MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HIKINA WHAKATUTUKI

FMA
FINANCIAL MARKETS AUTHORITY
TE MANA TATAI HOKOHOKO - NEW ZEALAND

Consultation Paper

Reviews of the Financial Markets Authority funding, the Financial Markets Authority levy, the External Reporting Board levy and Companies Office fees

July 2016

newzealand.govt.nz

How to have your say

Submissions process

The Financial Markets Authority (FMA) is seeking written submissions on:

- Funding options for the FMA, including the portion of funding covered by the FMA levy

The Ministry of Business, Innovation and Employment (MBIE) is seeking written submissions on:

- Proposed changes to the model underlying the FMA levy
- Proposed changes to the External Reporting Board (XRB) levy
- Proposed changes to some fees for the New Zealand Companies Office

This consultation paper includes questions you may like to respond to in your submission. The questions are listed in full on page 9 of this document. Your submission does not need to answer all of these questions.

The FMA and MBIE also encourage your input on any other relevant work. Where possible, please include evidence to support your views, for example, references to facts and figures, or relevant examples.

Please send your submission by 5pm on 22 August. Please include your name, or the name of your organisation, and contact details. You can make your submission:

- By attaching your submission as a Microsoft Word or PDF attachment and sending to

  feesandlevyreview@mbie.govt.nz

- Mailing your submission to:

  Financial Markets Policy
  Ministry of Business, Innovation and Employment
  PO Box 1473
  Wellington 6140
  New Zealand

Please direct any questions that you may have in relation to the submission process to: feesandlevyreview@mbie.govt.nz

Use of information

The information provided in submissions will be used to inform a review of FMA's funding and reviews of the FMA and XRB levies and New Zealand Companies Office fees and will be considered in the policy development process.

We may contact submitters directly if we require clarification of any matters in submissions.

Except for material that may be defamatory, MBIE and the FMA intend to upload PDF copies of submissions received to their websites at ***www.mbie.govt.nz* and *www.fma.govt.nz***. FMA and MBIE will consider that you have consented to uploading by making a submission, unless you clearly specify otherwise in your submission.

Release of information

Submissions are also subject to the Official Information Act 1982. Please set out clearly with your submission if you have any objection to the release of any information in the submission, and in particular, which part(s) you consider should be withheld, together with the reason(s) for withholding the information. FMA and MBIE will take such objections into account and will consult with submitters when responding to requests under the Official Information Act 1982.

If your submission contains any confidential information, please indicate this on the front of the submission. Any confidential information should be clearly marked within the text. If you wish to provide a submission containing confidential information, please provide a separate version excluding the relevant information for publication on websites.

Private information

The Privacy Act 1993 establishes certain principles with respect to the collection, use and disclosure of information about individuals by various agencies, including FMA and MBIE. Any personal information you supply in the course of making a submission will only be used for the purpose of assisting in the development of policy advice in relation to this review. Please clearly indicate in your submission if you do not wish your name to be included in any summary of submissions that MBIE and FMA may publish.

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Contents

List of Acronyms

AFA	Authorised Financial Adviser
AML/CFT Act	Anti-Money Laundering and Countering Financing of Terrorism Act 2009
DIMS	Discretionary Investment Management Service
FA Act	Financial Advisers Act 2008
FMA	Financial Markets Authority
FMC Act	Financial Markets Conduct Act 2013
FSP Act	Financial Service Providers (Registration and Dispute Resolution Act) 2008
FSP	Financial Service Providers
IOSCO	International Organisation of Securities Commissions
MBIE	Ministry of Business, Innovation and Employment
MIS	Managed Investment Scheme
PPSR	Personal Property Securities Register
QFE	Qualifying Financial Entity
RFA	Registered Financial Adviser

Part 1 - Introduction

Section 1 - Purpose and context of the reviews

1. FMA are seeking your views on FMA funding options, including the portion of funding covered by the FMA levy.
2. MBIE is seeking your views on proposed adjustments to the FMA and External Reporting Board (XRB) levies, and fees for New Zealand Companies Office (Companies Office) services.
3. Your views will be used to inform final decisions on any adjustments to funding and charges.
4. These reviews are being conducted together as many of the same groups help to fund the FMA, the XRB and the Companies Office. This approach ensures that the overall impact of any adjustments on participants is taken into account. There are also common collection points for the levies and fees - so reviewing them together ensures that any changes can be implemented in an integrated way.
5. The objectives of the reviews are to:

   - Review FMA's expenditure and funding requirements to ensure that the FMA can resource the functions they are expected to deliver under the Financial Markets Authority Act 2011, the Financial Markets Conduct Act 2013 (FMC Act) and other financial markets legislation it administers. Since FMA's budget was approved in 2011 FMA's functions and activities have been significantly reshaped and become more extensive in accordance with its expanded regulatory responsibilities.
   - Ensure that levy and fee settings remain appropriate. The FMA and XRB levies were introduced in August 2012 to help fund these newly-established Crown Entities. At that time a new fee structure to fund the Companies Office was also established.
   - The reviews of the FMA levy, the XRB levy and Companies Office fees consider current levy and fee levels in light of the need to ensure that the FMA, the XRB and the Companies Office are funded sustainably while ensuring third parties meet an appropriate proportion of the cost given the benefit they receive.

Timeline for the reviews

Guidance considered in these reviews

6. These reviews take into account existing guidance on setting charges, including The Treasury's *Guidelines for Setting Charges in the Public Sector* and the Office of the Auditor General's *Good Practice Guide: Charging fees for public sector goods and services*. The principles set out in these documents are reflected in the options for adjusting fees and levies, where relevant.

Using this discussion document

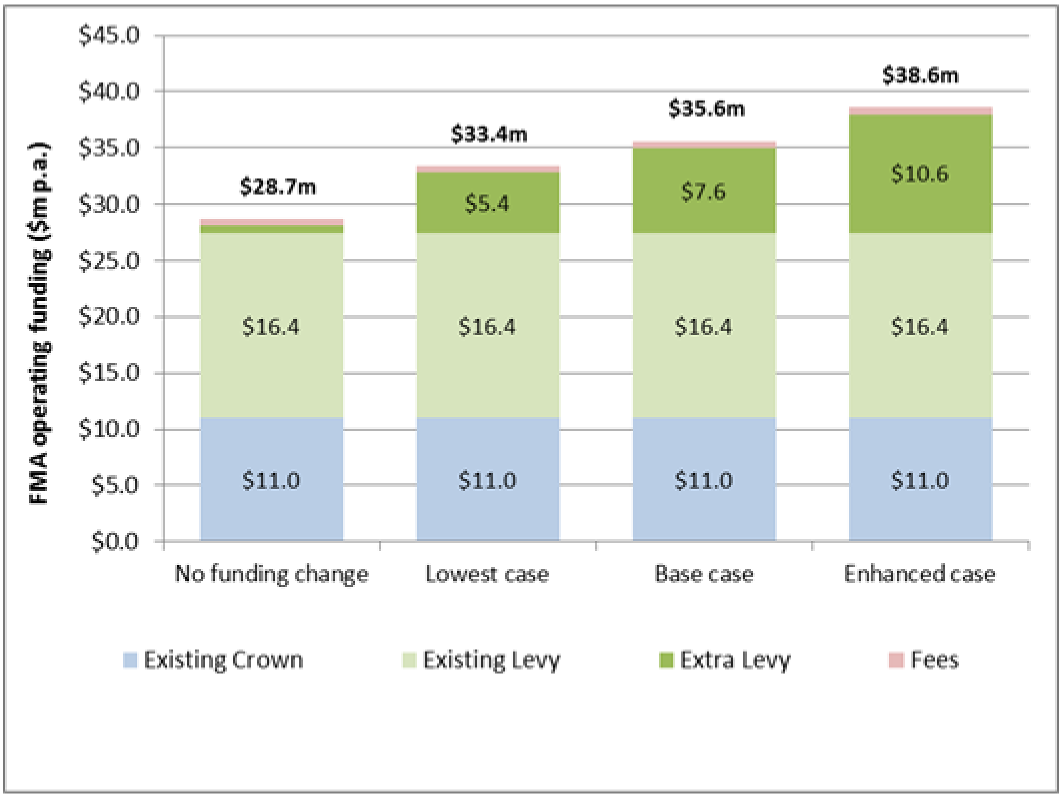
7. The remainder of this consultation paper is structured in four parts as outlined below. We have included suggested questions throughout the document but we welcome any other relevant information that you wish to provide. All paragraphs are numbered for ease of reference.

Part	Content
FMA funding (Sections 4 – 9)	Overview of the FMA and its approach to regulation (Sections 4-5) FMA's funding framework and reasons for seeking an increase in funding (Sections 6-7) Funding cases for the FMA and options for recovering these (Sections 8-9)
FMA Levy (Sections 10 – 12)	The current levy model (Section 10) Scope of the review of the FMA levy and key assumptions (Section 11) Options for adjusting the FMA levy (Section 12)
XRB Levy **(Sections 13 – 16)**	Overview of the XRB and its funding (Section 13) The current levy model (Section 14) Scope of the review, key assumption and proposed option (Sections 15-16)
Companies Office fees (Sections 17 – 20)	Overview of the Companies Office and its funding (Section 17) The current fee framework and its review (Sections 18-19) Proposed changes to Companies Office fees (Section 20)

8. Submissions on the questions in this paper are due by 5pm on 22 August 2016.

Section 2 - Summary of proposed changes to FMA funding, the FMA levy, the XRB levy and Companies Office fees

FMA funding proposals and options to recover



Proposed options for the total amount of the FMA levy (GST exclusive)

Option	Amount to be recovered by the levy	% portion of FMA's total funding (Crown, levy and fees)
1. No funding change	$17.1 million	60%
2. Lowest funding case	$21.8 million	65%
3. Base funding case	$24.0 million	67%
4. Enhanced funding case	$27.0 million	70%

Proposed option for the XRB levy (GST exclusive)

Option	Current levy	Proposed
Total amount to be recovered	$3.66 million	$4.115 million
Levy payable	$8.70	$7.70

Proposed Companies Office fees

Fee Type (excluding GST)	Current fee	Unit cost of service	Proposed fee	Change in fee ($)
Company name reservation – online	8.89	12.37	**10.00**	+1.11
Company name reservation – manual	22.22	12.37	**10.00**	-12.22
Company incorporation	113.04	71.66	**80.00**	-33.04
Company annual return	21.74	21.08	**21.00**	-0.74
Company amalgamation	266.67	388.44	**350.00**	+83.33
Company restoration	177.78	149.35	**150.00**	-27.78
Certified copy	22.22	33.87	**0.00**	-22.22
PPSR registration /renewal – Government to business	8.70	7.04	**7.00**	-1.70
PPSR registration /renewal – retail user	17.39	14.30	**14.00**	-3.39
PPSR search – Government to business	1.30	1.21	**1.00**	-0.30
PPSR search – retail user	2.61	2.04	**2.00**	-0.61
FSP Registration	311.11	295.91	**300.00**	-11.11
FSP Renewal	53.33	102.20	**75.00**	+21.67
Financial Statement filing	222.22	174.21	**175.00**	-47.22

Section 3 - Key questions

Questions for submitters:	
1	Which of the three proposed FMA funding options do you consider most appropriate and why?
2	Are there any proposed areas of FMA expenditure that you think should be expanded or reduced?
3	Do you think that the proposed additional funding for the FMA should be wholly funded through the levy or should Government cover some of the increase? Why?
4	Which of the proposed options for the total quantum of the FMA levy do you prefer?
5	What portion of the FMA's funding should the FMA levy recover and why?
6	Noting that the amount to be collected by the FMA levy is an estimate and is subject to fluctuating volumes and financial market activity, do you think that the actual and forecast over-recovery of the FMA levy should be factored into the levy re-set?
7	Do you agree with the proposed FMA levy classes set out in table A? Do they adequately capture the different types of market activity?
8	Do you agree with the proposed tiers for FMA levy payees? Do they recognise the variation in size of financial market participants?
9	Do you believe that the metrics used to assess the size of financial market participants and the proposed FMA levies payable are good approximations to the benefits from a well-regulated financial market?
10	Are there any particular adjustments to levies under the proposed FMA levy structure that you think should be reconsidered?
11	What would be the overall impact of the proposed FMA levy options on your business?
12	Do you agree with the option to re-set the XRB levy?
13	Noting that the amount to be collected by the XRB levy is an estimate and is subject to fluctuating volumes, do you think that the actual and forecast over-recovery of the XRB levy should be factored into the levy re-set?
14	Do you agree with the proposed Companies Office fee levels?
15	Are there any particular adjustments to Companies Office fees under the proposed fee structure that you think should be reconsidered?
16	What is the overall impact of current Companies Office fee levels on your business? What impact would the proposed fee levels have on your business?

Part 2 - FMA funding

Section 4 - Overview of the FMA

What does the FMA do?

9. The FMA was established as a new, consolidated market conduct regulator for New Zealand financial markets on 1 May 2011. The FMA's role is to strengthen public confidence in New Zealand's financial markets, promote innovation, and support the growth of New Zealand's capital base by providing effective regulation of conduct in relation to financial products and services. In 2014 it began working under a much wider mandate with the introduction of the FMC Act.

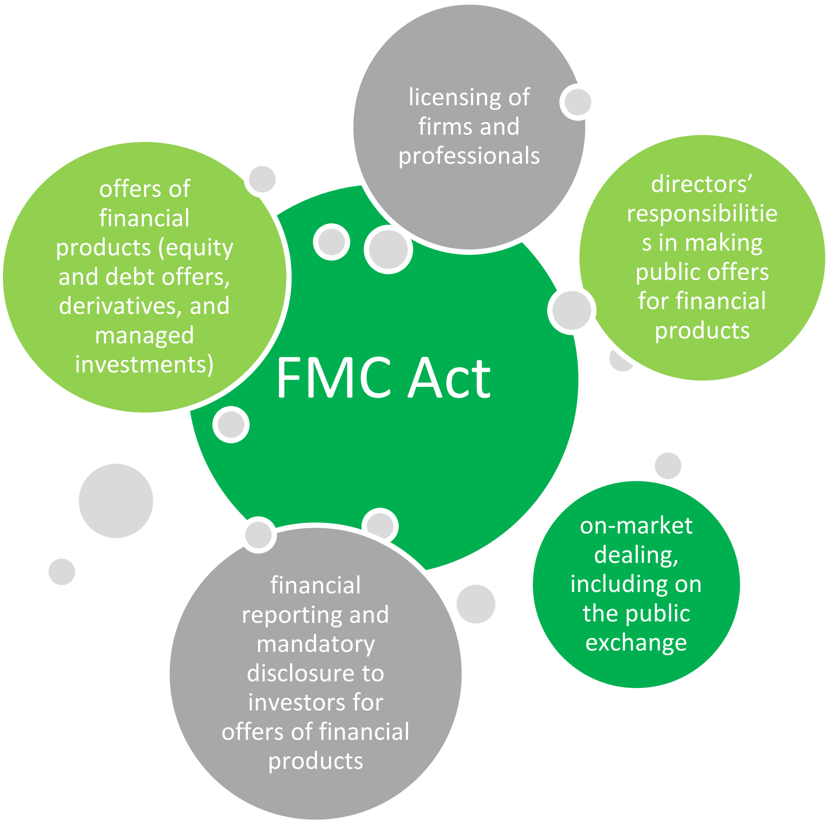
How the FMA regulates and the laws it administers

10. The FMA's approach to market regulation is based on active and extensive engagement with businesses and professionals.

Laws we administer or apply:

Financial Advisers Act 2008, Financial Markets Authority Act 2011, Financial Markets Conduct Act 2013, Financial Service Providers (Registration and Dispute Resolution) Act 2008, Part 4 and Schedule 1 of the Kiwi Saver Act 2006*, Securities Act 1978*, Securities Markets Act 1988*, Securities Transfer Act 1991, Superannuation Schemes Act 1989, Unit Trusts Act 1960, Auditor Regulation Act 2011, Financial Markets Supervisors Act 2011, Anti-Money Laundering and Countering Financing of Terrorism Act 2009, Building Societies Act 1965, Companies Act 1993, Corporations (Investigation and Management) Act 1989, Sections 220, 228, 229, 240, 242, and 256 to 260 of the Crimes Act 1961, Financial Reporting Act 2013, Friendly Societies and Credit Unions Act 1982, Industrial and Provident Societies Act 1908, Part 5C of the Reserve Bank of New Zealand Act 1989, Trustee Companies Act 1967, Trustee Companies Management Act 1975, Co-operative Companies Act 1996, and Limited Partnerships Act 2008.

The FMC Act effect and the expansion of the FMA's regulatory mandate



11. The FMC Act came into force in 2014. It represented a complete overhaul of securities law in New Zealand and is a key component of the Government's Business Growth Agenda. Securities law governs how financial products are promoted and sold, and the on-going responsibilities of those who offer, deal and trade them. Amongst a raft of reforms, the FMC Act introduced licensing requirements for financial service providers to raise standards across core financial products and providers and the entities that supervise them. The lack of a licensing regime for core sectors such as funds management and lack of a clear conduct mandate for the securities regulator had left New Zealand as an outlier in terms of best practise (including against International Organisation of Securities Commissions (IOSCO) principles).

