



COVERSHEET

Minister	Hon Dr Duncan Webb	Portfolio	Commerce and Consumer Affairs
Title of Cabinet paper	Financial Markets Conduct (Climate-related Disclosures and Fees) Amendment Regulations 2023 and Financial Markets Authority (Levies) Amendment Regulations 2023	Date to be published	14 November 2023

List of documents that have been proactively released

Date	Title	Author
October 2023	Financial Markets Conduct (Climate-related Disclosures and Fees) Amendment Regulations 2023 and Financial Markets Authority (Levies) Amendment Regulations 2023	Office of the Minister of Commerce and Consumer Affairs
2 October 2023	Financial Markets Conduct (Climate-related Disclosures and Fees) Amendment Regulations 2023 and Financial Markets Authority (Levies) Amendment Regulations 2023: CAB-23-MIN-0453 Minute	Cabinet Office

Information redacted

NO

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Office of the Minister of Commerce and Consumer Affairs

Chair, Cabinet Business Committee

**Financial Markets Conduct (Climate-related Disclosures and Fees)
Amendment Regulations 2023 and Financial Markets Authority (Levies)
Amendment Regulations 2023**

Proposal

- 1 This paper seeks authorisation for submission to the Executive Council of the:
 - 1.1 Financial Markets Conduct (Climate-related Disclosures and Fees) Amendment Regulations 2023; and
 - 1.2 Financial Markets Authority (Levies) Amendment Regulations 2023.
- 2 This paper also seeks:
 - 2.1 agreement to correct an error in regulation 16 of the Incorporated Societies Regulations 2023; and
 - 2.2 authorisation to submit the Incorporated Societies Amendment Regulations 2023 (which give effect to this correction) to the Executive Council.

Executive Summary

- 3 I am seeking authorisation for submission to the Executive Council of two sets of regulations to help implement the climate-related disclosures regime introduced by the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (**CRD Act**).
- 4 The first set of regulations concerns technical matters and lodging fees. On 21 August 2023, Cabinet agreed [CAB-23-MIN-0377 and DEV-23-MIN-0179 refer] to proposals for new regulations to be made under section 548 of the Financial Markets Conduct Act 2013 (**FMC Act**) relating to:
 - 4.1 technical matters regarding the climate-related disclosures register (the **Register**); and
 - 4.2 a fee to lodge climate statements or any notification of exempt status on the Register.
- 5 The Financial Markets Conduct (Climate-related Disclosures and Fees) Amendment Regulations 2023 have been prepared in accordance with the Cabinet decisions described in paragraph 3 and my decision making during the drafting process, as authorised by Cabinet.

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- 6 The second set of regulations provides for the Registrar of Financial Service Providers (the **Registrar**) to collect the climate-related disclosures levies (**FMA Levy**). Currently the Financial Markets Authority (**FMA**) collects the FMA Levy.
- 7 On 8 August 2022, Cabinet noted that [CAB-22-MIN-0302 and LEG-22-MIN-0129 refer]:
- 7.1 amendments to the Financial Markets Authority (Levies) Regulations 2012 would be required at a later date to provide for the Registrar to collect the climate-related disclosures levies;
- 7.2 the Minister of Commerce and Consumer Affairs would seek approval from the Cabinet Legislation Committee at a later date.
- 8 The Financial Markets Authority (Levies) Amendment Regulations 2023 will give effect to Cabinet’s expectation that the collection of the FMA Levy will change, and my approval of certain details relating to that change.
- 9 I am also seeking agreement to correct an error in the Incorporated Societies Regulations 2023 and authorisation for submission to the Executive Council of the Incorporated Societies Amendment Regulations 2023 to give effect to that correction.

