



Regulatory Impact Statement

Financial Markets Conduct Act Register Fees and Other Financial Markets Authority Fees and Levies

Agency Disclosure Statement

This regulatory impact statement has been prepared by the Ministry of Business, Innovation and Employment (the Ministry). It provides an analysis of options for proposed fees which are required for the commencement of the second implementation phase of the Financial Markets Conduct Act 2013 (FMC Act). The second phase is scheduled to commence on 1 December 2014.

The FMC Act requires the establishment of two online registers and sets various functions for the Financial Markets Authority (the FMA). The fee settings are required to enable the recovery of the following costs:

- operating costs of FMC Act registers; and
- costs incurred by the FMA in administering these statutory functions.

The Ministry has limited information available for which to inform the development of fee proposals. For the FMC Act registers, these limitations primarily arise from the difficulty in predicting the impact new legislation will have on the nature and volume of financial offers under the new regime. The Ministry has based its analysis in this regulatory impact statement (RIS) on the quantitative information available under the current law. In some instances, the Ministry has needed to make some assumptions on how new disclosure requirements will change this information.

There is also limited information about the volumes and variety of applications the FMA could receive for consents and approvals introduced under the FMC Act. As a result, the FMA is unable to accurately estimate its costs. However, this situation is not unique and this RIS considers fee settings appropriate for this situation.

Because of uncertainties around future demand and assumptions made around expected volumes under the new FMC Act regime, the fees discussed in this RIS are to be subject to review three years after their implementation.

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Signature

Date

Introduction

- 1 This RIS presents an analysis of proposed fees which are required for the commencement of the second tranche of the FMC Act. The fee proposals fall into two categories:
 - fees associated with the new FMC Act registers;
 - levy on the lodgement of a product disclosure statement; and
 - fees where market services providers require FMA consents or approvals.

Status quo

FMC Act

- 2 The recently passed FMC Act is a significant overhaul of securities law in New Zealand. It governs how financial products are promoted and sold, and the ongoing responsibilities of those who offer, deal and trade them. It will also regulate the provision of certain financial services.
- 3 The FMC Act's main purposes are
 - to promote the confident and informed participation by businesses, investors and consumers in New Zealand's financial markets, and
 - to promote and facilitate the development of fair, efficient and transparent markets.
- 4 A substantial body of regulation is needed to implement the FMC Act. An initial tranche came into force on 1 April 2014. This tranche included general fair dealing obligations, key growth focussed initiatives and enabling market participants to become licensed. A second tranche of the FMC Act comes into force on 1 December 2014.
- 5 The second tranche of regulation under the FMC Act will introduce:
 - the new financial products disclosure regime
 - the governance regime
 - licensing conduct obligations, and
 - the financial product markets regime.

Role of the FMA

- 6 The FMA, as the market conduct regulator, oversees securities, financial reporting and company laws as they apply to financial services and markets. The FMA is funded by a combination of Crown funding to reflect broader public good (around 60 percent of its total appropriation), and third-party revenue streams where services are provided to specific market participants for their individual or group benefit (the remaining 40 percent). The third-party revenue streams include the FMA levy and fees charged for specific services. The FMA levy is collected from market participants and registered entities. The FMA charges market participants fees for specific services that result in a private benefit.

FMC Act registers

- 7 A central feature of the FMC Act is the establishment of the new financial products disclosure regime. This new regime replaces the current prospectus and investment statement (required under the Securities Act 1978).
- 8 The role of the new disclosure regime is to ensure the supply of meaningful and reliable information about financial products to investors with the objective of ensuring confident and informed participation by those investors in financial markets.

- 9 The FMC Act requires the establishment of two new online registers:
- a register of offers of financial products; and
 - a register of managed investment schemes.
- 10 The registers are essential to enable the implementation and operation of the disclosure regime to work for both issuers and investors:
- Disclosure of information on the registers is a key legal requirement for issuers to be able to make offers and raise capital from investors.
 - The registers are intended to make offer documents and information relating to financial products much more accessible to investors, their advisers, market analysts and commentators. The registers do this in three ways:
 - They provide a readily accessible central repository of all “material information” relating to offers of financial products and managed investment schemes.
 - They enable the key offer document (called the product disclosure statement) to be reduced in size so that it is a shorter document focused on conveying the most important information for retail investors. This results in improved disclosure that is more “fit for purpose” for these investors.
 - While the key offer information will be contained in the product disclosure statement, the registers will provide ready access to the “deeper” and more complex information on offers. This will facilitate commentary and analysis on investments, and allows for other more sophisticated uses of the information (for example, through online comparator tools such as the “fund finder” tool set up by the Commissioner for Financial Literacy and Retirement Income).
 - More informed investors will lead to confident and increased investor participation in the market. This in turn benefits issuers seeking to raise capital from those investors.
- 11 The new registers, which will also replace some existing registers once issuers have fully transitioned into the FMC regime, will be operated by the New Zealand Companies Office (a business unit of the Ministry).
- 12 In February 2014, Cabinet approved capital and operating expenditure for the development and operation of the new registers on the basis that the operating costs would be fully third party funded.

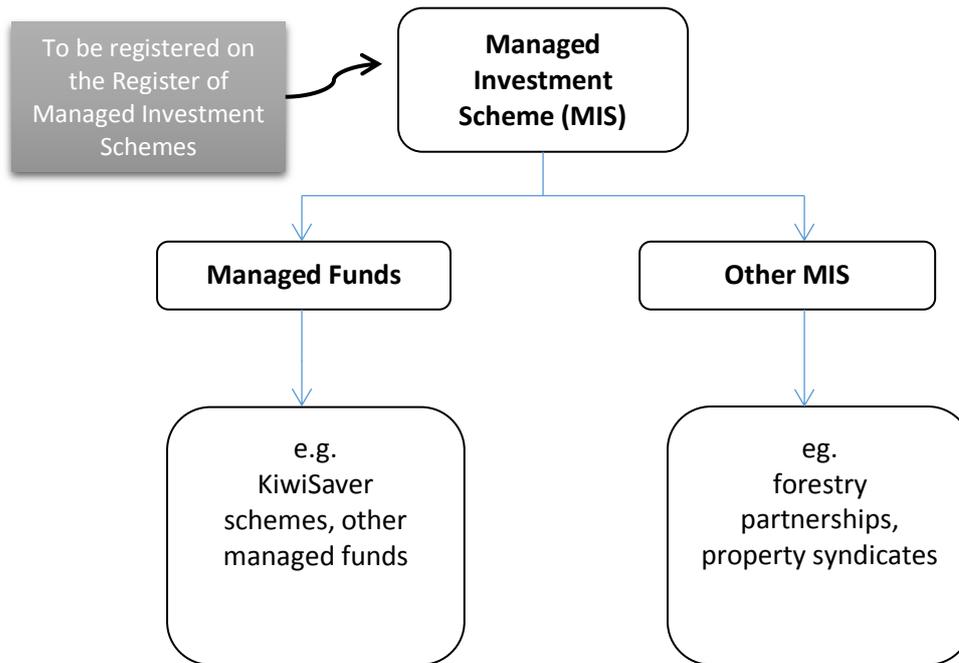
Who will be placing information on the registers?

- 13 Issuers of financial products and the managers of managed investment schemes have statutory obligations under the FMC Act to register and maintain their offers and schemes on the registers. These users will have up to two years to transition into the new FMC Act regime. By the close of this two year transition period (30 November 2016), all managed investment schemes will be required to be lodged on the register of managed investment schemes and all offers of financial products will be required to be lodged on the financial product offer register.

The Register of Managed Investment Schemes

- 14 All managed investment schemes that are, or have previously been, offered to retail investors also need to be registered on the register of managed investment schemes. Managers may also choose to register other managed investment schemes that are only offered to wholesale investors.
- 15 Managed investment schemes pool money from a number of investors, who rely on the investment expertise of a manager. They can be structured in different ways and invest in a wide range of

investments. The following diagram provides an illustration of the types of managed investment schemes under the FMC Act:



The Register of Financial Product Offers

16 The FMC Act requires all offers of financial products to retail investors to be lodged on the Register of Financial Product Offers. This includes offers of equity securities, debt securities and derivatives, as well as offers made by managed funds and other managed investment schemes.

DISCLOSURE UNDER THE FMC ACT =



PDS
Key information that is important for retail investors to read
e.g.:

- terms of the offer
- description of the issuer
- significant features of the product

+



Online offer register
Other information that is material to the offer (likely to be used by advisers and analysts)
e.g.:

- full financial statements
- contracts
- other material information

FMA levy relating to offer document

17 There is currently a \$2,000 FMA levy on the registration of a prospectus collected by the Companies Office. Issuers, like managed investment schemes, debt or equity offers, are subject to this levy.

18 The FMC Act replaces the prospectus and investment statement (required under the Securities Act) with a product disclosure statement. Approval is being sought to continue the \$2,000 FMA levy on the registration of a prospectus for the registration of a product disclosure statement.

FMA consents or approvals

19 The FMA will administer and enforce the regimes introduced in the second tranche of the FMC Act. These regimes are:

- the new financial products disclosure regime
- the governance regime
- licensing conduct obligations; and
- the financial product markets regime.

