

Regulatory Impact Statement

FEES AND LEVIES FOR THE FINANCIAL MARKETS AUTHORITY, THE NEW ZEALAND COMPANIES OFFICE, AND THE EXTERNAL REPORTING BOARD

Agency Disclosure Statement

- 1 This Regulatory Impact Statement has been prepared by Ministry of Economic Development (the Ministry).
- 2 It provides an analysis of fee and levy options to fund the Financial Markets Authority (FMA), the New Zealand Companies Office (NZCO), and the External Reporting Board (XRB). Cabinet has set the third party funding levels for the FMA and the XRB and decided that NZCO fee changes are necessary. Therefore, this RIS only considers how to allocate these costs to industry. The aim of the analysis is to:
 - a. Design an appropriate FMA levy regime that raises the required \$16.4 million annually from approximately 11,000 financial service providers (FSPs) and other financial market participants or specified persons defined in the Financial Markets Authority Act 2011;
 - b. Amend the current fees charged by the NZCO to stop the decline of the NZCO memorandum account further into deficit and to return the funding of the NZCO to sustainable levels; and
 - c. Provide for an XRB levy that raises \$3.66 million annually from financial reporting system stakeholders.
- 3 A lack of robust information about financial market participants makes it difficult to make precise estimates of the revenue that will be raised by the FMA levy. The Ministry has been conservative in the estimates of numbers of payers and has consulted several times on the FMA levy proposals and also on the draft FMA levy regulations. Throughout the FMA levy consultation process, the affected industry has continued to argue that the portion of third party funding is too high and, due to this, each sector of the industry is paying too much. Little or no comment was made regarding the proposals for the XRB and NZCO. The Ministry has recommended reviewing the whole package of FMA, NZCO and XRB fees and levies two years after they come into force.
- 4 The proposals in this paper do not impair private property rights, market competition, or the incentives on businesses to innovate and invest, or override fundamental common law principles. However, the proposals will impose additional costs on businesses as the fees and levies increase the costs of being a financial market participant and add to the costs of being a company or other registered entity.

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Status Quo and Problem Definition

- 5 The Government recently established two new regulatory bodies: the FMA and the XRB. Both organisations are intended to perform functions significantly beyond those performed by the regulators they replace, and therefore required additional funding. There are also pressing funding issues for the existing NZCO which performs the functions of the Registrar of Companies.
- 6 This RIS considers how to collect the required funding for each organisation.

Financial Markets Authority

- 7 The FMA was established on 1 May 2011, replacing the Securities Commission. The Commission was largely Crown funded whereas; the FMA has broader functions and therefore requires additional funding.
- 8 The FMA's main objective is to promote and facilitate the development of fair, efficient and transparent financial markets. The functions of the FMA include:
- a. Monitoring compliance with, investigating contraventions of, and enforcing securities and investment law, financial reporting law, and companies law, in respect of financial markets participants;
 - b. Promoting confident and informed participation of businesses, investors, and consumers in the financial markets. This includes collecting and disseminating information or research, issuing warnings, reports, or guidelines, and providing education about financial markets;
 - c. Licensing and supervising financial market participants, including financial advisers, trustees, auditors, and exchanges;
 - d. Monitoring and conducting inquiries into financial markets and financial market participants; and
 - e. Keeping the law under review.
- 9 The Financial Markets Authority Act 2011 provides for levies to be prescribed to meet a portion of the costs of the FMA in performing or exercising its functions, powers, and duties under the Act and any other enactment including the costs of collecting the levy. The Act defines a wide group of financial market participants and specified persons that can be levied.¹
- 10 In March 2011, Cabinet approved the FMA's budget arrangements, noting that the annual operating costs of the FMA would be \$24 million in 2011/12, increasing to \$28 million in 2013/14, before settling at \$26 million in 2014/15 and outyears.
- 11 Cabinet agreed that, except during the establishment year, Crown funding would remain at the same level as was provided to the Securities Commission (and the part of the Ministry that transferred to the FMA)². \$11 million of the Commission's total budget of \$18 million was Crown funded. The FMA's additional funding is to be sourced from third party revenue streams, including a new FMA levy [EGI Min (11) 4/4 refers]. The average annual amount to be recovered through the FMA levy over the next five years is \$16.4 million (excluding GST).

¹ Section 68(2) Financial Markets Authority Act 2011.

² \$1.1 million of funding from the Ministry was transferred to the FMA.

- 12 Table 1 illustrates the levels of third party funding and Crown funding for the FMA.

Table 1: FMA Crown / Third party funding breakdown \$(m)				
Appropriation	2011/12	2012/13	2013/14	2014/15 & outyears
Total Operation	26.78	27.46	29.77	28.18
Crown funded	15.32	11.01	11.01	11.01
Third party revenue	11.46	16.45	18.76	17.17
<i>% third party funded</i>	<i>43%</i>	<i>60%</i>	<i>63%</i>	<i>61%</i>

New Zealand Companies Office

- 13 The NZCO is part of the Ministry of Economic Development. It performs the functions of the Registrar of Companies by administering a number of corporate registers, the largest of which is the companies register. The NZCO predominantly operates on third party funding, derived on a user-pays basis from fees for services.
- 14 In March 2011, Cabinet noted that fee changes were required to stop the decline of the NZCO memorandum account further into deficit and to return the funding of the NZCO to sustainable levels [EGI Min (11) 4/4 refers].
- 15 In March 2012, Cabinet noted that the memorandum account grew to a surplus of \$24.639 million in June 2003 and the NZCO then operated with fees set below costs with the aim of returning the memorandum account surplus to stakeholders. The memorandum account then progressively declined and is expected to be in deficit by \$11.238 million at 30 June 2012 [SEC Min (12) 3/2 refers].
- 16 The NZCO has operated at a deficit over recent years with fee income insufficient to cover costs, despite efficiencies being made. In 2004, to deal with the rising surplus, Cabinet decided to remove the annual return fee, and in 2007 this was replaced by a company incorporation fee that was intended to cover the costs of a company over its lifetime. However, the economic downturn resulted in fewer company incorporations and tax reforms have reduced the desirability of loss attributing qualifying companies. Both these factors have contributed to the increasing memorandum account deficit.

External Reporting Board

- 17 The Accounting Standards Review Board (ASRB) was reconstituted as the XRB on 1 July 2011 and is responsible for all aspects of financial reporting and auditing and assurance standards-setting.
- 18 Section 10 of the Financial Reporting Amendment Act 2011 (which inserted a new section 42C into the Financial Reporting Act 1993) provides for a levy prescribed by regulations to fund the cost of the XRB performing its functions and exercising its powers and duties under the Financial Reporting Act 1993 and the costs of collecting the levy.

- 19 The XRB's annual budget is \$4.41 million (of which \$0.295 million is Crown funded), up from the ASRB's \$1.35 million per annum. In March 2010, Cabinet noted that EGI had agreed to the funding arrangements for the XRB, including that the net increase in appropriations would be fully funded from user fees and levies [EGI Min (10 4/3 refers)]. The average annual amount to be recovered through the levy is \$3.66 million (excluding GST).