Climate Related Disclosures Regulations

Background

- 10 In 2021, the CRD Act was passed and received Royal assent. By amending the FMC Act and the Financial Reporting Act 2013, the CRD Act imposed obligations on approximately 170 financial market participants to file annual climate statements disclosing their climate-related risks and opportunities.
- 11 Climate statements must be prepared in accordance with standards issued by the External Reporting Board. The FMA is responsible for the independent monitoring and enforcement of the regime.
- 12 Entities that are required to report are listed issuers, registered banks, licensed insurers, credit unions, building societies and investment scheme managers that are “large” as defined in the CRD Act. These entities are referred to in the legislation as “climate reporting entities”.
- 13 Under the FMC Act, a climate reporting entity must deliver the climate statements to the Registrar for lodgement within four months after the reporting entity’s balance date or, in the case of investment scheme managers, within four months after the scheme’s balance date (section 461ZI).
- 14 From October 2024, climate reporting entities will also be required to lodge an assurance report with the climate statements. This assurance report will relate to the disclosures in the climate statements concerning greenhouse gas emissions.
- 15 The first climate statements will be lodged with the Registrar between 1 January and 30 April 2024.

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- 16 The FMA may, on terms and conditions that it thinks fit, exempt certain climate reporting entities from the obligation to lodge climate statements (see section 556 of the FMC Act). It is intended that the terms of any FMA exemption will require the climate reporting entity to file an annual notice of exemption with the Registrar.

Register

- 17 The Registrar has approved the establishment of a new register to support the climate-related disclosures regime under clause 8 of Schedule 2 of the FMC Act. The Register will hold the climate statements (and notifications of exempt status).
- 18 Under section 548(1)(k) of the FMC Act regulations may be made prescribing procedures, requirements and other matters, not inconsistent with the FMC Act for any register kept under the Act. Under section 548(1)(o) regulations may also be made prescribing fees payable in respect of any matter under the Act, which includes lodgement of climate statements and any notifications of exemption.

Levies

- 19 By amending the Financial Markets Authority (Levies) Regulations 2012, the Financial Markets Authority (Levies) Amendment Regulations 2022 introduced an FMA Levy to be paid by climate reporting entities. These regulations give effect to Cabinet's decision that a portion of the FMA's costs to prepare for, monitor and enforce the climate-related disclosures regime should be recovered from climate reporting entities.
- 20 The Financial Markets Authority (Levies) Regulations 2012 (as amended) provide that the FMA will collect the FMA Levy by way of invoice. Collection of the levy in this way was only intended to be a temporary measure until the Companies Office could implement the IT system changes to collect the levy at the time that an entity files its climate statements (and pays the fee for doing so).
- 21 The IT system changes are now being implemented and the first climate statements are expected to be filed between 1 January and 30 April 2024. It is intended that the Registrar (rather than the FMA) will collect the FMA Levy from 1 January 2024.

Policy decisions

Register

- 22 Cabinet has agreed to proposals for new regulations under section 548 of the FMC Act [DEV-23-MIN-0179 and CAB-23-MIN-0377 refer] relating to the Register. Cabinet agreed that regulations should be drafted to prescribe:
- 22.1 the purpose for which a search of the Register may be carried out;
 - 22.2 the search criteria for the Register;
 - 22.3 the information to be contained on the Register about climate reporting entities;
 - 22.4 when the Registrar must amend the Register; and

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- 22.5 a fee of \$340 (excluding GST) charged to climate reporting entities when they lodge climate statements or a notification of exemption with the Registrar.
- 23 Cabinet also authorised the Minister of Commerce and Consumer Affairs to make decisions consistent with the policy decisions in the paper under DEV-23-SUB-0179 on any matters that may arise during the drafting process, including transitional arrangements. In accordance with this authority, I have decided that although investment scheme managers may file more than one set of climate statements in an accounting period, they will only pay one fee per accounting period. This is consistent with the expectations set out in the Cabinet paper under DEV-23-SUB-0179.