20 The new functions associated with the above regimes are:

- governance of regulated products, such as new requirements for managed investment schemes
- variations of authorisations under the Financial Advisers Act (FA Act); and
- licensing of financial product market operators.

21 The FMA will also continue to provide a number of other services (that are impacted by the FMC Act) including advice, decisions and exemptions, and licensing of financial markets participants.

What fees would be on status quo

22 Under current securities legislation, issuers are subject to the following obligations:

- FMA levy on registration of a prospectus – \$2,000
- fee for the review of a prospectus - \$327.11
- fee for filing financial statements - \$255.55
- fee for registering a scheme – \$102.22
- fee for filing a scheme’s annual report – from \$102.22

23 For the purposes of analysing the options, we have assumed that these fees would be the status quo.

Problem definitions

24 This regulatory impact statement considers responses to two problems.

Problem one: recovering the full operating costs of the FMC registers

25 Currently, there is no system of cost recovery for the new registers and the additional roles and responsibilities placed upon the Companies Office under the FMC Act. As such, a fee structure needs to be set to allow the operating costs of the registers to be recovered. The absence of a system of cost recovery (the status quo) would mean government’s intention for the operating costs of the registers to be fully third party funded would not be met.

Problem two: recovery of FMA’s costs in administering functions under the FMC Act

26 The FMC Act makes changes to some of the FMA’s existing administrative arrangements and also requires the FMA to carry out new functions. As a result, there are some fees and levies that are currently charged by or on behalf of the FMA that need to be altered, and new fees introduced to address additional FMA resource costs.

- 27 If fees are not set, the cost to undertake the new functions will need to be absorbed into the FMA's operating costs and be drawn from either Crown funding or the existing FMA levy. Licensing and registration approvals sought from the FMA are private goods. It is therefore not appropriate for the costs arising to the FMA in processing applications to be Crown or levy funded.
- 28 This RIS considers options for setting new fees and adjusting existing fees to enable appropriate recovery of the FMA costs associated with functions under the FMC Act.

Options analysis

- 29 This RIS is divided into three sections:
- Part A: fees associated with the FMC Act registers
 - Part B: levies relating to offer documents
 - Part C: fees where market services providers require FMA consents or approvals

Part A – fees associated with the FMC Act registers

- 30 This part considers fee structure options for distributing the operating costs of the FMC Act registers.
- 31 In line with established fee setting guidelines, the Auditor-General's guidelines *Charging fees for public sector goods and services*, and The Treasury's *Guidelines for setting charges in the public sector*, the register can be described as a private good. It is therefore appropriate for third parties to contribute to the costs of services where the outcomes provide a benefit to them.
- 32 As such, Cabinet agreed that the operating costs of the registers be recovered through fees to users of the registers. The register user group is defined as the issuers of financial products and the managers of managed investment schemes. These users have statutory obligations under the FMC Act to register and maintain their offers and schemes on the registers.
- 33 Issuers and managers will be charged fees (where applicable) for lodging offer documents on the offers register and for registering schemes on the register of managed investment schemes. The service the issuer or manager receives from submitting this information and paying the corresponding fee is the entitlement for the user to have their offer documentation or managed investment scheme available on the register for a 12 month period. These issuers and managers gain the opportunity to operate in the improved regulatory environment, and will benefit from the increased participation in financial markets encouraged by the FMC Act.
- 34 The Ministry acknowledges there will be other users of the registers such as investors, market analysts and the general public. However, the Ministry does not consider it appropriate to charge fees for these users. This is because one of the purposes of the FMC Act, which the registers support, is encouraging more informed investors through better access to relevant and understandable information. To charge a fee would place restrictions on those who could access the information on the registers.
- 35 This approach is also consistent with the recovery of costs associated with other registers such as the Companies Register and the Financial Service Providers Register.

Objectives

- 36 The Ministry has identified the following objectives of the proposed fee settings:

To recover the minimum amount necessary to accurately recover full costs

To achieve administrative efficiency

To achieve alignment with the intent of the FMC Act

- 37 The third objective, to achieve alignment with the intent of the FMC Act, relates to promoting the confident and informed participation of businesses, investors and consumers in the financial markets and promoting innovation and flexibility in the financial markets.
- 38 The fee structure should minimise the risk of placing barriers on issuers' participation in the market, competition, or innovation. In particular it should, to the minimum extent possible, not interfere with decisions around how schemes and offers are structured (for example, by putting all offers into a single registered scheme) or how best to set up the governance of a scheme. The Ministry prefers a fee option that does not affect an issuer's decision on how to present information to investors in a clear, concise and effective manner (for example, by putting many funds as possible into a single offer document to reduce the numbers registered).
- 39 Providing certainty to users is considered an objective in later parts of this RIS, however it is not considered as an objective for Part A. In an electronic register of this kind, the majority of the costs are fixed costs rather than costs driven by user interaction. Therefore, fees for the cost recovery of the register are fixed. This means the fee payer will know the fee amount from the outset.
- 40 In the sections below, we consider the extent to which the options meet these objectives. In selecting preferred options, the objective to recover the minimum amount necessary is weighted first.

Options analysis

- 41 The total operating cost for the registers is estimated to be \$7.9 million (GST exclusive) from 2013/14 through to 31 December 2020. A high level breakdown of the total operating costs is as follows:

Operating costs of FMC registers (000s per year, GST exclusive)

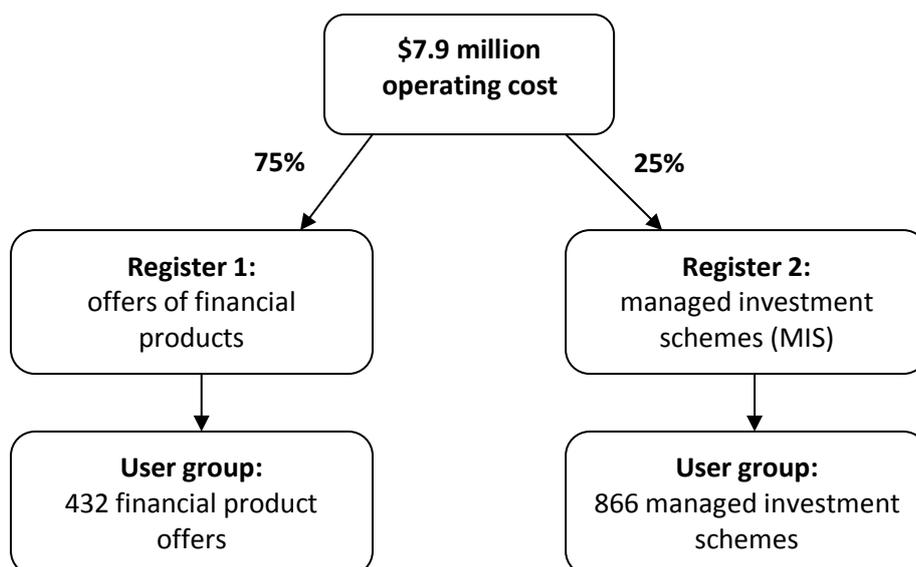
	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20	1/7/20 to 31/12/20
IT registers operating costs	498	416	188	188	188	188	188	94
Registrar operating costs	0	109	219	219	219	219	219	109
Depreciation	0	262	524	524	524	524	524	262
Capital charge	0	126	251	251	251	251	251	126
Total operating costs	498	913	1,182	1,182	1,182	1,182	1,182	591

- 42 The operating costs of the registers can be divided into two components:
- marginal costs – the costs associated with each additional user or interaction with the register, for example, storage space and Registrar involvement.
 - fixed costs – the costs that do not vary for additional users or by interactions with the register, for example, system maintenance.

- 43 In an electronic register of this kind, the majority of the costs are fixed costs rather than costs driven by user interaction. Because most of the fees collected will be going towards the fixed costs of the register, it is more appropriate that fixed fees be set rather than variable fees.
- 44 A fee model has been developed that apportions the operating costs of the registers across the registers' user population from 1 December 2014 (when the registers become operational) through to 31 December 2020. This lifespan is typical for this type of register. By 31 December 2020, the operating costs of the registers will have been fully recovered. From that point forward, the registers will either be maintained in their current form, be updated to reflect more modern technology, or be fully replaced.
- 45 The Ministry has some limits on the availability of information about the user population that can be used to inform the development of the fee model. This limitation primarily arises from the difficulty in predicting the impact new disclosure requirements will have on the nature and volume of offers made after 1 December 2014. The Ministry has based its analysis on quantitative information available under the current regulatory settings. In some instances, the Ministry has needed to make some assumptions on how new disclosure requirements will change the current information. The Ministry has noted where assumptions have been made. More information about these assumptions is detailed in Appendix One.
- 46 The Ministry proposes to review the register fee settings. The review period will be three years following the commencement of the FMC Act. This period allows for the two year transition period and an additional full year for the registers to operate in the new FMC Act environment. Following that period, more accurate information relating to users of the registers is expected to be available as well as a more accurate reflection of the operating costs of the registers.