Objectives

- 20 The overarching objective of the fees and levies regime is to ensure that the agreed third party funding levels for the FMA, NZCO and the XRB are met by industry. Within this, there are more specific objectives for each of the levies.

FMA levy

- 21 In determining how to design a levy model to fund the FMA, the Ministry identified the following objectives:
- a. The cost of the levy for market participants is consistent with the benefits they receive from a well-regulated financial market;
 - b. The levy will not discourage some classes of entity from supplying financial products or services; and
 - c. The levy is practical in respect of its implementation, collection and also avoids large over or under-collection.
- 22 In addition, the FMA's Crown funding represents the wider public benefits received from the FMA's work.

XRB levy

- 23 To recover the establishment and on-going costs of the XRB from financial reporting system stakeholders.

NZCO fees

- 24 To recover the full cost of the NZCO through increasing the fees for the services performed by the NZCO so that the fees cover the cost of these services and also contribute to the NZCO memorandum account deficit with the aim of significantly reducing or eliminating the memorandum account deficit by the time of the fee and levy review in 2014.

Regulatory Impact Analysis

- 25 The fees and levies in this RIS are being progressed together because many of the same financial sector organisations are funding the FMA, NZCO and the XRB. This approach allows decision making to be informed by the overall impact and ensures that the implementation is carried out in a way which minimises transaction costs and improves compliance.
- 26 The fee and levy proposals originated in a discussion document released in June 2011. The discussion document included the following proposals (GST inclusive):
- a. A new \$10 annual levy on companies to fund the XRB;
 - b. A new \$2.50 annual fee on companies to fund company liquidation functions of the Insolvency and Trustee Service (ITS);
 - c. Personal Property Securities Register search fees of \$0.50 and \$1.00 and renewal fees of \$4.00 and \$9.00 for wholesale and retail clients respectively;
 - d. Reduced registration fees for companies (\$110) and other registered corporate entities³ (\$250);
 - e. Re-introduction of annual return fees for companies (\$22.50) and other registered corporate entities (\$40);
 - f. Four options for funding the FMA's oversight of financial markets and the FMA's responsibilities under the Financial Advisers Act 2008:
 - i. Option 1 was presented as the preferred option and comprised tiered levies on financial advisers and FSPs as follows:
 1. \$8,000 per qualifying financial entity (QFE);
 2. \$680 per financial adviser (including QFE employees) providing advice on complex types of products;
 3. \$140 per financial adviser (including QFE employees) providing advice only on simple types of products;
 4. \$910 per financial service provider and per issuer of securities;
 - ii. Option 2 was similar to Option 1, but with a levy of \$20 per company and other registered corporate entities at registration and annual return, rather than \$910 per FSP and issuer;
 - iii. Option 3 provided for a flat \$1,800 levy on all FSPs and issuers at registration and annually;
 - iv. Option 4 proposed that companies and other registered corporate entities would pay the full \$16.4 million via a \$40 levy at registration and annual return; and
 - g. A levy of \$7,900 per licensed auditor, with auditing firms to meet the costs of quality reviews.

³ In the discussion document, other entities were defined as building societies, contributory mortgage brokers, credit unions, friendly societies, industrial and provident societies, and limited partnerships. Annex 4 provides further details.

Feedback on June discussion document

- 27 Submitters either made no comment or supported the proposals to fund the NZCO, ITS, and XRB.
- 28 No submitters supported our preferred option for levies to fund the FMA. The Ministry concluded that all four of the FMA levy options in the discussion document could cause significant distortions and/or proportionality problems. Table 2 provides an assessment of the discussion document options against the levy objectives.

Targeted consultation in November 2011 on FMA levy

- 29 In response to the discussion document submissions, the Ministry developed a revised proposal for the FMA levy that was released for targeted consultation in November 2011. The revised proposal placed financial market participants into categories primarily based on their business activities (see Annex 1 for the details of the November levy proposal). This levy proposal introduced the \$10 levy on all companies and other registered entities⁴ which equates to companies and other registered entities paying approximately one-quarter of the total levy funding, and financial sector firms paying three-quarters.
- 30 The feedback from submitters during the targeted consultation was generally positive. Most considered the revised proposal a significant improvement on the options in the June discussion document. The Ministry made a number of adjustments to refine the levy in response to submissions. Key changes are outlined below in paragraphs 38 to 49.

FMA levy regulations exposure draft – April 2012

- 31 In April, the Ministry released an exposure draft of the Financial Reporting (Levies) Regulations 2012 to a small number of selected stakeholders. The Ministry sought submissions focussed on the drafting of the definitions of the classes of specified persons, and the method and timing of the levy collection, rather than revisiting where the burden of the levy is applied. To avoid pre-empting Cabinet's decision, the exposure draft did not disclose the levy amounts or the commencement date of the regulations.
- 32 There were a number of minor technical adjustments made following 12 industry submissions on the exposure draft and these are outlined at paragraphs 50 to 51.

Assessment of the FMA levy options

- 33 Table 2 provides an assessment of the FMA levy options. The column on the far right of Table 2 evaluates the recommended FMA levy.
- 34 The recommended FMA levy, outlined in the Conclusion and Recommendations, is structured so that different classes of financial markets participants pay different tiered amounts, in accordance with the levy objectives.

⁴ Limited partnerships, overseas limited partnerships, building societies, credit unions, and friendly societies.

Objectives	Table 2: Assessment of FMA levy options ⁵					
	June 2011 discussion document Option 1	June 2011 discussion document Option 2	June 2011 discussion document Option 3	June 2011 discussion document Option 4	November 2011 targeted consultation proposal	Recommended levy following targeted consultation
The cost of the levy for market participants is consistent with the benefits they receive from a well-regulated financial market	X	X	X	X	✓	✓
The levy will not discourage some classes of entity from supplying financial products or services	X	x	x	✓ (but may cause some companies to deregister)	✓	✓
The levy is practical in respect of its implementation and collection	✓	✓	✓	✓	✓	✓
Avoids large over or under-collections	X	X	x	✓ (revenue dependent on number of companies registered)	✓	✓

Key: X Significant concerns ✓ Most concerns addressed x Minor concerns ✓ Largely positive

⁵ The discussion document options are outlined at paragraph 26. The November proposal is contained in Annex 1.

Recommended FMA Levy

- 35 The recommended FMA levy (set out in the Conclusion and Recommendations section) is charged on an activity basis whereby financial market participants pay a levy for every class in which they participate. For example, a bank (Class 2) that is also an insurer (Class 3) and an issuer of a managed fund (Class 5) will pay a levy for all three activities.
- 36 Table 3 shows the proportion of the \$16.4 million collected from each class of participant (a detailed breakdown of the recommended FMA levy and estimated revenue is included in Annex 2).