Levies

- 24 Cabinet has noted [CAB-22-MIN-0302 and LEG-22-MIN-0129 refer] that:
- 24.1 amendments to the Financial Markets Authority (Levies) Regulations 2012 would be required at a later date to provide for the Registrar of Financial Service Providers to collect the climate-related disclosures levies;
- 24.2 the Minister of Commerce and Consumer Affairs would seek approval from the Cabinet Legislation Committee at a later date.
- 25 I have approved the following amendments to the Financial Markets Authority (Levies) Regulations 2012 to be drafted, on the basis that they are routine and do not require new policy decisions, and because they are consistent with Cabinet's expectations described above:
- 25.1 the "collector" of the levy for class 16 entities is to change from the FMA to the Registrar;
- 25.2 the "leviable event" for class 16 entities is to change from being issued with an invoice under regulation 13 to the lodging of climate statements (or group climate statements) under s 461ZI of the FMC Act;
- 25.3 consequential changes to regulation 13 as a result of the change of collector from the FMA to the Registrar, including the removal of the FMA having the ability to issue an invoice for any debt collection costs;
- 25.4 clarification that an investment scheme manager will only pay one levy amount per year even if the manager files more than one set of climate statements (consistent with the requirements in the Financial Markets Authority (Levies) Amendment Regulations 2022 for entities to pay a single levy).

Exempt entities

- 26 Entities that rely on an FMA exemption (per paragraph 14 above) and therefore do not prepare climate statements:
- 26.1 will pay a fee of \$340 (excluding GST) when filing a notification of exemption with the Registrar;

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- 26.2 will not pay the FMA Levy (as the FMA's regulatory activities, which the FMA Levy funds, relate to the entities filing climate statements).

The final proposed regulations

Financial Markets Conduct (Climate-related Disclosures and Fees) Amendment Regulations 2023

- 27 The Financial Markets Conduct (Climate-related Disclosures and Fees) Amendment Regulations 2023 have been prepared in accordance with Cabinet decisions made in August 2023. These regulations provide for various technical matters relating to the Register and also introduce a fee of \$340.00 (excluding GST) to be charged to climate reporting entities when they lodge climate statements or a notification of exemption with the Registrar.
- 28 I propose that the Financial Markets Conduct (Climate-related Disclosures and Fees) Amendment Regulations 2023 are submitted to the Executive Council.

Financial Markets Authority (Levies) Amendment Regulations 2023

- 29 The Financial Markets Authority (Levies) Amendment Regulations 2023 have been prepared in accordance with Cabinet's expectations [see LEG-22-MIN-0129] and my approval of routine matters.
- 30 I propose that the Financial Markets Authority (Levies) Amendment Regulations 2023 are submitted to the Executive Council.

Incorporated Societies Amendment Regulations 2023

- 31 The Incorporated Societies Regulations 2023 were made on 4 September 2023. The Incorporated Societies Amendment Regulations 2023 correct an error in regulation 16.
- 32 Regulation 16 prescribes the threshold above which Incorporated Societies must have their financial statements audited. Cabinet agreed that this threshold be set at operating expenditure of \$3 million in each of the two preceding financial years [Recommendation 6, DEV-23-Min-0085 referring to Annex 2 under DEV-23-SUB-0085].
- 33 In the final regulations, the word 'payments' was used instead of 'expenditure'. In accounting terms, operating expenditure and operating payments have slightly different meanings.
- 34 I am therefore seeking the Committee's agreement to:
- 34.1 amend regulation 16 to refer to 'operating expenditure' instead of 'operating payments'; and
- 34.2 submit the Incorporated Societies Amendment Regulations 2023 which give effect to this change to the Executive Council.
- 35 Regulation 16 can only be made on my recommendation having regard to the matters set out in s254(3) of the Incorporated Societies Act 2022. This correction to

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Regulation 16 does not affect my consideration of those matters, as my consideration was based on a threshold described in terms of ‘operating expenditure’. I therefore recommend that the Incorporated Societies Amendment Regulations 2023 be made.

Timing and 28-day rule

- 36 The Financial Markets Conduct (Climate-related Disclosures and Fees) Amendment Regulations 2023 and the Financial Markets Authority (Levies) Amendment Regulations 2023 will come into force on 1 January 2024. Both sets of regulations will be notified in the New Zealand Gazette at least 28 days before 1 January 2024.
- 37 I am seeking a waiver of the 28-day rule for the Incorporated Societies Amendment Regulations 2023. The new regime comes into force on 5 October 2023 and it is important that these regulations are corrected by then so that incorporated societies are clear about their financial reporting responsibilities.