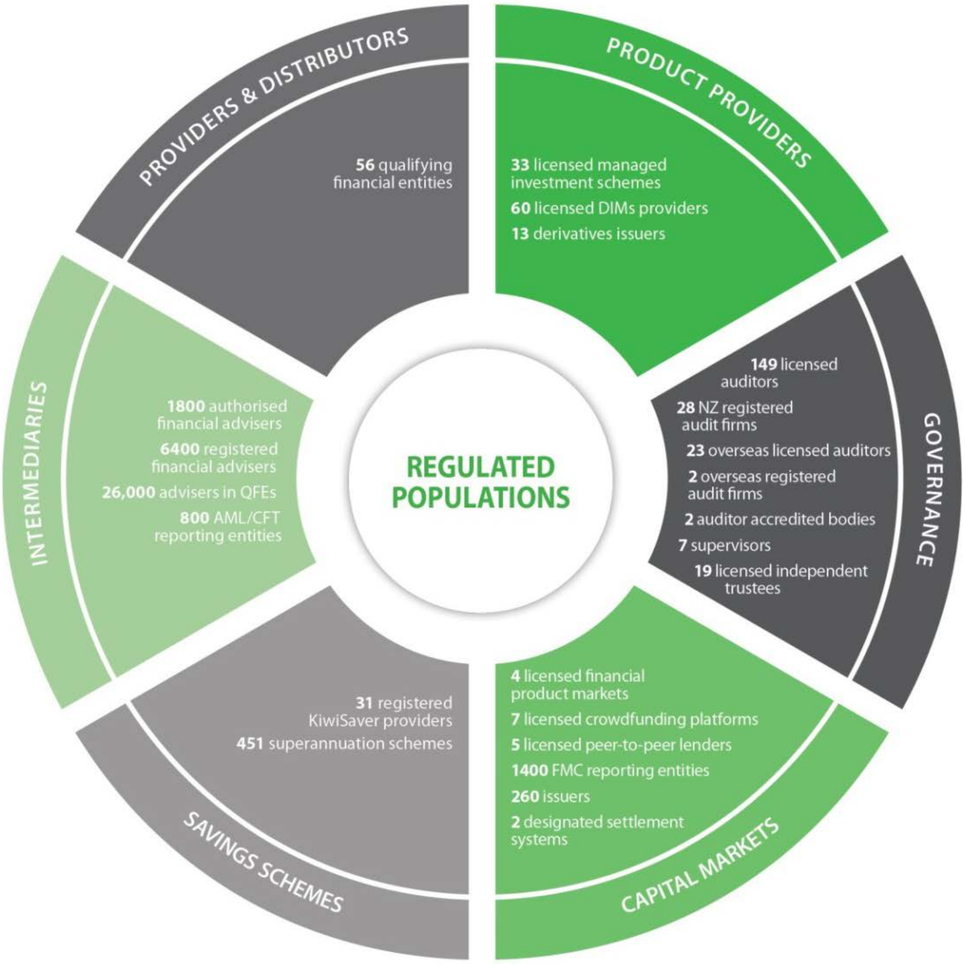
12. Like the FMA, the FMC Act's main purposes are to promote the confident and informed participation by businesses, investors and consumers in New Zealand financial markets, and to promote and facilitate the development of fair, efficient, and transparent financial markets. Well-functioning financial markets give high-quality investment opportunities for New Zealanders and channel capital to companies to grow their businesses. The FMC Act assists this flow of capital, which is crucial for economic growth. It also enables New Zealand's securities and capital markets framework to be assessed against international standards such as the International Monetary Fund's (IMF) financial sector assessment due to take place later this year.

13. Since its establishment the FMA has also continued the substantial work required to implement the Financial Advisers Act 2008 (FA Act), Financial Service Providers (Registration and Dispute Resolution) Act 2008 (FSP Act) and the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (AML/CFT Act) regimes in New Zealand. This legislation introduced new populations to regulation and provided new responsibilities and powers for the FMA. This has required significant and on-going resource commitment from the FMA to ensure that those populations understand the requirements, lift minimum standards of operating where necessary and to consider feedback on the compliance costs associated with those regimes.

14. Under the FMC Act the FMA has tools to support market activity and protect market integrity. It has an extended range of regulatory tools available to achieve better outcomes for investors, financial markets participants and businesses. These tools enable the FMA to tailor its regulatory approach to support healthy thriving capital markets. For example, to exempt market participants from obligations where the regulatory burden outweighs the benefit, to address rigidities in the regulatory framework, and to support innovation.

Who the FMA regulates

15. The number of businesses, professionals and markets regulated by the FMA has grown under the FMC Act. The diagram below sets out the FMA's regulated populations.



External recognition

The FMA uses third-party research to test investor/stakeholder confidence and sentiment in a number of areas. Recent findings include:

- Investors are confident in the quality of regulation of New Zealand's financial markets (a question which includes the NZX and trustees and supervisors) this increased from 49 per cent in 2015 to 63 per cent in 2016.
- Stakeholders agree that the FMA's actions support market integrity - this increased from 70 per cent in 2012 to 73 per cent in 2015
- Stakeholders believe the FMA's regulatory actions are proportionate - this increased from 34 per cent in 2012 to 50 per cent in 2015

Additionally, the evolution of securities regulation in New Zealand has been noted internationally. The MorningStar 'Global fund investor experience' survey, which occurs triennially, has seen New Zealand shift from a D- overall to a C+ (or from outlier to middle of the pack, globally) between 2009 and 2015. The key contributors to the shift in scoring have been Disclosure and Regulation.

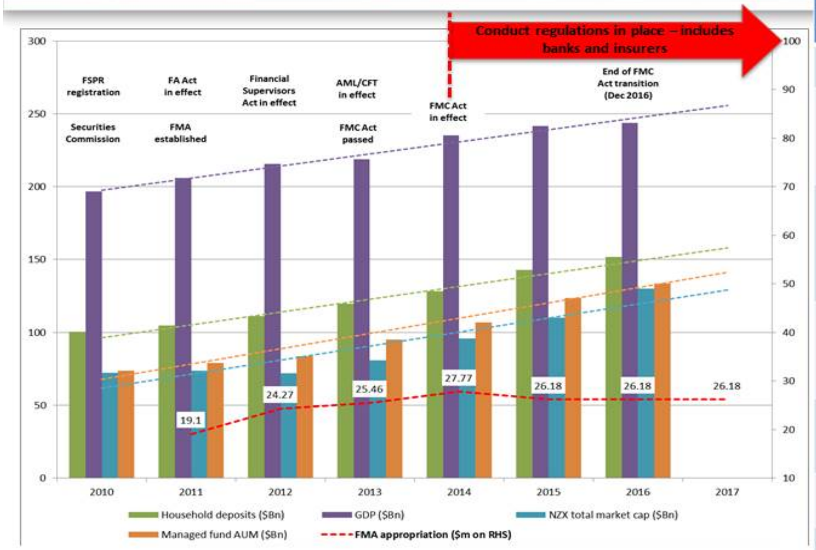
The growth of New Zealand's markets

16. Since the establishment of the FMA, New Zealand's financial markets have grown by over 50 per cent with significant new entrants into the listed market and new sectors such as crowd-funding, peer-to-peer lenders and newly regulated markets such as funds management. The landscape in which the FMA operates has changed considerably since its establishment which, alongside the requirements of the FMC Act, has further impacted on its remit. The FMC Act coming into effect has coincided with growth in capital markets, KiwiSaver balances and New Zealand's GDP.

17. The first graph below illustrates the FMA's regulatory activity - licensing of sectors and growth in market activity and improved economic indicators since 2010.

18. The impact of relief provided by the FMC Act for same class offers and via the application of exemptions, where a cost benefit analysis indicated such relief was warranted is illustrated in the further graph, below. This appropriate regulatory relief has supported capital market growth in the areas of same class offers, regulatory capital offerings and IPOs.

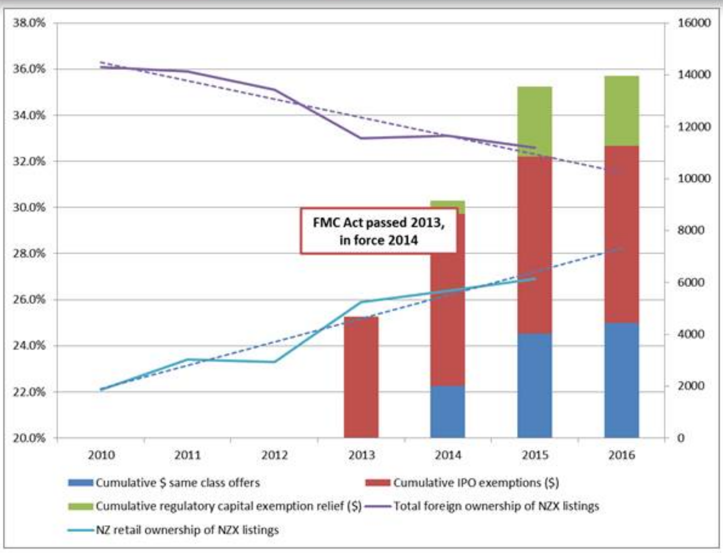
FMA – 2010-2016



*year is year licensing became possible, figure is total number licensed since that point to April 2016

Year	Licensed populations and product markets*
2010	**Securities Commission**
2011	• AFAs (1845) • QFEs (57) • Auditors (150 NZ licensed) • KS schemes (38) **30bn+**
2012	• Trustees (19) • Supervisors (7) • Futures exchanges (4) • NZX and sub-markets (5) **130bn**
2013	• Peer-to-peer (4) **~300m+ lending arranged** • Crowd-funding (8) **~30m+ funds raised**
2014	• DIMS (60) • Derivatives issuers (13) • NXT Market (1)
2015	• MIS (18) **100bn+** • **Renewals for AFAs / QFEs**
2016	**End of transition (December 2016)**

FMC Act – select capital markets impacts



Year	Exemptions and same-class offers
2013	• 4 IPO exemptions ($4.68bn)
2014	• 7 same-class offers ($199.3m) • 12 IPO exemptions ($1.95bn) • 2 regulatory capital relief exemptions ($500m)
2015	• 29 same-class offers ($3.63bn) • 3 IPO exemptions ($185.6m) • 4 regulatory capital relief exemptions ($1.7bn)
2016	• 5 same-class offers ($605m) • 1 IPO exemption ($299.1m)

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Section 5 - the FMA's approach to regulation

Risk-based conduct regulator

19. The FMA is a risk-based conduct regulator. It focuses on certain types of conduct and practices rather than specific sectors. This assessment of the risks of harm to markets and/or investors and consumers then drives the activities it undertakes to address those risks and its prioritisation and resourcing of those activities.

20. The FMA's attention, and the benefit of that attention, is therefore focussed on where it sees risk; not necessarily where the regulatory obligations are most dense. The FMA and the legislative framework sets specific standards for financial service providers. Financial service providers that meet those standards and the FMA's role in ensuring that those standards are met enables fair, efficient and transparent financial markets. This will encourage confident participation in those markets from both domestic and international investors.

21. Financial service providers and consumers benefit from a well-regulated market with high standards of conduct and a credible regulator. It is widely acknowledged that confidence in the structure and regulation of capital markets drives down the cost of capital for issuers and this benefits the entire economy. The FMA focuses on this reputational benefit and the benefit consumers receive from trustworthy financial service providers. For example, the benefit to all managed investment schemes from having a robust licensing regime is that, not only that it raises standards for operators in that sector, but also that New Zealand financial markets are not seen internationally as an outlier. This facilitates international investment in New Zealand markets and provides New Zealand financial service providers with a 'passport (literally, via the Asia Region Funds Passport)' to international markets, custom and income.

22. The FMA's aim is to be a proactive, engaged and approachable regulator who is connected with market participants, industry bodies, frontline supervisors, and professional advisers. This style and approach has thus far enabled the FMA to build the supporting framework around the FMC Act in a collaborative and consultative manner, ensuring that its securities regulation is right-sized to the New Zealand market and that regulatory burden can be kept to the absolute minimum necessary. It also enables the FMA to build a deeper understanding of the market participants it regulates and provides rich intelligence on which the FMA can base its risk-based and intelligence led regulatory decisions. The FMA has been recognised by its stakeholders for its efforts in market engagement and is encouraged to continue to build its capability and reach in this area.

Strategic Risk Outlook

23. The FMA's Strategic Risk Outlook (SRO)[1] sets out the strategic priorities that form the foundation of the FMA's operations over the medium term. It provides insight into areas where the FMA has chosen to direct its limited resources and where it thinks it can have the most significant impact on facilitating the development of fair, efficient, and transparent markets.

24. Based on drivers of risk identified by the FMA, the SRO identifies the FMA's seven strategic priority areas, as illustrated in the diagram below. They reflect the most significant risks and drivers of risk to the fair, efficient and transparent operation of New Zealand's financial markets. Within each of the FMA's priorities it has identified specific areas where it thinks it can most effectively minimise conduct risks, improve behaviour within New Zealand's markets, benefit participants and investors, and help strengthen New Zealand's economy. In choosing these areas, the FMA has taken into account its role and resources and has decided not to focus significant regulatory resources on other areas.

[1] The SRO was first published in November 2014 and is available at http://fma.govt.nz/fmas-role/corporate-publications/strategic-risk-outlook/. It is anticipated that this will be republished when the longer-term funding model has been settled.

The FMA's achievements since establishment

Over 18,000 complaints and enquiries responded to.	About 1500 media queries responded to; and 200+ media releases	369 presentations by FMA executives to market participants	Entered into MOUs with 13 different NZ partners, including government agencies, co-regulators and entities that are aligned with the work that the FMA delivers
100+ pieces of guidance issued	28 directors banned from managing entities and 13 people provided undertakings to FMA not to be a director/promoter or to be involved in the management of a company and/or public issuer	Completed implementation and ongoing operation of the FA Act regime	Implementation and operation of the AML/CFT Act for FMA supervised participants
1 designation and 329 exemptions (129 class, 200 individual)	Establishing signatory to the Asia Region Funds Passport	**Nearly $100m returned to investors, or imposed as fines, as a result of enforcement action** (e.g. Perpetual, Milford, Hanover, Kiwi Finance, Westpac, Dominion, Strategic, Bridgecorp)	275 onsite monitoring visits

Efficient and effective regulation

25. The FMA's own effectiveness and efficiency is one of its strategic priorities. As a relatively new regulator, it is establishing and improving internal systems and processes, and working to ensure that it has the skills and experience that it needs from its people. It continues to focus attention on the following factors to further support the FMA's effectiveness and efficiency. They are:

    i. Ensuring it continues to recruit and retain people with relevant experience and to develop skills and capabilities in regulation, including in areas such as supervision, licensing, enforcement, and market operations. In many of these areas, the FMA competes with financial service providers, such as banks and fund managers, for people with these skills and experience. The lack of a history of conduct regulation or supervisory regulators in New Zealand financial services requires many of the required capabilities and experience to be developed once staff are hired as opposed to be able to hire staff from an established pool of experienced regulators.

ii. Building its information and communications technology (ICT) capability, so that it supports the FMA's regulatory needs and makes it easy for participants to do business with it. That includes investment in systems to ensure the FMA has the ability to collect information and build intelligence that supports regulation, and to collect, retain and access data to support its risk-based and intelligence-led regulatory approach. Over the medium term, the FMA will focus on improving its ICT to support its effectiveness and efficiency. This will allow the FMA to apply information, and tactical and strategic intelligence, to its work so it better understands those it regulates, and analyse change and respond to those it regulates, as well as market conduct. Improved ICT will also help lower transaction costs for businesses that deal with the FMA, notably in licensing and supervision.

iii. Maintaining engagement with the businesses and people the FMA regulates, the investors whose interests it regulates for, and the government agencies it works alongside. Many of the businesses and professionals that are regulated by the FMA were previously regulated in a different way, or were largely unregulated. The FMA will continue to engage with existing and new regulated populations to better tailor its regulatory actions, reduce regulatory burden where possible and help market participants to understand their expectations of them. As identified in the FMA's strategic priorities, it will increase its emphasis on engagement with investors and with its co-regulators and relevant government agencies.

Section 6 - FMA's current funding framework

History of funding

26. The FMA was established on 1 May 2011. The FMA assumed the regulatory functions of the Securities Commission, the Government Actuary and certain regulatory functions of the Minister of Commerce and the then Ministry of Economic Development (MED). The Securities Commission was largely Crown funded whereas the FMA with its broader functions and expanded mandate set out in the Financial Markets Authority Act 2011 (FMA Act) required additional funding, part of which was funded by the FMA levy.

27. Even prior to the FMA being established, the Securities Commission's operating budget was seen as 'fraction' of contemporaries offshore, with its "style" seen as "administering legislation in a technically accurate way, giving lower priority to timeliness and up-front helpfulness"[2].

[2] From Prada/Walter report on Effectiveness of New Zealand Securities Commission 2009. The budgetary comparison acknowledged the difficulty of comparing regulators given duties, staff numbers and size of market. However the Securities Commission's operating budget was $9 million (no levies), the next lowest was Israel's on $40 million.