Table 3: Distribution of FMA levy across the financial sector

	Market Participants	Estimated Revenue excluding GST (Million)	% of Total Levy Collected
Class 2	Registered banks and non-bank deposit takers	1.75	11%
Class 3	Insurers	1.67	10%
Class 4	Licensed trustees and statutory supervisors	0.57	3.5%
Class 5	Issuers of specified managed funds ⁶	3.31	20%
Class 1, 6 and 7	Levy on application for FSP registration, exchange participants, contributory mortgage brokers, authorised futures dealers, FSPs entering into and trading particular financial products on behalf of another person ⁷ , FSPs offering broking services, authorised financial advisers, and registered FSPs which are not subject to a levy in classes 2 to 6	3.90	24%
Class 8 and 9	Public issuers and issuers registering a prospectus	0.96	6%
Class 10 and 11	Registered exchanges and authorised futures exchanges	0.03	0.2%
Class 12 and 13	Licensed auditors (via accredited body) and overseas auditors	0.22	1.3%
Class 14 and 15	Companies and other registered entities at registration ⁸ and annual return ⁹	4.00	24%
Total		16.4	

⁶ Issuers of unit trusts/participatory/KiwiSaver/superannuation schemes (excluding managers of participatory securities that are shares in a building society or an industrial or provident society).

⁷ Derivative transactions, money market instruments, foreign exchange, interest rate and index instruments, transferable securities (including shares), and futures contracts.

⁸ Companies, overseas companies, limited partnerships, overseas limited partnerships, building societies, credit unions, and friendly societies.

⁹ Companies, overseas companies, limited partnerships, overseas limited partnerships, building societies, credit unions, and friendly societies.

- 37 The assessment of the levy amounts for each class, and the distribution of the tiers within each class, involves an element of subjectivity. Where appropriate, the levy amounts have tiers within the class in order to recognise the size and nature of different financial market participants that come under each class. Even though different metrics for the classes have been used to assess the size of participants within the classes, the Ministry considers that these are comparable approximations of economic activity and, therefore, also for the benefits each participant receives from a well-regulated financial market. A detailed analysis of the levy against the levy objectives is included in Annex 3.

Key changes since the targeted consultation proposal in November

Levy extended to more financial market participants

- 38 The recommended levy now imposes a levy on the following financial market participants, which were not subject to a specific levy in the earlier proposals: registered exchanges (\$20,000), authorised futures exchanges (\$20,000), companies listed on New Zealand's registered exchange i.e. a public issuer (\$2,000), contributory mortgage brokers (\$2,000), authorised futures dealers (\$2,000), FSPs entering into and/or trading particular financial products and instruments¹⁰ on behalf of another person (\$2,000), and FSPs offering broking services (\$1,000). These participants were originally excluded or only subject to the "all other FSPs levy (\$350)" in an effort to maintain simplicity. As the levy has evolved into a more sophisticated model, it is now appropriate to include these entities explicitly.

Flat \$350 levy on registration of new FSPs

- 39 To avoid complexity, the Ministry had originally intended to charge FSPs the same type of levies at registration and annually. However, it is practically difficult to do so. For example, new entities may not have previous financial statements, assets, supervised interests or annual gross premium income. Therefore, the recommended levy requires FSPs to pay a flat \$350 levy at registration and then pay the tiered levy at their annual confirmation (which occurs in the calendar year following registration). This is a minor change and is not expected to affect the total levy revenue, as the levy modelling used conservative estimates of existing FSP numbers and numbers of FSPs applying for registration.

Waiver power

- 40 A waiver has been included in the levy model to address the situation where a specified person has been inadvertently caught by one of the levy classes and really should not be. Highly complex relationships exist between the classes and the tiers as they apply to different financial market participants with different corporate structures undertaking different financial services. In addition, for practicality the levy most of the levy will be collected through the FSP register and the register is not designed in a manner that assists easy identification of the numbers of market participants that undertake discrete financial activities or services.
- 41 If a waiver power was not included in the model, the Financial Markets Authority (Levies) Regulations 2012 may need amending in the near future. Due to this uncertainty, the FMA may waive the levy, in whole or in part, if the FMA is satisfied that the exceptional circumstances or characteristics of the person, when compared with the circumstances or characteristics of other persons in the class of specified persons for which the levy is payable, would make it inequitable for the person to pay the levy. This is a high threshold to meet in order for the FMA to grant a waiver. The waiver power is similar to the FMA's existing exemption power under the Securities Act 1978.

¹⁰ Derivative transactions, money market instruments, foreign exchange, interest rate and index instruments, transferable securities (including shares), and futures contracts.

- 42 In addition, a similar cost recovery structure for the FMA when exercising this waiver power, with identical GST inclusive fees, is recommended for inclusion in the Financial Markets Authority (Fees) Regulations 2011.

Change of approach for the levy on issuers

- 43 In the November proposal, in the interest of keeping the proposal simple, the levy on Category 3 issuers was loosely tiered according to the size of the issuer (see Annex 1). The recommended levy now creates a separate class for certain types of managed funds with seven new tiers (Class 5). The Ministry's analysis suggests there are likely to be a number of issuers of managed funds with total assets far in excess of the highest tier threshold of \$100 million set in the November proposal. In addition, the tier thresholds and levy amounts of the recommended levy better reflect the benefits from financial market regulation that these larger issuers receive.
- 44 The recommended levy also introduces a \$2,000 levy on the registration of a prospectus under section 42 of the Securities Act 1978. A levy paid in respect of each registered prospectus is a more equitable way of levying one-off issuers compared to requiring an annual levy for the life of their issue. The \$2,000 levy on the registration of a prospectus is not expected to cause any significant impact on small issuers given that this amount represents a small percentage of the total cost of preparing and registering a prospectus.

Tiered class for licensed trustees and statutory supervisors

- 45 The recommended levy creates a separate tiered class for licensed trustees and statutory supervisors. Under the November proposal the levy for all licensed trustees and statutory supervisors was \$35,000. Information provided during the targeted consultation indicated that there are significant differences in the size of participants within this group. Therefore, a more equitable approach is to tier the levy for this class.

Treatment of groups for Class 2 and 3

- 46 To ensure that the levy does not create incentives to modify corporate structures for levy avoidance purposes, where a group of associated companies operates within either Class 2 or Class 3, the relevant tier for each class will be determined on a group basis by aggregating the total assets or gross premium income for the associated companies.

Exclusions from classes of specified person

- 47 Class 5 applies to managers of managed investment schemes. Specifically, Class 5 includes issuers of unit trusts, participatory securities, KiwiSaver schemes and superannuation schemes. Managers in respect of securities in participatory schemes that are shares in building societies and industrial and provident societies are excluded from the calculation of total managed assets covered by Class 5. These securities are functionally equity securities rather than managed funds and the FMA levy is not directly targeting equity securities.
- 48 To remedy a definitional duplication that results from a KiwiSaver trustee being included in the definition of "superannuation trustee", the assets of a KiwiSaver trustee are excluded from the levy in Class 5 as these are levied as supervised interests of the KiwiSaver trustee in Class 4. The manager of the KiwiSaver scheme will pay a levy in Class 5.

