In Confidence

Office of the Minister of Finance

Office of the Minister of Commerce and Consumer Affairs

Chair, Cabinet Economic Development Committee

Financial Market Infrastructures Act 2021: Proposed regulations

Proposal

1 This paper seeks Cabinet agreement on the content of two regulations that are needed to complete the implementation of the Financial Market Infrastructures Act 2021 (the **Act**).

Relation to government priorities

2 This is a routine operational adjustment that requires Cabinet approval.

Executive Summary

3 The Act provides for the regulation of financial market infrastructures (**FMIs**) such as payment systems, securities settlement systems, and central counterparties. Under the Act the role of the regulator is carried out jointly by the Reserve Bank of New Zealand and the Financial Markets Authority (the **regulators**).[1] The Act provides the regulators with a comprehensive set of supervisory, enforcement, and crisis management powers for designated FMIs.[2] The Act replaces a regulatory regime with limited powers in Part 5C of the Banking (Prudential Supervision) Act 1989.

4 The Act was passed in May 2021, since that time the Reserve Bank of New Zealand (**RBNZ**) and the Financial Markets Authority (**FMA**) have been undertaking work to implement the new regulatory regime- in particular, designating FMIs under the Act (including those that are designated under the current regime), and developing legally binding standards for designated FMIs.

5 Note that we plan to consult industry on a tentative date of 1 August 2023 to bring the Act fully into force and thereby complete the implementation of the Act. This commencement date will need to be reflected in an Order in Council. We will seek a decision on this Order in Council at a later point, following our consultation with industry.

6 We are seeking decisions on two sets of technical regulations that are required before we complete the implementation of the Act. These regulations, made under section 153 of the Act, would:

[1] Except in relation to pure payment systems, where the Reserve Bank is the sole regulator.
[2] Designated FMIs are either FMIs that have been designated due to their being systemically important, or FMIs that have applied to be designated to access certain legal protections afforded by the regime (e.g. legal certainty that settlements effected through the FMI cannot be unwound).

- slightly extend the standards-making power in the Act—as authorised by section 34(3)(c) of the Act—to accommodate a robust equivalence framework for overseas FMIs; and
- set a fee to process applications to access the designation regime in the Act.

Background

7 FMIs are multilateral systems that provide clearing, settlement, and reporting services in relation to electronic payments, transactions involving personal property within the financial system and other financial market transactions. There are several types of FMIs, including payment systems, securities settlement systems, central securities depositories, central counterparties, and trade repositories.

8 FMIs are critical infrastructure and problems or disruptions to an FMI's operations could lead to a severe adverse impact on financial markets, the wider financial system, and the economy as a whole. The inter-bank payment system operated by the RBNZ– the Exchange Settlement Account System (ESAS) – is one example of an FMI operating in New Zealand.[3]

9 In its 2016-17 Financial Sector Assessment Programme (FSAP) report, the International Monetary Fund (**IMF**) recommended that New Zealand formally adopt the international standards for FMI regulation, the *Principles for Financial Market Infrastructures* (**PFMIs**), into law. The PFMIs were developed by the Committee on Payments and Market Infrastructures and the International Organisation of Securities Commission following the Global Financial Crisis of 2008.

10 There are only a small number of highly interconnected FMIs in the New Zealand market, which increases the likelihood of individual FMIs being systemically important due to a lack of substitutability in the case of disruption or failure. The interconnected nature of FMIs also means the systems operate across borders, reinforcing the need for regulators to adopt the international standard, the PFMIs.

11 Following the IMF recommendation, and significant industry consultation, the Act was passed in May 2021. The Act replaces the existing regime under the Banking (Prudential Supervision) Act 1989, which was a voluntary designation regime and does not reflect the current importance of FMIs in the financial system. In particular, it runs the risk of allowing the build-up of systemic risks within FMIs. The existing regime also does not reflect international developments in the regulation of FMIs, including the development of the international standard, the PFMIs. By contrast, the new regulatory regime covers all systemically important FMIs, and provides a comprehensive suite of supervisory, enforcement, and crisis management powers.

12 There are five FMIs designated under the Banking (Prudential Supervision) Act 1989 that will be re-designated under the Act (following a streamlined process):

- The Exchange Settlement Account System (ESAS) is the real time large value interbank settlement system. It is operated by the RBNZ:

[3] Another example is the New Zealand Clearing and Depository Corporation (NZCDC), which is the central counterparty for the NZX.