28. The FMA's 2011 funding reflected what the Government believed was adequate to get the FMA established and operating in the aftermath of the global financial crisis. This, together with the value of net assets transferred from the Securities Commission, was to cover the costs of establishing the FMA including a level of working capital.

29. Cabinet determined that, except for the first year of operating, Crown funding should remain at the level as was previously provided to the Securities Commission[3] and the part of MED that transferred to the FMA.[4] An initial capital injection[5] for establishment (including opening of an Auckland office) and transitional funding[6] for the first three years of operation was also provided.

30. The transitional funding was expected to last only until 2014 and be reviewed then. Ultimately the review was delayed until 2016 because of a number of factors, including the FMA's management of its financial resources and the wish to ensure the depth, scope and impact of the new regulatory framework was better understood before longer-term funding decisions were made.

31. Prior to the FMC Act being developed there was limited awareness of the actual scope of responsibilities and the size of the population that the FMA would be required to regulate. The FMC Act was not passed by Parliament until late 2013.

32. When the FMA was established, Cabinet approved the FMA's budget arrangements, noting that the annual operating costs of the FMA (excluding the litigation fund) would be $24 million in 2011/12, increasing to $28 million in 2013/2014, before settling at $26 million in 2014/15 and outyears. For 2011/12, Cabinet agreed that the $26 million appropriation was to consist of $11 million in tax payer funding (the same level that the Securities Commission received) with the rest to be recovered through third party funding.

Current funding

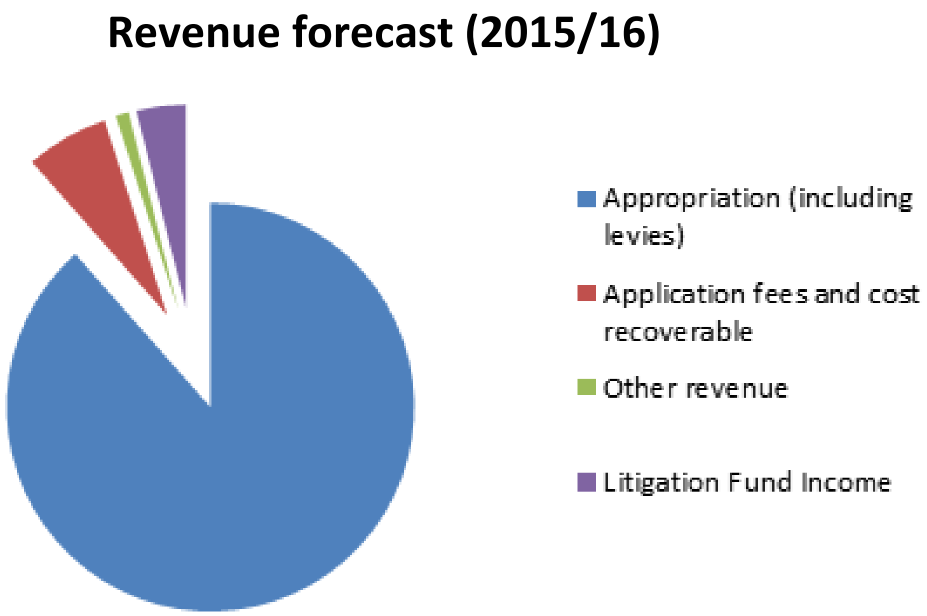
33. The FMA's annual appropriation is made up of Crown funding and third party funding. The FMA's current annual appropriation is $26.184 million plus up to $2 million for litigation funding.

34. The FMA also recovers some of its costs through fees for services it provides, including:

- Licensing fees (forecast to significantly reduce at the end of the two-year FMC Act transition period)
- Auditor quality review fees
- Other fees, e.g. exemption applications

[3] $18 million – comprising operating and litigation funds per annum – from Ministry of Economic Development discussion document June 2011
[4] estimated to be $1.1 million p.a.
[5] $5 million
[6] $3.45 million over three years

35. The split of FMA's revenue forecasted for 2015/16 is shown below.



36. To date, despite the transitional funding provided in 2011 for establishment being expected to last only until 2014, the FMA has been very conservative with current finances (particularly cash reserves) in the absence of visibility of the level of long-term funding. Over the first three years of its existence, the FMA built up a substantial cash surplus in order to take it through implementation of the FMC Act. Due to the decision to phase implementation of the FMC Act, this process is not due to finish until December 2016.

37. The surplus of approximately $9 million was built up over the first three years of the FMA's operation partially due to the postponement of some IT-related investment decisions whilst the operational requirements of the organisation became better defined and partially due to operating with the minimum possible staff ahead of the FMC Act coming into effect. As a result, the FMA has made its initial funding 'stretch' until the end of fiscal year 2016/2017 – and operating plans and budgets have reflected this transitional environment rather than the desired future state. Annual deficits were forecast from fiscal year 2014/15 that would be covered by the accumulated funds. However, budget work for 2015/16 and beyond shows that, at current levels of activity, the cash surplus accumulated during the FMA's early years will be exhausted by July 2017.

38. FMA's revenue and expenditure and equity position is summarised below.

FMA's revenue and expenditure ($ million, ex GST)

	14 mths to 30 June 2012 actual	Fiscal year 2012/13 actual	Fiscal year 2013/14 actual	Fiscal year 2014/15 actual	Fiscal year 2015/16 forecast
Total income comprised of:	**33.56**	**28.90**	**31.19**	**30.20**	**29.64**
Crown and levy revenue[1]	29.85	25.46	27.77	26.18	26.18
Litigation fund	2.43	2.01	1.61	1.68	1.20
Interest and other income	1.28	1.43	1.81	2.33	2.26
Total expenses comprised of:	**29.85**	**25.36**	**29.41**	**32.68**	**33.76**
Personnel, occupancy and other opex	26.63	22.16	26.56	28.69	29.46
Depreciation/amortisation	0.78	1.04	1.40	2.30	3.10
Litigation fund	2.43	2.16	1.45	1.68	1.20
Net operating surplus (deficit)	**3.72**	**3.70**	**1.62**	**(2.48)**	**(4.12)**
Net litigation fund surplus (deficit)		**(0.16)**	**0.16**		
Accumulated surplus	**3.72**	**7.42**	**9.04**	**6.56**	**2.44**

Source: FMA Annual Reports,
[1] Includes transitional funding of $1.03m in 2011/12, $0.83m in 2012/13 and $1.59m in 2013/14

Section 7 - FMA's reasons for seeking an increase in funding

39. Well-regulated financial markets are vitally important to New Zealand's economy and the financial well-being of every New Zealander. Strong financial markets help New Zealanders plan for the future, their retirement, hold savings and provide New Zealand businesses with the credit they require to innovate and develop. Well-regulated financial markets that encourage confident and broad participation drive the cost of capital down which benefits the broader economy. It is vital that the FMA receives the funding it needs to promote and facilitate the development of fair, efficient, and transparent financial markets.

From the Securities Commission to the FMA

40. Since establishment in 2011 as a key part of the Government response to the global financial crisis, the FMA has constantly been in both build and operate modes. Alongside a very significant enforcement workload cleaning up the issues related to the finance company collapses, the FMA has been developing its core activities, setting and explaining its priorities and managing change.

41. Additionally, the FMA has been laying foundations for a new regulatory mandate, the range and scale of which has steadily been increasing, completing implementation of the FA Act, implementing the AML/CFT Act and in particular implementing the FMC Act which came into effect in 2014 – three years after the FMA was formed and set to work. As the last major piece of the FMC Act licensing framework (managed funds) comes into effect (by end 2016), the full scale of the FMA's responsibilities is now upon it. This represents a very significant expansion of the role of (and expectations placed upon) New Zealand's securities regulator, compared to the days of the Securities Commission. This includes:

    - meeting a greater need for engagement with a broader range of market participants
    - managing a changing environment as previously unregulated or lightly regulated financial service providers transition into new a regime requiring licensing and compliance with new requirements
    - meeting international standards for anti-money laundering and countering the financing of terrorism
    - an identified need for the FMA to invest in the development of IT systems and to be able to adapt to a changing technological environment
    - currently administering two regulatory regimes during FMC Act's two-year transition period ending November 2016
    - considering new and significant policy issues which arise and which may require exemption or designation relief and/or legislative amendment to ensure compliance costs and regulatory burden are proportionate and appropriate and to refine the FMC Act regime.

42. The expectations of the FMA in terms of engagement with the industry and to operate as an effective conduct regulator are considerably higher than those of the Securities Commission/MED and the FMA has spent and expects to continue to spend a large amount of its resource in engaging with the industry.

43. The FMA expects to invest in development of its information systems to acquire, organise and analyse data in order to deliver on its expanded mandate. As the FMA licenses and authorises sectors under the FMC Act, the construction of intelligent, targeted and interventionist monitoring frameworks and capability is the next major step. This will ensure that the allocation of its human and financial resource is as efficient and effective as possible.

44. Supporting implementation of the FMC Act the FMA has seen an increase in capital expenditure as IT infrastructure and applications were developed together with establishment of a project management team to effectively manage change. Operating infrastructure has also materially changed with the need to take on additional office space and cost of people as both permanent and contract staff have increased.

45. This provides the backdrop for the funding proposal which the FMA will present to the Government during 2016. It seeks to establish a sustainable level for future funding taking into account:

- the growth in the FMA's responsibilities created by the implementation of the FA Act, the AML/CFT Act and the FMC Act
- the significantly larger and more complex financial services landscape
- Government and stakeholder expectations and what is necessary to deliver against the FMA's SRO, Statement of Intent, and Statement of performance expectations undertakings.

Effectiveness and Efficiency Review

46. As part of the FMA's preparation for the review of its funding, the FMA engaged Deloitte to undertake an effectiveness and efficiency review of the FMA's operations with the objective of providing stakeholder confidence in the FMA's ability to spend money wisely and to provide practical advice to the FMA on how to enhance efficiency and effectiveness to enable a financially sustainable operating model.

47. The FMA was encouraged by the findings and recommendations in the report and it believes the report reflects well on the FMA's operations to date. Whilst it demonstrates the amount of work undertaken to reach the current level of organisational maturity and efficiency, it also helps clarify the areas where further investment of time and resources will further enhance the FMA's efficient use of its funding.

48. The FMA now has a better view of what it still needs to do to build a sustainable and effective regulatory framework. This includes the design and build of its monitoring and supervisory framework for all newly licenced market participants, investment in intelligence and IT systems, deepening its market engagement efforts and building its internal capability.

49. Many of the opportunities for enhancement/development identified in the Deloitte report were already visible to the FMA and a number of actions are either already underway or have broad agreement in principle. Some of the proposed initiatives could be commenced over a longer-term horizon once the FMA's funding position is understood. The report also identifies areas where the FMA can look to realise efficiencies as its operating model starts to emerge. These include:

- Gradual scaling back some of its corporate support costs (mainly HR, ICT) as it enters a more steady state environment.

- Review of organisational structure to remove some unnecessary organisational tiers and address sub optimal 'spans of control' in some areas.
- Review of its time sheeting system to drive better management information and thus efficiencies around productivity and resource allocation.
- Reducing ICT contractor and project management office spend as its initial ICT infrastructure projects are completed.

The FMC Act effect

50. As noted in section 4, the FMC Act represents a significant increase in the scope of the FMA's regulatory framework. It has introduced regulation to new sectors of the financial services population, created opportunities for innovation in financial product offerings, armed the FMA with a suite of new regulatory tools and powers and introduced the new concept of conduct regulation. Many of the businesses and professionals the FMA now regulates were previously unregulated or operated under much lighter regulatory arrangements and those that were had not operated under the sort of conduct regime designed by the legislators. This has led to a significant need to foster awareness and education both amongst regulated firms and amongst investors/the public. The engagement with financial service providers required to implement a new licensing framework (particularly for managed investment schemes) and the new disclosure regime has been intense but well received.

Government's Business Growth Agenda

51. The Government is committed to New Zealanders enjoying greater prosperity and security through an increasingly competitive and productive economy. This requires well-functioning financial markets that support sustainable business growth and job creation. A reflection of well-functioning financial markets is an environment where risk is understood, innovation flourishes, integrity prevails, and investors are confident and active participants. The FMA's mandate to regulate financial markets in New Zealand with the objective of fair, efficient and transparent financial markets is central to ensuring this.

Ensuring an effective and efficient financial markets regulatory system

52. The FMA, along with The Treasury, the Reserve Bank and MBIE are committed to working collaboratively and collectively across their respective roles and functions, including at the most senior level through the Council of Financial Regulators, to support continuous monitoring and improvement and to ensure that the financial system continues to support higher living standards for New Zealanders.

53. In relation to the FMA's mandate, this requires:

    i. Significant ongoing work on new and emerging policy issues that may arise in the new FMC Act regime or more broadly across other financial markets legislation that the FMA administers to ensure that the regime remains fit for purpose and the compliance burden is proportionate and appropriate to the risk presented by an activity.

ii. The FMA to focus resource on identifying and considering potential policy issues requiring engagement with the market to better understand them and possible solutions available.

54. The FMA has delivered a significant body of regulatory relief in the form of class and individual exemptions to date in pursuit of this goal and frequently provides specialised advice to MBIE and other law making agencies in relation to legislative amendment solutions that may be necessary to promote fair, efficient and transparent financial markets. The FMA will continue to focus on opportunities to provide relief where compliance burdens are not proportionate and to identify and address gaps and overlaps across the financial markets regulatory system. Since the FMA's establishment it has been heavily involved in the policy and financial markets law reform programme with MBIE. This has been a large part of its workload and has required significant senior regulatory, legal and financial markets subject matter experts to support MBIE's programme.

Reaching out and engaging

55. As noted in section 5, the FMA has invested significant resource into its direct market engagement. This was noted by external stakeholders interviewed by Deloitte as part of the efficiency and effectiveness review and in MBIE's monitoring of the FMA's effectiveness. While this approach is resource intensive it pays dividends in terms of deepening the FMA's understanding of the sectors it regulates, understanding business models and challenges, and building its reputation as an engaged and proactive regulator.

56. The FMA is reaching market sectors and audiences that have not previously been reached, and not only through enforcement. It has engaged with both participants and their advisers through licensing, guidance, consultation, informal meetings, industry forums and speeches. The FMA's efforts in market engagement more recently have focused on education and awareness of new legislation and obligations.

57. The FMA's objective is to ensure market participants understand new obligations and have confidence to operate within the new framework. The FMA has worked with other Crown agencies to increase cross-government focus on the importance of improving the investment decision-making and broader financial capability of New Zealand investors. Elsewhere there have been broader government benefits from the FMA participating in cross-government regulatory efforts – for example with MBIE on policy development – and sharing lessons from exposure to the practices of international regulatory colleagues. Market engagement was a specific area identified for improvement and development in ASIC's recent capability review and the FMA wishes to continue its commitment and effort in this critical area.

58. The FMA has a close relationship with MBIE and act as trusted advisers and subject matter experts on all law reform and regulatory initiatives that impact financial markets and those that participate in them.

International eyes on the FMA

59. Looking back over the past five years, the FMA believes it has contributed to some confidence being re-established in New Zealand financial markets, and how they are regulated. New Zealand is no longer an outlier in global securities regulation – indeed, other regulators are looking at how the FMA has licensed and are managing innovative market participants such as crowd-funding and peer-to-peer lending; and at its disclosure approach.

60. The FMA is a respected member of IOSCO and regularly engages with the international securities regulator community ensuring that the New Zealand economy benefits from international regulatory intelligence, best practise standards and cooperation.

61. As noted in section 4, in 2016 the IMF will be visiting New Zealand to conduct a Financial Sector Assessment Program (FSAP) of this country's financial system. The regulatory framework will be reviewed against the IOSCO objectives and principles for securities regulation. New Zealand's last assessment by the IMF was completed over a decade ago in 2003. Taking part in the IMF assessment programme is an important way for New Zealand to showcase its suitability as an international destination for investor capital. Seeing how New Zealand's system compares against international best practice means investors both here and abroad can have confidence in the regulatory framework being built over the last decade.

Looking to the future – what next?

62. Looking forward, the FMA is beginning work to facilitate a meaningful shift in the culture and conduct of financial service providers. It is looking deeper into the core of, and at the perimeter of, its mandate for emerging and potential sources of harm to investors and markets. This includes assessing risks in areas of market conduct not currently actively monitored by the FMA such as in the insurance and banking sectors. The FMA is working with other Crown agencies to understand the deep, behavioural drivers of investment decision-making. It pays attention to issues of misconduct evident in other markets (such as Australia and the United Kingdom) and focus areas within the global regulatory community (including through IOSCO, the International Forum of Independent Audit Regulators, the International Accounting Standards Board and other global bodies.

63. The FMA has moved from disaster recovery to the full mandate envisaged by the Capital Markets Development task force - establishing a credible markets conduct regulator capable of delivering the full scope of the FMC Act. For this reason, the FMA's current expenditure, rather than its establishment funding, is the starting point to consider funding, however as explained in paragraphs 68 to 70 of Section 8 even at this baseline the FMA would only be able to deliver the core of its mandate.