- 49 Certain deposit takers are excluded from paying a levy in Class 2. These include those deposit takers the Reserve Bank has declared not to be non-bank deposit takers or those which have been exempted from the prudential requirements in Part 5D of the Reserve Bank of New Zealand Act 1989. Following the Reserve Bank's treatment of these deposit takers, the Ministry has concluded that it would be inappropriate to levy these deposit takers.

Adjustments following FMA levy exposure draft

- 50 There were a number of minor technical adjustments made following submissions on the exposure draft including clarifying the points in time when specified persons have to calculate the size of their business to determine which levy tier they come under in a particular class.
- 51 The definitions of the size measurements for each class, for example, annual premium income for insurers, have also been clarified in response to submissions. These changes are expected to facilitate understanding of the regulations and reduce compliance cost when determining levy classes and tiers. Where practicable, the Ministry has used existing reporting mechanisms for determining the size of a participant. Examples include references to the most recent audited financial statements, the most recent report to the FMA, or the most recent bank disclosure statement.

New Zealand Companies Office Fees

- 52 It is necessary to return the funding of the NZCO to sustainable levels. A well-functioning Companies Office is essential for firms doing business and promoting economic growth.
- 53 The recommended NZCO fees do no more than recover the cost of providing the services required under relevant statutes. This method of calculation is in accordance with Audit Office *Guidelines on Costing and Charging for Public Sector Goods and Services* and the Treasury *Guidelines for Setting Charges in the Public Sector*.
- 54 The fee proposals in the June discussion document were based on an extensive fees review and modelling conducted by a private accounting firm at the end of 2010. The accounting firm used a costing model derived from an analysis of volumes and services provided in the administration of the registers for registered entities, cost outputs, and the number of staff. The allocation of costs across each service allowed the true cost of providing the service to be calculated.
- 55 However, the NZCO fees recommended in this RIS are higher than the fees outlined in the discussion document because a number of important factors have changed since the modelling was conducted and have had to be incorporated. The NZCO memorandum account deficit has continued to grow and also the assumed number of registered entities factored into the earlier modelling is likely to be too optimistic given the current economic outlook. Therefore, it is necessary to increase some of the NZCO fees to cover the costs of the services performed by the NZCO, as some of the fees are currently set below costs, and return the memorandum account to sustainable levels. Table 4 outlines the recommended changes.

Table 4: Recommended fees for the NZCO (GST inclusive)

New Zealand Companies Office fees	Current Fees	Consultation Amount	Recommended Amount
Annual return and registration fees			
Fee for application for company registration	\$150.00	\$110.00	\$130.00
Fee for registration of company annual return	Nil ¹¹	\$22.50 (plus \$2.50 liquidation fee for ITS)	\$25.00 ¹²
Fee for application for registration by other entity	Nil - \$400	\$250.00 ¹³	\$250.00 ¹⁴
Fee for registration of annual return by other entity	Nil - \$2,000	\$40.00 ¹⁵	\$40.00 ¹⁶
Personal Property Securities Register fees (electronic register)			
Government to business client search fee	\$1.00	\$0.50	\$1.50
Government to business client financing statement/renewal fee	\$3.00	\$4.00	\$10.00
Retail user search fee	\$1.00	\$1.00	\$3.00
Retail user financing statement/renewal fee	\$3.07	\$9.00	\$20.00

56 In addition, due to legislative constraints, industrial and provident societies and contributory mortgage brokers (which were included in the definition of “other registered entities” in the discussion document) have been excluded from the NZCO fee proposals. For similar reasons, limited partnerships cannot currently be charged an annual return fee. Annex 4 provides further details.

57 Table 4 illustrates that the required fee revenue will come from:

- a. net increases in fees (annual return and registration) for companies and other registered entities, including the reintroduction of the annual return fee paid by all companies; and
- b. increases in the fees for registrations and searches under the Personal Property Securities Act 1999.

¹¹ For New Zealand companies that file electronically.

¹² Includes overseas companies.

¹³ Limited partnerships, building societies, credit unions, industrial and provident societies, friendly societies and contributory mortgage brokers.

¹⁴ Limited partnerships, overseas limited partnerships, building societies, credit unions, and friendly societies.

¹⁵ Limited partnerships, building societies, credit unions, industrial and provident societies, friendly societies and contributory mortgage brokers.

¹⁶ Building societies, credit unions, and friendly societies.

- 58 The re-introduction of a company annual return fee is expected to provide a more predictable and reliable income stream that is less vulnerable to economic downturns than the current reliance on an incorporation fee. The recommended company registration and annual return fees are still relatively low when compared to other jurisdictions.

Personal Property Securities Register

- 59 The NZCO is responsible for administering the PPSR which is the register where security interests over personal property may be registered and can be searched.
- 60 The PPSR has two broad types of client. Firstly “government to business” clients (wholesale clients) such as credit agencies like Veda Advantage and Dun and Bradstreet who make use of PPSR services by connecting their systems to the PPSR. Secondly, those clients who make use of the PPSR services via the internet (retail clients). The 2010 cost allocation model was used to consider the possibility of establishing what would effectively be a wholesale and retail fee structure.
- 61 The wholesale clients have for some time urged the NZCO to assess the differential in cost of providing services to the two types of clients. Wholesale clients currently have lower costs associated with the services that they use. For example, they do not make use of the Contact Centre and require a lower amount of IT related services within the NZCO compared to retail clients. Therefore, a lower fee is appropriate for wholesale clients. The wholesale/retail fee structure aligns with the NZCO’s desire to move more towards the model of offering services to stakeholders via third party offerings where feasible.
- 62 The PPSR fees have also had to be increased further from the amounts which were included in the discussion document. In an effort to reduce the historical surplus that existed in the NZCO memorandum account, the PPSR fees were set below cost for the past 10 years that the register has been in operation. However, due to the need to contribute to the current increasing deficit in the memorandum account the PPSR fees need to be increased. Table 4 outlines these changes.
- 63 The recommended fees are not expected to significantly affect usage of the PPSR and the fees are similar to those in other jurisdictions. The Ministry has relationships with the six main PPSR clients and will contact them to discuss the further fee increases. It is likely that the PPSR fees will be reduced following the 2014 fees and levies review outlined in the Monitoring, Evaluation and Review section of this RIS, as the memorandum account deficit is expected to be significantly reduced or eliminated by then.