- NZ Clear is a securities settlement system and securities depository that is used to settle fixed interest and equity transactions and cash transfers. It is operated by the RBNZ:
- NZCDC plays several key roles in supporting all NZX markets:
- ASX Clear (Futures) is based in Australia and clears various NZD derivatives traded on the ASX 24 market:
- The CLS system, is a global high value inter-bank payment system used to settle foreign exchange transactions.

13 There are several other FMIs that might be considered systemically important in accordance with section 28 of the Act, and the regulator will assess these FMIs in due course to assess whether a recommendation for designation should be made. These include two payment systems run by Payments New Zealand (Settlement Before Interchange (SBI) and the High Value Clearing System (HVCS)) and LCH Clearnet Ltd (LCH), which is a London domiciled central counterparty that New Zealand participants use to help manage risks when seeking offshore funding.

Analysis

Extending the standards-making power in the Act

14 As considered above, due to the interconnected nature of how FMIs operate, it is common to have FMIs operating across borders. The Act contemplates that FMIs without a physical presence in New Zealand may nevertheless be systemically important to our financial system, or apply to be designated due to the protections afforded to designated FMIs. The Act also provides that the regulators may issue legally binding standards for designated FMIs, including those based overseas. These standards may require, amongst other things, operators of designated FMIs to report contraventions of obligations under the Act, or any other prescribed matters, to the regulators.

15 We propose that regulations be made so that the standards can also require designated overseas FMIs to report contraventions of home country obligations.

16 Due to difficulties in administering a regulatory regime where there are overlapping requirements in New Zealand and an FMI's home jurisdiction, the regulators propose to establish an equivalence framework for these overseas FMIs. Under this framework, most standards made under the Act will not apply to these overseas FMIs subject to certain conditions being met (most importantly, that the FMI is subject to a broadly equivalent regulatory regime in its home jurisdiction). However, it is important in these circumstances that the regulators are promptly notified of any contraventions of home country requirements by overseas FMIs in case action needs to be taken. This action could be through engagement with the home country regulator and any applicable international supervisory college that may oversee the FMI, or, as a last resort in cases of ongoing contraventions, by requiring the FMI to comply with additional standards under the New Zealand regime.

17 To issue a standard requiring this reporting for overseas FMIs the standard-making power under the Act needs to be extended, allowing the regulator to issue standards that require overseas FMIs to report contraventions of home country obligations.

18 We expect that a notification requirement for overseas FMIs will not carry a significant burden on industry for two reasons. First, there is a similar reporting requirement for overseas FMIs currently designated under part 5C of the Banking (Prudential Supervision) Act 1989. Second, we expect that prospective overseas-equivalent FMIs would already be subject to a requirement to report regulatory contraventions in their home country so there should be minimal burden for this reporting to also be provided to the New Zealand regulators.

Setting a fee to process designation applications

19 Only operators of designated FMIs are subject to the full suite of powers in the Act. As mentioned in footnote 2, an FMI may be designated in one of two ways:

- They may be brought into the regime where they are assessed by the regulator as systemically important; or
- They may apply for designation to gain access the legal protections around settlement finality, netting, and the enforceability of system rules.

20 We propose to set a fee to process applications to be designated under the Act, and that this fee be set at $45,000 (inclusive of GST).

21 The proposed fee is in accordance with Treasury and Auditor-General guidelines regarding fees. In particular, the benefits gaining designation status are substantially private rather than public, and the fee is set at a cost recovery level.

22 We do not propose to charge a fee for FMIs that are brought into the regime due to being systemically important, because it does not involve a choice on the part of the FMI operator (and the benefits are substantially public – i.e. management of systemic risk to the New Zealand financial system).

Analysis of public and private benefits

23 We consider that securing designation status under Act provides significant private benefits to an FMI. Specifically, the legal protections designation affords provide much greater certainty for participants and ability to manage their financial exposures (and therefore make it easier for the FMI to attract business). More specifically, these legal protections mean that:

- Settlements using the system cannot be reversed notwithstanding any legal requirements to the contrary (with one very narrow exception where a party to the transaction has defaulted); and
- Netting (i.e. the conversion into 1 net obligation, or the set-off, of different obligations between participants) affected in accordance with the rules of the system, and other aspects of the rules of the system, is valid and enforceable notwithstanding any law or legal requirement to the contrary.

