combinations of underlying instrument and derivative forms you offer. For example, possibilities include interest rate swaps, interest rate futures, foreign currency futures, foreign currency options, equities contracts for difference (CFDs).

c. Total notional values

The total notional value **turnover** of your derivatives business is an approximate measure of the notional value of all contracts traded. Please provide this figure by calculating either the:

- Number of contracts traded multiplied by the contracts' notional value, or
- Sum of the notional values of all contracts traded.

The total notional value of **open contracts** is a measure of the notional value of all derivative contracts outstanding. Please provide the sum of the notional values of all your open contracts.

Please provide your answer **in NZ dollars** rounded to the nearest million (enter \$1,200,000 as 1,000,000).

d. Questions about your clients

The FMC Act defines what is meant by:

- Client money and/or property is defined in section 444 of the Act
- A wholesale investor is defined in Schedule 1, clause 36
- A retail investor (anyone who is not a wholesale investor) is defined in Schedule 1, clause 35.

e. How many employees do you have?

Please tell us how many staff you have, represented as FTEs (full-time equivalent employees) in your derivatives business. So if you have part-time workers please total their hours and include in your head count the number of full-time workers those hours represent (for example four part-timers working a total of 40 hours a week between them equal one FTE).

f. **How do you assess financial risk?**

You may select one or more of the standard measures listed to tell us how you assess financial risk. If you use a different measure please select 'Other' and provide sufficient detail to explain it (and if possible please provide a website link).

The definitions of the standard risk measures are:

- **Value at Risk (VaR)** – defined as the minimum potential loss in value of a portfolio due to adverse market movements, for a given probability
- **Expected Shortfall** – an analysis designed to determine the expected value of an investment in the worst percentage of cases, also known as conditional VAR, or tail loss
- **A stress test** – an analysis or simulation designed to determine the ability of a given financial instrument or financial institution to deal with an economic crisis
- **Monte Carlo simulation** – generates random outcomes according to assumed probability distributions and a set of parameters to estimate the VaR.

g. **Regulators and capital adequacy requirements**

For more information on different regulators and/or their capital adequacy requirements visit:

- **APRA** – [Australian Prudential Regulation Authority](#)
- **ASIC** – [Australian Securities and Investment Commission](#)
- **CFTC** – [U.S. Commodity Futures Trading Commission](#)
- **FCA (BIPRU)** – [Financial Conduct Authority \(United Kingdom\)](#)
- **NZX** – [NZX Ltd \(New Zealand\)](#)
- **RBNZ** – [Reserve Bank of New Zealand](#)

8. Describe your business

Your comments should cover the general nature and scale of the business, including ownership and corporate structure and any other information you think relevant. For example:

- What is the legal form of your business (such as a company or partnership)?
- Give a high-level description of your business structure. If you're part of a corporate group, please provide a group structure diagram which shows your shareholders, relevant parties and related bodies. If the group is listed or widely held, please provide information on significant shareholders.
- What is the nature of the business you're seeking the licence/s for? Include an overview of the types of products or services you provide (or will provide under the licence) and the types of clients you cater for.
- How will any related bodies authorised under your licence be involved in providing the licensed service?
- What other businesses or services do you or your corporate group provide (other than the proposed licensed business)?

Minimum standards

A. Fit and proper

Your directors and senior managers must be fit and proper persons to hold their respective positions.

Minimum standards

- Your directors and senior managers (current or proposed), and any other relevant parties, must be fit and proper persons to hold their position. This requirement broadly covers the tests of:
 - Good character** – covering integrity, probity, trustworthiness and reputation
 - Capability** – competence, skills and experience for the position they hold (the next section on capability asks for more information about this).
- You must have appointment, recruitment and human resource processes to ensure directors and senior managers undergo a character assessment – and their competence, skills and experience are assessed before they assume their roles.
- If you have related bodies under your licence, each entity's executive directors and senior managers who are responsible for the licensed service must meet these minimum standards.

Information for applicants

B. What do we ask?

- » Please explain how you ensure your directors and senior managers (current or proposed) meet and maintain the minimum standards of 'fit and proper'.
- » How many directors and senior managers are you supplying details for in relation to this application?
- » For each of these directors and senior managers please provide full name, date of birth, gender, position, role.
- » You must attach a declaration completed by each person listed. The declaration form also asks for their consent for third party checks. (*See comment 11*)

Consultation

- » Are you a registered bank, non-bank deposit taker or licensed insurer?

C. Our comments

9. Who should you include in your application?

This section relates to those who lead the licensed business. You need to include your:

- **Directors** – current or proposed
- **Senior managers** – current or proposed
- **For related bodies** – executive directors and senior managers (the related body is asked to list these people in their part of the application)
- **Relevant parties** – such as business owners or people who indirectly control the applicant or directors and senior managers of those people – will be asked to provide some details (see regulation [189](#) of the Regulations for a definition of 'relevant party').

10. Who is a senior manager?

The title senior manager means different things in different organisations. There is a definition of 'senior manager' in section [6](#) of the FMC Act to guide you. It means you only need to list people who have a significant influence over the management or administration of the relevant entity.

- In **smaller organisations** this means you'll probably need to list all or most of your senior people.
- In **larger organisations** it means you may not need to list everyone who has a senior manager title. You only need to list people with significant influence on the management or administration of the entity such as the CEO or CFO.

Minimum standards

The minimum standards in this guide apply at the time you seek your licence – and on an ongoing basis.

They apply to your business – and to any related body you want authorised under your licence.

11. What do you need to supply?

a. Each person you list has to complete and sign a declaration, which you need to scan and attach to your application. You must retain the original signed hard copy as we may ask for this later.

The declaration asks your directors and senior managers to tell us about their background and past conduct, provide details of their employment and qualifications, and give us consent to make checks with third parties such as the Ministry of Justice.

Related bodies to be authorised under your licence are required to do the same for executive directors, and any senior managers responsible for the licensed service.

Relevant parties will need to complete a more limited declaration with details of their relationship with the applicant and give us consent to make checks with third parties such as the Ministry of Justice.

b. You'll find the templates for these [declarations](#) on our website. The form numbers are:

- **Applicants:** declaration SD1.1 for current/proposed directors, or SD1.2 for current/proposed senior managers
- **Related bodies:** declaration SD2.1 for executive directors of related bodies, or SD2.2 for senior managers of related bodies
- **Relevant parties:** declaration SD3.1 for directors of relevant parties, SD3.2 for senior managers of relevant parties, or SD3.3 for other individual relevant parties.

c. **How will we assess good character?**

Good character means the integrity, probity, trustworthiness and reputation of the people leading your licensed business. Our assessment is based on factors including (but not limited to):

- Information in the declarations provided with your application
- Feedback from checks made with third parties
- Conduct indicating past non-compliance
- Convictions or involvement in dishonesty, deceit, theft or fraud
- Failure to manage business or personal financial affairs
- Dismissal from a position of trust
- Adverse information from other government agencies and regulators.

We must also consider whether the applicant's owners or other relevant parties have had any convictions or successful disciplinary actions taken against them (in New Zealand or overseas). Regulation [189](#) of the Regulations provides further details.

13. How will we assess capability?

We assess the information supplied by directors and senior managers in their CVs and position descriptions in relation to the requirements of their roles (we ask for more information about roles and responsibilities in the next section on 'capability').

14. How will you meet and maintain the fit and proper standard?

We need to know you have appropriate arrangements to ensure your directors and senior managers are fit and proper people to be involved with the licensed service – when they take up their roles, and on an ongoing basis. Please describe how you determine someone is fit and proper.