The fee model

- 47 The operating costs specific to the each of the two registers are not able to be determined. Therefore, to determine how much should be recovered from the users of each register, the Ministry has apportioned the total operating costs across the two registers.
- 48 In taking into account each user group's interaction with the registers, the Ministry considers the following adjusted ratio to be an appropriate apportionment of the costs:
- 75 percent will be recovered from users of the financial products offers register; and
 - 25 percent will be recovered from users of the register of managed investment schemes.
- 49 Using this ratio, the following diagram illustrates how the total operating costs will be split across the two registers:



50 This apportionment is based on the available information regarding volumes. The Ministry has roughly estimated there will be 2519 offers lodged and 1158 managed investment schemes registered over the lifetime of the registers. This resulted in the following ratio:

- 69 percent of total users will be users of the financial products offers register; and
- 31 percent of total users will be users of the register of managed investment schemes.

51 Given the limitations with the information (discussed in paragraph 45), this ratio is likely to be imperfect. Therefore, in addition, the proposed apportionment is based on relative expected use of the different registers. Managers of managed investment schemes have obligations in respect of the registration of their managed investment schemes. This will involve providing the Registrar of Financial Service Providers with any required data and documents relating to the scheme they wish to register. Managers are also required to lodge changes of information and also periodically lodge information with the Registrar of Financial Service Providers while the scheme is registered.

52 Issuers of financial products will have more interaction with the registers due to greater data input and document lodgement requirements. In comparison, the registration and maintenance of a managed investment scheme is relatively simple from a register perspective. It should also be noted that managers of managed investment schemes will also be subject to fees in respect of their managed investment products if they make an offer (arising from the requirement to lodge the offer on the offers register). This means the financial products offers register will have greater use than the register of managed investment schemes.

53 In addition to the status quo, the Ministry has considered three options for distributing the operating costs of the registers across its user population. These options are discussed below.

Option 1

54 Under the first option a fee would be charged every time the user interacts with the register. For example, the user would incur a fee for each upload of a document (such as a product disclosure document) and for every data entry or update (such as providing issuer contact details or a change of address).

55 As discussed above, the FMC Act places statutory obligations on issuers of financial products and the managers of managed investment schemes to register and maintain their offers and schemes on the registers. As such, each user is likely to have many interactions with the register as they comply with the relevant statutory requirements.

56 To be able to assess the amount recovered under this option, the Ministry would be required to predict the number of interactions each user would have with the registers over the lifetime of the registers. The users would not be able to predict their register costs in advance. In addition, there would be a disincentive for users to keep the information on the register up-to-date.

Option 2

57 A second option has been designed with fewer charge points than under option one.

58 For the offers of financial products register, this option would apply one fixed fee for the lodgement of the offer document and a further fee once a year when the issuer is required to confirm that the offer document is still up to date (annual confirmation). The fee would apply evenly to offer documents for equity, debt, derivatives, managed funds and other managed investment products.

59 For the register of managed investment schemes, a fixed fee would apply on initial registration of the managed investment scheme, followed by an annual fee charged on lodgement of the scheme's annual report.

60 Under this option, the following fees would be charged:

Fee charging points	Fee amount (GST inclusive)
<p>Register of offers of financial products</p> <p>Lodgement of a product disclosure document (PDS)</p> <p>Lodgement of Schedule 1 disclosure document</p> <p>Lodgement of overseas offer document</p> <p>Lodgement of annual confirmation</p>	\$2,700 each
<p>Register of Managed Investment Schemes (MIS)</p> <p>Registration of a MIS</p> <p>Lodgement of an MIS's annual report</p>	<p>\$775 each</p> <p>\$275 each</p>

61 The following scenarios demonstrate the impact of this option:

Type of issuer	Year 1	Year 2 (and out-years)
<p>A one off equity issuer:</p> <ul style="list-style-type: none"> lodging a PDS <p>Total costs to issuer:</p>	<p>\$2,700</p> <p>\$2,700</p>	N/A
<p>A continuous debt issuer:</p> <ul style="list-style-type: none"> lodging a PDS annual confirmation of PDS <p>Total costs to issuer:</p>	<p>\$2,700</p> <p>N/A</p> <p>\$2,700</p>	<p>N/A</p> <p>\$2,700</p> <p>\$2,700</p>
<p>Fund manager with one scheme offering 2 funds:</p> <p><u>MIS register</u></p> <ul style="list-style-type: none"> registering the scheme 	\$775	N/A

<ul style="list-style-type: none"> lodging scheme's annual report <u>Offers register</u>	N/A	\$275
<ul style="list-style-type: none"> lodging a PDS containing 2 funds 	\$2,700	N/A
<ul style="list-style-type: none"> annual confirmation of PDS 	N/A	\$2,700
Total costs to issuer:	\$3,475	\$2,975
Fund manager with one scheme offering 6 funds:		
<u>MIS register</u>		
<ul style="list-style-type: none"> registering the scheme 	\$775	N/A
<ul style="list-style-type: none"> lodging scheme's annual report 	N/A	\$275
<u>Offers register</u>		
<ul style="list-style-type: none"> lodging 6 funds across 2 PDS's 	\$5,400	N/A
<ul style="list-style-type: none"> annual confirmation of PDS 	N/A	\$5,400
Total costs to issuer:	\$6,175	\$5,675
OR		
<u>MIS register</u>		
<ul style="list-style-type: none"> registering the scheme 	\$775	N/A
<ul style="list-style-type: none"> lodging scheme's annual report 	N/A	\$275
<u>Offers register</u>		
<ul style="list-style-type: none"> lodging one PDS containing 6 funds 	\$2,700	N/A
<ul style="list-style-type: none"> annual confirmation of PDS 	N/A	\$2,700
Total costs to issuer:	\$3,475	\$2,975

Option 3 (preferred option)

- 62 Option three is essentially the same fee structure as proposed under option two, but provides an alternative charging approach for offers of managed funds and managed investment products.
- 63 Characteristically, offers of managed funds and managed investment products vary in the number funds being offered. For example, some boutique fund providers may only offer one or two funds whereas some will offer significantly more. Under this option, the fee for lodging an offer document for a managed fund on the register of offers financial products would be calculated on the number of funds being offered.
- 64 The effect of this approach would be to make the decision regarding the number of funds contained in an offer document cost-neutral.
- 65 Under this option the Ministry is able to use information available about existing funds to estimate the number of funds going forward. This is more accurate than estimating the number of PDSs that will be used to present these funds going forward.
- 66 For the other issuers of financial products (for example, offers of equity, debt and derivatives) the fee will still be \$2,700 per offer document.
- 67 The fees that would be applied under this option are as follows:

Fee charging points	Fee amount (GST inclusive)
<i>Register of offers of financial products</i> Lodgement of PDS Lodgement of Schedule 1 disclosure document Lodgement of overseas offer document Lodgement of annual confirmation	\$2,700 each
<i>Managed funds on register of offers of financial products</i> Lodgement of PDS Lodgement of annual confirmation of PDS	\$600 per fund contained in PDS
<i>Register of Managed Investment Schemes (MIS)</i>	
Registration of a MIS	\$775
Lodgement of a MISs annual report	\$275

68 The following scenarios demonstrate the impact of this option:

Type of issuer	Year 1	Year 2 (and out-years)
A one off equity issuer: <ul style="list-style-type: none"> lodging a PDS Total costs to issuer:	\$2,700 \$2,700 (same as option 2)	N/A (same as option 2)
A continuous debt issuer: <ul style="list-style-type: none"> lodging a PDS annual confirmation of PDS Total costs to issuer:	\$2,700 n/a \$2,700 (same as option 2)	N/A \$2,700 \$2,700 (same as option 2)
Fund manager with one scheme offering 2 funds: <u>MIS register</u> <ul style="list-style-type: none"> registering the scheme lodging scheme's annual report <u>Offers register</u> <ul style="list-style-type: none"> lodging a PDS containing 2 funds annual confirmation of PDS 	\$775 N/A \$1,200 N/A \$1,975	N/A \$275 N/A \$1,200 \$1,475

Total costs to issuer:	(less than option 2)	(less than option 2)
Fund manager with one scheme offering 6 funds:		
<u>MIS register</u>		
• registering the scheme	\$775	N/A
• lodging scheme's annual report	N/A	\$275
<u>Offers register</u>		
• lodging 6 funds across 2 PDS's	\$3,600	N/A
• annual confirmation of PDS	N/A	\$3,600
Total costs to issuer:	\$4,375	\$3,875
	(less than option 2)¹	(less than option 2)

¹ When compared to the desired use of an offer document, that is, the 6 funds be distributed across more than one PDS, rather than compacted into one in order to reduce costs [table in paragraph 61 refers].