24 While the application of these protections also has some broader public benefit (for example, for some systems designation reduces counterparty and other risks in the wider financial system), it is likely that if there is significant public benefit to designating an FMI, such an FMI would be systemically important and as such

wouldn't be required to pay the fee. Therefore, we consider that the majority of the benefit is private, and therefore a fee can be justified here on a first principles basis.

25 Despite there being significant private benefits from securing designation status, charging a cost recovery application fee may, at the margin, discourage some FMIs from seeking designation. However, processing designation applications comes at a cost to the regulators and having a fee will discourage spurious applications, which will minimise unnecessary cost impacts on the regulators.

26 The proposed fee is unlikely to be a barrier to entry for an FMI because they tend to be run by sophisticated operators with adequate financial resources. The fee itself will be borne directly by the FMI operator and the FMI's members, who are typically businesses like banks, other financial service providers and other FMIs. The fee is unlikely to have a meaningful impact on consumers or businesses who need FMI services because the application fee will effectively be spread out over a number of participants and across a large number of transactions.

Fee is set at a cost recovery level

27 Designation applications are likely to be very rare – there have been 5 applications in approximately 15 years to become a designated settlement system under Part 5C of the Banking (Prudential Supervision) Act 1989 and the Regulators are not aware of any FMIs that are considering to voluntarily seek designation. A conservative estimate (favouring the applicant) is that historical designation applications required 279 hours of staff and Board time to process on average. We anticipate that processing future designation applications under the Act will require a similar amount of time as historical applications and therefore consider 279 hour a reasonable basis for setting a cost recovery flat fee.

28 We consider that the hourly charge-out rates in Schedule 2 of the Financial Markets Conduct (Fees) Regulations 2014 are suitable for defining FMA costs. These hourly charge rates are:

- $178.25 per hour for staff member
- $230.00 per hour for FMA Board member

29 For the RBNZ, we consider appropriate cost recovery hourly charge rates are as follows:

- $130.30 per hour for Reserve Bank staff member
- $265.49 per hour for RBNZ Board member

30 On the assumption that the RBNZ and the FMA spend equal time processing designation applications and that the vast majority of this time sits with staff rather than the Board, we propose a flat fee for designation applications under Act be set at $45,000 (*inclusive GST*), which is calculated as follows (after rounding to the nearest five thousand dollar):

	Total hours	FMA hours	FMA costs	RBNZ hours	RBNZ costs	Total costs
Staff time	265	132.5	$ 23,618.13	132.5	$ 17,264.75	$ 40,882.88
Board Time	14	7	$ 1,610.00	7	$ 1,858.43	$ 3,468.43
Total(s)	**279**	**139.5**	**$ 25,228.13**	**139.5**	**$ 19,123.18**	**$ 44,351.31**

31 The level of the proposed fee is based on a conservative estimate of the time required to process an application and therefore approximates the underlying costs for the regulators. The fee will be reviewed at least every five years and this provides an opportunity to better reflect cost as new information becomes available.

Other matters relating to the proposed fee

32 The fee will be evenly split between the RBNZ and the FMA, except for pure payment systems where 100% of the fee would go to the RBNZ (who is the sole regulator of pure payment systems as noted in footnote 1).

33 Charging a flat fee to process designation applications also carries over the approach currently in place under part 5C of the Banking (Prudential Supervision) Act 1989, where there is a $30,000 fee for opt-in designation applications. This fee was last updated in 2010 and is well short of being set at a cost recovery level.

34 The cost of ongoing supervision will also continue to be met from within existing baselines rather than being recovered through a new levy or fee.

Financial Implications

35 The proposed fee is not expected to have financial implications. This is because the fee is calibrated to a conservative cost recovery level and very few FMIs are expected to voluntarily seek designation. Any amounts recovered from the fee would be outside the RBNZ's five-year funding agreement and outside the FMA's funding from the Crown.

36 There are no financial implications for the other proposal to make a regulation that extends the standards making power in the Act to accommodate a robust overseas-equivalence framework.

Legislative Implications

37 Regulations will be required to implement the proposals in this paper. Drafting instructions will be provided to the Parliamentary Counsel Office following Cabinet decisions.

Impact Analysis

Regulatory Impact Statement

38 A Stage 2 Cost Recovery Impact Statement (**CRIS**) has been prepared (and attached) to support the decision to establish a fee to process designation applications under the Act. The CRIS was prepared by the RBNZ and the FMA and they consider that the analysis summarised in the CRIS meets the quality assurance criteria.