External Reporting Board Levy

- 64 The XRB is responsible for issuing financial reporting standards, and auditing and assurance standards.
- 65 Financial reporting standards describe the principles and rules that entities must follow when preparing general purpose financial reports. These principles and rules relate to recognition, measurement, disclosure and presentation. Auditing and assurance standards are the standards that auditors must apply when determining whether a set of financial statements comply with generally accepted accounting practice.
- 66 The main purpose of financial reporting is to promote accountability by an entity's senior management to:
- a. Those who own the entity, either directly (e.g. shareholders of a company) or indirectly (e.g. taxpayers in the case of government entities); and
 - b. Other stakeholders, such as:
 - i. Debt security holders in the case of issuers of securities;
 - ii. Depositors in the case of banks;
 - iii. Service recipients in the case of public sector entities; and
 - iv. Donors in the case of charities.
- 67 Thus, the benefits of the XRB's standards setting are widely dispersed. The benefits to the broadest group of beneficiaries, the taxpayer, are reflected in the proportion of Crown funding allocated to the XRB. The recommended \$10 levy on all companies and other registered entities¹⁷ at registration and annual return reflects the diverse range of beneficiaries from the XRB's standards-setting activities.

Consultation

- 68 The Ministry received 278 written submissions on the June discussion document, of which 216 were in an identical standard form. The Ministry also hosted four open stakeholder forums (two each in Wellington and Auckland) and also individually met with or talked to a number of stakeholders.
- 69 Submitters either supported or made no comment on the fee and levy proposals for the XRB, NZCO, and ITS in the discussion document.
- 70 No submitters supported the preferred option for levies to fund the FMA. Almost every submitter stated or implied that the submitter's class of entity was being overcharged and that more funding should be obtained from other sources. Submitters' other main concerns were that the proposals would:
- a. Force smaller providers to exit the sector and other providers to alter their business structure to avoid levies;
 - b. Discourage banks and other qualifying financial entities from providing financial advice;

¹⁷ Limited partnerships, overseas limited partnerships, building societies, credit unions, and friendly societies. See Annex 4 for further details.

- c. Result in significant over-charging or double-charging; and
- d. Fail to appropriately match levy charges to the beneficiaries of a well-functioning financial market.

- 71 In light of the submissions, the Ministry concluded that all four of the FMA levy options in the discussion document could cause significant distortions and/or proportionality problems.
- 72 Therefore, in November 2011, the Ministry conducted a further round of targeted consultation with a number of industry groups on a revised FMA levy option. The revised levy structure placed a greater emphasis on levying entities rather than individuals. The majority of submitters considered that the revised FMA levy proposal was a significant improvement on the original options.
- 73 However, some of the financial sector industry still has a number of on-going concerns, which are either outside the scope of these funding proposals or can be balanced against the benefits that are received from a well-regulated financial sector. The main concerns are:
- a. A well-regulated financial sector has a greater public good element than is currently represented by the proportion of FMA funding that is Crown funded (i.e. funded by all taxpayers, not just financial market participants);
 - b. Banks and insurers argue that they should contribute substantially less to the FMA's funding as they are prudentially regulated by the Reserve Bank;
 - c. Entities that have chosen to become qualifying financial entities, which includes many of the banks and some insurers, argue that they should pay a smaller levy because they have taken on front-line regulatory responsibility for their financial advisers and have incurred significant costs in doing so;
 - d. General concern that other substantial costs and regulatory requirements are already being imposed elsewhere on financial market participants (for example, the Financial Advisers Act 2008 regime, Financial Service Providers (Registration and Dispute Resolution) Act 2008 requirements and fees, and NZX supervision); and
 - e. Large entities argue that they are of less risk than smaller entities for various reasons (e.g. reputation, easier to manage risks) and should therefore pay smaller levies.
- 74 The recommended FMA levy is a result of refinements made following targeted consultation in November and further targeted consultation on an exposure draft of the regulations in April this year.
- 75 In addition to the public consultation and the following rounds of targeted consultation with industry participants, the Ministry has consulted with the FMA, Treasury and the XRB during the development of the recommended fees and levies. The Department of Prime Minister and Cabinet has been informed.

Conclusions and Recommendations

76 The Ministry recommends the following preferred options for the FMA levy, NZCO fees and XRB levy:

*FMA levy*¹⁸

Levy Class	Levy Amount (GST incl.)
Class 1	
Levy on application for FSP registration	\$350
*Class 2	
Banks and NBDTs (total assets >\$50b)	\$350,000
Banks and NBDTs (total assets \$10b to \$50b)	\$80,000
Banks and NBDTs (total assets \$2b to \$10b)	\$25,000
Banks and NBDTs (total assets \$1b to \$2b)	\$15,000
Banks and NBDTs (total assets \$20m to \$1b)	\$7,500
Banks and NBDTs (total assets <\$20m)	\$2,000
* Class 3	
Insurers (GPI >\$250m)	\$150,000
Insurers (GPI \$50m to \$250m)	\$35,000
Insurers (GPI \$10m to \$50m)	\$10,000
Insurers (GPI <\$10m)	\$2,000

¹⁸ **Notes:**

* Where a group of associated companies operates within either Class 2 or Class 3, the relevant tier for each class will be determined on a group basis (aggregated assets or GPI for the associated companies).

** Issuers of unit trusts/participatory/KiwiSaver/superannuation schemes. Each issuer is to aggregate its total assets for all Class 5 schemes to determine the relevant tier. Securities in participatory schemes that are issued by building societies and industrial and provident societies are excluded from Class 5.

*** Only one levy is payable by a Financial Service Provider (FSP) in Class 6. For FSPs that are involved in more than one activity in Class 6, the activity that corresponds to the highest levy amount is payable.

GPI is Gross Premium Income.

NBDT is Non-bank deposit taker.

Class 4	
Licensed trustees and statutory supervisors (total supervised interests > \$5b)	\$100,000
Licensed trustees and statutory supervisors (total supervised interests \$1b to \$5b)	\$60,000
Licensed trustees and statutory supervisors (total supervised interests \$100m to \$1b)	\$20,000
Licensed trustees and statutory supervisors (total supervised interests < \$100m)	\$5,000
** Class 5	
Issuers of specified managed funds (total assets >\$2b)	\$100,000
Issuers of specified managed funds (\$1b to \$2b total assets)	\$80,000
Issuers of specified managed funds (\$500m to \$1b total assets)	\$60,000
Issuers of specified managed funds (\$100m to \$500m total assets)	\$40,000
Issuers of specified managed funds (\$50m to \$100m total assets)	\$20,000
Issuers of specified managed funds (\$20m to \$50m total assets)	\$10,000
Issuers of specified managed funds (total assets <\$20m)	\$2,000
*** Class 6	
Exchange participants (excluding issuers listed on the registered exchange and natural persons)	\$7,500
Contributory mortgage brokers	\$2,000
Authorised futures dealers and FSPs entering into derivative transactions, trading in money market instruments, foreign exchange, interest rate and index instruments, transferable securities (including shares), futures contracts on behalf of another person	\$2,000
FSPs offering broking services	\$1,000
Authorised financial advisers (AFA)	\$400
Class 7	
Registered FSPs which are not subject to a levy in classes 2 to 6	\$350

Class 8	
Public issuer (party to a listing agreement with a registered exchange)	\$2,000
Class 9	
Levy on registration of a prospectus (under s42 of Securities Act 1978)	\$2,000
Class 10 and 11	
Registered exchanges and authorised futures exchanges	\$20,000
Class 12 and 13	
Licensed auditors (via accredited body) and overseas auditors	\$2,000
Class 14	
Companies and other registered entities at registration ¹⁹	\$10
Class 15	
Companies and other registered entities at annual return ²⁰	\$10

77 In addition, the Ministry recommends the inclusion in the Financial Markets Authority (Levies) Regulations 2012 a power for the FMA to waive the levy, in whole or in part, if the FMA is satisfied that the exceptional circumstances or characteristics of the person, when compared with the circumstances or characteristics of other persons in the class of specified persons for which the levy is payable, would make it inequitable for the person to pay the levy.