Maintaining flexibility to meet future unknown requirements

64. While the transition period for the FMC Act will finish at the end of November 2016, the FMA's mandate is constantly being reviewed and refined, and demand for the FMA to engage on new policy initiatives which impact financial markets to ensure effective outcomes in terms of conduct and compliance cost is not expected to decrease. The FMA's continued ability to engage on these matters is essential. Examples of these initiatives which the FMA is currently engaged on include:

    - MBIE's review of the Financial Advisers Act 2008 and the Financial Service Providers (Registration and Dispute Resolution) Act 2008
    - class and individual exemption and designation work
    - the Reserve Bank's review on a crisis management regime for financial market infrastructures
    - the Reserve Bank's regulatory stocktake
    - changes to the insolvency practitioners licensing framework
    - the review of trust law in New Zealand
    - the review of Anti-Money Laundering and Countering Financing of Terrorism legislation
    - the review of the FMC Act

Section 8 - the FMA's funding options

65. A sustainable level for future funding will allow the FMA to:

    - allocate sufficient resource to priority risk areas identified in its SRO
    - meet its regulatory responsibilities as agreed with its Minister
    - provide financial investors (whether domestic or international) and market participants, many of which the FMA now licenses and supervises, with confidence that the FMA is credibly resourced and is efficient and effective
    - best provide value for money to the Government, the taxpayer and to market participants (levy payers)

    Not everything that could be done will be able to be done even under the enhanced funding case.

66. The FMA's funding needs to be increased to enable it to be a high performing, intelligence-led, proactive, and engaged regulator and to enable it to effectively fulfil the responsibilities given to it. In the absence of additional funding, the FMA's activity levels and resourcing would need to drop substantially from current levels.

67. As noted in section 7 the FMA engaged Deloitte to undertake an Effectiveness and Efficiency Review. Based on Deloitte's work, and incorporating identified efficiency gains, the FMA identified three funding options.

Summary of the three proposed funding options

Base case (funding of NZ$35.6 million): minimum viable case

68. The base case broadly represents today's expenditure and activity levels (plus investment in intelligence and data management systems). Today's activities and funding needs are directed from operating plans and budgets which reflect the transitional environment that the FMA is operating in, rather than desired future state. In the view of the FMA's Board this is the minimum viable funding option and would enable delivery on its core statutory activities only. This means limited ability to invest further in initiatives such as an Entity Based monitoring and relationship management model, investor capability and decision-making and new supervision frameworks.

69. Minimising regulatory burden and costs to participants whilst meeting obligations under the legislation would remain a key focus. The FMA provides relief from regulatory requirements currently via a number of channels, most notably through class exemptions. However, under this funding option the work would be largely reactive and limited by available resource. This will drive sub-optimal response times and will limit the number of issues that the FMA can deal with at any point in time.

70. Supervision of newly licensed populations would be conducted in so far as funding enabled, rather than being able to deploy a proactive, future proof model such as is envisioned in the enhanced case (see below). Depth and frequency of monitoring of high impact firms or sectors outside these populations would be reduced to a de minimus level. Focus on so-called perimeter areas such as FX trading, investment scams and offshore activity into New Zealand would be at a reduced level. Enforcement activity will be largely reactive with little ability for proactive action to lift standards.

Enhanced case (funding of NZ$38.6 million): FMA's preferred option

71. The enhanced case represents the appropriate level of funding for a high-performing and credible regulator in the New Zealand context and decreases the risk of serious and/or systemic harm to investors and market.

72. This level of funding means investment in competent and experienced staff and would increase front-line activities which use risk-based intelligence-led models to identify and prevent harms before they occur. In particular it would:

    - enable the FMA to proactively identify risks and regulatory gaps (within mandate and on the perimeter) and faster implementation of mitigations (e.g. FSP deregistration)
    - build the FMA's ability to assess harms and oversee conduct in the insurance and banking sector
    - enable the FMA to respond more quickly to a greater range of policy issues via FMA tools (exemption, designation) and provide greater levels of advice to MBIE and other agencies on regulatory system enhancements and reduction of regulatory burden

- enable the FMA to provide advice and resource to support law reform initiatives and to enable smooth implementation
- enable the FMA to proactively engage with the market on a structured and unstructured basis thereby increasing its influence and understanding of sectors (e.g. published guidance, industry/sector engagement)
- allow implementation of a risk-based and intelligence led programme of supervision for licensees including increased front-line activities (e.g. site visits, investigations of non-compliance via searches and interviews)
- enhance the FMA's ability to deal with disruptive market events
- increase the FMA's contribution to cross- Government initiatives (e.g. investor capability) and its engagement with the investing public
- enable the FMA to continue to engage with IOSCO and other international bodies to keep pace with global emerging risks
- improve the FMA's ability to gather and use intelligence in order to drive smart decision-making
- reduce risk with new offers of securities and monitor ongoing disclosure
- increase the FMA's ability to investigate anomalous events
- ensure that the FMA is able to focus on minimising regulatory burden where appropriate, in a proactive manner, with faster results and greater ability to focus on multiple areas. In this model the FMA may continue to focus on the key objective of keeping under review the regulatory burden on its regulated populations and will have the ability to respond where appropriate to relieve unnecessary compliance costs or to apply additional measures to mitigate new risks.

We note that a significant portion of ASIC's additional funding ($57 million of the total $127 million) as recently announced by the Australian government is also specifically directed at monitoring and surveillance of key sectors of the industry e.g. financial advice, responsible lending, life insurance, and breach reporting. $61 million of the additional funding is to be directed towards improving data analytics and surveillance abilities.

Lowest case (funding of NZ$33.4 million): delivery of mandate compromised

73. The lowest case represents the minimum option which significantly reduces, and in some cases stops, activities the FMA thinks are necessary for effectively regulating New Zealand capital markets.

74. The FMA Board does not consider it is possible to achieve the FMA's mandate (to an acceptable standard) under this funding model. The risk consequences for this scenario are stark, in particular it would mean:

- reactive enforcement responses as primary mechanism to promote compliance
- limited capacity to react to negative market or sector events without reducing other activities
- no activity in the FMA's regulatory 'perimeter' - currently this includes banking and insurance conduct

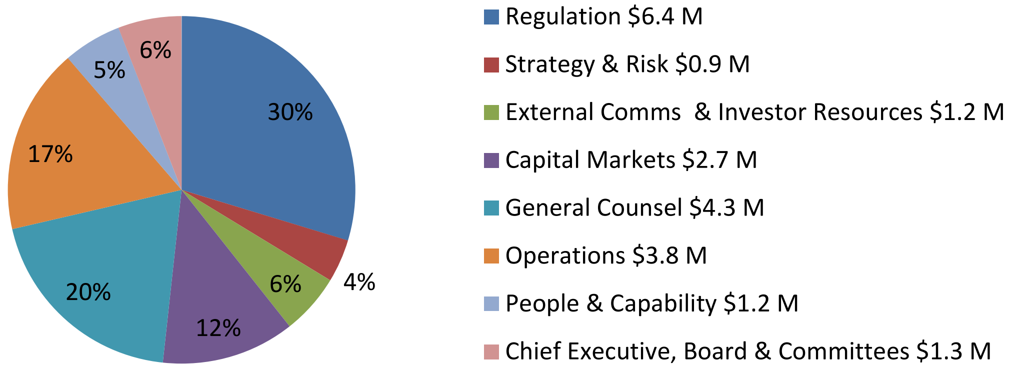
- no engagement with non-licensed populations and engagement with licensed populations is largely reactive and event driven
- reduction in frequency and extent of monitoring work, very basic file-based supervision model
- minimal pro-active engagement with the market
- significantly down-sizing or even ceasing investor capability partnerships and core strategy
- unable to proactively seek opportunities to minimise regulatory burden and unnecessary compliance costs
- unable to engage on non-core policy issues and significantly reduced ability to engage on policy issues generally. Exemptions and designations offering compliance cost relief will take longer to resolve
- statutory reporting only
- withdrawal from bulk of current contributions to and engagement in IOSCO
- cease all but enforcement-related market engagement (moving to a deterrence based model rather than a proactive and influential preventative model)
- very limited and undeveloped intelligence function
- no investment in intelligence or IT systems - resulting in inability to develop intelligence led regulation

Expenditure by function

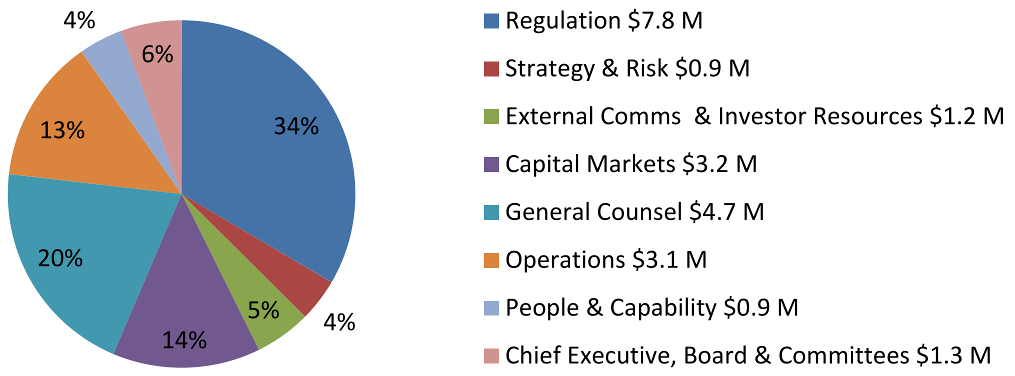
75. The following charts show the breakdown of personnel costs (using fiscal year 2018/19) for the base, enhanced and lowest funding options. For comparison, we have also shown the current financial year breakdown (fiscal year 2016/17). Note:

    - Regulation includes supervision, compliance services, evidence and investigation, monitoring frameworks and conduct assessment
    - General counsel includes litigation and enforcement, regulatory policy and corporate legal
    - Operations includes finance, ICT, project management and delivery

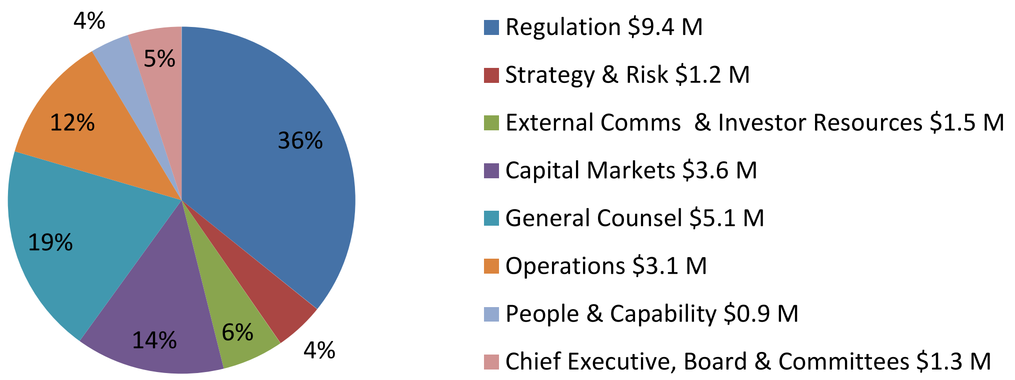
Current Financial Year (fiscal year 2016/17)



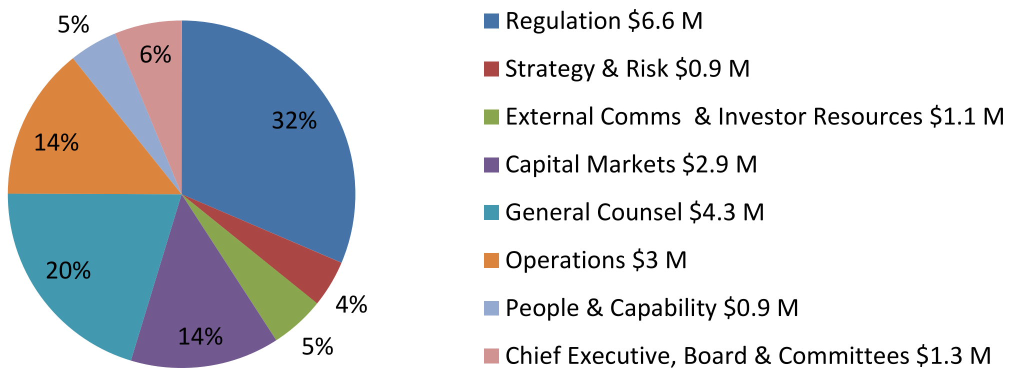
Base Case (fiscal year 2018/19)



Enhanced Case (fiscal year 2018/19)



Lowest Case (fiscal year 2018/19)



Forecast expenditure

76. The following table shows the breakdown of the base, enhanced and lowest funding options across financial years.[7]

Operating Budget Breakdown - BASE	FY 17/18	FY 18/19	FY 19/20	FY 20/21
Personnel Costs	$23,036,212	$23,219,834	$23,219,834	$23,219,834
Litigation Fund Expenses	$2,000,000	$2,000,000	$2,000,000	$2,000,000
Occupancy Expenses	$1,910,008	$1,942,372	$1,975,010	$2,025,926
Depreciation and Amortisation	$2,500,000	$2,500,000	$2,500,000	$2,500,000
ICT	$2,214,866	$2,214,866	$2,214,866	$2,214,866
Professional Services	$1,668,200	$1,668,200	$1,668,200	$1,668,200
Services & Supplies	$1,341,167	$1,341,167	$1,341,167	$1,341,167
Travel & Accommodation	$707,432	$707,432	$707,432	$707,432
TOTAL EXPENSES	**$35,377,885**	**$35,593,872**	**$35,626,510**	**$35,677,425**
TOTAL FTE	**167.8**	**166.8**	**166.8**	**166.8**

Operating Budget Breakdown - ENHANCED	FY 17/18	FY 18/19	FY 19/20	FY 20/21
Personnel Costs	$26,091,786	$26,275,408	$26,275,408	$26,275,408
Litigation Fund Expenses	$2,000,000	$2,000,000	$2,000,000	$2,000,000
Occupancy Expenses	$1,910,008	$1,942,372	$1,975,010	$2,025,926
Depreciation and Amortisation	$2,500,000	$2,500,000	$2,500,000	$2,500,000
ICT	$2,214,866	$2,214,866	$2,214,866	$2,214,866
Professional Services	$1,668,200	$1,668,200	$1,668,200	$1,668,200
Services & Supplies	$1,341,167	$1,341,167	$1,341,167	$1,341,167
Travel & Accommodation	$707,432	$707,432	$707,432	$707,432
TOTAL EXPENSES	**$38,433,460**	**$38,649,446**	**$38,682,085**	**$38,733,000**
TOTAL FTE	**192.0**	**191.0**	**191.0**	**191.0**

Operating Budget Breakdown - LOWEST	FY 17/18	FY 18/19	FY 19/20	FY 20/21
Personnel Costs	$20,886,568	$21,070,190	$21,070,190	$21,070,190
Litigation Fund Expenses	$2,000,000	$2,000,000	$2,000,000	$2,000,000
Occupancy Expenses	$1,910,008	$1,942,372	$1,975,010	$2,025,926
Depreciation and Amortisation	$2,500,000	$2,500,000	$2,500,000	$2,500,000
ICT	$2,214,866	$2,214,866	$2,214,866	$2,214,866
Professional Services	$1,668,200	$1,668,200	$1,668,200	$1,668,200
Services & Supplies	$1,341,167	$1,341,167	$1,341,167	$1,341,167
Travel & Accommodation	$707,432	$707,432	$707,432	$707,432
TOTAL EXPENSES	**$33,228,242**	**$33,444,228**	**$33,476,867**	**$33,527,782**
TOTAL FTE	**148.1**	**147.6**	**147.1**	**147.1**

[7] Total FTE numbers are indicative only. Actual numbers will reflect required skills mix and levels of seniority applied across the activities in each year.

Expenditure across key activities

77. The tables below show the primary areas where the FMA considers it could vary its resourcing (beyond a de minimis level). The estimated personnel costs for these activity areas are set out for each funding option.

78. The activity areas where FMA considers there is little ability to increase (or decrease) the amount of activity undertaken are grouped at the bottom of the tables to show how the totals balance to the figures above.

79. The increases in activities shown below are estimates at this point in time. The FMA continually reviews the market environment and its risk assessment of potential harms to consumers or markets. Therefore the application of resource to each of these activity areas will vary over time as the FMA responds to its environment.