39 The Treasury's Regulatory Impact Analysis team has determined that the proposal to slightly extend the standards-making power in the Act to allow for a notification requirement for overseas FMIs to report contraventions of home jurisdiction regulatory requirements to the New Zealand Regulator is exempt from the requirement to provide a Regulatory Impact Statement on the grounds that it has no or only minor impacts on businesses, individuals, and not-for-profit entities.

Climate Implications of Policy Assessment

40 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to the proposals in this paper as the threshold for significance has not been met.

Population Implications

41 The proposals in this paper are not expected to adversely affect population groups.

Human Rights

42 There are no human rights implications arising out of the proposals in this paper.

Consultation

43 The Treasury and the Ministry of Business, Innovation and Employment have been consulted.

Proactive Release

44 We propose to release this paper proactively in whole, subject to redactions as appropriate under the Official Information Act 1982.

Recommendations

The Minister of Finance and the Minister of Commerce and Consumer Affairs recommend that the Committee:

1 **note** that the Financial Market Infrastructures Act 2021 (the **Act**) provides for the prudential regulation of financial market infrastructures (**FMIs**), such as payment systems, settlement systems, and central counterparties;

2 **note** that the Reserve Bank of New Zealand and the Financial Markets Authority acting jointly are the regulator of FMIs, and have been working to implement the Act;

3 **note** that two sets of regulations, made under section 153 of the Act, are needed to complete implementation of the Act;

4 **note** that the regulator may issue standards for designated FMIs under the Act, and that these may, amongst other things, require operators of designated FMIs to give to the regulator reports relating to any of the following matters:

4.1 disruption to activities under designated FMIs;

4.2 contraventions of requirements imposed by or under the Act; and

4.3 any other prescribed matters;

5 **agree** that for the purposes of recommendation 4.3, a prescribed matter be specified as contraventions of requirements imposed on an overseas FMI or its operator by or under the law of the FMI's home jurisdiction;

6 **note** that the regulator may recommend that an FMI be designated:

6.1 on the regulator's own initiative if the regulator is satisfied that the FMI is systemically important; or

6.2 subject to certain conditions, on receipt of an application by the operator of that FMI;

7 **agree** that a fee of $45,000 (inclusive of GST) be payable to the regulator for applications of the type referred to in recommendation 6.2;

8 **authorise** the Minister of Finance and the Minister of Commerce and Consumer Affairs to issue drafting instructions to the Parliamentary Counsel Office to give effect to the above recommendations;

9 **authorise** the Minister of Finance and the Minister of Commerce and Consumer Affairs to make decisions, consistent with the above recommendations, on any minor or technical matters that may arise during the drafting process.

Authorised for lodgement

Hon Grant Robertson

Minister of Finance

Hon Dr David Clark

Minister of Commerce and Consumer Affairs

Stage 2 Cost Recovery Impact Statement

FMI Act designation application: Regulation for cost recovery fee

Purpose of Document	
Decision sought:	*Establish a fee under section 153(1)(b)(ii) of the FMI Act 2021 to process designation applications.*
Advising agencies:	*Reserve Bank of New Zealand* *Financial Markets Authority*
Proposing Ministers:	*Minister of Finance* *Minister of Commerce and Consumer Affairs*
Date finalised:	*13 September 2022*

Problem Definition

Establishing a conservative cost recovery fee to process voluntary designation applications is considered appropriate because designation confers a significant private benefit.

Executive Summary

- The Financial Market Infrastructures Act 2021 (the Act) provides for a fee to process designation applications. Financial Market Infrastructures (FMIs) who are determined to be systemically important will be called-into the regime and will not face a designation fee.
- Designation provides a significant private benefit to FMIs, which justifies a cost recovery charge on a first principles basis.
- The proposed flat fee of $45,000 (*inclusive of GST*) is based on a conservative estimate (to the favour of the applicant) of the effort required to process historical designation applications under the previous regulatory regime for FMIs (i.e. part 5C of the Banking (Prudential Supervision) Act 1989). A conservative flat fee (to the favour of the applicant) is considered appropriate because it is administratively simple, provides certainty to industry and recognises the effort required to process designation applications. The proposed fee is unlikely to be controversial because it is calibrated to a conservative cost recovery level and replicates the approach of charging an application fee under the previous regulatory regime for FMIs.
- The main alternative option considered was an hourly charge, which is not the preferred option because it creates uncertainty for industry and is more challenging to administer.
- Based on historical experience and current knowledge of the FMI landscape, very few applications are expected. FMIs are complex systems that are mainly used by banks and other financial sector institutions to offer payment and settlement services to business and consumers. The impact of a one-time designation application fee is unlikely to have significant impacts on business or consumers because the fee would

ultimately be spread over a large number of transactions.