Compliance

- 38 The Financial Markets Conduct (Climate-related Disclosures and Fees) Amendment Regulations 2023, the Financial Markets Authority (Levies) Amendment Regulations 2023 and the Incorporated Societies Amendment Regulations 2023 comply with:
- 38.1 the principles of the Treaty of Waitangi;
 - 38.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
 - 38.3 the principles and guidelines set out in the Privacy Act 2020;
 - 38.4 relevant international standards and obligations;
 - 38.5 the Legislation Guidelines (2021 edition), which are maintained by the Legislation Design and Advisory Committee.
- 39 Section 549 of the FMC Act requires that the responsible Minister consult with the FMA before recommending regulations under section 548 of the FMC Act as proposed in the Financial Markets Conduct (Climate-related Disclosures and Fees) Amendment Regulations 2023. This consultation requirement has been met.

Regulations Review Committee

- 40 There are no grounds for the Regulations Review Committee to draw:
- 40.1 the Financial Markets Conduct (Climate-related Disclosures and Fees) Amendment Regulations 2023; or
 - 40.2 the Financial Markets Authority (Levies) Amendment Regulations 2023; or
 - 40.3 the Incorporated Societies Amendment Regulations 2023
- to the attention of the House of Representatives under Standing Order 327.

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Certification by Parliamentary Counsel

- 41 Parliamentary Counsel Office (PCO) has certified that:
- 41.1 the Financial Markets Conduct (Climate-related Disclosures and Fees) Amendment Regulations 2023;
 - 41.2 the Financial Markets Authority (Levies) Amendment Regulations 2023; and
 - 41.3 the Incorporated Societies Amendment Regulations 2023
- are in order for submission to the Executive Council.

Impact Analysis

Financial Markets Conduct (Climate-related Disclosures and Fees) Amendment Regulations 2023

- 42 The Treasury's Regulatory Impact Analysis team has determined that the proposals relating to the new climate related disclosures register (other than the proposal to introduce a fee to fund the register) are exempt from the requirement to provide a Regulatory Impact Statement on the grounds that they have no or only minor impacts on businesses, individuals, and not-for-profit entities.
- 43 A Cost Recovery Impact Statement in respect of the fee was submitted at the time Cabinet approval was sought for the policy relating to the regulations [DEV-23-MIN-0179 refers].
- 44 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this proposal as the threshold for significance is not met. The potential emissions impact is indirect and unable to be accurately quantified.

Financial Markets Authority (Levies) Amendment Regulations 2023

- 45 The Treasury's Regulatory Impact Analysis team has determined that amending the Financial Markets Authority (Levies) Regulations 2012 to provide that the Registrar of Financial Service Providers will collect the FMA Levy is exempt from the requirement to provide a Regulatory Impact Statement on the grounds that this proposal will have no or only minor impacts on businesses, individuals, and not-for-profit entities.
- 46 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this proposal as the threshold for significance is not met. The potential emissions impact is indirect and unable to be accurately quantified.

Incorporated Societies Amendment Regulations 2023

- 47 No impact analysis is required for these regulations.

Publicity

- 48 The Financial Markets Conduct (Climate-related Disclosures and Fees) Amendment Regulations 2023 and the Financial Markets Authority (Levies) Amendment Regulations 2023 will be notified in the Gazette and published on Parliamentary Counsel Office's 'New Zealand Legislation' website. MBIE intends to notify stakeholders when both sets of regulations have been made.

Proactive release

- 49 I propose to release this paper within 30 business days of Cabinet's decision. Any redactions made will be consistent with the Official Information Act 1982.

Consultation

- 50 In preparing this Cabinet paper, MBIE has consulted with Ministry for the Environment, the Treasury and the FMA. The Department of Prime Minister and Cabinet was informed.
- 51 Prior to the DEV-23-MIN-0179 decision, MBIE consulted with climate reporting entities on a proposed fee.
- 52 In accordance with section 549 of the FMC Act, the FMA has been consulted on the Financial Markets Conduct (Climate-related Disclosures and Fees) Amendment Regulations 2023.