Comparison of options against objectives

69 The following table provides an assessment of the three options against the objectives stated in paragraph 36:

Key:



meets the policy objective



partially meets the policy objective



does not meet the policy objective

	Status quo	Option 1	Option 2	Option 3 (preferred)
Objective 1: recovered the minimum amount necessary to accurately recover full costs	 Would not recover the operating costs of the registers.	 Due to the difficulty in predicting each user's interactions with the registers, the fee level under this option is unable to be calculated with any degree of accuracy. This means there would be little confidence that the fees set would accurately recover costs.	 There is improved ability to predict the amount recovered as compared to option one and as compared to the status quo this option is more likely to recover the operating costs. This option is based on assumptions about how many PDSs schemes will use. This data is currently limited and consequently it is possible the fee level is not set at the precise amount to recover the exact operating costs of the register.	 Same advantages as option two but provides greater certainty around cost recovery. The Ministry can estimate the number of funds offered by managed investment schemes better than the number of PDSs likely to be used by managed investment schemes. This reduces the risk that the amount recovered is less than required to cover the operating costs of the registers.
Objective 2: administrative efficiency	 No additional cost recovery system to administer.	 The high number of charge points involved is complex to administer.	 Simple to administer – fee will be automatically generated.	 Simple to administer – fee will be automatically generated.
Objective 3: to achieve alignment with the intent of	 Minimal impact on how issuers comply with	 Creates a disincentive for keeping material on the register	 Could be a barrier to entry for new entrants that are fund	 Encourages offer documents for managed funds and

<p>the FMC Act</p>	<p>disclosure and governance requirements and would not pose a risk to the intent of the FMC Act.</p>	<p>up to date, and for disclosing additional information that is not specifically required within legislation.</p>	<p>managers offering small numbers of funds. The impact of page limit requirements for offer documents may result in issuers using more than one offer document and therefore increasing costs. May incentivise fund managers to include more funds in each offer document to reduce the number of documents and therefore reduce costs.</p>	<p>managed investment products to be structured in a way that assists presentation of information to investors, for example smaller numbers of funds in an offer document. Minimises the risk that fund managers will structure schemes to have all funds in one scheme (undermining governance objectives of the FMC Act) and risks of barriers to entry to small fund managers.</p>
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Analysis

- 70 The Ministry is of the view that the status quo stated in paragraph 22 would not achieve the objective of recovering the operating costs of the registers.
- 71 The Ministry is of the view that option one would not achieve the objectives. The Ministry would not be able to set a fee with any certainty that it would provide full recovery of the operating costs of the registers. While it has the advantage of being a user pays approach, it is likely to be costly to administer and create additional transaction costs to users that are unnecessary.
- 72 There would also be a disincentive for issuers to keep the information on the registers up to date. This would make it more likely that the information on the register becomes false and misleading, which would not promote the confident and informed participation of investors and consumers in the financial markets.
- 73 The second option would likely achieve full cost recovery and is simple to administer. However, this option will set a flat charge regardless of the size of managed investment schemes.
- 74 The Ministry's preference is to implement option three. As with option two, this option is also simple to administer. In addition, this option provides a charging approach specific to issuers of managed funds and managed investment products. This approach creates the least risk of undermining the intent of the FMC Act. In particular, it creates the least barriers to new smaller fund managers entering the market. It diminishes the risk that fee structures will cause issuers to structure disclosure documents or schemes in ways that undermine the governance and disclosure objectives of the regime.
- 75 The Ministry can estimate the number of funds offered by managed investment schemes better than it is able to estimate the number of PDSs likely to be required by managed investments schemes. Therefore, importantly the Ministry has greater confidence that this option will fully recover the operating costs of the register.

Impact on industry

- 76 The issuers of financial products and the managers of managed investments schemes benefit from the registers. The benefit is primarily the opportunity for issuers and managers to operate in an improved regulatory environment under the FMC Act. The intent of this new regulatory environment is to encourage participation in financial markets. While difficult to quantify, these issuers and managers should benefit from the resulting increase in participation.
- 77 The fees payable for using the registers are new. This means they will be in addition to other costs associated with participating in the regulated environment.
- 78 The following table demonstrates the marginal impact of the registers fees for examples of companies that have sold shares through an initial public offering (IPO):

Company	Capital raised	IPO costs	Marginal impact of register fees
Small IPO	Raised \$22 million	Costs directly attributed to the offer anticipated to total \$2.1 million. Costs include advisers' fees, brokerage and commission, NZX listing fees, legal and accounting, advertising, design and printing costs and	The addition of a \$2,700 register fee would result in a 0.13 percent increase to current costs.

		insurance.	
Medium IPO	Raised \$244 million	Preliminary and issue expenses (including regulatory fees, brokerage, commissions, management fees, share registry expenses, legal fees, investment advisory fees, accounting fees, advertising costs, printing costs and postage and courier costs relating to this offer) are estimated to amount to an aggregate of \$10.9 million.	The addition of a \$2,700 register would result in a 0.025 percent increase to current costs.

79 The following table demonstrates the marginal impact of the registers fees for a smaller continuous issuer. A smaller continuous issuer will be more affected than a larger continuous offer.

Company	Total liabilities	Annual business expenses	Marginal impact of register fees
Small credit union	\$15.5 million	\$1.5 million	The addition of a \$2,700 register fee per year would result in a 0.18 percent increase to business expenses.

80 The following table demonstrates the marginal impact of the register fees on a small fund manager and a larger fund manager:

Company	Products offered	Annual business expenses	Marginal impact of register fees
Boutique fund manager	One scheme offering 3 funds	\$267,293 total expenses	The addition of \$2,575 in register fees (comprised of \$775 fee for scheme registration plus \$1,800 fee for lodging PDS for 3 funds) would result in a 0.96 percent increase to business expenses.
Large fund manager	25 schemes offering 25 funds	\$21,800,000 total expenses Note: this includes \$50,000 FMA levy payable on prospectus registration (25 x \$2,000). The format for this levy payment will	The addition of a \$34,375 register fee (comprised of \$19,375 fee for scheme registration plus \$15,000 fee for lodging PDS for 25 funds) would result in a 0.15 percent increase to operating expenses. Note: this has been calculated using the total operating expenses less the \$50,000 levy on registration of a prospectus.

		change from 1 December 2014 [Part B refers]	
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Impact on consumers

- 81 There is no direct impact on consumers. However, the Ministry assumes that issuers of financial products and managers of managed investment schemes will pass the costs associated with the registers on to investors. It is likely that the transfer of these costs would be by way of an increase in the level of fees charged to investors. However, the distribution of the comparatively low register fees across the number of investors is likely to result in a negligible fee increase.
- 82 The fee model does not place any financial barrier to the access of the information on the registers for other consumers such as market analysts and the general public. This group of consumers will not be impacted by this fee setting until they choose to invest (at which point they may be subject to the minor impacts discussed above).

Consultation

- 83 The Ministry undertook consultation with stakeholders from 30 May 2014 to 27 June 2014. A discussion document titled *Financial Markets Conduct Act Register Fees and Other Financial Markets Authority Fees and Levies* was published on the Ministry’s website. The discussion document sought feedback on the options proposed for the cost recovery of the registers (in addition to feedback on the suite of fee proposals discussed in Part’s B and C of this RIS). The Ministry received a total of 13 submissions on the discussion document of which 10 of these submissions made comment on the proposed register fees.
- 84 The discussion document presented the single fixed fee option as the main approach (discussed as option two in this RIS) and presented the per fund charging for managed funds as a possible alternative option (discussed as option three in this RIS).
- 85 The majority of submitters (7 out of 10) provided comment on the proposals without expressing a preference for either option. One submitter expressed partial support for the main approach while two submitters supported the alternative per fund approach. Supporters of the alternative approach stated this was primarily due to the resulting lower level of compliance costs but also because it encourages the decision on the structure of offer documents to be based on what makes sense for investors, not which option is cheaper for managers.

Summary of common feedback received from submitters:

- 86 Submitters expressed general concern about the size of the fees. Submitters consider the fees for using the register to be high, particularly on top of other compliance costs associated with regulation of the industry. Due to the comparatively small user population, the distribution of costs has resulted in higher fees than desired. However, the Ministry considers that the fee model equally distributes the fees across the users. As demonstrated in the tables above (refer to paras 78 to 80) in the context of many offers of financial products, the costs associated with using the registers are not significant.
- 87 Some submitters queried why the annual confirmation fee was being charged at the same rate as the initial registration fee. Given the offer document is being reused, submitters felt the fee was mismatched with the complexity of the document. The fee arises from the benefit the user receives (for example, having an offer document on the register for a period of 12 months) rather than being driven by the marginal costs of receiving a document (a cost associated with manually checking a document for example). The same fee is set at both charge points because the service the user receives is the same. On uploading an annual confirmation, the issuer continues to use the offer document for another 12 month period and has continuing obligations in respect of the registers.

- 88 Some submitters consider that the benefits to the defined user group are not adequately demonstrated to justify charging fees. The Ministry acknowledges there will be other users of the registers such as investors and market analysts. However, it is not considered appropriate to charge fees for these users given that one of the main purposes of the FMC Act, which the registers support, is encouraging more informed investors through better access to relevant and understandable information. To charge a fee would place restrictions on those who could access the information on registers.
- 89 The question of what happens in the event of over or under collection of fees was also raised in submissions. The Companies Office will use a memorandum account to track costs and revenue, which allows the Companies Office to identify where any over or under recovery has arisen. Following a review, adjustments can be made to the fee settings if necessary. As an example, any over collected revenue can be returned going forward through subsidised fees to those from whom the revenue was collected.
- 90 The discussion document requested industry comment on the Ministry's estimated volumes used to inform the fee settings. In response, submitters had varied opinions on the accuracy of these figures. Some submitters consider the impact of extra regulatory requirements introduced through the new disclosure regime and the associated compliance costs will result in reduced volumes going forward. On the other hand, other submitters consider that the actual volume might be higher than the estimated. Due to the lack of consensus, the Ministry has not adjusted its estimated volumes. The limitations in the availability of this information have been explained in the Appendix.