- The proposed designation application fee will be reviewed at least every five years.

Limitations and Constraints on Analysis
• The main limitation on the analysis presented in this Modified Cost Recovery Impact Statement is that there is some uncertainty on the effort required to process a designation application. This is due to the diverse nature of FMIs operations and business models, where levels of complexity can vary significantly and impact the amount of time an application takes to assess • Experience from processing historical designation applications has been used as a guide to estimate the time cost of assessing prospective applications. • The regulators will regularly review the proposed fee and use any available experience or information to ensure that it remains in line with cost recovery principles.
Responsible Manager
Piers Ovenden *Acting Manager* *Dynamic Policy* *Reserve Bank of New Zealand* *13 September 2022*

Quality Assurance	
Reviewing Agency:	Reserve Bank
Panel Assessment & Comment:	This modified stage 2 cost recovery impact statement has been reviewed by two Reserve Bank staff and, after reflecting feedback from the two reviewers, meets the quality assurance criteria.

Status quo

1. Financial Market Infrastructures (FMIs) are systems that facilitate electronic payments and financial market transactions and are therefore essential for the day-to-day operation of the economy. There are several types of FMIs, including payment systems, securities settlement systems, central securities depositories, central counterparties, and trade repositories.

2. New Zealanders depend on FMIs in their daily economic lives, although in most cases they will not be directly aware of this because FMIs typically operate behind the scenes with banks and other financial sector institutions providing the interface to their customers.

3. The Act provides for the prudential regulation of FMIs and replaces a regulatory regime with limited powers that is in part the 5C of the Banking (Prudential Supervision) Act 1989. The Reserve Bank and Financial Markets Authority (FMA) are the joint regulator under the Act (other than for pure payment systems, where the Reserve Bank is the sole regulator).

4. The Act was passed in May 2021 and since that time the Reserve Bank and the FMA have progressed their work to implement the Act.

5. Only operators of designated FMIs are subject to the full suite of powers in the Act. An FMI may be designated in one of two ways:

    - They may be brought into the regime where they are systemically important; or
    - They may apply for designation to gain access to the legal protections around settlement finality, netting, and the enforceability of system rules. The application is subject to various considerations by the regulator, such as those in sections 22 and 23 of the Act.

6. The proposal is to establish a flat fee (under section 153(1)(b)(ii) of the Act) to process designation applications because designation confers a significant private benefit to the FMI. This is a new fee because it is being established under new legislation, but it is carrying over the approach of charging a fee for designation applications under part 5C of the Banking (Prudential Supervision) Act 1989.

7. The proposal does not include charging a fee for FMIs that are brought into the regime due to being systemically important because it does not involve a choice on the part of the operator (and the benefits are substantially public – i.e. management of systemic risk to the New Zealand financial system).

Cost Recovery Principles and Objectives

8. When exercising powers under the Act the relevant principles in section 13(2) must be taken into account. For the purpose of setting a user charge for designation application under section 153(1)(b)(ii), the relevant principle is section 13(2)(f), which states that the regulator needs to avoid unnecessary compliance costs and unnecessary constraints on innovation.

Policy Rationale: Why a user charge? And what type is most appropriate?

Why is full cost recovery appropriate?

9. Cost recovery is considered appropriate because voluntary designation under the Act provides significant private benefits to an operator of an FMI. Specifically, the legal protections designation affords provide much greater certainty for participants and ability to manage their financial exposures (and therefore make it easier for the FMI operator to attract business). More specifically, these legal protections mean that:

    - Settlements using the system cannot be reversed notwithstanding any legal requirements to the contrary (with one very narrow exception where a party to the transaction has defaulted); and
    - Netting (i.e. the conversion into 1 net obligation, or the set-off, of different obligations between participants) effected in accordance with the rules of the system, and other aspects of the rules of the system, is valid and enforceable notwithstanding any law or legal requirement to the contrary.