Personnel Costs by Area – BASE	FY 2018/19
1. EBRM and other market engagement	$807,068
2. Proactive supervision and monitoring of entities	$2,533,216
3. Proactive supervision and monitoring of individuals (e.g. AFAs)	$424,466
4. Engagement with Frontline Supervisors	$234,003
5. Surge capacity to rapidly respond to emerging threats or risks	$468,006
6. Risk assessment and intelligence	$1,311,510
7. Investigations	$659,225
8. Investor capability	$297,311
9. Offers and disclosure	$1,683,033
10. Policy capacity	$1,184,294
11. Litigation	$1,299,487
12. Other regulatory and external facing activities	$6,939,723
13. Corporate and support	$5,378,491
TOTAL Personnel Costs	**$23,219,834**

Personnel Costs by Area - ENHANCED	FY 2018/19
1. EBRM and other market engagement	$1,050,922
2. Proactive supervision and monitoring of entities	$3,132,416
3. Proactive supervision and monitoring of individuals (e.g. AFAs)	$655,735
4. Engagement with Frontline Supervisors	$466,063
5. Surge capacity to rapidly respond to emerging threats or risks	$582,579
6. Risk assessment and intelligence	$1,578,882
7. Investigations	$875,316
8. Investor capability	$592,153
9. Offers and disclosure	$1,971,818
10. Policy capacity	$1,453,650
11. Litigation	$1,294,092
12. Other regulatory and external facing activities	$7,243,292
13. Corporate and support	$5,378,491
TOTAL Personnel Costs	**$26,275,408**

Personnel Costs by Area - LOWEST	FY 2018/19
1. EBRM and other market engagement	$800,852
2. Proactive supervision and monitoring of entities	$1,779,306
3. Proactive supervision and monitoring of individuals (e.g. AFAs)	$326,699
4. Engagement with Frontline Supervisors	$232,201
5. Surge capacity to rapidly respond to emerging threats or risks	$232,201
6. Risk assessment and intelligence	$1,165,846
7. Investigations	$654,148
8. Investor capability	$295,022
9. Offers and disclosure	$1,424,473
10. Policy capacity	$1,175,173
11. Litigation	$1,089,730
12. Other regulatory and external facing activities	$6,653,980
13. Corporate and support	$5,240,561
TOTAL Personnel Costs	**$21,070,190**

Descriptions of the activity areas

- **EBRM and other market engagement**: Entity based relationship management (EBRM) - direct structured and unstructured engagement with systemically important financial services firms (in terms of potential harms to consumers/markets and FMA objectives), based around a relationship model with senior FMA staff assigned to each entity. EBRM is integral to our approach of being connected with the market, it assists to develop a deeper understanding of major sectors and firms, ensures conduct/regulatory expectations are understood and offers opportunities to encourage conduct aimed at best outcomes for investors. Primarily impacts the larger institutions that have multiple market service licences and significant consumer reach such as Banks, KiwiSaver providers, Fund Managers, QFEs and NZX participant firms.

- **Proactive supervision and monitoring of entities:** This is the application of the supervisory and monitoring framework across all licenced entities. In terms of how to focus resources, the FMA takes a risk-based view at the entity level taking into account the nature of licences held, services and products offered and the entity conduct record. All regulated sectors/levy classes affected, heavier emphasis on multiple licence holders (DIMS, MIS, Derivatives issuers) with greater and broader consumer impact as well as new services to market (for example Crowdfunding and peer-to-peer) where monitoring in the early stages of the regime is beneficial.

- **Proactive supervision and monitoring of individuals:** Impacts individuals such as authorised financial advisers (AFAs), registered financial advisers (RFAs) and qualifying financial entity (QFE) advisers. Activity and effort will be subject to change in the lead-up to and following Financial Adviser Act reforms (for which timing and precise nature of changes to FMA activities and remit are not yet known).

- **Engagement with Frontline Supervisors:** This includes securities trustees and statutory supervisors, Auditors, NZX (frontline regulatory functions), and independent trustees.

- **Surge capacity to rapidly respond to emerging threats or risks:** Ability to quickly triage, investigate and respond to anomalous and/or disruptive market events, threats and issues and rapidly emerging risks - minimising consumer harm and acting quickly to protect investor interests/market impacts. Market integrity and confidence benefits all sectors - effort will be concentrated on areas of high risk - for 2015/16 high activity areas have included firms offering FX trading services (whether NZ domiciled or offshore) and suspected fraudulent or unauthorised investment management services.

- **Risk assessment and intelligence:** Critical part of an ability to take a truly risk-based and intelligence-led approach to regulation. It means having capability and capacity to proactively identify, understand, analyse and assess risks and regulatory gaps in markets, sectors, and across financial products and services (including on the perimeter of regulation) and to utilise the intelligence and information gathered in interactions with market participants. This increases the ability to more effectively use intelligence to drive smarter decision-making. Impacts all sectors - heavier focus on licenced market participants and will include those on the regulatory perimeter. Enables targeting of resources to the areas of highest risk to the FMA's objectives and enables the FMA to enhance its ability to assess harms and oversee conduct in the insurance and banking sectors.

- **Investigations:** All pre-enforcement investigative activity. High quality and well-resourced investigatory capability at early stages of a matter ensures the right selection of regulatory tools and proportionate response. Impacts all sectors/levy classes. Quality investigation in technically and factually complex areas is a critical contributor to the FMA's credible deterrence capacity.

- **Investor capability:** Significant components of the FMA's workload/output are designed to protect consumers and to influence outcomes for them. A specific activity area is to work with consumer groups, providers and other government bodies in assisting investors, including KiwiSaver members, to approach decisions around investment on a well-informed and confident basis. This applies across sectors but in particular securities issuers, fund managers (including KiwiSaver providers) and providers of investment products.

- **Offers and disclosure:** Direct market engagement with issuers (and their advisers) where issuers are looking to issue new financial products, raise capital and in many cases list on markets. Involves review of offer documents, financial reporting compliance and monitoring on going disclosures. It also includes guidance on application of FMC Act disclosure or offer regulations. Impacts KiwiSaver providers and all managed investment schemes, all securities issuers, pre IPO companies. Particularly critical in a new disclosure regime with a focus on clarity of risk disclosures and clear and effective financial information.

- **Policy capacity:** FMA's policy capacity enables proactive engagement on identification and analysis of policy issues with the market, other regulatory agencies and MBIE. Delivery of solutions including exemptions, designations, guidance, advice to agencies on law reform and regulatory enhancements with a view to minimising regulatory burden whilst ensuring mitigation of risk. Facilitating smooth implementation of new laws and regulatory frameworks. Impacts all regulated sectors/levy classes. Also includes engagement with IOSCO and other international bodies and regulators to keep pace with global risks.

- **Litigation:** The FMA's ability to influence conduct and customer outcomes across its remit depends on its ability to conduct complex, time-consuming and challenging litigation in a number of different areas. This requires a litigation capability that can respond to well-resourced financial institutions. The workload covers a broad range of conduct issues under legislation that has been subject to relatively little judicial consideration. Broad cross-sectoral focus and impacts across all levy classes.

- **Other regulatory and external facing activities:** Includes non-discretionary Capital Markets work (e.g. NZX oversight, financial markets infrastructure, primary and secondary market conduct) outward-facing communication and publishing, strategic regulatory projects (e.g. FSAP) and strategic risk work, thematic reviews, corporate legal and conduct assessment team. Impacts across all sectors/levy classes.

- **Corporate and support:** Includes back-office services such as HR, ICT and Finance.

Preference for funding

80. The FMA's preference is the enhanced case level of funding over the next four years. This gives the FMA the best chance to continue to develop a risk-based intelligence led organisation that is right sized for New Zealand and to address the mandate that it has, and be best placed to support the long-term growth and innovation needed in New Zealand's capital markets.

Question for submitters:	
1	Which of the three proposed FMA funding options do you consider most appropriate and why?
2	Are there any proposed areas of FMA expenditure that you think should be expanded or reduced?

Future of the FMA – what does success look like

81. Over the next four years, with the enhanced funding model in place, the FMA will be able to focus on:

- identifying emerging market risks – sharing risk information and regulatory responses both globally and domestically - and proactively supporting regulation to effectively address risk
- growing its internal capability - attracting and retaining highly capable staff supported by intelligence and knowledge management systems – to enable an intelligence –led risk-based regulatory approach
- deploying resources to assess and make recommendations in relation to perimeter issues and potential gaps in the FMA's conduct remit, such as market conduct in the insurance and banking sectors, not currently actively monitored by the FMA
- facilitating the smooth and effective implementation of new laws and supporting law reform, through forward looking programmes of work
- early identification of issues requiring the flexibility in approach through application of class and individual exemptions and designations – thus supporting innovation and contributing to growth in New Zealand's capital markets
- appropriate and right-sized licensing conditions - balancing raising of industry standards to international best practice whilst guarding against potential barriers to entry
- implementation of a risk based and intelligence-led programme of supervision and monitoring for FMC licensees - supported by a mature relationship management model
- proactively supporting law reform undertaken by MBIE and other law making agencies
- reviewing practices and processes where they interact with the regulated population to ensure they are high return with appropriate impact
- assisting effective compliance with timely, targeted and effective market guidance and information
- ongoing proactive engagement and coordination with other regulators and agencies in the financial markets regulatory system – both domestic and overseas, to manage potential and identified overlaps and gaps in the regulatory framework.

Section 9 - Options for recovering FMA's funding

82. The FMA is funded through a combination of Crown funding and third-party revenue. When the FMA was established Cabinet agreed that from 2014/15 the Government would fund 39 percent of the FMA's appropriation with the remaining 61 percent obtained from financial market participants. At the time third-party funding covered the amount of funding not met by the transfers from the Securities Commission and the Ministry of Economic Development. In addition to their appropriation the FMA receives a small amount of funding from fees for services.

83. A well-regulated financial market benefits all of New Zealand so the FMA is funded by all taxpayers, not just financial market participants. This public good element is reflected in a

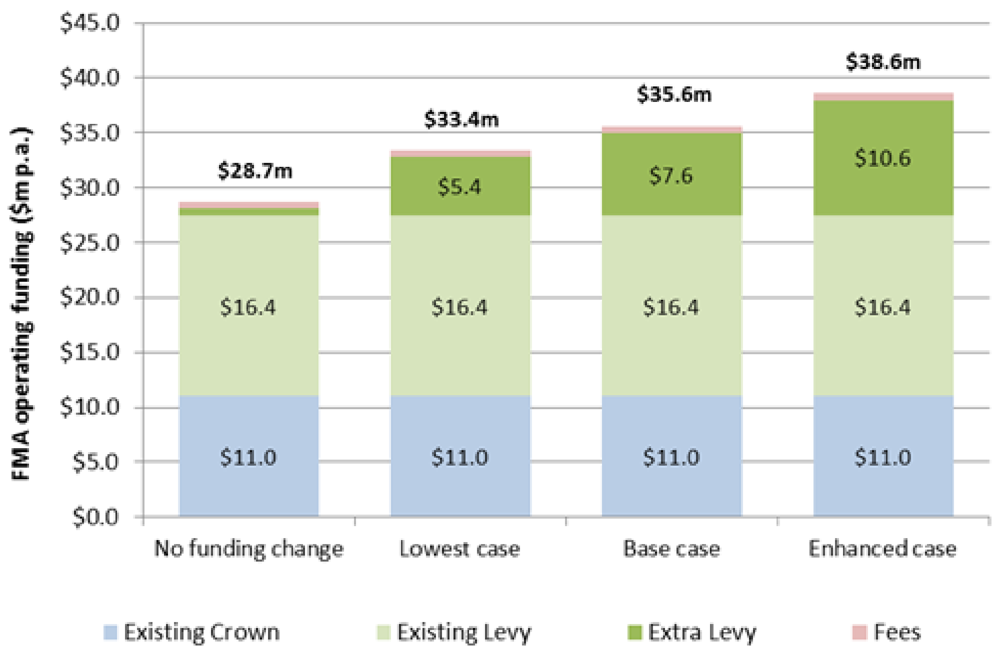
financial market with a highly-regarded reputation, which drives down the cost of capital and benefits the economy.

84. Financial markets participants also benefit from being regulated by the FMA. As mentioned in section 4 above, the FMA's regulation covers licensing of firms and professionals; assessment of compliance, conduct and competency; identifying potential harms to the market and taking appropriate action on these; and providing guidance, information and resources to help investors to make better-informed investment decisions and assists firms and professionals to comply with the law. Through participation by New Zealanders in financial services and markets, market participants derive direct benefit from well-regulated financial markets.

85. Different countries fund their regulators in different ways. In terms of its regulation, the FMA focuses on the impact and likelihood of risk which changes over time. The FMA works with a range of participants to support activity in financial markets and protect market integrity. But, a well-regulated financial market benefits all New Zealanders particularly the consumers of financial services and products.

86. The Government's preferred position is for the additional funding required for the FMA to come from financial market participants via the existing FMA levy. The resulting impact on the mix of the FMA's funding in terms of what was agreed in 2011 is shown below. In part 3 we highlight the implications for individual participants in terms of the levy payable.

Options for recovering FMA's funding



87. The enhanced case represents the appropriate level of funding for a high-performing intelligence-led and credible regulator in the New Zealand context and decreases the risk of serious and/or systemic harm to investors and the market. The likelihood for harm to

eventuate with negative impact on New Zealand's financial markets is greatest in the lowest case funding scenario. Enhanced case funding will enable the FMA to engage more proactively with the market to build its understanding of the populations it regulates and intelligence which supports its risk based approach. Quicker resolution of issues which highlight disproportionate compliance burden on certain participants or activities and addressing issues that may otherwise stifle the potential for innovation in our markets will be possible. Continuing engagement with international regulatory bodies and alignment with international developments, where appropriate, will ensure our financial markets continue to be held in good regard internationally and do not become the outlier.

Question for submitters:	
3	Do you think that the proposed additional funding for the FMA should be wholly funded through the levy or should Government cover some of the increase? Why?

Part 3 - The FMA levy

Section 10 - The current levy model

Background

88. The FMA levy was introduced in August 2012 to ensure industry met the third-party funding level for the FMA agreed by Cabinet. Under section 68(4)(a) of the Financial Markets Authority Act 2011, the FMA levy covers a portion of the costs of the FMA in performing and exercising its functions, powers, and duties together with the costs of collecting the levy. The portion of the FMA's appropriation to be met by the levy is determined by the Minister for Commerce and Consumer Affairs.

89. Balancing objectives underlying the model for the levy are:

    i. The cost of the levy for market participants is consistent with the benefits they receive from a well-regulated financial market.

    ii. The levy does not discourage the supply of financial products or services.

    iii. The levy is practical in respect of its implementation, collection and also avoids large over or under-collection.

90. The FMA levy is prescribed on an activity basis so that financial market participants make a contribution for each class in which they do business.[8] For example, a registered bank that is also a derivatives issuer and a KiwiSaver manager will pay a levy for all three activities. Where appropriate, and in keeping with the levy objectives, levy amounts are tiered within the classes to recognise the variation in size and nature of different financial market participants.

91. The levy is payable annually by financial market participants. Most of the levy is collected by the Companies Office through registers that they administer. The FMA is responsible for collecting the levy from financial market participants outside of the registers.

92. The levy classes and levy tiers apply to different financial market participants with different corporate structures undertaking different financial services. The FMA has a discretionary power to waive a levy payable where the circumstances of a financial markets participant are exceptional when compared with others in the same levy class.

[8] For governing regulations refer to Financial Markets Authority (Levies) Regulations 2012.

93. When the levy was established in 2012, the average annual amount to be recovered over five years was estimated to be $16.41 million (excluding GST). This included establishment costs for the FMA and a 12-month operating shortfall.

Levies collected

94. As the levy model is based on estimates of financial market activity and populations in each group the levy will over or under-collect over time. As shown below, looking over the first three years since the levy was introduced, the levy has recovered approximately $3.1 million more than anticipated in 2012. This additional collection has not increased the funding received by the FMA.

FMA levies collected

Fiscal year	Levy revenue ($ million)	Over/(under) recovery ($ million)
2012/13	$14.027[9]	(2.383 m)
2013/14	$19.771	3.361 m
2014/15	$18.524	2.114

95. Based on predicted financial market activity and populations, and in the absence of changes to the FMA's funding, it is anticipated that the levy will continue to over-recover by approximately $1 million per year (relative to its current target amount) unless it is adjusted.

96. When the levy was established in 2012 there was a lack of robust information about some financial market participants. This made it difficult to make precise estimates of how much financial participants would pay across the levy tiers and the revenue that would be raised by the levy. Some of MBIE's estimates at the time were conservative.

97. Subsequent to the introduction of the levy, company incorporations have steadily increased and numbers of financial service providers have been greater than expected. Under the FMC Act further licensing of financial market participants has occurred and there have been adjustments to statutory definitions of some financial market participants. Growth in assets under management (e.g. KiwiSaver funds) has also meant that some levy participants now fall into a higher levy tier than previously. Partially offsetting these changes is some consolidation within classes of financial market participants.

[9] The levy was introduced on 1 August 2012, so this is not a full year's worth of revenue.

Section 11 - The review of the FMA levy

Review scope

98. In reviewing the FMA levy MBIE has considered:

    i. How much has been recovered through the levies in comparison to what was anticipated.

    ii. Third-party funding levels for the FMA proposed in Part 2 of this consultation paper.

    iii. How the population and composition of financial market participants has changed since the levy was introduced.

    iv. The appropriateness of the current levy classes, the basis for the levy and levy tiers, and levy amounts payable.

Assumptions

99. As indicated above, the levy model relies on forecasts of numbers of financial market participants and volumes of transactions. MBIE has worked with the FMA and the Reserve Bank of New Zealand to update forecasts to more accurately reflect market activity. As the levy is calculated on a five year basis, it is assumed that forecast numbers and volumes will mostly remain static over the next five years. In reality, they will fluctuate from year to year in ways that are not predictable.