¹⁹ Companies, overseas companies, limited partnerships, overseas limited partnerships, building societies, credit unions, and friendly societies.

²⁰ Companies, overseas companies, limited partnerships, overseas limited partnerships, building societies, credit unions, and friendly societies.

New Zealand Companies Office fees

New Zealand Companies Office fees	Amount (GST incl.)
Annual return and registration fees	
Fee for application for company registration	\$130.00
Fee for registration of company annual return	\$25.00
Fee for application for registration by other entity ²¹	\$250.00
Fee for registration of annual return by other entity ²²	\$40.00
Personal Property Securities Register fees (electronic register)	
Government to business client search fee	\$1.50
Government to business client financing statement/renewal fee	\$10.00
Retail user search fee	\$3.00
Retail user financing statement/renewal fee	\$20.00

XRB levy

78 The Ministry recommends an annual XRB levy of \$10 (GST incl.) payable by every company, limited partnership, building society, credit union, and friendly society on application for registration and upon filing of an annual return.

Review of fees and levies 2014

79 As set out in the Monitoring, Evaluation and Review section, the Ministry recommends reviewing the whole package of fees and levies two years after the regulations take effect.

Implementation

80 Subject to Cabinet approval, the regulations giving effect to the fee and levy proposals will take effect on 1 August 2012.

81 The majority of financial market participants will pay their levy to the NZCO through their FSP annual confirmations and registrations. Companies and other registered entities will pay their levy to the NZCO through their registrations and annual returns. The Ministry does not consider there will be any significant issues with collecting the levy.

82 Levies payable by participants that are not on the FSP register will be collected through other existing mechanisms. For example, upon registration of a prospectus with the NZCO, when accredited bodies perform their annual confirmation under the Auditor Regulation Act 2011 and the FMA will invoice public issuers, overseas auditors, and exchanges (if they do not file an annual report with the FMA).

83 Using existing interactions to collect the FMA levy does not impose additional compliance costs on market participants or the government.

84 In addition, legislative vehicles are being considered to introduce an annual return fee for limited partnerships and fees and levies for industrial and provident societies that are currently not possible.²³

²¹ Limited partnerships, overseas limited partnerships, building societies, credit unions, and friendly societies.

²² Building societies, credit unions, and friendly societies.

- 85 The need for three rounds of consultation on the FMA levy has delayed the development of fee and levy regulations. If there were any further delays to the fee and levy regulations, possible revenue implications for the FMA, XRB, and NZCO would need to be considered.

Monitoring, Evaluation and Review

- 86 As indicated in the June 2011 discussion document, the Ministry also recommends that the proposed fees and levies be reviewed two years after they come into force. This will enable us to evaluate the impacts and assess whether any adjustments are required.
- 87 It is anticipated that at the time of the review, when the NZCO deficit is expected to be significantly reduced or eliminated, the NZCO fees, particularly the PPSR fees, could be reduced.
- 88 There is a lack of detailed and robust information available about financial market participants. During the first two years that the FMA levy is in force, the Ministry of Business, Innovation and Employment will be able to assess whether the volume assumptions are correct, whether the classes and tiers are appropriate, and thus determine what adjustments are required to the levy design.
- 89 Additional information will also be collected through the FSP annual confirmation process which will help inform the review. In addition, there will be further licensing of financial market participants and also adjustments to statutory definitions of financial market participants through the consolidation of fragmented securities legislation by the Financial Markets Conduct Bill.

²³ Annex 4 provides further details.

Annex 1: FMA levy targeted consultation proposal (November 2011)

	Number	Amount (\$)	GST incl. (\$)	GST excl. (\$)
Category 1			\$	\$
Banks (Assets >\$50b)	4	350,000	1,400,000	1,217,391
Banks (Assets \$10-50b)	4	80,000	320,000	278,261
Banks (Assets \$2-10b)	7	20,000	140,000	121,739
NBDTs (Assets >\$1b)	3	10,000	30,000	26,087
Total	18		1,890,000	1,643,478
Category 2				
Insurers (GWP >\$250m)	6	175,000	1,050,000	913,043
Insurers (GWP \$50-250m)	26	40,000	1,040,000	904,348
Insurers (GWP \$10-50m)	21	10,000	210,000	182,609
Total	53		2,300,000	2,000,000
Category 3**				
Licensed trustees & statutory supervisors & all other issuers (>\$100m)*	150	35,000	4,500,000	3,913,043
Other managed funds and non-bank deposit takers (>\$100m)*	100	10,000	1,000,000	869,565
All other issuers (including equity and debt)	500	1,000	1,250,000	1,086,957
Total	750		6,750,000	5,869,565
Category 4				
Licensed auditors	100	1,600	160,000	139,130
Category 5				
Broking firms	50	7,500	375,000	326,087
All other FSPs (including retirement villages)	9,450	300	2,835,000	2,465,217
Total	9,500		3,210,000	2,791,304
Category 6				
Companies	460,000	10	4,600,000	4,000,000
Total			18,910,000	16,443,478

* Funds under supervision for trustee companies. Total assets for other issuers.