Part B – levies relating to offer documents

- 91 This part considers the levy on the registration of a product disclosure document (PDS). This levy differs from the fees for lodging a PDS on the register of financial products offers discussed in Part A. The fees in Part A intend to cover the operating costs of the FMC Act registers, whereas the FMA levy discussed in Part B addresses funding the FMA's baseline.

Status quo

- 92 The FMA is funded by a mix of Crown funding, levy funding and fees. An FMA levy was introduced on 1 August 2011 and is to be reviewed later this year. The FMA levy is spread across a number of classes of market participants and also across companies and other registered entities, with a number of charging points. The amount of levy varies according to the type of market participant and also the size of the participant.
- 93 One class is a \$2,000 levy that is payable on the registration of a prospectus. This is collected by the Companies Office on behalf of the FMA. Companies that make one-off issues of debt or equity securities are subject to this levy, as well as continuous issuers. Continuous issuers include managed investment schemes and finance companies that are currently required to annually reregister prospectuses under the Securities Act (which limits the period of prospectus validity).

The FMC Act changes

- 94 The FMC Act replaces the current prospectus and investment statement (required under the Securities Act) with a PDS. The PDS must be lodged, together with other information to make up an online register entry on the register of financial product offers (explained in Part A).

Objectives

- 95 The objectives of this section are:

To recover the minimum amount necessary to accurately recover full costs

To achieve alignment with the charging approach used for the cost recovery of the registers

96 The first objective means ensuring an adequate level of baseline funding for the FMA to perform its functions. The second objective means the charging approach used for the levy should align with the charging approach for the recovery of the FMC Act register operating costs.

97 While Part A included a further objective – to achieve administrative efficiency – this is not included in Part B. This is because this part considers the rolling over of an existing levy. Administrative efficiency is not necessary because the levy collection is already established.

The option analysis

98 The Ministry has not considered the status quo as an option. This is because on implementation of the FMC Act on 1 December 2014, the existing prospectus and investment statement to which the fees and levies are attached to are discontinued. It is therefore not possible to carry the existing levy and fee arrangement forward in its current form.

99 To ensure the FMA continues to be adequately funded, the Ministry has considered two possible options for carrying forward this levy under the FMC Act regime.

Option 1

100 Under this option, the \$2,000 levy will be collected when a PDS or Schedule 1 disclosure document is lodged on the register of financial product offers in respect of an offer. The requirement to pay the levy will be applicable to all regulated offers under Part 3 of the FMC Act and offers under Schedule 1 of that Act for which a disclosure document must be lodged.

101 This option sets a levy equivalent to the current levy on a prospectus. There are some differences between the new and old regimes which would affect who pays and how often they pay:

- Continuous issuers will pay at initial lodgement, but will not be required to pay the levy again for that offer because the FMC Act does not require PDSs to expire.
- The levy will apply to more types of issuers, because in addition to the current prospectus levy payers, derivative issuers and banks will also be required to lodge a PDS or Schedule 1 disclosure document.

102 The FMA levy is due for review two years from implementation. The Ministry proposes to review the \$2,000 levy within this wider review of the FMA levies.

Option 2 (preferred option)

103 Option two is essentially the same proposal as option one, but provides an alternative charging approach for the levy on offers of managed funds and managed investment products.

104 Characteristically, offers of managed funds and managed investment products vary in the number of funds being offered. For example, some boutique fund providers may only offer one or two funds whereas some will offer significantly more. Under this option, the levy for review of a PDS for a managed fund will be calculated on the number of funds being offered. As explained in the Appendix, the Ministry estimates an average of 4.7 funds contained in a PDS for managed funds. The \$2,000 levy has been divided by the average of 4.7 funds to calculate a \$425.53 levy per fund.

105 This option aligns with the charging of fees relating to managed funds preferred in Part A.

106 The effect of this approach is to assist the decision regarding the number of funds contained in an offer document to be cost-neutral and to encourage the structure of offer documents to assist the clear presentation of information to investors.

Comparison of options against objectives

	Option 1	Option 2
Objective 1: recovers the minimum amount necessary to accurately recover full costs	✓ The levy would have been calculated to ensure it covered the FMA’s costs when it was initially set up. The change has only a marginal effect on the overall levy receipts and is about to be reviewed.	✓ The levy would have been calculated to ensure it covered the FMA’s costs when it was initially set up. The change has only a marginal effect on the overall levy receipts and is about to be reviewed.
Objective 2: To achieve alignment with the charging approach used for the recovery of the registers	✗ This option does not align with the charging approach used for the recovery of the registers. This could incentivise fund managers to include more funds in each offer document in order to reduce the number of documents and therefore to reduce costs. Having too many funds in an offer document could compromise the clarity or the effectiveness of the document.	✓✓ The per fund approach ensures that the fund manager’s decision regarding the number of funds contained in an offer document will not be impacted by costs and encourages them to structure offer documents in a way that assists the presentation of information to investors.

Consultation

107 The \$425.53 levy per fund lodged by a managed investment scheme was not included in the Ministry’s consultation as this approach was subsequently developed after further thinking on the register model. Therefore, the submitters’ comments are limited to the concerns of the \$2,000 levy more generally.

108 Two submitters had concerns that retaining the \$2,000 levy will cause over-collection as issuers, especially the large scale ones, may be registering multiple revised PDSs. Another submitter wanted the Ministry to consider the amount collected from continuous issuers required to register new PDSs in setting the levy. One submitter noted the significant increase in costs for lodging a PDS from \$2,327.11 to \$4,700 when the \$2,000 FMA levy is added to the \$2,700 register lodgement fee. One submitter suggested the \$2,000 levy should be charged on a per fund basis so that fund managers are not incentivised to register as few PDSs as possible. This submitter also questioned the reasoning behind exempting mutual recognition offers from the \$2,000 levy. Another submitter suggested that the FMA annually disclose the aggregate revenue collected from levies, the expenses incurred by the FMA relating to its statutory and regulatory responsibilities, and how it monitors and manages its business efficiency.

109 The Ministry notes that under the preferred option, continuous issuers will not be required to pay the \$2,000 levy past initial lodgement of the PDS and a per fund approach has been provided to encourage fund managers to present PDSs in a manner that benefits investors and to encourage smaller new entrants to enter the financial market.

Part C – fees where market services providers require the FMA’s consents or approvals

110 This section considers options for fee settings to enable costs incurred by the FMA in administering functions under the FMC Act (and other relevant legislation) to be appropriately recovered.

The FMA’s current administrative functions

111 The FMA’s current administrative functions are varied. Some consents and approvals are simple processing of applications. In these cases the FMA is able to estimate the costs of undertaking a function or service with some certainty.

112 However, many of the FMA’s functions and services require assessment by suitably qualified staff with significant variation in the complexity and quality of applications received by the FMA. The degree of involvement each application requires is therefore also varied and the costs associated with each application are difficult to predict.

113 Therefore, the FMA currently has a number of fee charging structures in place that have been selected to reflect the most appropriate form of cost recovery for the particular function or service.

The FMA’s functions impacted by the FMC Act

114 The following table shows the number of FMC services or functions that are impacted by the FMC Act. They are in groups A) to F) according to the service types offered by the FMA under different parts of the FMC Act.

Service/function	Current fee/charge
A) Managed investment scheme fees	
• Registration of managed investment schemes	various charges
• Various new permissions under Part 4 of the FMC Act	n/a
B) Schedule 3 scheme fees	
• Approval of Schedule 3 scheme	\$102.22 flat fee (based on 30 minutes of the FMA’s work)
C) Financial market operator licensing fees	
• Licence applications/variations	n/a
• Market rule applications/changes	\$115 admin fee and \$178.25 per hour
D) Financial Advisers Act variation fee	
• Financial Advisers Act variation fee	n/a
E) Financial statements filing fee	
• Filing financial statements	\$255.55 flat fee
F) Offer documents fees	
• Reviewing offer documents	\$327.11 flat fee

115 Because of the wide variety in FMA services and functions, a number of different fee settings are proposed and discussed in this part of the RIS.

116 To assist in determining the most appropriate fees, the Ministry considers the functions and services in this part to fall within two scenarios. These are:

- where the FMA is unable to accurately estimate costs (highly variable)
- where the FMA is able to accurately estimate costs (little variability).

117 The Ministry will discuss each fee in turn and outline its reasoning for classifying the fees into either scenario.

Objectives

118 While the functions and services of the FMA will each require their own tailored fee setting, there are common objectives that the fee settings should achieve. The Ministry has identified the following objectives for all of the proposed fee settings:

To recover the minimum amount necessary to accurately recover full costs
(Weighted: 1st)

To provide certainty for applicants
(Weighted: 2nd)

To achieve administrative efficiency
(Weighted: 3rd)

119 In this part, the objectives are weighted. As discussed in the following three paragraphs, the Ministry considers this necessary to recognise the higher importance of objective one in relation to objective's two and three.

120 The most important objective is to recover the minimum amount necessary to accurately recover full costs. This is because it is important for the FMA to recover its operational costs, especially in relation to its new functions under the FMC Act. Under-recovery of these fees would impact on the FMA's ability to perform its functions effectively.

121 The second weighted objective is to provide certainty for applicants. The Ministry is aware that the FMC Act has imposed a number of new obligations on financial market participants, and added costs as a result. The Ministry acknowledges the importance of having predictable fees for financial market participants.