You'll also need to describe the controls and procedures you use to ensure standards are maintained on an ongoing basis. Your arrangements may differ depending on the size and nature of your business.

Minimum standards

A. Capability

Your organisation must have the right mix of people, with the right skills and experience, in the right roles, to manage your licensed business properly and effectively.

Minimum standards

1. Your management team (collectively) has an appropriate breadth and depth of relevant financial services know-how, whether gained here or overseas, to effectively manage the licensed business.
2. Management roles include clear responsibility and accountability for:
 - Effective operation of the key activities of the licensed business
 - Strategic development and direction of your business
 - Risk management
 - Financial management
 - Compliance with product-specific laws and regulatory requirements
 - Compliance assurance/internal audit to ensure controls and procedures are effective
 - Customer/investor complaints.
3. Your arrangements ensure that your directors and management team have the skills and experience to perform their roles effectively.
4. Your business has access to any necessary expert professional advice (for example legal or tax advice) either through internal appointments or external consultants.

Information for applicants

B. What do we ask?

Skills and experience of your management team

- » Explain or demonstrate how your management team collectively has the right skills and experience.
- » Please provide details for each management team member who is not already listed in the 'Fit and Proper' section (name, date of birth, title and position).

Roles and responsibilities

- » Explain or demonstrate how you document the roles, responsibilities and accountabilities of your management team.

Capability

- » Explain or demonstrate the recruitment and human resource processes you use to ensure your management team have the right skills and experience for their roles.
- » Explain or demonstrate how you access external advice when your management team's capabilities don't cover an area of expertise needed by your business.

C. Our comments

15. Your management team

- a. We need to assess whether your directors and management team, **as a whole**, have the right skills and experience to manage the licensed business.

So here, your management team means all those key people who are responsible for the main activities required to deliver the licensed service. This includes:

- Your directors and senior managers already covered in the previous section
 - Other senior key people and managers you haven't told us about yet, for example someone heading a key business unit who doesn't meet the definition of 'senior manager' in the FMC Act (because they don't have a significant influence on the management or administration of the entity as a whole).
- b. For your **directors and senior managers**, if you've already provided this information under 'fit and proper' you don't need to do so again.

Supporting information

If the narrative fields on the form do not allow sufficient space you can attach a supporting document as well.

When answering a question refer to the supporting document by name and the specific part you want us to read in relation to that question.

- c. For your **other key people and managers**, you need to list each one and ask them to complete the [curriculum vitae template](#) provided (form SD1.3), and then attach these to your application. These people do **NOT** need to complete a declaration.
- d. We're not implying you need a separate manager for each key position, or area of responsibility in minimum standard 2. It depends on the size and nature of your business. For example you might have one or two managers covering most of these areas – or a dedicated manager for each one.
- e. If you're providing a new type of service, you may not be able to demonstrate depth and breadth of experience in that particular business. However, you'll need to explain how the directors' and manager's experience, as a whole, provides sufficient capability to deliver and manage that service.

16. Roles and responsibilities

- a. You must provide an organisation chart showing how your licensed business will be structured.

This chart should show:

- Your management structure, the key positions and how these roles relate to each other (please include your directors)
 - The names of the people filling the key positions
 - The number of FTE (full-time equivalent) staff in each area of responsibility.
- b. For large organisations with several management layers you don't need to include:
 - All your subordinate managers or departments (if any)
 - Details of lower level managers and staffing, apart from an indication of numbers
 - Parts of your business not connected to the licensed activity.

17. Your processes

We need to see that you have appropriate processes to ensure all members of your management team are capable of performing their role, on commencement and on an ongoing basis. This requirement also applies to your directors, who are ultimately responsible for the business.

We require this information for your business and for any related bodies to be authorised under your licence.

18. Professional advice

Please comment on whether and how you ensure you have ready access to key **expert advice** when you need it (such as legal, accounting, tax, financial, business or IT advice). We're not implying that you need to keep advisors on a retainer, just that you can access advice as and when required.

If you outsource part of your work and have a formal agreement, you don't need to include that arrangement here – we cover outsource providers later in the application form.

Minimum standards

A. New clients

You must have adequate and effective arrangements for opening client accounts and administering them on an ongoing basis.

Minimum standards

1. You have appropriate account opening procedures, including:
 - Undertaking appropriate client due diligence
 - Ensuring you have a written agreement with your client that governs the issue of derivatives before you enter into any derivative with them (section [430\(2\)\(b\)](#))
 - Having processes for giving clients a copy of the relevant product disclosure statement (PDS) in accordance with [Part 3](#) of the FMC Act and Applicable Regulations made in relation to that part.
2. You have appropriate account maintenance procedures, which include processes or mechanisms to provide your client with:
 - Supplementary documents and replacement product disclosure statements (PDS) as required (also see the section on advertising and disclosure).
 - Account information, including details of open positions and related price details, margin requirements, account balances and transaction history.

Information for applicants

B. What do we ask?

- » Please explain or demonstrate how you meet the minimum standards for opening client accounts.
- » How will you provide clients with updated information?

C. Our comments

Your explanation of how you will comply should provide details about your processes and systems.

19. Account opening process

- a. Please describe your procedures for bringing new clients on board – whether you provide clients with a trading account or trading is through one-off or occasional transactions.
- b. Please explain how your procedures will ensure you meet your obligations, including:
 - The requirement for a written client agreement with the client
 - Undertaking any client due diligence required by applicable anti-money laundering legislation, overseas law or exchange rules
 - The obligation to provide product disclosure to clients as required by the FMC Act
 - Checks and controls to ensure the process is followed.
- c. Parts of your process may differ from other dealers' (particularly what's in your client agreement) depending on the contracts you offer, the type of trading the products lend themselves to, and the dealings you have with the client.

20. Client agreement

- a. The client agreement must include, or provide a framework for agreeing, the terms of the derivative contracts that are specific to the client or transaction, and any other terms of your service.
- b. For retail clients it must also:
 - Be in writing and legally enforceable
 - Be consistent with the FMC Act, Applicable Regulations, conditions of your licence and any product disclosure statement (PDS) for products offered to that client.

- c. Your client agreement will also be subject to the following terms or implied terms (see regulation [213](#) of the Regulations):
- You, and all your authorised bodies, will exercise the care, diligence and skill a reasonable licensee would exercise in the same circumstances
 - If you or any of your authorised bodies contracts out any part of the service, you will take all reasonable steps to ensure the service is provided in the same manner, and is subject to the same duties and restrictions, as if you or your authorised body provided the service yourself.

21. Account maintenance

Please explain your account maintenance processes, including how you will:

- Identify if any updated disclosure is required and provide that disclosure
- Comply with your obligations to provide account information.

If you:

- **Use an online platform** to provide the information, we'll consider security of the arrangements and how the client can retain/access copies of the information
- **Don't use an online platform**, we'll look at how you provide the information and comply with the Applicable Regulations, including the timing requirements.

Minimum standards

A. Dealing conduct

You must ensure your dealing is fair and transparent, you carry it out in an accurate and efficient manner – and your controls prevent illegal or improper trade practices.

Minimum standards

1. You have adequate and effective arrangements for:
 - Ensuring your conduct is consistent with the provisions in your product disclosure statements and client agreements
 - Ensuring client orders are processed promptly, accurately and without any improper bias
 - Ensuring prices quoted to clients are accurate and current – and you have (and adhere to) clear and transparent rules on when/how prices can be re-quoted
 - Preventing and detecting potentially misleading or deceptive conduct by you or your staff
 - Preventing and detecting insider trading, market manipulation and other market misconduct (including those specifically prohibited under [Part 2](#) of the FMC Act) by you or your staff.