** Issuer has the meaning under the Financial Reporting Act

GWP is Gross Written Premium

Apart from Category 6, if a financial market participant is subject to more than one category or tier, they should pay only the higher or highest amount. However, two or more levies will be payable for groups of companies where individual entities carry out different activities (e.g. a bank that has a subsidiary which provides insurance services)

Annex 2: Recommended FMA levy²⁴

Class	Recommended levy amount including GST	Estimated number paying	Estimated revenue including GST (\$)	Estimated revenue excluding GST (\$)
*Class 2				
Banks and NBDTs (total assets >\$50b)	\$350,000	4	1,400,000	1,217,391
Banks and NBDTs (total assets \$10b to \$50b)	\$80,000	2	160,000	139,130
Banks and NBDTs (total assets \$2b to \$10b)	\$25,000	6	150,000	130,435
Banks and NBDTs (total assets \$1b to \$2b)	\$15,000	2	30,000	26,087
Banks and NBDTs (total assets \$20m to \$1b)	\$7,500	29	217,500	189,130
Banks and NBDTs (total assets <\$20m)	\$2,000	26	52,000	45,217
<i>Total for Class 2</i>		69	2,009,500	1,747,391
*Class 3				
Insurers (GPI >\$250m)	\$150,000	6	900,000	782,609
Insurers (GPI \$50m to \$250m)	\$35,000	21	735,000	639,130
Insurers (GPI \$10m to \$50m)	\$10,000	17	170,000	147,826
Insurers (GPI <\$10m)	\$2,000	55	110,000	95,652
<i>Total for Class 3</i>		99	1,915,000	1,665,217
Class 4				
Licensed trustees and statutory supervisors (total supervised interests >\$5b)	\$100,000	5	500,000	434,783
Licensed trustees and statutory supervisors (total supervised interests \$1b to \$5b)	\$60,000	1	60,000	52,174
Licensed trustees and statutory supervisors (total supervised interests \$100m to \$1b)	\$20,000	2	40,000	34,783
Licensed trustees and statutory supervisors (total supervised interests <\$100m)	\$5,000	12	60,000	52,174
<i>Total for Class 4</i>		20	660,000	573,913

²⁴ **Notes:**

* Where a group of associated companies operates within either Class 2 or Class 3, the relevant tier for each class will be determined on a group basis (aggregated assets or GPI for the associated companies).

** Issuers of unit trusts/participatory/KiwiSaver/superannuation schemes. Each issuer is to aggregate its total assets for all Class 5 schemes to determine the relevant tier. Securities in participatory schemes that are issued by building societies and industrial and provident societies are excluded from Class 5.

*** Only one levy is payable by a Financial Service Provider (FSP) in Class 6. For FSPs that are involved in more than one activity in Class 6, the activity that corresponds to the highest levy amount is payable.

GPI is Gross Premium Income.

NBDT is Non-bank deposit taker.

Class	Recommended levy amount including GST	Estimated number paying	Estimated revenue including GST (\$)	Estimated revenue excluding GST (\$)
**Class 5				
Issuers of specified managed funds (total managed assets >\$2b)	\$100,000	4	400,000	347,826
Issuers of specified managed funds (\$1b to \$2b total managed assets)	\$80,000	1	80,000	69,565
Issuers of specified managed funds (\$500m to \$1b total managed assets)	\$60,000	5	300,000	260,870
Issuers of specified managed funds (\$100m to \$500m total managed assets)	\$40,000	56	2,240,000	1,947,826
Issuers of specified managed funds (\$50m to \$100m total managed assets)	\$20,000	4	80,000	69,565
Issuers of specified managed funds (\$20m to \$50m total managed assets)	\$10,000	36	360,000	313,043
Issuers of specified managed funds (<\$20m total managed assets)	\$2,000	175	350,000	304,348
<i>Total for Class 5</i>		281	3,810,000	3,313,043
***Class 6				
Exchange participants (excluding issuers listed on the registered exchange and natural persons)	\$7,500	17	127,500	110,870
Contributory mortgage brokers	\$2,000	85	170,000	147,826
Authorised futures dealers and FSPs entering into derivative transactions, trading in money market instruments, foreign exchange, interest rate and index instruments, transferable securities (including shares), futures contracts on behalf of another person	\$2,000	40	80,000	69,565
FSPs offering broking services	\$1,000	300	300,000	260,870
Authorised financial advisers (AFA)	\$400	2,000	800,000	695,652
Class 7 and 1				
Registered FSPs which are not included in classes 2 to 6, and levy upon application for FSP registration	\$350	8,600	3,010,000	2,617,391
<i>Total for Class 6, 7 and 1.</i>		11,500	4,487,500	3,902,174
Class 8				
Public issuer (party to a listing agreement with a registered exchange)	\$2,000	150	300,000	260,870
Class 9				
Levy on registration of a prospectus (under s42 of Securities Act 1978)	\$2,000	400	800,000	695,652
<i>Total for Class 8 and 9</i>		550	1,100,000	956,522
Class 10 and 11				
Registered exchanges and authorised futures exchanges	\$20,000	2	40,000	34,783

Class	<i>Recommended levy amount including GST</i>	<i>Estimated number paying</i>	<i>Estimated revenue including GST (\$)</i>	<i>Estimated revenue excluding GST (\$)</i>
Class 12 and 13				
Licensed auditors (via accredited body) and overseas auditors	\$2,000	125	250,000	217,391
Class 14 and 15				
Companies and other registered entities at registration ²⁵ and annual return ²⁶	\$10	460,000	4,600,000	4,000,000
Total			18,872,000	16,410,435

²⁵ Companies, overseas companies, limited partnerships, overseas limited partnerships, building societies, credit unions, and friendly societies.

²⁶ Companies, overseas companies, limited partnerships, overseas limited partnerships, building societies, credit unions, and friendly societies.

Annex 3: Assessment of proposed FMA levy against the levy objectives

Assessment of FMA Levy: Proportionality

90 The following table contains a proportionality assessment of the FMA levy classes relative to the benefits received through a well-regulated financial market.

Table 2: Proportionality assessment of recommended FMA levy

Class	Proportionality
<p>Class 2: Registered banks and non-bank deposit takers (11% of total FMA levy funding)</p>	<p>Participants in Class 2 (registered banks, non-bank deposit takers (NBDT)) and Class 3 (insurers) indirectly benefit from a well-regulated financial market. Each class will pay a levy amount which represents approximately 10 per cent of the total. Levy amounts have been tiered for these classes according to the size of the participant.</p>
<p>Class 3: Insurers (10% of total FMA levy funding)</p>	<p>Where a group of associated companies operates within either Class 2 or Class 3, the relevant tier for each class will be determined on a group basis (aggregated assets or GPI for the associated companies) to ensure that the levy does not create incentives to modify corporate structures for levy avoidance purposes.</p>
<p>Class 4: Licensed trustees and statutory supervisors (3% of total FMA levy funding)</p>	<p>The recommended levy has a separate tiered class for licensed trustees and statutory supervisors (under the November proposal the levy was \$35,000). Information provided during the targeted consultation indicated that there are significant differences in the size of participants within this group. Therefore, a more equitable approach is to tier the levy within this class.</p>
<p>Class 5: Issuers of unit trusts/participatory/ KiwiSaver/superannuation schemes (20% of total FMA levy funding)</p>	<p>The recommended levy has a separate class for certain types of managed funds with seven new tiers. In the November proposal, in the interest of keeping the proposal simple, the levy on issuers was loosely tiered according to the size of the issuer. Analysis suggests, there are likely to be a number of issuers of these managed funds with total assets far in excess of the highest tier threshold of \$100 million set in the November proposal. In addition, the tier thresholds and levy amounts in the recommended levy better reflect the benefits from financial market regulation that these larger issuers receive.</p>
<p>Class 1, 6 and 7: Levy on application for FSP registration, exchange participants, contributory mortgage brokers, authorised futures dealers, FSPs</p>	<p>The levy for an authorised financial advisors (AFA) is slightly higher than the levy for a registered financial advisors (RFA) (RFAs will pay \$350 under Class 7) as AFAs are able to provide advice on a wider range of financial products. The levies on the specified</p>