10. While application of these protections to FMIs that apply for designation (but are not systemically important) also has some broader public benefit (including in some cases by reducing counterparty and other risks in the financial system), the majority of the benefit of voluntary designation is considered private, and therefore a full recovery fee can be justified here on a first principles basis.

11. Despite there being significant private benefits from securing designation status, charging a cost recovery application fee may, at the margin, possibly discourage some FMIs from seeking designation. This potential innovation cost is not likely to be significant because very few FMIs are expected to seek designation status and the level of the fee is calibrated to a conservative cost recovery level. Processing designation applications comes at cost to the regulators and having a fee will discourage spurious applications, which will minimise unnecessary cost impacts on regulators.

Design of the cost recovery charge

12. FMIs are often unique and complex systems and the effort needed to process designation applications is likely to vary considerably across different types of FMIs. This makes setting a user charge on a full cost recovery basis difficult and potentially creates uncertainty for industry if there was high variable user charge (i.e. an hourly charge). An hourly charge can lead to inefficiency and also has the disadvantage of being challenging to administer in a joint regulator setting.

13. In the interest of minimising unnecessary compliance costs (and uncertainty) for industry - which is a principle (see section 13(2)(f)) for exercising powers under the Act - and creating an administratively efficient user charge, a flat fee is considered appropriate for processing designation applications under the Act. A conservative estimate (to the favour of the applicant) will be used to calibrate the cost recovery flat fee to recognise the variable time needed to process designation applications.

14. There have been 5 applications in approximately 15 years to become a designated settlement system under part 5C of the Banking (Prudential Supervision) Act 1989. A conservative estimate is that these historical designation applications required 279 hours of staff time to process on average – see Annex 1. Although there is significant

uncertainly in terms of the effort required to process future designation applications, the historical experience noted above is considered a reasonable basis for setting a cost conservative recovery flat fee.

15. The fee will be paid by the operator of the FMI at the time an application for designation is submitted to the regulators. The fee will not be refunded should the application not be successful.

The level of the proposed fee and its cost components (cost recovery model)

Proposed fee level

16. The proposal is for a cost recovery flat fee of $45,000 (inclusive GST) to process a designation application under section 53 of the Act. This is technically a new fee because it will be made under the Act (which is new legislation) but there was a $30,000 fee (inclusive GST) in place for processing designation applications under the previous regulatory regime for FMIs in part 5C of the Banking (Prudential Supervision) Act 1989.

Cost drivers and work involved

17. The main cost driver of the proposed fee is staff time of the regulators to process designation applications. Annex 1 details the process steps and the estimated time of 279 hours to process a designation application. These are conservative estimates based on the experience of processing designation applications under part 5C of the Banking (Prudential Supervision) Act 1989.

18. The level of the proposed fee is based on a conservative estimate of the time required to process an application and therefor approximates the underlying costs for the regulators. The fee will be reviewed at least every five years and this provides an opportunity to better reflect cost as new information before available.

Calculation of the fee

19. The hourly charge-out rates in Schedule 2 of the Financial Markets Conduct (Fees) Regulations 2014 are considered for defining FMA costs. These hourly charge rates are:

    - $178.25 per hour for staff member
    - $230.00 per hour for Board member

20. For the Reserve Bank, appropriate hourly cost recovery charge rates are determined to be as follows:

    - $130.30 per hour for Reserve Bank staff member
    - $265.49 per hour for RBNZ Board member

21. On the assumption that the Reserve Bank and the FMA spend equal time processing designation applications and that the vast majority of this time sits with staff rather than the Board, we propose a flat fee for designation applications under Act be set at $45,000 (*inclusive GST*), which calculated as follows (after rounding to the nearest five thousand dollar):

	Total hours	FMA hours	FMA costs	RBNZ hours	RBNZ costs	Total costs
Staff time	265	132.5	$ 23,618.13	132.5	$ 17,264.75	$ 40,882.88
Board Time	14	7	$ 1,610.00	7	$ 1,858.43	$ 3,468.43
Total(s)	**279**	**139.5**	**$ 25,228.13**	**139.5**	**$ 19,123.18**	**$ 44,351.31**

Projecting revenue and costs

22. Based on historical experience and current knowledge of the FMI landscape, very few FMIs are expected to apply for voluntary designation. Projected revenues and expenses have not been provided because, under these circumstances, any such projections likely to be very unreliable.