You also have:

2. For non-bank derivative issuers, clear and appropriate policies on speculative trading on proprietary accounts by the derivatives issuer (if any is undertaken), including:
 - Separation between those proprietary trading activities and dealings with clients
 - Appropriate limits on proprietary risk positions.

Information for applicants

B. What do we ask?

- » How do you ensure that your dealing activities are fair, transparent, accurate, and efficient – and in accordance with good market practice?
- » What controls do you have to prevent illegal or disruptive trading?

C. Our comments

22. Dealing activities

- a. Dealing activities – and the policies, processes and controls used to ensure these activities are done appropriately – will differ between derivatives issuers depending on the nature of the products issued and the terms of the client agreement.
- b. Please explain your policies, processes and controls for carrying out dealing activities, including how you ensure your dealing activities are carried out:
 - In accordance with the disclosures in your PDS and the terms of your client agreement
 - Without breaching the fair dealing provisions in [Part 2](#) of the FMC Act, and the provisions relating to dealing on financial product markets, where applicable
 - In accordance with the rules of any exchange or overseas jurisdiction, where applicable
 - Otherwise in a proper and efficient manner.
- c. You need to demonstrate how your policies, processes and controls are designed to prevent instances of non-compliance or misconduct, are effective in reducing non-compliance or misconduct by staff as much as practical in the circumstances, and in identifying any incidents which do occur as early as possible.

23. Duty of care

For clients who are offered derivatives under a regulated offer, please demonstrate how your procedures will ensure that you, and all authorised bodies under your licence, will exercise the care, diligence and skill that a reasonable licensee would exercise in the same circumstances.

3. Clear and appropriate policies on staff having trading accounts, either with your business or a competitor. These should include any requirements for prior approval, and processes for monitoring trading activities.
4. Adequate and effective supervision and oversight of dealing activities.

24. Conflict of interest

We need to know about situations that could create conflicts of interest and how you deal with them. Please tell us:

- How you identify and address potential conflicts of interest
- If your company undertakes any proprietary trading in derivatives or underlying markets that could create a conflict between your interests and those of your clients (apart from your normal business of issuing derivatives and hedging the risks involved), how you manage those conflicts of interest
- If personal trading in derivatives or underlying markets by your staff has the potential to create conflicts with clients' interests, how you manage those conflicts of interest.

Minimum standards

A. Hedging

You must have adequate and effective arrangements for managing the financial risks associated with trading derivatives, including both market risk and credit risks from institutional counterparties.

Minimum standards

1. You have a hedging strategy that effectively addresses both market risk, and the credit risk associated with institutional counterparties.
2. You have adequate and effective arrangements to implement your hedging strategy, including:
 - Policies and processes to assess (both initially and on an ongoing basis), the counterparties you hedge with, and to manage the residual risk of dealing with that counterparty
 - Processes for managing margins lodged with counterparties, including the use of client money (any use of client money must comply with Applicable Regulations)
 - Monitoring and controls to ensure you follow your hedging strategy in your dealing activities, and the residual market/counterparty risks stay within approved limits.

Information for applicants

B. What do we ask?

- » Are you prudentially regulated by RBNZ?
- » To what extent do you act as a market maker? Select one:
 - » You fully hedge each client contract with an equal and opposite position in the same instrument (straight through processing).
 - » You hedge all, or substantially all, of net client positions with the same instrument.
 - » You fully hedge all net client positions with a suitable comparable instrument.
 - » You hedge the majority of net client positions for each product and 'underlying' (as defined in section 6(1) of the FMC Act) using the same or a comparable instrument, but plan to carry a level of market risk within defined parameters.
 - » You hedge the majority of aggregate market risk using derivatives and/or by holding the 'underlying' (as defined in section 6(1) of the FMC Act).
 - » Your business model includes carrying a substantial level of unhedged market risk arising from derivative contracts.

If you are NOT regulated by RBNZ, please also answer these questions:

- » Please give an overview of your hedging strategy.
- » How does your hedging strategy ensure you manage the financial risks in your business?
- » How do you ensure your hedging strategy is implemented effectively?
- » For each hedging party you interact with please tell us:
 - » Their name, place of incorporation, regulatory status and if they are a related body to you or not
 - » If you impose any position limits on the business you have with them, and give details
 - » How much business you have conducted with this party over the last financial year.

C. Our comments

25. You need to have an appropriate hedging strategy for your business. For the purposes of your licence application, a 'hedging strategy' includes any process or activity aimed at managing the market or position risk from issuing derivatives. Hedging strategies will vary significantly depending on the nature and range of products traded, and an organisation's sophistication and financial resources. Some may hedge most client contracts on a one-to-one basis – others may manage risk across a business unit, or aggregate exposure to an underlying (the underlying commodity, asset, rate or index that the derivative is priced by reference to).

Here's a really important tip!

Remember to save your document as you work through the form.

Ensure you are using Adobe Reader - other formats may not save correctly.

26. Are you regulated by RBNZ?

If you are prudentially regulated by the Reserve Bank of New Zealand, you don't need to give a detailed explanation of your hedging strategy – because that regulation already requires you to assess and manage your financial risks and have sufficient capital to cover them. We may review aspects of your hedging strategies during routine monitoring after you are licensed.

27. Your hedging strategy

Please explain how your hedging strategy is appropriate for your business. We expect you to have considered:

- The nature of the instruments being hedged – and the choice of instruments used to hedge risk
- The liquidity and volatility of the market for the instruments being traded
- Your preferred business model – including if you use a 'straight through processing' model or take more of a 'market maker' role
- The risk tolerances of your business
- Your financial position and ability to meet any losses arising from adverse market movements on unhedged client positions
- Whether you carry out the hedging directly, or through a related company
- The number and nature of the counterparties you trade with for hedging purposes.

This is not a definitive list of considerations for your hedging strategy. You don't need to comment on those that are not relevant to your licensed business – or you may add others.

28. Limits on exposures

Your hedging strategy doesn't need to eliminate all market risk at all times – and we don't propose to set position limits for derivatives issuers. But we do consider an appropriate hedging strategy will generally involve you setting limits on your exposure to particular underlyings – and managing your exposure within those limits. (Limits may be regularly or continuously adjusted according to market conditions, or other factors.)

29. Implementing your hedging strategy

In addition to explaining your hedging strategy and how it fits the needs of your business, you need to explain how the strategy is implemented, and the controls you have to ensure it is effective on an ongoing basis.

30. Hedging counterparties

Please describe your process for assessing the counterparties you hedge with and the credit risk associated with transacting with them. This should take account of:

- The risk profile of counterparties, including their operational capacity, financial resources, creditworthiness, and regulatory status (and obligations)
- Any exposure limits you have on the level of business through a particular counterparty.

31. Client money

Where you use client money for hedging, you must comply with all Applicable Regulations about derivatives issuers receiving and holding client money and property see the 'Client money' section later in the guide).

Minimum standards

A. Margining of client positions

You have adequate and effective arrangements to manage the financial risks associated with trading derivatives, including credit risk from contracting with clients.

Minimum standards

You have adequate and effective arrangements to manage credit risk from clients, including:

1. For margined contracts, appropriate processes for setting margin requirements, which take into account factors including (but not limited to):
 - The volatility of each contract type and its underlying asset, index, rate or other reference amount or value
 - The liquidity in the market and your ability to close out a client's position
 - If there is any means for you to collect intraday margins from your client.
2. Policies and processes relating to collecting and maintaining margins, including:
 - Collecting any initial margin, and whether your client can enter positions before you receive it
 - If, as security for a margin obligation, you accept anything other than major currencies and whether the value of other types of security is discounted
 - Making margin calls – the thresholds, method and timing to be used
 - If you close out a client's positions if they don't have sufficient margin and don't meet a call on time.