122 Administrative efficiency is weighted least because the options considered under Part C of this paper are relatively easy to implement and without great cost.

Options analysis

123 The Ministry has considered two fee setting options for Fees A) to F). These options are discussed below. For some fee groups, a status quo option is discussed if appropriate.

Option 1 – hourly rate fee

124 The first option charges applicants per hour spent by the FMA on the application. Each hour is charged at a rate that covers the FMA’s resource costs. The FMA has an established hourly rate of \$178.25 (GST inclusive). This rate was recently increased from \$166.62 (GST inclusive) to set the fee at a level that recovers the FMA’s costs.

125 As an example, if the FMA’s assessment of an application takes 2.5 hours to process, the fee to the applicant will be \$445.62. This is calculated by multiplying the processing time by the hourly rate (\$178.25 x 2.5 hours = \$445.62).

Option 2 – flat fees

126 Under the second option, applicants would be charged a flat fee. The flat fee is set at a level that reflects the average amount of time needed to process all applications of the same type. Flat fees are also calculated using the FMA’s hourly rate of \$178.25. As an example, if the average time taken to assess an application is 2 hours, the flat fee would be set at \$356.50. This is calculated by multiplying the average processing time of 2 hours by the FMA’s hourly rate (\$178.25 per hour x 2 hours = \$356.50). Therefore, calculating a flat fee requires the FMA to be able to accurately estimate its costs in carrying out its administrative functions.

Comparison of options against objectives

127 The Ministry has undertaken an assessment of the two options against the objectives stated in paragraph 118 above for Fees A) to F). To assist in determining the most appropriate fee setting, this assessment has been undertaken for each of the scenarios:

- where the FMA is unable to accurately estimate costs (highly variable); and
- where the FMA is able to accurately estimate costs (little variability).

128 Which scenario the fees in Fees A) to F) fall under will be discussed below. General assessments of the options against objectives under each of the two scenarios are provided in the following tables:

Scenario 1: where the FMA is unable to accurately estimate costs (highly variable)

Key:

- ✓✓ meets the policy objective
- ✓ partially meets the policy objective
- ✗ does not meet the policy objective

	Option 1 – hourly rate (preferred)	Option 2 – flat fees
Objective 1: recovers the minimum amount necessary to accurately recover full costs	<p>✓</p> <p>Most accurate form of cost recovery because the FMA is only recovering the costs of carrying out its function. This reduces the risk of over or under recovery. This is also the fairest method for applicants because they are only charged for the time spent to assess their application.</p>	<p>✗</p> <p>Uncertainty of volumes and the variation of applications make it difficult to average in order to calculate a flat fee. This results in little accuracy in the fee set which leads to either under or over-recovery. Funding collected from elsewhere will likely be used to cross subsidise the function.</p>

<p>Objective 2: provides certainty for applicants</p>	<p>✘</p> <p>Some uncertainty for applicants as they may not know the costs of the fee until after the application has been processed.</p> <p>More detail is provided in the monitoring, evaluation and review section of the RIS to address this concern around the uncertainty of costs.</p>	<p>✓</p> <p>Provides certainty of costs to the applicant – applicant knows what costs they’ll be subject to from the outset.</p> <p>By averaging out the FMA resource needed to process all applications, the cost of some resource intensive applications may be shared amongst all applicants, resulting in the potential for cross subsidisation. This reduces the fairness for applicants.</p>
<p>Objective 3: administrative efficiency</p>	<p>✓</p> <p>Simple to apply.</p> <p>Small increase in administration for the FMA, for example, it needs to log time spent on applications and produce personalised invoicing. Payment is not received prior to the application being processed.</p> <p>However, the FMA charge the hourly rate for other functions and services and the mentioned issues are minor.</p>	<p>✓✓</p> <p>Straight forward to administer – automated invoicing system and payments are received prior to processing.</p>

129 Where the FMA is unable to accurately estimate the costs of its services or functions, the hourly rate is the preferred option because it will recover the full costs.

130 The main concern from submitters about the hourly rate fee setting is that an uncapped hourly rate makes it hard for market service providers to predict costs and provides minimal incentive for the FMA to manage the process efficiently.

131 In response to submitters’ concern, the FMA has advised that in some cases, it may be able to provide the applicant with an estimate of the time it is likely to spend on an application once all the required information has been submitted by the applicant. The estimate of time is supported by the FMA’s assumptions and its experience with other applications, which may be of a similar or different kind. The FMA notes that applicants often request for an estimate of the time the FMA may require when they submit their application.

132 Where appropriate, the FMA may also identify trigger points for when the applicant will be notified of the time spent on their application to date. An example of a trigger point is using the end of a week or month for when the FMA would update the number of hours it has spent on a particular application. For complex applications, the FMA may work with the applicant to agree on trigger points, in order to ensure applicants are as informed and prepared as they can be.

133 The FMA has advised that it can issue invoices for a less amount lesser of an amount than the time it spent on processing the application. The FMA has internal processes that ensure all invoices are reviewed and signed off by a manager before being issued. During the review process, the manager

will assess whether the amount charged is fair and reasonable for the applicant and the amount charged can be reduced as a result.²

134 The FMA’s aim is to process applications efficiently to ensure applicants can get the consent required to do their business as soon as possible. The FMA is happy to provide a breakdown of time spent (including a timesheet listing) upon request. In addition, if the applicant wishes to complain or have their fees reviewed, they can contact the FMA through the normal complaints channel.³

Scenario 2: where the FMA is able to accurately estimate costs (little variability)

Key:

- ✓✓ meets the policy objective
- ✓ partially meets the policy objective
- ✗ does not meet the policy objective

	Option 1 – hourly rate	Option 2 – flat fees (preferred)
Objective 1: recovers the minimum amount necessary to accurately recover full costs	✓ Most accurate for cost recovery because the FMA is only recovering the costs of carrying out their function. This reduces the risk of over or under-recovery.	✓ Costs of all applications would be covered by a flat fee. However, if the fee is set too low it can result in under-recovery.
Objective 2: provides certainty for applicants	✗ Some uncertainty for applicants as they may not know the costs of the fee until after the application has been processed.	✓ Provides certainty of costs to the applicant – applicant knows what costs they will be subject to from the outset. By averaging out the FMA resource needed to process all applications, the cost of some resource intensive applications will be shared between all applicants, resulting in cross-subsidisation. This reduces the fairness for applicants.
Objective 3: administrative efficiency	✓ Simple to apply. Small increase in administration for FMA, for example, it needs to log time spent on applications and produce personalised invoicing.	✓✓ Straight forward to administer – automated invoicing system and payments are received prior to processing.

135 Where the FMA is able to accurately estimate the costs of its services or functions, the flat fee is more appropriate. This is because, if the flat fee is set correctly, it can ensure that the FMA

² The FMA’s assessment will take into account various factors including, for example, the quality of the application submitted, the amount charged for comparable applications, any inefficiencies in processing the application by the FMA and any factors relating to the applicant (for example. not providing all information requested, changes to application etc).

³ The FMA has a process for managing complaints about the services it provides.

adequately recovers its costs, as well as providing applicants with certainty. The submitters generally prefer flat fees.

A) Managed investment scheme fees

136 Part 4 of the FMC Act regulates the governance of managed investment schemes. The Ministry proposes to apply the hourly rate of \$178.25 to the FMA permissions and approvals provided under this part of the FMC Act.

Status quo

137 Currently, obligations for managed investment schemes are split over four pieces of legislation (KiwiSaver Act 2006, Superannuation Schemes Act 1989, Unit Titles Act 1960 and Securities Act 1978) and differ according to the Act that applies. Part 4 of the FMC Act will set common governance obligations for managed investment schemes.

138 These schemes come in many different legal forms: unit trusts, participatory schemes, limited partnerships or contractual schemes. The legal form of the managed investment scheme will determine the fees for registration (ranging from \$0 for participatory schemes, a flat fee of \$102.22 for registration of superannuation schemes, to a flat fee of \$270 for limited partnerships) and the governance rules that apply.

The FMC Act changes

139 From 1 December 2014, managed investment schemes will be governed by Part 4 of the FMC Act. Part 4 of the FMC Act provides a common set of governance rules for managed investment schemes which apply to schemes according to their function, not their legal form. Some distinct sub-categories of schemes are separately identified in the FMC Act, including KiwiSaver schemes, superannuation schemes and workplace savings schemes.

140 Schemes will have to meet new criteria to register under the FMC Act. If a scheme chooses to register under one of the sub-categories of managed investment scheme, they will have to meet further requirements. For example, current registered superannuation schemes (registered under the Superannuation Schemes Act 1989) may register under the FMC Act as a “superannuation scheme”, or as a workplace savings scheme, depending on which set of criteria they meet.

141 Schemes will also have to apply to the FMA for specific permissions and approvals provided for by Part 4 of the FMC Act. For example, approval of a change to a scheme’s supervisor.

142 Because of these changes, it is not possible to simply migrate managed investment scheme registrations to the FMC Act. All schemes that wish to continue operating have to re-register under the FMC Act, as well as new schemes. The Ministry therefore has to set a fee payable for registration, as well as the other Part 4 governance permissions of managed investment schemes.