Class	Proportionality
<p>entering into and trading particular financial products on behalf of another person²⁷, FSPs offering broking services, Authorised financial advisers, and registered FSPs which are not subject to a levy in classes 2 to 6</p> <p>(24% of total FMA levy funding)</p>	<p>persons in Class 6 recognises that they each receive proportionately greater benefits from financial market regulation than the other FSPs which are only required to pay a levy of \$350.</p> <p>The Ministry does not have sufficient information on the size of each exchange participant (i.e. share broking firms), so this levy is not tiered. However, this is offset by the fact that each exchange participant will also pay a levy for every AFA or RFA they employ which means larger firms will pay proportionately more than smaller firms in this respect.</p>
<p>Class 8 and 9:</p> <p>Levy on listed companies and prospectus registration</p> <p>(6% of total FMA levy funding)</p>	<p>Although, the method of collecting the levy in Class 8 differs, as it is imposed upon the activity of registering a prospectus (\$2,000), this is an equitable way of levying one-off issuers (compared to requiring an annual levy for the life of their issue) and it also collects a levy from issuers that are not required to register on the FSP register.</p> <p>The Class 9 levy of \$2,000 for companies listed on New Zealand's registered exchange, (not included in the November proposal), recognises the additional benefits they receive from well-functioning financial markets compared to unlisted companies.</p>
<p>Class 10 and 11:</p> <p>Registered exchanges and authorised futures exchanges</p> <p>(0.2% of total FMA levy funding)</p>	<p>Classes 10 and 11 provides for a levy on financial market participants which were not subject to a specific levy in the earlier proposals: registered exchanges (\$20,000) and authorised futures exchanges (\$20,000). These participants were originally excluded in an effort to maintain simplicity, but as the levy has evolved into a more sophisticated model it is now appropriate to include them. In addition, inclusion is consistent with the benefits they receive from a well-functioning financial market.</p>
<p>Class 12 and 13:</p> <p>Licensed auditors (via accredited body) and overseas auditors</p> <p>(1.3% of total FMA levy funding)</p>	<p>Licensed auditors also benefit directly from a well-regulated financial market. The levy amount of \$2,000 is moderately higher than the \$1,600 proposed in the November proposal.</p>

²⁷ Derivative transactions, money market instruments, foreign exchange, interest rate and index instruments, transferable securities (including shares), and futures contracts.

Class	Proportionality
<p>Class 14 and 15:</p> <p>Companies and other registered entities</p> <p>(24% of total FMA levy funding)</p>	<p>The Ministry considers that the small levy of \$10 on all companies and registered entities²⁸ at registration and annual return is proportionate to the indirect benefits that this group obtains from having a stable and well-regulated financial sector. The levy will collect approximately 25 per cent of the total levy funding required, and while this amount is a significant proportion, it is spread broadly across the large number of companies and registered entities.</p>

Assessment of FMA Levy: Distortions

- 91 The Ministry does not consider that any of levy amounts are large enough to discourage participants from supplying financial products or services. Where sufficient information was available and where a flat levy was considered inappropriate, tiers have been developed to distribute the levy across different sized participants within classes.
- 92 The \$10 levy on companies and other registered entities, in addition to other proposed charges on companies noted in this paper, may encourage directors to deregister some inactive or very small companies. The economic loss to New Zealand associated with these company de-registrations is expected to be negligible.

Assessment of FMA Levy: Practicality

- 93 The Ministry is confident in collecting the estimated levy revenue from Classes 2, 3, 4, 10 and 11. Based on information available and a number of conservative assumptions, there is also relative confidence in collecting the estimated levy revenue from Classes 1, 6, 7, 8, 9, 12 and 13. There is less certainty about Class 5, which includes the issuers of various types of managed funds. The Ministry does not have definitive information on the number of issuers in this class. However, there is information as to the size of many of the funds, which has been used to develop the thresholds for the tiers. A higher number of tiers have been used in this class to minimise arbitrage between the thresholds.
- 94 In addition, the Ministry does not consider there will be any significant issues with collecting the levy. The majority of financial market participants will pay their levy to the NZCO through their FSP annual confirmations and registrations. Companies and other registered entities will pay their levy to the NZCO through their registrations and annual returns.
- 95 Levies payable by participants that are not on the FSP register will be collected through other existing mechanisms. For example, upon registration of a prospectus with the NZCO, when accredited bodies perform their annual confirmation under the Auditor Regulation Act 2011 and the FMA will invoice public issuers, overseas auditors, and exchanges (if they do not file an annual report with the FMA).

²⁸ Annex 4 defines other registered entities.

Annex 4: Fees and levies for companies and other registered entities

1. The recommended fees and levies on “companies and other registered entities” will be collected through the NZCO’s annual return and registration processes. The discussion document included an XRB levy (\$10) and various NZCO fees for companies and other registered entities. In addition, a \$10 FMA levy for companies and other registered entities at registration and upon filing an annual return has been introduced following consultation.
2. In the discussion document, “other registered entities” were defined as limited partnerships, building societies, credit unions, industrial and provident societies, friendly societies and contributory mortgage brokers. However, industrial and provident societies and contributory mortgage brokers have had to be excluded from the fees and levies that will apply to “other registered entities” until legislative changes are made. These two exclusions will be fiscally immaterial because only approximately 125 entities are affected.
3. Firstly, the Industrial and Provident Societies Act 1908 prohibits charging a registration fee. In addition, it is arguable whether the Act allows an annual return fee to be set. Therefore, there is no process to easily charge industrial and provident societies the \$10 FMA levy and the \$10 XRB levy through the registration and annual return process. It is intended that the Financial Reporting Bill will amend the annual return provisions which will ensure an annual return fee can be charged and therefore, consequently, provide a mechanism to charge the FMA and XRB levies.
4. Secondly, registration by contributory mortgage brokers is governed by the Securities Act (Contributory Mortgage) Regulations 1988. There is currently no registration fee and no requirement to file an annual return. Similarly there is no mechanism for the NZCO to charge contributory mortgage brokers the \$10 FMA and \$10 XRB levies applicable to other registered entities. These Regulations are being reviewed as part of the securities law review. Contributory mortgage brokers who are registered FSPs will pay an FMA levy via their FSP registration (\$2,000).
5. In addition, there is also currently no provision to charge an annual return fee for a limited partnership. Legislative options are currently being considered to introduce such a fee. However, limited partnerships will still be required to pay the NZCO registration fee of \$250 and the \$10 FMA and \$10 XRB levies at registration and annual return.