Information for applicants

B. What do we ask?

- » Do you collect margins on entering a derivative contract with a retail client?
If YES, how do you set minimum initial and maintenance margin rates?
If YES, how do your processes for collecting and managing margins help you manage the financial risks for your business (especially the credit risk from clients)?
- » For contracts that are not margined, how do you manage the credit risk from clients arising from derivative contracts?
- » If you offer margined contracts, you must provide a document setting out the minimum margin rates for each contract type and underlying combination.

C. Our comments

32. We appreciate that margins are not routinely collected for all classes of derivative contracts, and for some classes of contracts they are collected by some issuers and not others. These minimum standards are not intended to require you to collect margins, or to create a preference or benefit for margining contracts, where this is not consistent with commercial practice.
33. 'Margins' in this section:
 - a. Are amounts, whether money or other property, collected at the start of, or during the term of, the contract that are intended to provide security for any losses the client may incur or settlement obligations the client may have, however those amounts are described, and
 - b. Include amounts payable at the start of a contract, which are in substance a deposit or advance on the final settlement of a contract (such as an 'advanced part payment' on a forward foreign exchange contract), but
 - c. Don't include non-refundable amounts paid to enter into a contract, payable at the start of it (such as a premium on an option).
34. **Risk of non-payment on contracts**
Please explain how you manage the risk to your business (and potentially your other clients) if a client fails to meet payments under a derivative contract. Include comment on:
 - How you assess the level of risk for a contract – and how this is reflected in the level of initial margins or other security arrangements
 - Your processes for monitoring the adequacy of the margin held or other security arrangements – and for addressing any deficiency in the level of security held
 - Your legal rights if a client fails to meet a payment (or other default) – and your policies and procedures for dealing with the default.

3. For contracts that are not margined, appropriate policies and processes for otherwise managing credit risk from clients, which take into account (without limitation):
 - The volatility of each contract type and its underlying asset, index, rate or other reference value or amount, and
 - The financial resources and creditworthiness of the client.
4. Any other mechanisms to manage risk, such as placing position limits on clients' accounts.

35. Exchange traded contracts

If the derivatives are exchange-traded contracts (or an over-the-counter equivalent), you should discuss:

- The level of initial and variation margin requirements applying to those contracts under the rules of the exchange or the laws of the relevant jurisdiction
- How your margining arrangements correspond to those requirements.

36. Margin as an indication of risk

- a. If you market a class of margined derivatives to retail clients as an investment, or it is reasonably likely that the product will be used this way, explain how the level of margin or other security accurately reflects the potential for clients to lose money on the contract.
- b. Where a contract is margined and there is a significant risk of clients misunderstanding the extent of the risk because of the level of margin required or of losing more than they deposited as margin, we may consider requiring higher margin levels through conditions. Any conditions as to minimum margins will target the particular dealers or products where the issues arise – we do not intend to create a framework setting minimum margins across all, or most, products and underlyings.

Minimum standards

A. Client money

You comply with all applicable regulations about handling client money or property – and keep proper records of all transactions related to client money and derivative contracts.

Minimum standards

1. You have adequate and effective arrangements to:
 - Receive, hold, use and disburse client money in compliance with the Applicable Regulations
 - Comply with all procedural, record keeping, and audit requirements for the handling of client money.

Information for applicants

B. What do we ask?

- » How do your processes ensure all client money and property is held in accordance with the Applicable Regulations?
- » Who do you hold client money with?
- » What is the level of client money held?
- » Do you hold client property other than money?
If YES please give details
- » Do you hold client money above the level of margins on open contracts?
- » Do you keep proper records of all transactions related to client money and derivatives contracts?

C. Our comments

37. In this section, references to 'client money' means 'derivatives investor money' and/or 'derivatives investor property' under the Regulations, as appropriate.
38. As a derivatives issuer you'll need to comply with the Regulations covering the holding and application of client money (see Regulations [238-250](#)). You'll need to have processes and controls in place to enable you to comply with the Regulations.
39. Client money must be held on trust for the investor. You will need to provide detail of the specified bank (as defined in the Regulations) that will hold client money. You'll also need to provide evidence that the client money is held in a trust account, separate from money held by or for any of the following persons on their own account: the derivatives issuer, the offeror or any person who holds the money.
40. If you don't routinely hold margins or surplus account balances, please explain your processes for making or receiving payments under derivative contracts, and how you comply with the Applicable Regulations in relation to handling those.
41. Please also provide details of any external auditing done in relation to your handling of client money – and the relevant auditor's engagement letter.

Minimum standards

A. Advertising and disclosure

You have compliant product disclosure documents and registry entries – the information is not false or misleading and your advertising complies with the fair dealing part of the FMC Act.

Minimum standards

1. You have adequate and effective arrangements to ensure:
 - Your disclosure materials are at all times compliant with the requirements for PDS and Register entries (or other disclosure documents) in Part 3 of the FMC Act and the Applicable Regulations
 - Your advertising complies with fair dealing provisions in Part 2 of the FMC Act and advertising provisions in Subpart 3 of Part 3 of the FMC Act.

Information for applicants

B. What do we ask?

- » How do you ensure your initial (and ongoing) disclosure and advertising materials are appropriate, compliant, contain all the legally required details, and are not misleading or deceptive?

C. Our comments

42. As a licensee you must comply with the requirements in the FMC Act covering:
 - Disclosure to clients and prospective clients (Parts 2 and 3)
 - Advertising materials (Part 2 and Subpart 3 of Part 3).
43. Please explain the policies, processes and controls you have to ensure your disclosure and advertising materials ('the items') are compliant for the duration of their use, including:
 - How do you ensure the people who prepare the items understand the requirements of the FMC Act and Applicable Regulations?
 - What legal or compliance reviews (internal and/or external) are done before your final review and sign off process?
 - What are your approval processes for the items – and who approves them?
 - How do you ensure staff don't use the items before they are approved?
 - How do you ensure that your disclosure materials and registry entries remain up-to-date and compliant? Do you undertake reviews periodically and/or after significant events?
 - What records do you keep of the items produced, and the approvals?
44. You may provide a near final draft PDS for us to review. Please note we only use this to assess your capability to produce a high quality, compliant document – we do NOT pre-vet any PDS as part of the application process.

Minimum standards

A. Material issues and complaints

You have effective processes and procedures to identify and deal with material issues in your business.

Minimum standards

1. You maintain effective methods for identifying and reporting to the FMA any material change of circumstance or breach of your market services licensee obligations.
2. You monitor complaints to ensure they are dealt with fairly.
3. You have systems and procedures to identify trends in complaints – and you investigate and address any issues identified.

Information for applicants

B. What do we ask?

- » Explain or demonstrate how you ensure material issues in your business are identified and appropriately dealt with.
- » Explain or demonstrate how you ensure you identify breaches of your market services licensee obligations, or material change of circumstances, and report them to FMA.
- » Explain or demonstrate how you ensure client complaints are dealt with fairly and promptly.
- » Explain or demonstrate the systems and processes you have for identifying any trends in complaints.
- » How many complaints have you had in the last financial year?
- » How many of these have been resolved to the customer's satisfaction internally?
- » How many have gone to the Dispute Resolution service?