Recommendations

I recommend that the Cabinet Business Committee:

Register

- 1 **note** that on 21 August 2023 the Cabinet Economic Development Committee agreed to proposals for new regulations under section 548 of the FMC Act [DEV-23-MIN-0179 refer] relating to:
- 1.1 the purpose for which a search of the Register may be carried out;
 - 1.2 the search criteria for the Register;
 - 1.3 the information to be contained on the Register about climate reporting entities;
 - 1.4 when the Registrar must amend the Register; and
 - 1.5 a fee of \$340.00 (excluding GST) payable in respect of lodgement of climate statements (or notifications of exempt status);
- 2 **note** that the Minister of Commerce and Consumer Affairs has decided, as authorised by Cabinet [DEV-23-MIN-0179 refers], that the regulations should include a provision to reflect that although investment scheme managers may file more than one

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set of climate statements in an accounting period, they will only pay one fee per accounting period;

- 3 **note** that the Financial Markets Conduct (Climate-related Disclosures and Fees) Amendment Regulations 2023 will give effect to the decisions referred to in recommendation 1 and 2 above;
- 4 **note** that section 549 of the FMC Act requires that the Minister of Commerce and Consumer Affairs consult with the FMA before recommending regulations under section 548 of the FMC Act;
- 5 **note** the advice of the Minister of Commerce and Consumer Affairs that the consultation requirement has been met;
- 6 **authorise** the submission to the Executive Council of the Financial Markets Conduct (Climate-related Disclosures and Fees) Amendment Regulations 2023;
- 7 **note** that the Financial Markets Conduct (Climate-related Disclosures and Fees) Amendment Regulations 2023 come into force on 1 January 2024;

FMA Levies

- 8 **note** that on 8 August 2022, Cabinet noted [CAB-22-MIN-0302 and LEG-22-MIN-0129 refer] that:
 - 8.1 amendments to the Financial Markets Authority (Levies) Regulations 2012 would be required at a later date to provide for the Registrar of Financial Service Providers to collect the climate-related disclosures levies;
 - 8.2 the Minister of Commerce and Consumer Affairs would seek approval from the Cabinet Legislation Committee at a later date;
- 9 **note** that the Minister of Commerce and Consumer Affairs has approved the drafting of amendments to the Financial Markets Authority (Levies) Regulations 2012, as set out in the proposed Financial Markets Authority (Levies) Amendment Regulations 2023, on the basis that the amendments are routine and do not require new policy decisions;
- 10 **note** that the Minister of Commerce and Consumer Affairs' approval included his agreement that investment scheme managers should pay one levy per accounting period (although they may file more than one set of climate statements);
- 11 **authorise** the submission to the Executive Council of the Financial Markets Authority (Levies) Amendment Regulations 2023;
- 12 **note** that the Financial Markets Authority (Levies) Amendment Regulations 2023 come into force on 1 January 2024;

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Incorporated Societies Amendment Regulations 2023

- 13 **note** that regulation 16 of the Incorporated Societies Regulations 2023 refers to ‘operating payments’ instead of ‘operating expenditure’;
- 14 **agree** to amend regulation 16 to refer to ‘operating expenditure’ in line with Cabinet’s previous decisions on the regulations [Recommendation 6, DEV-23-Min-0085 referring to Annex 2 under DEV-23-SUB-0085];
- 15 **note** that the Minister of Commerce and Consumer Affairs is satisfied that this amendment does not change his consideration of the matters under s254(3) of the Incorporated Societies Act, and that he recommends these regulations be made;
- 16 **authorise** the submission to Executive Council of the Incorporated Societies Amendment Regulations 2023, which give effect to this correction;
- 17 **agree** to a waiver of the 28-day rule for Incorporated Societies Amendment Regulations 2023 in order that the correction can be made before the Incorporated Societies Regulations come into force on 5 October 2023.

Authorised for lodgement

Hon Dr Duncan Webb

Minister of Commerce and Consumer Affairs