The option analysis

143 The Ministry considers that the applications for registration and other Part 4 governance permissions of managed investment schemes fall under **Scenario 1 where the FMA is unable to accurately estimate costs (highly variable)** and therefore the hourly rate is the preferred form of cost recovery.

144 Although the Ministry estimates there to be 866 managed investment schemes to transition to the FMC Act and 44 new managed investment scheme registrations each year, there is limited information about how the current managed investment schemes will choose to be registered under the FMC Act. The variety and volume of applications may differ from one category to another. Because the registration requirements are new to the managed investment scheme industry, the Ministry also expects there to be revision in some managed investment schemes’

registration applications. For example, a managed investment scheme might be better suited to register under the category of workplace savings scheme rather than superannuation scheme.

145 For other Part 4 permissions, the level of service required is likely to vary greatly depending on the managed investment scheme in question and the documentation provided. As such, it is difficult to predict the volume and variety of applications under each of the other Part 4 permissions and therefore difficult to accurately estimate costs.

146 The Ministry's proposals are summarised in the table below:

Brief summary of permissions	Proposed fee
Application for registration	\$178.25 per hour
Power to approve changes to debt security trust deeds	
Approval of changes to KiwiSaver scheme fees	
Approval of changes to a restricted scheme's membership eligibility criteria	
Changes to registration as particular type of registered scheme	
Power to approve changes to managed investment scheme governing documents (all schemes) and consent to changes to governing documents (restricted schemes)	
Limits on reversion of scheme property in certain schemes to non-scheme participant contributor	
The FMA's consent to transfer of participant who cannot be contacted	
Transfer with the FMA's consent	
Supervisor or the FMA may make temporary appointment	
Change of supervisor	
Winding up report	
Authorisation for not providing copy of securities register	
Transitional permission – power to approve changes to debt security trust deeds and managed investment schemes' governing documents	
Transitional permissions - conversion of governing documents to separate governing documents	
Transitional permission - amalgamation of schemes	

Consultation

147 The main concern from submitters about the proposed hourly rate fee setting is that an uncapped hourly rate makes it hard for market service providers to predict costs and provides minimal incentive for the FMA to manage the process efficiently. One submitter suggested that for the new fees for the governance of regulated products, the FMA should initially charge a flat fee with a view to adjusting the settings later. One submitter noted that the effects of uncertainty of cost and time of applications may deter potential applications.

148 The submitters' concerns have been addressed in paragraphs 131 to 134 above.

Impact

149 The Ministry expects most of the applications under Part 4 of the FMC Act to relate to registration, especially during the first two years of Part 4 coming into force as managed investment schemes transition into this new regime. For other Part 4 permissions (such as change of supervisor and winding up report), the Ministry expects managed investment schemes to apply for permissions when the need arises.

150 The Ministry estimates there to be 866 managed investment schemes to transition across to the FMC Act and 44 new registrations each year. The FMA estimates the average processing time for a registration of any managed investment scheme to be between 4 to 6 hours. Therefore, a registration could cost between \$713 and \$1,070. The potential cost of this fee model to the industry for the schemes that look to transition across to the FMC Act within the first two years would be somewhere between \$617,458 and \$926,620.

151 For other Part 4 governance permissions, the Ministry is unable to estimate the impact of these fees on industry. Because the Ministry cannot predict future demand for these functions, therefore the volume of applications is too uncertain to quantify.

152 The Ministry proposes to review the final fee setting in the future. This review would take place three years after Part 4 of the FMC Act commences, after which more accurate volumes of approvals and consents will be known.

B) Schedule 3 scheme fees

153 Schedule 3 of the FMC Act regulates single-person retirement schemes. The Ministry proposes to set a flat fee of \$178.25 (based on one hour of work at the FMA's hourly rate) for applications under Schedule 3.

Status quo

154 Single-person retirement schemes are currently registered superannuation schemes under the Superannuation Act. They are categorised as "private schemes" under the FMA's Superannuation Schemes Report and there are 238 private schemes on scheme balance dates in 2012.⁴

155 For registration of a superannuation scheme, the applicant pays a flat fee of \$102.22 (based on 30 minutes of the FMA's work).

The FMC Act changes

156 The schemes may choose to be recognised as single-person retirement schemes under Schedule 3 of the FMC Act. They could also choose to be registered as a managed investment scheme under the FMC Act, but are unlikely to adopt this option, given that Schedule 3 schemes will be subject to fewer accountability requirements and are easier to manage than managed investment schemes.

The option analysis

157 The Ministry considers the Schedule 3 fee to fall under **Scenario 2 where the FMA is able to accurately estimate costs (little variability)**, and therefore considers a flat fee to therefore be the most appropriate form of cost-recovery. This is because the Schedule 3 approval applications are expected to be less complex and more standardised than managed investment schemes.

158 The Ministry proposes to set a flat fee of \$178.25 (based on one hour of work at the FMA's hourly rate) for applications under Schedule 3 of the FMC Act.

⁴ The FMA's Superannuation Schemes Report as at 30 June for the number of private schemes in force on scheme balance dates in 2012.

Impact

159 These single-person retirement schemes will face an increase in flat fees charged for approval from \$102.22 to \$178.25 if they choose to be recognised under Schedule 3 of the FMC Act. If all of the current 238 private schemes choose to be recognised under Schedule 3 of the FMC Act, the impact on the industry would be an increase of \$18,095 in fees paid to the FMA.

C) Financial market operator licensing fees

160 The Ministry proposes to apply an hourly rate of \$178.25 for the Part 5 of the FMC Act requirements for dealing in financial products or markets. Part 5 includes:

- Licensing of markets for trading financial products; and
- Requirements to operate under market rules.

Status quo

161 There is currently no licensing regime for financial product market operators. Financial product market operators are instead required in some circumstances to be registered as an exchange under the Securities Markets Act 1988. The Securities Markets Act imposes general obligations on a registered exchange in respect of the registered markets it operates. NZX Limited is currently New Zealand's only registered exchange.

162 Under the Securities Markets Act, a registered exchange is required to have its market rules and any rule changes approved by the FMA. The FMA charges an administration fee of \$115 plus the hourly rate for these applications.

The FMC Act changes

163 The FMC Act repeals the Securities Markets Act. It introduces a licensing regime for financial product market operators starting from 1 December 2014. The aim of the licensing regime is to improve regulatory oversight of market operators for the trading of financial products. A licence granted by the FMA to operate a financial product market is required, unless an exemption from the licensing requirement has been obtained. In addition to evaluating applications for licences and the exemption of licences, the FMA will also be responsible assessing applications for the variation of licences and applications for licences from overseas applicants.

164 The licensed operator's markets will also be required to operate under market rules. The provisions on market rules are largely carried over from existing law. As was required under the Securities Markets Act, market rules for a financial product market are required to be approved by the FMA.

The option analysis

165 There is no status quo option for the fee relating to licensing of markets for trading financial products as the licensing regime is new under the FMC Act.

166 The Ministry considers the fees relating to the licensing of financial market operators to fall under **Scenario 1 where the FMA is unable to accurately estimate costs (highly variable)** and the hourly rate is the preferred form of cost recovery.

167 This is because the Ministry expects there to be only one or two licensed market operator applications, and for the characteristics of these applicants to vary greatly. The licensing

requirements will also be new to the FMA.⁵ As such, the Ministry proposes to apply the FMA's hourly rate of \$178.25 for licensing applications from financial product market operators.

168 There is a status quo option for the fee relating to requirements to operate under market rules – a \$115 administrative fee plus an hourly rate. However, the Ministry considers the hourly rate of \$178.25 sufficient to accurately recover the FMA's costs and reduces the risk of over recovery. The Ministry therefore proposes to apply the FMA's hourly rate of \$178.25 to market rules and any rule change approvals.

Consultation

169 One submitter was concerned that the FMA may take longer at first to process licensing applications, as the licensing requirements are new, and this could result in higher costs for applicants. No other specific comments were received in relation to these fees except for the general concern around the potential for a lack of incentive for the FMA to assess applications efficiently when it can charge an uncapped hourly rate.

Impact

170 The potential impact of this fee is that the applicant may incur a significant cost depending on the quality and complexity of its application. Because this licensing function is new, the FMA is unable to estimate the time to processing an application. The cost in any case may get passed on to the users of the licensed market. If the cost that is passed onto the users is high, this may in turn reduce the up-take of the licensed market and lessen the benefits gained from market activities.

D) Financial advisers variation fees

171 The Ministry proposes to introduce a variation fee in line with the existing exemption fee under the Financial Advisers Act 2008 (FA Act) and licence variation fees under the FMC Act. The FMA's hourly rate of \$178.25 will apply to these applications.

Status quo

172 Authorised Financial Advisers (AFAs) and Qualifying Financial Entities (QFEs) are regulated under the FA Act and the FMA is responsible for authorising/approving and supervising them.

173 AFAs and QFEs can request a variation to their authorisation/approvals from the FMA, for example to change the scope of the services that they are permitted to provide. There are costs to the FMA in both processing these variations and assessing whether AFAs and QFEs meet the criteria for such a variation. However, unlike other licensing regimes administered by the FMA, there is not a fee prescribed for these variations at present. This would appear to be an unintentional omission.