C. Our comments

45. Material issues

- a. Under the FMC Act (section [412](#)) you must have effective methods to:
 - Monitor compliance with your market services licensee obligations and identify material changes in circumstance (by you or any authorised body)
 - Report to the FMA any breach or material change of circumstance that has happened, may have happened, or is likely to happen in relation to your licensed business (by you or any of your authorised body/s).
- b. You'll also need to provide certain specific notifications and reports to the FMA, as set out in the FMC Act and conditions of your licence. Please tell us how you will achieve this.
- c. A **market services licensee obligation** is defined in section [6](#) of the FMC Act and generally covers any obligation imposed by the:
 - Conditions of your licence
 - The FMC Act and Applicable Regulations
 - Terms of any financial product you offer, or financial service you provide (or any court order related to your products and services).
- d. A material change of circumstance is defined in section [410](#) of the FMC Act and includes:
 - One that adversely affects your (or any authorised body's) capacity to perform the licensed business effectively
 - Any change that means you/your authorised body no longer satisfy all the requirements of any of sections [396\(a\)–\(f\)](#) or [400\(1\)\(a\)–\(e\)](#) of the FMC Act.

Here's a really important tip!

Remember to save your document as you work through the form.

Ensure you are using Adobe Reader - other formats may not save correctly.

46. Complaints

- a. We expect you to have a complaints process which covers how you handle complaints and identify and monitor any trends. Please tell us about:
- Your complaints process
 - How many unresolved complaints you have when you apply for your licence
 - How many unresolved complaints you had 12 months ago.
- b. Please note you must belong to a dispute resolution scheme, as required under the [Financial Service Providers \(Registration and Dispute Resolution\) Act 2008](#). This is one of the requirements of registering to become a financial service provider to retail clients (and getting your FSP registration number).

Minimum standards

A. Staffing and supervision

You must have adequate and effective arrangements to manage and supervise staff. Your staff need to be suitable for their roles and act professionally.

Minimum standards

Your arrangements ensure:

1. Staff have the right skills and experience for their roles, and a clear job description that sets out their responsibilities (including authorisation/delegation levels)
2. Roles are designed to support key controls (for example by segregating duties between roles)
3. Enough time is allowed for key processes including compliance activities
4. Staff are appropriately trained, managed and supervised – you address poor performance and recognise professional conduct
5. You have appropriate supervisory arrangements, including:
 - Sufficient resources are allocated to supervision
 - Supervisory staff have the right knowledge and experience (including understanding the functions of the roles they supervise)
 - Supervisory staff have the support and authority they need to do the role effectively
 - Any issues identified by supervisory staff are acted on appropriately.

Information for applicants

B. What do we ask?

- » Explain or demonstrate how you meet the minimum standards for staffing and supervision.

C. Our comments

47. What do we need to know?

- a. You need to demonstrate that you have appropriate staffing and an adequate staff supervision structure to ensure you can maintain minimum standards for the course of your licence.

The question in this section asks for the information we need to assess your policies and processes for deciding what staff you need, how you recruit them, and how you manage their performance.

Please note we ask about outsourcing arrangements in the next section.
- b. How you structure your business and decide what skills and people you need to meet the minimum standards is up to you.

We don't need to know about the character or capability of individual staff or particular teams. Nor do we need to know the details of your financial bonus schemes, if any.

You only need to describe any business processes or staffing structures that are relevant to the licensed activity. You don't need to describe how you ensure staff have the right skills and experience for roles that are not relevant to the licensed activity.

Minimum standards

A. Outsourcing

You must ensure outsourced functions are adequate, effective and comply with your licence obligations.

Minimum standards

1. You have appropriate processes to ensure, before you outsource a function, that the provider is an appropriate entity and capable of effectively performing the outsourced function to an acceptable service level.
2. You have a proper legal arrangement with the provider, including provisions that enable you to effectively monitor their performance and take appropriate action for non-performance.
3. Records and information the provider holds will be available for inspection by the FMA on request.
4. You regularly review the outsource arrangement (at a frequency appropriate to the risk involved).
5. Your performance monitoring programme includes:
 - Checks that the provider's performance meets required standards
 - Triggers for identifying non-performance
 - A plan for steps you will take in the event of non-performance.

Information for applicants

B. What do we ask?

- » Do you or will you outsource any functions required for you to effectively perform the licensed service applied for? If YES, you will be asked:
 - » Describe the functions you will outsource and your arrangements (such as who will perform the functions, how and where).
 - » Explain or demonstrate how you have the appropriate processes to ensure the provider/s are appropriate and can effectively perform the outsourced function.
 - » Explain or demonstrate how you will monitor performance and ensure the outsource providers perform to an acceptable level.
 - » Do you have formal legal agreements with outsource providers? If YES, do these agreements provide for information to be available to FMA as required?

C. Our comments

48. Who are the standards for?

These standards apply to any functions outsourced by you or any of your authorised bodies.

You only need to explain your core outsource arrangements – these relate to the licensed business and where you rely on the outsource provider to meet the minimum standards or your licence obligations.

If you're a registered bank subject to RBNZ's Outsourcing Policy BS 11, you may already meet some of these requirements, but you still need to explain how you'll meet our minimum standards for the licence/s you're seeking.

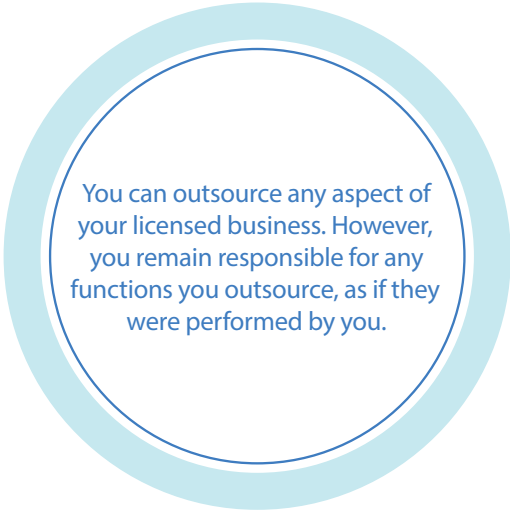
49. How will you select providers?

Please explain how you determined the outsource provider can perform the outsourced functions to the required standard.

50. What functions will you outsource?

Please list your core outsource arrangements, name the outsource providers and confirm that you have an outsourcing agreement with them.

For each outsourced function please describe the assurance processes you have in place to ensure the provider can effectively perform the outsourced function and how you monitor their performance. If you have the same approach for all outsourced functions you only need to describe this once.



You can outsource any aspect of your licensed business. However, you remain responsible for any functions you outsource, as if they were performed by you.

51. What records are required?

The level and nature of records the outsource provider must keep should be at least equivalent to what you would keep if you performed the function yourself (see the records section of this guide).

We also expect to be able to view them within a few days of our request, depending on the nature and volume of the records.

Explain what records the outsource provider will keep, and your arrangements for us to have access to them. You don't need to arrange for direct access, providing we can obtain the records through you.

52. Authorised body or outsource provider?

If a related body corporate will perform part of the licensed service, you can choose to either set up a formal outsourcing agreement with them – or include them as an authorised body under your licence.

If you decide to include them as an authorised body, the minimum standards in this outsourcing section don't apply. However, you must have oversight over the authorised body to ensure your group as a whole meets the minimum standards.

Minimum standards

A. Records

You must maintain adequate records and provide information to the FMA in a timely manner.

Minimum standards

1. You have systems and procedures to maintain proper records.
2. You retain these records for at least seven years – and they are available for inspection by the FMA on request.

Information for applicants

B. What do we ask?

- » Describe how your processes ensure you will meet the minimum standards.
- » How do you ensure your business records will be readily accessible for at least seven years, and available for inspection by FMA on request?