Impact analysis

23. Very few FMIs are expected to voluntarily seek designation under the Act. This is based on experience under the previous regulatory regime for FMIs, where only 5 applications were processed over approximately 15 years. Also, at this stage, the regulators are not aware of any FMIs who might be interested in seeking designation under the Act.

24. The fee to process designation applications under the previous regime (part 5C of the Banking (Prudential Supervision) Act 1989) was $30,000 and this was last updated in 2010. The proposed $45,000 application fee for designation under the Act represents a significant increase from the previous fee but this better reflects the time that regulators require to process applications, based on their previous experience.

25. The proposed fee is unlikely to have a material impact on an FMI or be a barrier to entry because FMIs tend to be run by sophisticated operators with adequate financial resources. The fee itself will be borne directly by the FMI operator and the FMI's members, who are typically businesses like banks, other financial service provides and other FMIs. The fee is unlikely to have a meaningful impact on consumers or businesses who need FMI services because the application fee will effectively be spread out over a number of participants and across a large number of transactions.

26. As noted, only few designation applications are expected so the impacts on the regulators are expected to be minimal. Charging an application fee will discourage spurious applications, which works to further minimise unnecessary impacts on the regulators.

27. The proposed fee is believed to be reasonable because designation confers a significant private benefit and is calibrated to a conservative cost recovery level.

Consultation

28. There are no statutory consultation requirements to establish a fee under section 153(1) of the Act. The approach of setting the proposed designation application fee at a

conservative cost recovery level, is unlikely to be controversial with industry stakeholders and this provided additional rationale for not seeking industry stakeholder feedback.

Conclusions and recommendations

29. Based on available information and conservative cost estimates, a flat fee $45,000 to process a designation application under section 25 of the Act is considered appropriate. Charging an application fee is seen as reasonable because designation imparts a significant benefit on the FMI. The proposed flat fee structure is administratively efficient and reduces uncertainly on the part of a prospective applicant. The five year review period will help ensure that the application fee remains reasonably reflective of processing costs over time.

Implementation plan

30. The proposal carries over the existing approach to charge a flat fee for designation applications so there are no material transitional or implementation issues. The proposed flat fee is calibrated to a conservative cost recovery level and therefore does not pose material cost risk to applicants. The proposed fee does not interact with other regulations and does not interface with the broader enforcement strategy for designated FMIs.

Monitoring and evaluation

31. FMIs are unique and complex systems and the effort needed to process designation applications is likely to vary across different types of FMIs. The regulators will assess the overall effort to process designation applications and use this information to review the fee on a regular basis.

Review

32. A review of the application fee will occur at least every five years or on an earlier date as agreed by the regulators (the Reserve Bank and the FMA). The review will ensure that the fee remains in line with the Treasury's guidelines on setting fees and that the fee continues to work on a cost recovery basis. The five year review period is viewed as reasonable because the regulators expect a very low number of applications for FMI designation over the review period. This is based on experience over the past 15 years where there were only 5 applications for designation under the previous regulator regime and, at this time, the regulators are not aware of any prospective FMI's that might seek designation voluntarily.

Version control

Other version	Date	Link

Annex 1: Process and time estimates to assess an application for designation[1]

Task	Time requirement
Receive application – initial review to check completeness. If necessary, request additional information.	6 hours
Assess application taking into account the matters set out in section 23 of the Act and published guidance. This includes gathering information from the applicant FMI about the various matters outlined in section 23 of the Act, including the FMI's rules (which can be lengthy documents).	80 hours
Engage with applicant as needed to seek further information, clarify matters etc.	60 hours
Prepare and finalise a decision memo with a recommendation to accept or decline the application.	55 hours
Regulators deliberate on the application decision memo.	9 hours
Notify applicant of outcome of application.	1 hour
Draft and review designation notice.	12 hours
Consult applicant on the draft designation notice.	6 hours
Finalise designation notice (including legal review)	8 hours
Draft and review advice to Ministers (who make designation decisions on the recommendation of the regulators)	30 hours
Prepare and submit advice to the Ministers seeking approval of the proposed designation notice.	8 hours
On receipt of agreement from Ministers, inform applicant and publish designation notice in the Gazette and on the regulators websites	4 hours
TOTAL	279 hours

[1] Time estimates are based on experience processing designation application under part 5C of the Banking (Prudential Supervision) Act 1989.