100. There is also an element of judgement involved in setting the tiers within each levy class and the levy amounts payable. Under the objectives for the FMA levy model, different metrics for the FMA levy classes are used to assess the size of participants within each class (for example, total supervised assets for licensed supervisors of debt securities). These metrics are proxies for economic activity and the perceived benefits that each financial market participant receives from a well-regulated financial market.

101. Like many conduct regulators around the world, the FMA takes a risk-based approach to regulating the sectors it is responsible for. It focuses on certain types of conduct and practices that may pose the most harm, rather than specific sectors and its assessment of risks drives the activities it undertakes. As risk impacts and likelihood of occurrence change over time and may impact interactions across sectors, product and services, it is not sensible to attribute the levy to individual participants in terms of the FMA's interaction.

102. Through its activities the FMA aims to strengthen confidence in New Zealand's financial markets, promote innovation, and support the growth of New Zealand's capital base. The level of the levy for financial market participants is intended to be consistent with these benefits and also avoid discouraging the supply of financial products and services.

Section 12 - Options for adjusting the FMA levy

103. MBIE is proposing changes to the total quantum of the levy to be recovered and how the levy is applied across participants. The impact of the proposed changes for each type of financial market activity and participant is indicated in table A on page 53.

Proposed changes to the amount of the levy to be recovered

104. The levy is currently intended to recover $16.41 million from participants on an annual average basis. The proposed changes to the total amount of the levy to be recovered are shown below and are in line with the funding options for the FMA in part 2 of this paper.

Proposed options for the total amount of the FMA levy (GST exclusive)

Option	Amount to be recovered by the levy	% portion of FMA's total funding (Crown, levy and fees)
1. No funding change	$17.1 million	60%
2. Lowest funding case	$21.8 million	65%
3. Base funding case	$24.0 million	67%
4. Enhanced funding case	$27.0 million	70%

No change in the FMA's funding: (option 1, not preferred)

105. With no change to FMA's funding it is proposed that the annual average levy be re-set to $17.1 million. This amount represents the currently agreed amount of $16.41 million and a historical funding payment of $0.695 million from third parties that the Companies Office currently makes to the Government to cover the FMA's financial filing and prospectus vetting functions. (When Companies Office fees are re-set this existing third-party funding stream will cease.)

106. While option 1 is an increase in the 2012 agreed quantum of the levy, as the levy is currently recovering more revenue than expected, the net impact would be a decrease in the current levy being collected.

107. The levy amount under option 1 represents 61 per cent of the FMA's appropriation (which is in keeping with agreed third-party funding levels for the FMA when it was established). With the addition of fees, the proposed levy amount is approximately 60 per cent of the FMA's total funding.

Changes to the FMA's funding (options 2, 3 and 4)

108. As noted in part 2 the Government's preferred position is that additional funding for the FMA be wholly funded by the levy. This reflects the significant growth in New Zealand's financial markets and also the broader mandate for the FMA and higher regulatory standards for market participants set by the FMC Act, compared to the position when the levy was first set in 2012.

109. Additional funding will enable the FMA to sustain its regulatory effort and, in the enhanced funding case, do more to facilitate fair, efficient and transparent financial markets. Given the additional benefits to financial market participants outlined in part 2 of this paper, MBIE is interested in your views on the estimated levy amounts as a result of proposed changes to the FMA's funding and the impact on your business.

110. The levy amounts represent 65 to 70 per cent of the FMA's total funding (FMA's appropriation and fees).

Accounting for over-recovery of the levy

111. In addition to these proposed options MBIE is considering whether to account for past 'over-recovery' of the levy. As noted above, for the first three years since its introduction, the levy has collected \$3.1 million more than anticipated and, based on forecast volumes, we anticipate that the levy will over-collect another \$2 million before it is re-set in July 2017. If this over-recovery is factored into the levy re-set the total amount of the levy to be recovered over the next five years would reduce by \$1 million for each option.

112. Fluctuating volumes will always drive the levy model, resulting in either over- or under-collection. Any adjustment for the over-collection within the current levy re-set would need to be reversed when the levy is next reviewed.

Questions for submitters:	
4	Which of the proposed options for the total quantum of the FMA levy do you prefer?
5	What portion of the FMA's funding should the FMA levy recover and why?
6	Noting that the amount to be collected by the FMA levy is an estimate and is subject to fluctuating volumes and financial market activity, do you think that the actual and forecast over-recovery of the FMA levy should be factored into the levy re-set?

Changes to the levy arising from the population and composition of financial market participants

113. With the implementation of the FMC Act additional participants have been required to obtain a licence from the FMA and are now within the population of levy payees. These include licensed equity crowd-funders, peer-to-peer lenders, derivatives issuers making regulated offers and discretionary investment management service providers (DIMS). There have also been new requirements for authorised financial advisers (AFAs) that provide DIMS, managed investment schemes (MIS), independent trustees, and custodians. Activity that will diminish or disappear include contributory mortgage broking, authorised futures dealers and prospectus filing.

114. We now have a better understanding of the types of financial market activities. As a result, we propose some changes to the levy classes and to the basis for payment of the levy for some participants.

Changes to the levy classes, basis for levy payment, levy tiers, and proportionate levies payable

115. Under the current levy model all financial service providers pay a flat levy at registration and then pay various levies at annual confirmation (which occurs in the calendar year following registration) according to the levy class that they fall into. MBIE proposes to continue this distinction in the levy model as new entities may not have previous financial statements, assets, supervised interests or annual gross premium income.

116. Separate (but in parallel) to this review, the Government is considering potential amendments to the way financial advisers are regulated under the FA Act. MBIE's recommendations include removing the current distinctions between different types of advisers (currently Authorised Financial Advisers, Registered Financial Advisers, and Qualifying Financial Entities) with a view to creating a simpler regime. This will likely require changes to how Authorised Financial Advisers, Registered Financial Advisers and Qualifying Financial Entities are currently captured in the levy classes. MBIE will consult on any such changes in due course.

117. The proposed changes to the levy classes, the basis for payment of the levy, levy tiers, and proportionate levies payable across financial market participants are summarised below. As well as the changes to the population and composition of financial market participants, we have considered the perceived relative benefits for participants from well-regulated financial markets and the metrics used to proxy the size of financial market participants.

Summary of proposed changes to the levy classes, basis for levy payment, levy tiers and proportion of levy payable

Stakeholder or activity	Proposed changes to levy class, basis for levy payment and % share of levy	Levy tiers changing?
Authorised financial advisors (AFAs)	Differentiate AFAs that provide DIMS within a separate DIMS category.	n/a
Authorised futures dealers	Repeal as class no longer necessary from 1/12/16.	n/a
Banks and non-bank deposit takers	Increase in % share of levy in line with original model.	No
Brokers	Differentiate brokers from those that provide custodial services.	n/a
Contributory mortgage brokers	Decrease in relative levy.	n/a
Crowd funders and peer-to-peer lenders	New levy class.	Possible
Custodians	Consolidate custodians under the FA Act and the FMC Act into one class and better align the levy with benefit.	Possible
Derivative issuers	Better align levy to benefit.	n/a
Discretionary investment management scheme (DIMS) providers	Consolidate DIMS under the FA Act and the FMC Act into own levy class.	New tiers
Financial statement filing for FMC reporting entities	New levy class.	No
Foreign exchange traders	Split out from DIMS providers under the FMC Act and better align levy to benefit.	n/a

Stakeholder or activity	Proposed changes to levy class, basis for levy payment and % share of levy	Levy tiers changing?
Licensed insurers	Small reduction in % share of levy. Possible change to basis for levy.	Possible
Licensed market operators	From fixed $20,000 levy/operator to levy/issuer.	n/a
Lodging product disclosure statements and prospectuses	As prospectuses are being replaced by Product Disclosure Statements, levy payable on lodgement of prospectus will be repealed.	n/a
Managers or superannuation trustees in respect of securities	Possible differentiation between managers or trustees of managed funds and single asset schemes.	Changes to existing tiers
Persons authorised to undertake trading activities on licensed markets	Decrease in relative levy.	n/a

Questions for submitters:	
7	Do you agree with the proposed FMA levy classes set out in table A? Do they adequately capture the different types of market activity?
8	Do you agree with the proposed tiers for FMA levy payees? Do they recognise the variation in size of financial market participants?
9	Do you believe that the metrics used to assess the size of financial market participants and the proposed FMA levies payable are good approximations to the benefits from a well-regulated financial market?
10	Are there any particular adjustments to levies under the proposed FMA levy structure that you think should be reconsidered?
11	What would be the overall impact of the proposed FMA levy options on your business?

118. The key thinking behind the proposed changes and for maintaining some existing levy classes is discussed below.

Banks and non-bank deposit takers

119. Registered banks and licensed non-bank deposit takers (NBDT) currently pay tiered levies based on their total assets – market size is one of the factors in the calculation of the FMA's risk estimates. We considered introducing a higher tier for banks to reflect growth in assets and changing some of the lower tiers in line with volume changes. However, not all the largest banks were captured by the higher tiers and the changes to the lower tiers would cause some payees to pay relatively more when payees in other tiers are paying relatively less. We are, therefore, not proposing to make changes to the current payment tiers for banks and NBDTs at this time.

120. With additional financial market participants being incorporated within the levy model, the proportion of the levy paid by banks and NBDTs has decreased since the levy was established in 2012. In keeping with the original model, we propose to adjust the portion of the levy covered by banks and NBDTs back to approximately 11 percent of the total levy. Banks and NBDTs look after approximately 85 percent of New Zealand's assets and most New Zealanders are customers. They receive a significant benefit from having well-

regulated financial markets and changes in market confidence have a large impact on these participants.

121. Under the levy regulations a person included in two or more levy classes must pay the levy prescribed for each of those classes. This means, for example, registered banks that issue derivatives or offer managed fund products also pay levies for these activities. In terms of the total amount of the levy paid by banks the relative levy for some other types of financial market activities are also proposed to change.

Brokers and custodians

122. Well-regulated brokers and custodians are critical to the success of the FMC Act regime and critical to retail confidence as they are the holders of retail funds and therefore have a higher risk profile than most other classes. They therefore warrant more regulatory attention and higher levies than are currently paid.

123. Brokers (including custodians) defined under the FA Act currently pay a fixed $870 (excluding GST) levy but custodians of registered schemes and DIMS services provided by DIMS licensees pay a $1,739 (excluding GST) levy. When the levy is re-set it is proposed that custodians be incorporated into one category. Custodians warrant the FMA's regulatory attention whether they are regulated under the FA Act or under the FMC Act.

124. MBIE has modelled the levy payable for custodians as a fixed amount. However, as property and financial products held by custodians vary, ideally the levy payable should be tiered according to client money and property received, paid or held. MBIE is interested in your views as to whether tiered levies should be introduced for custodians based on New Zealand domiciled funds under custody, rather than fixed levies.

125. The regulatory obligations on brokers are less than that for custodians and they differ in size and ability to pay. This justifies a lower relative levy for brokers compared to custodians. If a broker is also a custodian then in this instance we propose that they just pay the higher custodian levy.

Building societies, companies, credit unions, friendly societies and limited partnerships

126. Reflecting the indirect benefits from having a stable and well-regulated financial sector, and access to capital, all building societies, companies, credit unions, friendly societies and limited partnerships currently pay a $8.70 (excluding GST) levy at registration and annual confirmation. When the levy was established, this equated to approximately 25 per cent of the total levy funding. Under the proposed options this would decrease to approximately 19 per cent.

127. While option 4 proposes an increase in the levy payable, this increase will be offset by a proposed decrease in the XRB levy.

Contributory mortgage brokers

128. From 1 December 2016 all new offers of contributory mortgages must be made under the FMC Act and the levy payable for this activity will fall into other levy classes (for example, peer-to-peer lenders). To reflect the winding down of this activity MBIE propose to reduce the relative levy payable for contributory mortgage brokers. It is necessary to retain this levy class because contributory mortgages issued prior to 1 December 2016 may continue to be managed under contributory mortgage regulations.

Crowd-funders and peer-to-peer lenders

129. Crowd-funders and peer-to-peer lenders are new categories of financial market participants that have come under the FMA's regulatory activities under the FMC Act. MBIE proposes to distinguish these participants within the levy classes and structure the levy payable on a fixed basis, in line with other financial market participants that offer similar services (for example, NBDTs and contributory mortgage brokers). At the same time it is important to encourage innovation, so the relative portion of the levy payable by crowd-funders and peer-to-peer lenders has been kept low across the FMA funding cases.

130. It is possible that the levy for peer-to-peer lenders could be tiered according to annual lending through the platform, for example. MBIE is interested to understand how a fixed versus a tiered levy could affect the supply of peer-to-peer lending services.

Derivative issuers

131. The FMA licenses derivatives issuers and monitors them on a risk-based approach. While licensed derivatives issuers are required to comply with money and property handling requirements, there is no regulatory requirement for their assets to be held by an independent custodian. Derivative issuers are also not required to be supervised by a licensed supervisor. As such, investors take a direct credit risk on the derivatives issuer and its financial stability. To counter this, the regulatory regime (including special conditions covering solvency) for derivatives issuers requires regular reporting and monitoring and oversight by the FMA. MBIE proposes to better align the levy payable for derivatives issuers to this regulatory benefit and thereby increase the portion of levy payable.

Discretionary investment management schemes (DIMS)

132. A DIMS is an investment arrangement where buying and selling decisions about a client's portfolio are made on a client's behalf. DIMS cover a wide range of services and can vary considerably. The FMC Act recognises that because some DIMS can have similar characteristics to a product like a managed investment scheme they are regulated in a similar way. Other DIMS can be entirely personalised to a client's circumstances. In these cases an AFA's business model may involve a personalised DIMS that is based on an individual investment strategy.

133. Under the current levy model DIMS pay one of two fixed levies, according to whether they are licensed under the FMC Act or regulated under the FA Act. As the FMA do not treat DIMS categories differently we propose to consolidate DIMS providers into their own levy class and tier the levy payable according to assets under management. The implication is that the cost of the levy will increase for both types of DIMS providers but more so with those regulated under the FA Act.

Financial statement filing for FMC reporting entities

134. The review of the levy provides an opportunity to tidy up some fees. FMC reporting entities are required to annually file their financial statements and currently pay a fee for this service. This fee is intended to cover the costs of oversight by the FMA as it is responsible for issuers and their compliance with the financial reporting obligations. It is proposed that the FMA's related costs covered by the filing fee be incorporated within the levy.

135. The advantage of bringing this funding stream into the levy is a small reduction in the proportion of the levy paid by other participants.

Foreign exchange traders

136. Currently traders that exchange foreign currency on behalf of other persons fall within the same levy class as DIMS providers under the FMC Act. As noted above we propose to establish a separate class for DIMS providers. Balancing the objective of not discouraging the supply of financial services and additional focus on foreign exchange traders in terms of the FMA's risk-based monitoring MBIE proposes to increase the levy payable for foreign exchange traders.

137. The new levy for foreign exchange traders will not affect the levy on foreign exchange operators that provide platforms for investment from small money remitters.

Licensed insurers

138. MBIE proposes a small relative decrease in the proportion of the levy paid by licensed insurers. Due to declining numbers of licensed insurers, the burden of this levy is falling on a smaller group. This is tempered by the fact that, despite the benefit for insurers being felt at the consumer and broader market integrity end, insurers' conduct is high on FMA's risk assessment.

139. Insurers supply a large proportion of total financial services in the market and they are a key focus for the FMA. The insurance sector is regulated under part 2 of the FMC Act which covers fair dealing in connection with financial products and services. While insurance intermediaries, for example, brokers and AFAs, pay a separate and much smaller FMA levy, the FMA takes a thematic view of risks which includes insurance provider conduct and benefits the wider insurance industry.

140. The basis for the levy for licensed insurers is currently on annual gross premium revenue. We are interested in feedback on whether this should be maintained or whether a new basis for the levy should be considered, for example, distinguishing general from life insurance, or domestic from overseas insurance.

Licensed market operators

141. Under the current levy model licensed market operators pay a fixed $20,000 levy. To avoid imposing a barrier to entry we propose that licensed market operators pay a smaller levy calculated on a per issuer basis. MBIE anticipates that, for the existing operator, NZX, there will be a minimal difference in the levy paid under a fixed versus a per issuer basis.

Managers or superannuation trustees in respect of securities

142. Managed funds have grown significantly in funds under management since the levy was introduced in 2012. The popularity of KiwiSaver has accentuated the importance of maintaining public confidence in this group, and has required significant and increased FMA resources in terms of monitoring and compliance. Through helping New Zealanders save for their retirement KiwiSaver is a crucial investment for most New Zealanders. There are now $34 billion funds under management in KiwiSaver.

143. The size of the risk that managed funds pose to financial markets and the benefit that their customers receive is a function of size. So, MBIE intends to maintain levy tiers for this class. However, to reflect the increased focus of the FMA's regulation of managed funds it is proposed that the top levy tiers are increased as shown in the table below and the associated levy payable.