C. Our comments

53. What records must you keep?

You must retain all documents required to be kept by law under the FMC Act and applicable regulations. You'll also need to be able to produce appropriate records about your licensed business, including:

- Records of key decisions and activities, so we can confirm your compliance
- Files for each client (and past clients) with all relevant documents, such as client agreements and disclosure documents.

You must ensure your client agreement and other arrangements will include client consent for us to view their records.

54. What are your arrangements?

Please describe your approach to record keeping, including the types of records you keep and how you ensure they will be available for at least seven years.

Please also describe the arrangements you've made so we can inspect your records without unnecessary delays, such as having reliable archival systems and getting client consents in advance.

Minimum standards

A. IT systems and business continuity

Your IT systems used to deliver the licensed market service must be secure and reliable. Your arrangements ensure they perform efficiently and the associated risks are managed.

Minimum standards

1. Your IT systems include all necessary functionality to provide your service, and perform the intended processes effectively.
2. You have effective safeguards and controls over the IT systems (and the underlying processes) whether they are built into, or external to, the system. These include processes:
 - To ensure data and system security – and prevent errors or system failure
 - That take into account risk from human error, technical failure and malicious conduct.
3. You maintain an appropriate (and tested) business continuity plan – including procedures for data backup and disaster recovery.
4. You have proper legal arrangements with any third party software providers, including licences for software and contracts for any required maintenance and support.
5. You regularly review your IT systems and anticipate increase in demand, so that your resource remains appropriate for the scale and complexity of your licensed business (reviews should include outsourced functions).

Information for applicants

B. What do we ask?

- » Describe the IT systems you use in providing the market service.
- » How do you ensure your key IT infrastructure: is fit for purpose, performs effectively and has all the necessary functionality? Is stable and secure? Is used according to legal agreements?
- » How do you manage IT risks, including from human error, technical failure, or malicious conduct?
- » Explain how you review your IT system in order to anticipate increases in demand and maintain sufficient resources.
- » Please provide a Business Continuity Plan.

C. Our comments

55. Your IT systems

You are free to choose how you implement IT solutions in your business. Where you integrate processes into IT systems, the processes performed by that system must be effective.

For example, your IT systems must have built in parameters consistent with the terms of your service, and controls to ensure the integrity of external data feeds and their accurate use in calculations.

56. Key information

Please tell us about the IT systems you rely on to deliver the licensed service. You don't need to provide details on every aspect of your systems, but please tell us about:

a. Fit for purpose/functionality

- The functionality of your systems – what function/s they perform for the licensed business (an overall architecture design map might be useful)
- Key risks and the controls/safeguards in place (internal and external)
- Any third party verification you obtain for your IT systems.

b. Stability and security

How you manage the risks associated with the use of your IT systems, including:

- Data security and integrity (such as a security audit)
- Disruptions from IT system failures and outages.

c. **Legal agreements**

Your legal rights to use the software and if it is currently under support.

57. Business continuity plan

- a. Your business continuity plan should include the documented procedures that guide your organisation to respond, recover, resume and restore to a pre-defined level of operation following disruption. This plan should provide for the continuity of your business operations generally – not just the recovery of your IT systems.
- b. The size and complexity of your plan is likely to be based in part on the size and complexity of your business and organisational arrangements. It should cover all aspects of your business (not just IT systems) that are necessary to meet the minimum standards or your licence obligations.
- c. Please provide evidence you have completed a business impact analysis – and have management support, and resources, to implement and maintain your business continuity plan. We also need to know when you last did an impact analysis and last tested your business continuity plan.

Minimum standards

A. Financial resources

To get a licence you must meet capital adequacy requirements under the FMC Act. This includes having the resources to provide the derivatives service and meet your contractual obligations – plus effective arrangements for managing those resources.

Minimum standards

1. You are solvent and have positive net assets.
2. You are able to pay your debts as they become due in the normal course of business.
3. At all times your net tangible assets must be at least the required net tangible assets (the greater of \$1m or 10% of average revenue).
4. You hold half of the required net tangible assets in cash and cash equivalents and the remainder in liquid assets.
5. You prepare a rolling projection of your cash flows for the 12 months ahead. This must be done at least every six months and approved by your board of directors.

Information for applicants

B. What do we ask?

- » Are you prudentially regulated by RBNZ?
- » Are you subject to prudential regulation or capital adequacy requirements in any jurisdiction? If YES, please provide details.
- » What is your balance date?
- » Who is your auditor?
- » What are your net tangible assets? (NTA - see comment 60)
- » Was your latest audit opinion modified, unmodified or not applicable?
- » Please provide a copy of your latest audited full year financial statements or financial plan. If they are over 8 months old, please also provide your management accounts for the first 6 months of the current financial year.

If you are NOT prudentially regulated by RBNZ you must also provide

- » Details of the systems, policies, and controls you use to meet the minimum standards for financial resources. (See comment 64)
- » A copy of your cash flow forecast for the next 12 months (with assumptions), current capital adequacy calculation and your auditor's engagement letter.
- » A copy of the balance sheet used as the basis for your NTA calculation.

C. Our comments

58. Your audited financial statements

The questions ask you to provide your most recent audited financial statements. You'll need to tell us if your audit opinion was modified or unmodified. By 'modified' we mean an audit report containing a qualified audit opinion, an adverse opinion or a disclaimer of opinion.

If you have financial statements for the most recent year, but they have not been audited, or if you only have interim financial statements, please still provide them and tick not applicable (n/a) on the audit opinion question. If you are a new business and have not prepared any financial statements, please provide a financial plan in the form of your prospective balance sheet and P&L for each month end for the next 12 months.

59. Are you prudentially regulated or subject to other capital adequacy requirements?

If you're prudentially regulated by RBNZ, there are some questions in this section you don't need to answer – but you'll still have to provide information needed for our risk assessment. Also, you won't be subject to the standard conditions on financial resources.

If you're subject to other prudential or capital adequacy requirements that are (at least) as stringent as those in our standard licence conditions, we may not require you to meet all the financial resource conditions – or we may set tailored conditions that recognise your other regulation. However, you still need to answer all the questions in this section and provide details about the other regulation.

6. You have adequate and effective systems, policies, procedures and controls to:
- Monitor your financial resource levels at all times
 - Prepare cash flow forecasts as required by the conditions of your licence
 - Assess the risks of not having enough financial resources to provide the service, or of a serious financial problem occurring
 - Calculate your net tangible assets as required by your licence
 - Comply with the reporting and notification requirements under the FMC Act and in the conditions of your licence.

What are net tangible assets (NTA)?

Your total tangible assets, less your total liabilities, as they appear on your balance sheet at the time of calculation.

60. Solvency and cash flow forecasting

- The standard conditions require you to be solvent at all times. For this purpose, being solvent means you are able to meet the solvency test in the Companies Act 1993 – you can pay your debts as they fall due, and you have positive net assets.
- You'll need to demonstrate the cash flow component of your solvency on an ongoing basis through cash flow forecasting. This means you'll need to prepare cash flow forecasts every six months, and update them in between if an updated forecast shows you may not continue to meet the financial resource requirements.
- Cash flow forecasts should be broken down into monthly (or shorter) intervals to show the timing of receipts and payments.
- You'll also need to document the calculations and assumptions you use in your forecasts, and your explanations of why the assumptions are appropriate. The cash flow forecasts, including the assumptions and explanations, will need to be approved by your board or governing body.
- You'll need to provide your first cash flow forecast with your application – including your calculations, assumptions and explanations of assumptions.
- Once you're licensed, you must report to the FMA if you become (or are likely to become) insolvent – or if your cash flow forecast shows you won't have enough cash to meet your obligations as they fall due. You'll also need to provide us with your cash flow forecast on request.

61. Net tangible assets

- The standard conditions for a licensed derivatives issuer require you to have net tangible assets (NTA) of, at least, the greater of \$1 million or 10% of average revenue.
- Broadly, your NTA is your total tangible assets less your total liabilities, as they appear on your balance sheet at the time of calculation, less excluded assets. This NTA calculation must not include any:
 - Receivables from a related party or associate unless 'permitted'
 - Client funds you hold, or any investments you have in the portfolios you manage.

Your balance sheet must be prepared on the same basis as your audited annual financial statements. Full details of the NTA calculation are set out in the [standard licence conditions](#).
- 'Permitted' related party** receivables are those resulting from a transaction done in the ordinary course of business, on standard commercial terms, and at arms' length. Your total permitted related party receivables can't exceed 20% of your net assets (total assets less total liabilities).
- Shareholder loans** can be excluded from your total liabilities for the NTA calculation, providing you have a written agreement with the relevant shareholder to subordinate the debt. This agreement must:
 - Provide that repayment of the debt will be subordinate to all the claims, demands, rights and causes of action of all unsubordinated creditors
 - Provide that the debt is not repayable within one year
 - Be available to your auditor and the FMA on request.
- Average revenue** means the average of three years' revenue (calculated according to NZ IFRS), being your current financial year to date (with reasonable forecast for the rest of the year) plus your previous two financial years.
- As part of your application we ask for your current capital adequacy calculation. This should be the NTA calculated as at the time of your application. Calculate this in the manner set out in the [standard licence conditions](#).

62. Liquid assets

At least half your minimum NTA requirement must be held in cash and cash equivalents; and at least half must be held in liquid assets. Your liquid assets are your cash and cash equivalents and any assets you can reasonably expect to realise for their market value within six months.

You must not include any client funds you hold or any other assets that are excluded from your NTA calculation.

63. Calculating your NTA

The standard conditions require you to calculate your NTA monthly, or when you suspect that you may no longer have at least 110% of your required NTA. While you have less than 110% of your required NTA, you must calculate your NTA at an increased frequency and report to the FMA. For details about how to calculate your NTA please see the [standard licence conditions](#).

Additionally, if you have less than 100% of your required NTA for more than 20 working days or less than 90% of your required NTA at any time, you must stop entering into new contracts with clients, unless you have express written approval from the FMA. You will, however, be able to permit clients to close out positions provided you can continue to hedge your overall position.

64. Audit requirements

You need to have your compliance with your financial resource requirements audited annually by a licensed auditor or registered audit firm. Generally, we expect this audit to be undertaken by the auditor who audits your annual financial statements under Part 7 of the FMC Act, and to be done at the same time. The audit opinion will need to provide opinions on a number of specific points – some of these will be a reasonable assurance opinion and others will be expressed as a limited assurance opinion.

There is no specific requirement to have engaged an auditor prior to applying for the licence. If you have engaged an auditor, please provide the engagement letter. If you are yet to appoint an auditor pending the licence outcome, you can provide a draft terms of reference instead.

65. Your systems, policies and controls

If you are not prudentially regulated by RBNZ you'll need to:

- Tell us how you'll undertake your NTA calculations and cash flow management, and
- Provide an overview of how you manage your financial resources more generally.

Minimum standards

A. Professional indemnity

You must maintain an appropriate level of professional indemnity insurance cover for your business.

Minimum standards

1. You maintain an appropriate level of professional indemnity insurance to cover risks related to your market service (if cover is available).
2. Your level of professional indemnity insurance cover is adequate and appropriate for the nature, scale and complexity of the market service you're licensed for – there is no set minimum cover, it depends on your business.
3. You have sufficient resources to meet any policy excess.

Information for applicants

B. What do we ask?

- » Please show you have adequate professional indemnity cover for your business, and explain how you assessed this was adequate.
- » Please tell us about any material exclusions or conditions in your policy/s.

C. Our comments

66. Please tell us the level and scope of cover you think is necessary for your business, and explain how you assessed this and why you think that level and scope is adequate.
We expect you to have cover at or above that level and scope:
 - If you don't think you need cover please explain why
 - If you can't get suitable cover please explain the steps you took to try and get cover.
67. Your description of material exclusions or conditions in your policy/s should include any policy excess. We only require information on exclusions or conditions that could affect cover for your licensed business. For example, there could be other parts of your business, not within the scope of your licence, that are covered by the same policy. We don't need to know about exclusions that would have no impact on the cover for the licensed business.
68. Please also tell us if there are any claims currently notified under your policy that relate to your licensed business.

Minimum standards

A. Governance

You must have a high-level body responsible for overseeing compliance with your licence obligations – and ensuring appropriate risk management.

Minimum standards

1. You have a clear reporting and governance framework covering all key aspects of your business (or proposed business) including compliance obligations and key risks of the business.
2. You have an 'oversight body' responsible for overseeing compliance – it should not be solely the responsibility of risk, compliance or internal audit functions.
3. You have appropriate arrangements to ensure your oversight body and other senior managers and directors get timely, and sufficient, high quality governance and management information to allow for proper oversight and decision making.
4. Your oversight body considers the adequacy and robustness of its governance and compliance arrangements at least annually.
5. **Related bodies** – your oversight body is able to direct and oversee the provision of market services by any related body authorised under your licence (authorised body).

Information for applicants

B. What do we ask?

- » Please name your oversight body.
- » Explain or demonstrate how your oversight body will oversee your (and your included related bodies) compliance with your market services licensee obligations.
- » Explain or demonstrate how your oversight body will ensure they receive sufficient and timely high quality information.

C. Our comments

69. Your oversight body

- a. You must have an oversight body responsible for overseeing compliance with your market services licensee obligations.
- b. Arrangements may vary depending on your business. In **smaller organisations**, the oversight body will often be the board of directors. If a company has only one director, they might perform this duty on their own.
- c. In **larger organisations** with more diverse operations, the oversight function may be performed by a committee composed of senior managers and representatives from legal, risk and compliance areas, with the board providing a high level of oversight across the licensed business. In that case we'd like to know about the committee (we'll already have details of your board from earlier questions).
- d. We haven't restricted the types of arrangement considered acceptable – but you need to demonstrate that your arrangements ensure your business governance is effective.

70. How does it operate?

In explaining how your oversight body operates, you need to tell us:

- Who the members of your oversight body are and how they are selected. If this is your board please tell us that – but we don't need any other details about your board, as you'll supply these under the 'fit and proper' section of your form
- The source of the body's authority (including any terms of reference, delegations and limits on its authority)
- How the oversight body's performance is assessed by the board
- How often it meets and the types of matters considered at the meetings
- What actions it can take to ensure the effective delivery and performance of the licensed market service/s, such as the ability to approve or require changes to key processes and controls.

71. How do you keep them informed?

You'll also need to explain your processes for ensuring your oversight body gets the information they need to perform their role effectively, including comment on:

- Which matters are referred to the oversight body for consideration
- The nature of information provided to inform the oversight body's decisions
- When, and how often, that information is provided.

In larger businesses, reporting to the oversight body may be a formal process, carried out in advance of periodic meetings.

In small businesses where the oversight role is undertaken by the board or a single person, the process may be less formal. For example, your reports may be emails sent as matters arise and, if required, clarified by a relevant person – or you might attend meetings to report matters to your governing body.