Levy tiers for managed investment schemes

Total managed assets	
Current tier	Proposed tier
Does not exceed $20 million	Does not exceed $10 million
Exceed $20 million but not $50 million	Exceed $10 million but not $20 million
Exceed $50 million but not $100 million	Exceed $20 million but not $100 million
Exceed $100 million but not $500 million	Exceed $100 million but not $500 million
Exceed $500 million but not $1 billion	Exceed $500 million but not $1 billion
Exceed $1 billion but not $2 billion	Exceed $1 billion but not $5 billion
Exceeds $2 billion	Exceed $5 billion but not $10 billion
	Exceeds $10 billion

144. To minimise the burden on new entrants and assist small fund managers to absorb the cost of the levy MBIE propose to incorporate an additional tier for managers of small managed investment schemes. Due to the merging of some schemes it is also proposed to amalgamate some other tiers. For all options the levy paid by smaller fund managers and trustees with managed assets of up to $1 billion would reduce. With managed assets greater than $1 billion the levy would increase across most options.

145. Within this levy class single asset managed investment schemes (for example forestry partnerships and some property syndicates) are treated on the same basis as managed funds. However, there is a difference in the complexity of regulatory requirements between these schemes as well as differences in liquidity (and ability to pay the levy). MBIE is interested in gaining participants' feedback on whether separate levy tiers should apply to single asset schemes.

146. Rather than assets under management MBIE considered charging the levy according to a basis point fee on funds under management. However, as basis point charging is more complex to collect and amounts recovered are less certain, MBIE is not proposing to make changes to the basis for the levy at this time.

Persons licensed to undertake trading activities on licensed markets

147. Financial market participants in this levy class are members of NZX and benefit from its front-line regulation. Less monitoring is therefore required by the FMA. To address this it is proposed that persons licensed to undertake trading activities on licensed markets pay relatively less levy than currently. This is a levy class where entities also pay levies for other types of financial market activity.

Supervisors of debt securities and managed products in registered schemes

148. Volumes in this class have declined due to de-registrations and licensed supervisors are now clustered at the higher levy tiers. Despite this it is proposed the lower levy tiers are maintained so that new entrants are still able to enter into the market.

Table A: Existing and proposed rounded levy amounts (GST exclusive)

	Current levy model			No change to FMA funding		Changes to FMA funding		
Stakeholder or financial market activity	**Current basis and tiers for levy calculation**	**Current levy**	**Proposed basis for levy calculation**	**Option 1: No change to FMA funding**	**% portion of total levy revenue**	**Option 2: Lower funding case**	**Option 3: Base funding case**	**Option 4: Enhanced funding case**
Accredited Bodies	Per licensed entity	$1,739		$1,600	1.4%	$2,100	$2,300	$2,600
AFAs	Fixed levy	$348		$300	4.1%	$420	$460	$520
Authorised futures dealers	Fixed levy	$1,739		n/a	n/a	n/a	n/a	n/a
Banks and NBDTs	Total assets exceed $50 billion	$304,348		$340,000	11.2%	$440,000	$480,000	$540,000
	Total assets exceed $10 billion but not $50 billion	$69,565		$78,000		$100,000	$110,000	$125,000
	Total assets exceed $2 billion but not $10 billion	$21,739		$25,000		$30,000	$33,000	$38,000
	Total assets exceed $1 billion but not $2 billion	$13,043		$14,000		$18,000	$20,000	$23,000
	Total assets exceed $20 million but not $1 billion	$6,522		$7,000		$9,000	$10,000	$11,000
	Total assets do not exceed $20 million	$1,739		$2,000		$2,400	$2,600	$3,000

	Current levy model			No change to FMA funding		Changes to FMA funding		
Stakeholder or financial market activity	**Current basis and tiers for levy calculation**	**Current levy**	**Proposed basis for levy calculation**	**Option 1: No change to FMA funding**	**% portion of total levy revenue**	**Option 2: Lower funding case**	**Option 3: Base funding case**	**Option 4: Enhanced funding case**
Brokers	Fixed levy	$870 (includes some custodians)		$1,300	0.6%	$1,500	$1,700	$1,900
Building societies, Companies, friendly societies, credit unions and limited partnerships	Fixed levy	$8.70		$6.10	19.2%	$7.80	$8.60	$9.57
Contributory mortgage brokers	Fixed levy	$1,739		$1,200	0.1%	$1,400	$1,600	$1,800
Crowd funders and peer-to-peer lenders	Part of other FSP category currently	$304	Could be tiered e.g. according to capital raised on platform?	$1,600	0.1%	$2,100	$2,300	$2,600
Custodians	In respect of a registered scheme or DIMS service provided by a DIMS licensee Regulated under FAA	$1,739 $870	Could be tiered e.g. according to NZ funds under custody?	$4,000 $4,000	5.0%	$5,000 $5,000	$5,800 $5,800	$6,500 $6,500
Derivative issuers	Fixed levy	$1,739		$5,500	0.2%	$7,000	$8,000	$9,000

	Current levy model			No change to FMA funding		Changes to FMA funding		
Stakeholder or financial market activity	**Current basis and tiers for levy calculation**	**Current levy**	**Proposed basis for levy calculation**	**Option 1: No change to FMA funding**	**% portion of total levy revenue**	**Option 2: Lower funding case**	**Option 3: Base funding case**	**Option 4: Enhanced funding case**
DIMS providers	Licensed under FMC Act Regulated under FAA	$1,739 $304	Funds under management:		3.4%			
			exceed $250 million	$26,000		$31,000	$34,000	$38,000
			exceed $100 million but not 250 million	$8,000		$10,000	$11,000	$13,000
			do not exceed $100 million	$4,000		$5,000	$5,800	$6,500
FMC reporting entity filing financial statement	Fixed levy	n/a		$47	0.2%	$47	$47	$47
Financial service providers	At registration	$304		$300	3.7%	$370	$400	$460
	Annual confirmation (if not in other levy classes)	$304		$300	12.3%	$370	$400	$460
Foreign exchange traders	Fixed levy	$1,739		$2,500	2.4%	$3,300	$3,700	$4,000

	Current levy model			No change to FMA funding		Changes to FMA funding		
Stakeholder or financial market activity	**Current basis and tiers for levy calculation**	**Current levy**	**Proposed basis and tiers for levy calculation**	**Option 1: No change to FMA funding**	**% portion of total levy revenue**	**Option 2: Lower funding case**	**Option 3: Base funding case**	**Option 4: Enhanced funding case**
Licensed insurers	Annual gross premium revenue (GPR) exceed $250 million	$130,435	Could distinguish general from life insurance or domestic from overseas insurance?	$105,000	9.5%	$135,000	$145,000	$165,000
	GPR exceed $50 million but not $250 million	$30,435		$25,000		$31,000	$34,000	$38,000
	GPR exceeds $10 million but not $50 million	$8,696		$7,000		$8,800	$9,700	$11,000
	GPR does not exceed $10 million	$1,739		$1,400		$1,800	$1,900	$2,200
Licensed market operators	Fixed levy	$17,391	e.g. a smaller levy calculated on a per issuer basis?	$16,000	0.2%	$21,000	$24,000	$26,000
Lodging product disclosure statements and prospectuses	Per PDS or prospectus (except managed funds) Per managed fund	$1,739 $370	Per PDS (except managed funds) Per managed fund	$1,600 $350	2.6%	$2,100 $450	$2,300 $500	$2,600 $550

	Current levy model			No change to FMA funding		Changes to FMA funding		
Stakeholder or financial market activity	**Current basis and tiers for levy calculation**	**Current levy**	**Proposed basis and tiers for levy calculation**	**Option 1: No change to FMA funding**	**% portion of total levy revenue**	**Option 2: Lower funding case**	**Option 3: Base funding case**	**Option 4: Enhanced funding case**
Managers or superannuation trustees in respect of securities	Total managed assets exceed $2 billion	$86,957	Total managed assets exceed $10 billion	$235,000	19.2%	$300,000	$330,000	$370,000
			Total managed assets exceed $5 billion but not $10 billion	$165,000		$220,000	$245,000	$270,000
			Total managed assets exceed $1 billion but not $5 billion	$66,000		$84,000	$95,000	$105,000
	Total managed assets exceed $1 billion but not $2 billion	$69,565						
	Total managed assets exceed $500 million but not $1 billion	$52,174	Total managed assets exceed $500 million but not $1 billion	$29,000		$37,000	$40,000	$46,000
	Total managed assets exceed $100 million but not $500 million	$34,783	Total managed assets exceed $100 million but not $500 million	$16,000		$21,000	$24,000	$26,000

<table>
<tr><th></th><th colspan="2">Current levy model</th><th></th><th colspan="2">No change to FMA funding</th><th colspan="3">Changes to FMA funding</th></tr>
<tr><th>Stakeholder or financial market activity</th><th>Current basis and tiers for levy calculation</th><th>Current levy</th><th>Proposed basis and tiers for levy calculation</th><th>Option 1: No change to FMA funding</th><th>% portion of total levy revenue</th><th>Option 2: Lower funding case</th><th>Option 3: Base funding case</th><th>Option 4: Enhanced funding case</th></tr>
<tr><td rowspan="4">Managers or superannuation trustees in respect of securities</td><td>Total managed assets exceed $50 million but not $100 million</td><td>$17,391</td><td rowspan="2">Total managed assets exceed $20 million but not $100 million</td><td rowspan="2">$4,000</td><td rowspan="5">1.9%</td><td rowspan="2">$5,200</td><td rowspan="2">$5,800</td><td rowspan="2">$6,500</td></tr>
<tr><td>Total managed assets exceed $20 million but not $50 million</td><td>$8,696</td></tr>
<tr><td rowspan="2">Total managed assets do not exceed $20 million</td><td rowspan="2">$1,739</td><td>Total managed assets exceed $10 million but not $20 million</td><td>$1,000</td><td>$1,200</td><td>$1,400</td><td>$1,600</td></tr>
<tr><td>Total managed assets do not exceed $10 million</td><td>$820</td><td>$1,000</td><td>$1,100</td><td>$1,300</td></tr>
<tr><td>Listed issuers</td><td>Fixed levy</td><td>$1,739</td><td></td><td>$1,600</td><td>$2,100</td><td>$2,300</td><td>$2,600</td></tr>
<tr><td>Overseas auditors</td><td>Fixed levy</td><td>$1,739</td><td></td><td>$1,600</td><td>0.2%</td><td>$2,100</td><td>$2,300</td><td>$2,600</td></tr>
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	Current levy model			No change to FMA funding		Changes to FMA funding		
Stakeholder or financial market activity	**Current basis and tiers for levy calculation**	**Current levy**	**Proposed basis and tiers for levy calculation**	**Option 1: No change to FMA funding**	**% portion of total levy revenue**	**Option 2: Lower funding case**	**Option 3: Base funding case**	**Option 4: Enhanced funding case**
Supervisors of debt securities and trustees of registered schemes	Total supervised interests exceed $5 billion	$86,957		$85,000	2.0%	$110,000	$120,000	$140,000
	Total supervised interests exceed $1 billion but not $5 billion	$52,174		$50,000		$65,000	$70,000	$78,000
	Total supervised interests exceed $100 million but not $1 billion	$17,391		$16,000		$21,000	$23,000	$26,000
	Total supervised interests do not exceed $100 million	$4,348		$4,000		$5,200	$5,800	$6,500
Trading activities on licensed markets	Fixed levy	$6,522		$3,000	0.2%	$3,700	$4,000	$4,600

Part 4 - The XRB Levy

Section 13 - Overview of the XRB and its funding

149. The XRB is an independent Crown Entity responsible for the development and issuing of accounting, auditing and assurance standards in New Zealand. The XRB was established on 1 July 2011 and was reconstituted from the Accounting Standards Review Board following amendments to the Financial Reporting Act 1993.

150. The functions of the XRB are prescribed by Section 12 of the Financial Reporting Act 2013. They include:

    i. Developing and implementing an overall strategy for financial reporting standards, including developing and implementing tiers of financial reporting.

    ii. Preparing and issuing accounting standards, and authoritative notices for the purposes of the definition of generally accepted accounting practice.

    iii. Preparing and issuing auditing and assurance standards, including the professional and ethical standards that will govern the professional conduct of auditors.

151. The standards issued by the XRB establish consistent and best-practice requirements for accounting, auditing and assurance practices, playing an important role in regulating the quality of financial reporting.

152. The XRB's overall goal is to help build a productive and competitive economy. The standards established by the XRB engender confidence in New Zealand financial reporting, enhance entities' accountability to stakeholders, and assist entities to compete internationally. This means that:

    - Investors and other market participants are able to compare and make use of quality financial information to make informed economic decisions. There is confidence in New Zealand financial reporting.

    - The management of entities are held to account and encouraged to behave in ways that are consistent with the interests of their stakeholders. Examples of such accountability include companies to their shareholders, issuers to debt security holders, public sector entities to taxpayers and service recipients, not-for-profit entities to their members and charities to their donors.

- Through the use of a common financial language, investors can more easily identify risks and opportunities and entities face lower financial reporting and capital raising costs. In turn, entities can be more competitive.

The XRB's revenue and expenditure

153. The XRB receives $4.41 million in funding from the Crown: $4.115 million of which is estimated to be recouped by third party funding. The difference of $0.295 is the Crown's net investment. In addition to their funding the XRB receives a small amount of income from interest.

154. Third party funding is comprised of the XRB levy and an historical transfer from the Companies Office of $0.830 million. This transfer will cease when Companies fees are re-set in fiscal year 2017/18.

155. The XRB's forecast revenue and expenditure for the next five years is shown below.

The XRB's revenue and expenditure

	Fiscal Year 2015/16	Fiscal Year 2016/17	Fiscal Year 2017/18	Fiscal Year 2018/19	Fiscal Year 2019/20
Total Revenue ($)	**4,468,792**	**4,460,000**	**4,450,000**	**4,440,000**	**4,430,000**
Revenue from the Crown (incorporating third party funding)	4,410,000	4,410,000	4,410,000	4,410,000	4,410,000
Interest income	58,792	50,000	40,000	30,000	20,000
Total Expenditure ($)	**4,276,229**	**4,831,447**	**4,809,575**	**4,984,367**	**4,860,854**
Personnel costs	2,224,284	2,525,902	2,575,420	2,625,928	2,677,447
General Operating costs	428,780	437,356	446,103	455,025	464,125
Board Members fees	671,651	685,084	698,786	712,762	727,017
Depreciation/amortisation	55,266	125,000	120,000	110,000	100,000
Premises expenses	174,613	178,105	181,667	185,300	189,006
Travel	343,385	380,000	387,600	395,352	403,259
International contributions	300,000	300,000	300,000	300,000	300,000
Research	78,250	200,000	100,000	200,000	0
Net Surplus ($)	**192,563**	**(371,447)**	**(359,575)**	**(544,367)**	**(430,854)**

Section 14 - The current levy model

156. Under Section 52 of the Financial Reporting Act 2013 the levy covers a portion of the costs of the XRB in performing its functions and duties and exercising its powers together with the costs of collecting the levy. The size of the portion is determined by the Minister of Commerce and Consumer Affairs.

157. Balancing objectives for the levy model are:

i. Administrative simplicity, low transaction costs in collection and avoidance of large over or under-collection.

ii. Those benefiting from the XRB's functions, or who contribute to risks that warrant a regulatory response, should bear the costs of these.

158. When the levy was established in August 2012 the average annual amount to be recovered over five years was estimated to be $3.66 million (excluding GST). In addition to a portion of the XRB's ongoing costs this amount included one-off establishment costs for the XRB of $0.225 million and an operating shortfall.

159. The amount of the levy is currently set at $8.70 (excluding GST) for all companies, limited partnerships, building societies, credit unions and friendly societies. The levy is paid at registration and annual return via registers administered by the Companies Office.

Levies collected

160. The levy model is based on estimated volumes of registrations and annual returns so will not exactly collect what was anticipated. As shown below, for the first three years since the levy was introduced the levy has recovered approximately $2.3 million more than estimated.

XRB levies collected

Fiscal year	Levy revenue ($ million)	Over/(under) recovery ($ million)
2012/13	$3.619[10]	(0.041)
2013/14	$4.965	1.305
2014/15	$4.693	1.033

161. With respect to the 2012 agreed levy of $3.66 million and based on updated forecasts of market volumes we predict that the levy will continue to over-recover at a rate of approximately $1 million per annum unless it is adjusted.

[10] The levy was introduced on 1 August 2012, so this is not a full year's worth of revenue.

Section 15 - The review of the XRB levy

Review scope

162. In reviewing the XRB levy MBIE has considered:

   i. How much has been recovered through the levy in comparison to what was anticipated.

   ii. Whether the levy is payable by stakeholders that benefit from the XRB's standards-setting.

163. The efficiency and the effectiveness of the XRB are not part of this review. While the XRB is focused on influencing outcomes they primarily assess their performance by reference to output delivery and delivering high quality financial reporting standards.

Key assumption

164. For this review Crown and third party funding levels for the XRB will remain at $4.41 million per annum.

Section 16 - Option for adjusting the levy

165. It is proposed that the annual average total amount of the levy be re-set to $4.115 million in line with existing third party funding levels for the XRB. While the amount to be recovered by the levy would increase from 2012 estimates, due to higher estimated volumes the net impact is a $1 decrease in the current levy payable by stakeholders from $8.70 (excluding GST) to $7.70 (excluding GST).

166. The new quantum incorporates an historical funding payment that the Companies Office makes to the Crown for the now defunct Accounting Standards Review Board. When Companies Office fees are re-set this separate third-party funding stream of $0.830 million will cease.

167. We do not propose to make changes to the population of stakeholders that pay the levy nor the method of collecting the levy. Current levy stakeholders benefit directly or indirectly from the XRB's standards-setting and collection of the levy is administratively simple.

168. Under the proposed option, the levy represents approximately 93 per cent of XRB's appropriation (which is the portion agreed for third parties by Cabinet in 2012) with Government contributing approximately 7 percent. We are interested in your views as to whether this is an appropriate mix of the XRB's funding.

Accounting for over-recovery of the levy

169. There is an open question about whether the actual and forecast ‘over-recovery’ of the levy should be factored into the levy re-set. Based on levies collected to date and those forecast until end of fiscal year 2016/17 we estimate that the levy will recover $4.3 million more than anticipated. If this over-recovery was incorporated within the amount of the levy from fiscal year 2017/18 the annual levy to be recovered would reduce by $0.9 million and the levy payable by a further $1.60.

Questions for submitters:	
12	Do you agree with the option to re-set the XRB levy?
13	Noting that the amount to be collected by the XRB levy is an estimate and is subject to fluctuating volumes, do you think that actual and forecast over-recovery of the levy should be factored into the levy re-set?

Part 5 - Companies Office fees

Section 17 - Overview of the Companies Office and its funding

170. The Companies Office is an operating business unit within the Ministry of Business, Innovation and Employment. It plays a key role in supporting New Zealand corporate and non-corporate stakeholders in meeting their governance and compliance requirements, and in enforcing relevant legislation.

171. The core role of the Companies Office is to operate a portfolio of statutory registers. These registers are segmented into three broad categories as detailed below.

Corporate Entity Registers	Charitable Trusts Register Companies Register Friendly Societies and Credit Unions Register Incorporated Societies Register Limited Partnerships Register Retirement Villages Register Unit Trusts Register
Capital Markets Registers	Auditors Register Disclose Register Financial Service Providers (FSP) Register
Secured Transaction Register	Personal Property Securities Register (PPSR)

172. The registers have diverse characteristics depending upon the objectives and needs each is intended to fulfil. For example, the FSP Register is a searchable online register of people, businesses, and organisations that offer financial services and offers registration and renewal services. The PPSR holds details of security interests over certain personal property including motor vehicles, stock, and plant and provides registration and basic search services at both wholesale and retail levels.

173. The largest and most complex register administered by the Companies Office is the Companies Register which provides name approvals, incorporation of companies, and filing of annual returns and financial statements. Company information and documents can be filed and viewed online.

174. In addition to administering public registers, the Companies Office is responsible for managing the Business.govt.nz website which is the Government's website for small business, bringing together information and advice for small businesses from across Government. It is also responsible for the Community Housing Regulatory Authority which

registers community housing providers (CHPs) that wish to house tenants from the Social Housing Register. Through its registration process and ongoing monitoring, it provides an assurance to Government and the community that registered CHPs are well-governed, remain financially viable, and deliver appropriate housing and tenancy management services to vulnerable tenants.

175. The Companies Office is also the custodian for the New Zealand Business Number (NZBN). The NZBN is a key initiative of one of the Government's key result areas, Result 9 Better for Business which aims to reduce costs for businesses interacting with Government. The NZBN is a unique business identifier with associated primary business data. The NZBN will enable the identification of a business within and across Government agencies and the creation of joined up Government services that will reduce the time businesses need to spend interacting with Government. It will also enable the creation of innovative private sector business-to-Government and business-to-business services.

Objectives of the Companies Office

176. In delivering its services, the Companies Office has two main objectives:

i. To facilitate ease of doing business in New Zealand by providing easy-to-use registers and easily accessible information.

ii. To maintain confidence in the registers it administers through a focus on integrity and taking enforcement action where this is necessary.

177. The functions of the Companies Office contribute to an efficient and transparent New Zealand business environment. Businesses can meet governance obligations online in a simple and cost-effective way, and can view and search information and documents.

178. The Companies Office aims to minimise the regulatory hurdles involved in starting and operating a business by delivering services digitally, reducing compliance costs and increasing business efficiency. In doing so, the Companies Office directly contributes to improving the ease of doing business in New Zealand.

179. This is reflected by the World Bank's "Doing Business" survey. In the 2016 survey New Zealand was ranked as the number one country for starting a business and number two for overall ease of doing business.

Companies Office revenue and expenditure

180. The Companies Office is predominantly third party funded, with some functions being partially or fully Crown funded such as the NZBN, the operation of Business.govt.nz and the Community Housing Regulatory Authority.

181. For the registry functions the Companies Office charges fees to third parties on a 'user pays' basis for the services it provides through these registers. In this way, those that

benefit from the registry functions of the Companies Office, and those who need to use the services, contribute to the funding of these functions.

182. For example, fees are charged through the registers for reserving a company name, incorporating a company, and for continuing to operate a company reflected through the annual return fee. Fees are set at levels to recover the long-run cost to the Companies Office of providing these services.

183. The Companies Office operates a 'memorandum account' for providing its services. Memorandum accounts are notional accounts used by many New Zealand public sector agencies to manage the revenue and expenditure associated with providing outputs to third parties that are fully cost-recovered. The use of memorandum accounts allows any surplus or deficit in the provision of these services to be recorded and balanced out over time. In this way, memorandum accounts improve the transparency of providing services and help agencies to avoid the need to constantly update fees.

184. Companies Office revenue and expenditure for fiscal years 2015/16 to 2019/20 is shown below.

	Fiscal Year 2015/16	Fiscal Year 2016/17	Fiscal Year 2017/18	Fiscal Year 2018/19	Fiscal Year 2019/20
Total Revenue ($)	**29,597,460**	**29,082,910**	**26,612,092**	**26,620,223**	**26,628,353**
Companies	16,507,734	15,948,519	15,374,039	15,374,039	15,374,039
Excluding late filing fees	-78,350	-68,250	-78,350	-78,350	-78,350
Societies and Retirement Villages	330,353	346,189	346,188	346,188	346,188
PPSR	10,894,811	10,296,635	8,126,950	8,126,950	8,126,950
Occupational registers	21,887	22,174	22,609	22,609	22,609
Disclose	248,041	1,451,346	1,288,156	1,296,287	1,304,417
Financial Service Providers	1,171,857	1,085,520	1,532,500	1,532,500	1,532,500
Other	501,127	778	-	-	-
Total Expenditure ($)	**24,297,000**	**29,716,000**	**29,424,000**	**29,424,000**	**29,424,000**
Personnel Costs	5,700,867	5,386,252	5,407,973	5,574,921	5,677,616
Other operating costs	8,794,498	9,012,377	7,982,978	7,414,086	7,595,423
Depreciation	2,826,390	2,317,864	3,033,542	3,435,486	3,151,454
Capital Charge	335,672	1,335,672	1,335,672	1,335,672	1,335,672
Corporate Allocations	6,639,573	11,663,835	11,663,835	11,663,835	11,663,835

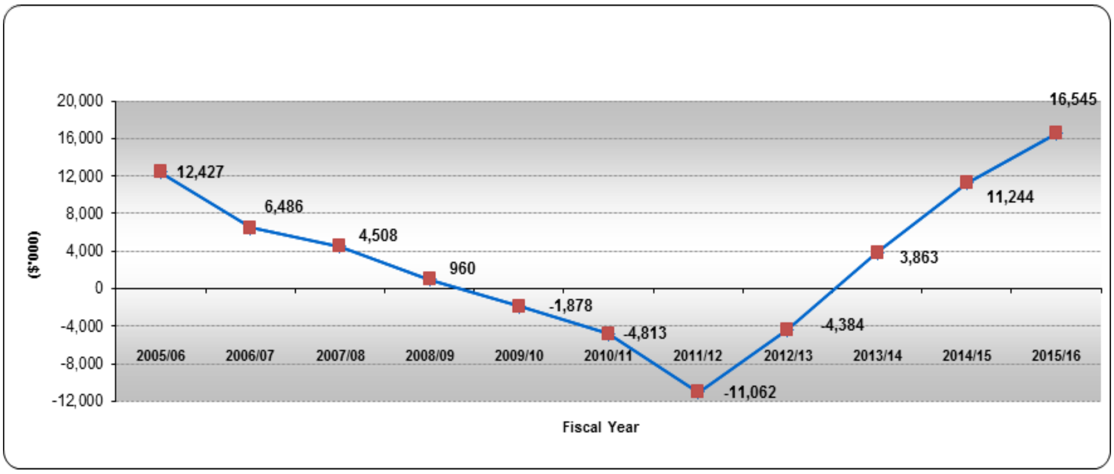
Section 18 - Current fee framework

185. Fees charged by the Companies Office for funding its services were last reviewed and adjusted in 2012. At that time, the Companies Office's memorandum account was in $11 million deficit. This was partly as a result of a large decrease in the number of company incorporations due to adverse economic conditions (global financial crisis) and changes in taxation legislation in relation to Loss Adjusting Qualifying Companies (LAQCs) which were being used as vehicles for residential property rental purposes. Cabinet approved a new fee structure in order to recover the growing memorandum account deficit, ensuring that

the Companies Office would have a sustainable level of funding to continue to provide its services.

186. Since 2012, the deficit in the memorandum account has been recovered more quickly than anticipated. This is largely due to higher than expected volumes for some services, coupled with certain fees being set above cost to recover the deficit in the memorandum account. The Companies Office now has an accumulating surplus in its memorandum account, which is forecast to exceed $16 million by 30 June 2016. This is illustrated below.

Companies Office memorandum account, 2005/06 – 2015/16



187. Fees need to be amended to take into account current volumes and costs incurred by the Companies Office in providing services. In doing so, the memorandum account surplus can be addressed and can be returned to stakeholders. This is in line with a key purpose of using memorandum accounts to minimise under or over collection from third parties over time.

Section 19 - The review of Companies Office fees

Review scope

188. Treasury guidelines recommend fees are reviewed every three to five years to manage the balance in the memorandum account. Given that Companies Office fees were last amended in 2012 and noting a directive by Cabinet, it is time for another fees review.

189. In reviewing Companies Office fees MBIE has considered:

i. What are the cost drivers and forecast operating requirements of the Companies Office for the next five years.

ii. How can fees be adjusted to reflect costs and to return the memorandum account surplus to stakeholders over time.

190. Not all Companies Office fees are being reviewed at this time because projected volumes and costs for some registry services are uncertain. For example, the Disclose Register for managed investment schemes and product offers is still in a transition phase so 'business as usual' costs and volumes of transactions are unknown.[11] Costs for some other Company Office services are subject to change due to these services being migrated to a new register platform commencing in 2017 or because their enforcing legislation is under review. Some fees (i.e. late fees) have also been excluded from this review as they are a penalty fee and not applicable to the memorandum account. The fees that are part of this review are the key drivers of the memorandum account balance.

191. The fees review is an opportunity to discontinue some funding arrangements. Currently the Companies Office makes historical funding payments to the Crown for the FMA, which is being replaced by fees and levies, and for the defunct Accounting Standards Review Board which is being replaced by the XRB levy.

Key assumptions

192. The review of Companies Office fees is based on an external review of costs and funding by Deloitte. The cost allocation process was derived from an analysis of volumes and services. Direct and indirect costs were allocated across fee bearing services to derive a unit cost for each service.

193. Volumes used in the cost allocation model are based on a historical view (normalised for the effects of the global financial crisis) across all Company office services. These volumes are a key driver in determining a per unit cost of each Companies Office service. A five year average of forecast costs was used to capture a long-run view of the business. This approach helps to normalise one-off cost pressures and ensure that the costs which are allocated are largely sustainable year-on-year. Built into the costing model is an allocation of MBIE IT support costs and capital charge costs.

194. Funding for the Companies Office needs to increase by $5.3 million of which $4.3 million is due to a change in MBIE's IT cost allocation model where costs are now more accurately allocated to business units. The remaining $1 million relates to increased compliance and enforcement activity and support of joined up government services such as the NZBN programme as well as replacement costs of legacy shared services systems.

195. The proposed strategy for the review is to set fees at sustainable levels to provide stability in the memorandum account and minimise the regular accumulation of memorandum account surpluses and deficits. This will ensure that fee levels can be set and maintained for a reasonable period of time and avoids making large corrections to fees in the future.

[11] Fees for the Disclose Register were set when the register was implemented based on estimated costs and volumes and these will be updated once the register is in a 'business as usual' mode.

Section 20 - Proposed changes to Companies Office fees

Companies Register fees

196. Adjustments are proposed for a number of fees charged for services that relate to the Companies Register, the largest register administered by the Companies Office. Taking into account the costs of providing these services, proposed adjustments to these fees are presented below:

Proposed fees for Companies Register functions

Fee Type (excluding GST)	Current fee	Unit cost of service	Proposed fee	Change in fee ($)
Company name reservation – online	8.89	12.37	**10.00**	+1.11
Company name reservation – manual	22.22	12.37	**10.00**	-12.22
Company incorporation	113.04	71.66	**80.00**	-33.04
Company annual return	21.74	21.08	**21.00**	-0.74
Company amalgamation	266.67	388.44	**350.00**	+83.33
Company restoration	177.78	149.35	**150.00**	-27.78
Certified copy	22.22	33.87	**0.00**	-22.22

197. There are currently separate fees for company name reservations processed online and manually. However, the number of manual company name reservations has been very low, so a single fee of $10.00 (excluding GST) has been proposed for both online and manual reservations to reflect this.

198. A notable fee decrease is the company incorporation fee which is proposed at $80.00 (excluding GST), currently $113.04 (excluding GST). This new fee is higher than its unit cost but the additional fee element offsets the name reservation fee which is proposed at lower than its unit cost. The same set of stakeholders use the name reservation and company incorporation services.

199. It is proposed that the fee for company amalgamations be increased to more closely align to the cost of providing this service.

200. Under the proposed fee structure, fees for certified copies would be removed. Given the low volumes of certified copies processed by the Companies Office, it is more administratively effective to remove the fee for this service.

Personal Property Securities Register fees

201. Adjustments are also proposed for fees relating to the Personal Property Securities Register (PPSR), where security interests in personal property can be registered and searched. New fees are proposed below.

Proposed fees for Personal Property Securities Register functions

Fee Type (excluding GST)	Current fee	Unit cost of service	Proposed fee	Change in fee ($)
PPSR registration /renewal – Government to business	8.70	7.04	**7.00**	-1.70
PPSR registration /renewal – retail user	17.39	14.30	**14.00**	-3.39
PPSR search – Government to business	1.30	1.21	**1.00**	-0.30
PPSR search – retail user	2.61	2.04	**2.00**	-0.61

202. All of the PPSR fees are proposed to decrease. Although they are not large in magnitude the decreases are in the range of 19-23 per cent.

203. Search fees exist for the PPSR to deter 'keyhole' searching of this register. For example, a person searching the register to see if a neighbour's new car has any money owing on it. The current fee for a member of the public searching the register is $2.61 (excluding GST) per search, which is reduced to $2.00 (excluding GST) per search under the proposed changes. We consider that even with the reduction in the PPSR search fee, the charging of a per-search fee would still deter keyhole searching.

Financial Service Providers Register

204. Financial Service Provider fees are proposed to move both ways: registrations downwards slightly and renewals up. These current fees were put in place in 2010 when the register was introduced and they were based on estimates of costs of operating the new register. While registration fees are reasonably close to their unit costs, in the updated costing model the cost of renewals is much higher than the current fee.

205. We propose to increase the renewal fee from $53.33 (excluding GST) to $75 (excluding GST) but not to the level indicated by the costing model at this point in time. It is possible that costs have risen recently with recent legislative changes and this activity may not continue.

Proposed fees for Financial Service Providers Register functions

Fee Type (excluding GST)	Current fee	Unit cost of service	Proposed fee	Change in fee ($)
FSP Registration	311.11	295.91	**300.00**	-11.11
FSP Renewal	53.33	102.20	**75.00**	+21.67

Financial statement filing fee

206. Companies that meet certain criteria under the Financial Reporting Act 2013 and the FMC Act are required to file financial statements on Companies Office registers. The costing model has identified that Companies Office unit costs associated with financial statement filing are lower than the current $222.22 (excluding GST) fee payable. It is proposed to decrease the fee to file financial statements to $175 (excluding GST) to better reflect the cost of providing this service.

Fee Type (excluding GST)	Current fee	Unit cost of service	Proposed fee	Change in fee ($)
Financial Statement filing	222.22	174.21	**175.00**	-47.22

207. As indicated in part 3 FMC reporting entities may also pay a levy towards funding for the FMA at the time of filing financial statements.

Questions for submitters:	
14	Do you agree with the proposed Companies Office fee levels as set out in the tables above?
15	Are there any particular adjustments to Companies Office fees under the proposed fee structure that you think should be reconsidered?
16	What is the overall impact of current Companies Office fee levels on your business? What impact would the proposed fee levels have on your business?