72. Any related bodies to be authorised under your licence?

If you will have any related bodies authorised under your licence (authorised bodies), please explain how your oversight body will oversee the licensed activities and ensure those bodies:

- Comply with the obligations of your licence
- Manage risks appropriately and treat clients fairly
- Provide sufficient good quality governance and management information
- Deliver and perform the market service/s effectively.

Minimum standards

A. Culture

You have governance and compliance arrangements that promote a culture of compliance with your obligations as a licensee, and ensure appropriate risk management and fair treatment of investors.

Minimum standards

1. You have a good compliance culture, supported by systems, policies, procedures and controls.
2. We expect a good compliance culture to include the following:
 - You clearly communicate your conduct expectations to staff, for example through a code of conduct or code of ethics
 - Management actively supports professionalism in their messages to staff
 - Remuneration, reviews, promotions and other incentives recognise professionalism and compliance, not just the achievement of revenue, cost or profit targets
 - You have processes to identify and manage conflicts between the interests of the licensee (or individual staff) and investors' interests – and you quickly resolve any issues in a way that is fair to investors
 - You allocate adequate time and resources for training, supervision and compliance activities
 - Management encourages staff to report breaches or inappropriate behaviour, and deals appropriately with staff who report matters (for example through an independent whistle-blowing policy)
 - Management willingly engages with relevant regulators in an open and honest manner, and are responsive to any regulatory concerns they may raise.

Any **related bodies** operating under your licence must also promote a culture of compliance, appropriate risk management and fair treatment of investors.

Information for applicants

B. What do we ask?

- » How do you foster a good compliance culture – and ensure compliance with your obligations as a licensee, effective risk management and fair treatment of investors?

C. Our comments

73. Do you have a good compliance culture?

You need to demonstrate that you (and any related bodies authorised under your licence) have a good compliance culture. This stems from an ongoing focus by management on culture and behaviours.

We want to specifically understand the compliance policies and processes you have that meet each of the points in minimum standard 2.

You should only include documents if they are necessary to demonstrate you are meeting the minimum standards.

74. How do you demonstrate it?

In answering the questions in this section you may wish to tell us about specific steps you have taken (or will take) to promote the right attitudes and behaviour from managers and staff across your business, and the effects of these steps.

Minimum standards

A. Compliance assurance

You must have adequate and effective arrangements for challenging and testing your own compliance, the compliance framework and the outcomes.

Minimum standards

1. **Compliance assurance** – you have adequate and effective arrangements to challenge and test the design and operation of your processes and controls, and the adequacy of your governance and management information. This is your compliance assurance programme.
2. Your **compliance assurance programme** goes beyond day to day controls for key processes, by including more in-depth testing of processes and controls including:
 - The testing (and the design of it) is done independently of those involved in day to day processes and oversight – for example testing is done by a separate compliance or internal audit function, or by an external organisation
 - You allocate sufficient, appropriate resources to planning and carrying out the programme, and ensure those involved have the skill and experience to carry out the work
 - Your compliance assurance programme is approved by your oversight body
 - Your oversight body is kept updated about progress against the compliance assurance programme – you also report significant findings to them and follow up on remedial action needed.

Information for applicants

B. What do we ask?

- » What are your (and included related bodies) arrangements for testing compliance with policies, procedures and controls?

C. Our comments

75. Testing your compliance

- a. You need to have processes to test your compliance – over and above the checks built into your operational systems and oversight of staff. The extent and type of testing you do depends on things like:
 - The nature and size of your business
 - How your systems and processes are designed
 - The types and levels of risk in your business
 - How involved your directors/oversight body are in overseeing day to day functions.
- b. **Larger businesses** generally have more formal processes and a greater separation between the governing body and staff, so you'll probably need more extensive testing to ensure the processes and controls are working as intended.
- c. **Smaller businesses** – if the people in your oversight body directly manage the staff performing key functions, or perform the key functions themselves, you may be able to rely more on their direct oversight or knowledge of the business and do less testing. You may be able to focus your testing on areas where there are particular risks, or where you have less ability to manage the day to day functions, instead of comprehensively testing all areas of your business.
- d. You'll need to explain the nature and level of the testing undertaken, and why you consider this is appropriate for your business. You should also discuss how findings are reported – and followed up on, where needed.

76. Is your testing independent?

- a. Where practical, your compliance testing should be done independently of those responsible for undertaking, and directly managing, the functions to be tested.
- b. We expect **larger businesses** to have a separate compliance assurance and/or internal audit function responsible for creating a compliance assurance programme, undertaking the compliance testing, and reporting to the oversight body on progress and findings.

For **small businesses**, we appreciate it may not always be practical for the compliance assurance to be done by someone who is completely independent of the person or team performing the business function.

Compliance assurance

Your compliance assurance programme isn't a policy document, compliance plan or risk register – it's the programme of independent checks you do to test whether your policies, procedures and controls are effective in ensuring the compliance of your business.

For example, the manager responsible for the business function may also have to do the compliance testing, or may directly oversee the compliance staff – or in very small businesses, compliance testing may be achieved by staff peer reviewing each other's work.

- c. You may outsource all or part of your compliance assurance programme – including establishing or reviewing your framework, and testing your compliance. This may be an appropriate option for small businesses that don't have the scale or structure to employ someone independent for the role.

Final steps

This section covers the finalisation of the application – where you self-certify, review then email with attached supporting documents.

At the end you're asked to **certify** that you've told us everything material to the licence.

Review everything, and you're nearly done!

But before you hit that send email button...

Have you...

- Answered all the questions – and given the answers you think best portray how your business meets the minimum standards?
- Attached all the declarations, CVs and other supporting documents needed?
- Checked there's nothing you want to add, change or delete?
- Arranged how you're going to pay?

Information for applicants

77. Attaching documents

These are the main things you need to know: (*also see [PART A](#) for more details*)

- You'll be asked for certain mandatory documents – they can be attached to the email you send us with your application form. If the file size is too large, please email licensing@fma.govt.nz. They will supply you details to upload to a databox.
- If you consider you have valid reasons for not having or providing a mandatory document, you can instead attach a document explaining your reasons for not supplying it
- Many questions ask for supporting material – Please include in the application form the document name and specific section we should read.
- You can refer to one document for several questions – but it is essential your documents are clearly named and the sections in them are numbered – so we can find the bits you want us to read.

78. Certifying your application

When you select the 'certification' box you're certifying that to the best of your knowledge you have included everything material to the licence sought. It means you need to be sure the information you're providing is true, correct and complete – that nothing material has been left out.

79. Review before emailing

Please review all the questions and your answers before you email to us.

80. Making fee payments

We will send you an invoice once we have received your application form – you can also find the application fees on our website. For more about how to pay your fees please see [PART A](#).



If you have any questions,
talk to us on 0800 434 566,
or email us at
licensing@fma.govt.nz

81. Submitting your application

These are the main things you need to know:

- You need to have answered all the questions and attached any mandatory documents.
- The limit on email size is 153600 (kB)
- We will issue you with an invoice and instructions on how to pay the licence fee
- You need to pay the invoice before we will start assessment of the application
- We will tell you if not enough information has been provided with the application for us to accept it.
- If for some reason we may need to place limits on your licence, or decline your application, we'll contact you first so you have the chance to discuss it with us
- If we issue a licence, we'll confirm it in writing and set out the conditions that apply



Was this guide helpful?

We welcome your feedback.

If you have any comments or suggestions that might make it more useful, please [share them with us](#).

Thank you.

Any questions?

If you have any questions please call us on 0800 434 566. We're open for calls from 8:30am – 5:00pm, Monday to Friday.