The FMC Act changes

174 Variation requests are likely to become both more common, and potentially more complex, from 1 December 2014, as AFAs will be subject to additional eligibility criteria if they want to be authorised to provide personalised discretionary investment management services. Existing AFAs who want to vary their authorisation so that they can offer this service will need to satisfy the FMA of a number of additional criteria, which will increase the cost of the FMA processing these variations.

The option analysis

175 The Ministry does not consider the status quo option to be viable. The reason is that, under the status quo, AFAs and QFEs would be able to request variations of their authorisations/approvals,

⁵ As mentioned in paragraph 133 and footnote 2, the FMA's business rules require that invoices are reviewed and signed off by a manager. The manager will assess whether the charge is fair and reasonable. The amount charged on the invoice may be less than the time recorded on the timesheets as a result.

with the costs of processing these applications being absorbed within the FMA baseline. As such, the objective of accurately recovering costs would not be met and cross-subsidisation will happen.

176 The Ministry considers this situation to fall under **Scenario 1 where the FMA is unable to accurately estimate costs (highly variable)**. As the decision to apply for a variation or not sits with individual financial advisers, the volume of these applications is hard to quantify. In addition, to determine whether a variation should be granted, the FMA is likely to have to look into the individual characteristics of the applicant. The time taken to assess is likely to vary greatly.

177 Therefore, an hourly rate is the preferred form of cost recovery. The Ministry proposes to introduce a variation fee in line with the existing exemption fee under the FA Act and licence variation fees under the FMC Act, based on the FMA's hourly rate of \$178.25.

Consultation

178 No submitters commented specifically on these fee proposals except for the general concern around the lack of incentive for the FMA to operate efficiently under an hourly rate model.

Impact

179 The impact of this fee model is that AFAs and QFEs will be subject to a new fee for variations of their authorisations/approvals – \$178.25 multiplied by the number of hours taken by the FMA. While the FMA expects to receive some applications for variations, the overall impact of this fee model on the financial adviser industry cannot be quantified as the volume of applications cannot be predicted.

E) Filing financial statements

180 The Ministry proposes to apply the \$255.55 flat fee for registration of financial statements under Part 7 of the FMC Act.

Status quo

181 Currently under the Financial Reporting Act 1993 (FR Act), an issuer is required to register financial statements relating to itself as the issuer and financial statements in respect of its schemes or other securities (for example, KiwiSaver schemes, superannuation schemes, unit trusts, participatory securities). The filing fee to register financial statements under the FR Act is \$255.55. These fees cover the costs of oversight by the FMA as it is responsible for issuers and their compliance with financial reporting obligations under the FR Act.

The FMC Act changes

182 From 1 December 2014, the same obligation placed upon issuers to register their financial statements will instead be provided under Part 7 of the FMC Act.

The option analysis

183 There is only a change to where the obligation of issuers to register financial statements sits within legislation, i.e. this obligation is now required under the FMC Act instead of the FR Act. There is essentially no change to the service provided by the FMA. The service provided is still an administrative standardised service - **Scenario 2 where the FMA is able to accurately estimate costs (little variability)**. The Ministry therefore proposes to have a flat fee at the same level for issuers that fall under the FMC Act from 1 December 2014.

Consultation

184 No submitters commented on this fee proposal.

Impact

185 There is no impact because the registration of financial statements fee is simply carried over from the FR Act to the FMC Act at the same fee level.

F) Fee for review of prospectus

186 The Ministry proposes to remove the current \$327.11 fee for review of prospectus.

Status quo

187 There is a \$327.11 fee on the lodgement of a prospectus which is collected by the Registrar of Financial Service Providers on behalf of the FMA. The FMA is not obliged to review every registered prospectus but takes a risk-based approach to selecting prospectuses for review. The fee on registration of the prospectus covers the costs in respect of the FMA's reviewing processes. The total amount collected via this fee is approximately \$200,000.

The FMC Act changes

188 The FMC Act replaces the prospectus and investment statement with a PDS, which must be lodged on the FMC register.

The option proposed

189 The Ministry proposes to remove the \$327.11 fee for reviewing offer documents. While the FMA will continue to oversee offer documents, the Ministry considers that the costs of this function are more appropriately recovered through the FMA levy. In addition, removing an unnecessary fee reduces compliance costs.

190 The removal of the \$327.11 fee will be included in the wider review of FMA levies.

Consultation

191 All submitters who chose to comment on the fee for reviewing offer documents agreed with its removal.

Impact

192 Removing this fee means costs would decrease by \$327.11 for each issuer. The aggregate amount of fees collected from reviewing offer documents, approximately \$200,000 per annum, will be absorbed within the FMA baseline. The FMA has advised that this will not compromise its functions.

Consultation

193 The Ministry undertook consultation with stakeholders from 30 May 2014 to 27 June 2014, to seek feedback on the proposed fee settings. A formal discussion document was prepared titled *Financial Markets Conduct Act Register Fees and Other Financial Markets Authority Fees and Levies*. The discussion document was published on the Ministry's website. The consultation was also open to the public.

194 A total of 13 submissions were received, from a range of stakeholders within the financial sector. A summary of the feedback received on proposals has been provided at the relevant sections in this RIS.

Conclusions and recommendations

195 Following the options analysis presented above and feedback from submissions, the Ministry is making the following recommendations:

Part A - FMC Act registers

196 The Ministry recommends a system of costs recovery that charges per fund for managed funds and a flat fee for other financial product offers. This model best achieves the intended policy objectives:

- it implements a system of cost recovery that provides the most reliable basis for predicting that the operating costs of the registers are fully recovered.

- administration is simple as the fee will be automatically generated based on data and information uploaded on the registers.
- supports the objectives of the disclosure and governance regimes by:
 - making the decision on the number funds contained in an offer document cost neutral and allowing issuers to present offer documents in the best interest of investors
 - minimising the risk that fund managers undermine governance objectives by placing as many funds as possible into one scheme
 - minimising barriers for new smaller fund managers to enter the financial market.

197 The fees applicable under this option are as follows:

Fee charging points	Fee amount (GST inclusive)
<i>Register of offers of financial products</i> Lodgement of PDS Lodgement of Schedule 1 disclosure document Lodgement of overseas offer document Lodgement of annual confirmation	\$2,700 each
<i>Managed funds on register of offers of financial products</i> Lodgement of PDS Lodgement of annual confirmation of PDS	\$600 per fund contained in PDS
<i>Register of Managed Investment Schemes</i>	
Registration of a scheme	\$775 each
Lodgement of a scheme's annual report	\$275 each

Part B – levies relating to offer documents

levies relating to offer documents	Current fee/charge	Proposed fee/charge
Registering an offer document	\$2,000 levy	\$425.53 levy per fund for offers of managed funds \$2,000 levy per offer document for offers of other financial products

Part C – fees where market services providers require the FMA's consents or approvals

198 The Ministry recommends the following settings for:

Service/function	Current fee/charge	Proposed fee/charge
A) Managed investment scheme fees		

Registration of managed investment schemes	Various charges	\$178.25 per hour
Various new permissions under Part 4 of the FMC Act	n/a	\$178.25 per hour
B) Schedule 3 scheme fees		
Approval of Schedule 3 scheme	\$102.22 flat fee	\$178.25 flat fee
C) Financial market operator licensing fees		
Licence applications/variations	n/a	\$178.25 per hour
Market rule applications/changes	\$115 admin fee and \$178.25 per hour	\$178.25 per hour
D) Financial Advisers Act variation fee		
Financial Advisers Act variation fee	n/a	\$178.25 per hour
E) Financial statements filing fee		
Filing financial statements	\$255.55 flat fee	\$255.55 flat fee
F) Offer documents fees		
Reviewing offer documents	\$327.11 flat fee	Fee removed

Worked examples of impact upon participants

199 The following worked examples are only indicative of how a participant with certain features will get impacted by the fees and levies proposed in this paper. They do not cover all situations of how market participants will be impacted by the fees and levies.

Example type of issuer	Current charge		Proposed charge	
	Year 1	Year 2 (and out-years)	Year 1	Year 2 (and out-years)
A one off equity issuer:				
Register fees • lodging a PDS	n/a	n/a	\$2,700	n/a
FMA levy • lodging an offer document	\$2,000	n/a	\$2,000	n/a
FMA fees • review of offer documents • filing financial statements	\$327.11 \$255.55	n/a \$255.55	n/a \$255.55	n/a \$255.55

Total costs to one off equity issuer:	\$2,582.66	\$255.55	\$4,955.55	\$255.55
<i>A continuous debt issuer:</i>				
Register fees				
• lodging a PDS	n/a	n/a	\$2,700	n/a
• annual confirmation of PDS	n/a	n/a	n/a	\$2,700
FMA levy				
• lodging an offer document	\$2,000	\$2,000	\$2,000	n/a
FMA fees				
• review of offer documents	\$327.11	n/a	n/a	n/a
• filing financial statements	\$255.55	\$255.55	\$255.55	\$255.55
Total costs to continuous debt issuer:	\$2,582.66	\$255.55	\$4,955.55	\$2,955.55
<i>Fund manager with one scheme* offering 3 funds:</i>				
Register fees				
• registering the scheme	n/a	n/a	\$775	n/a
• lodging a PDS containing 3 funds	n/a	n/a	\$1,800	n/a
• lodging scheme's annual report	n/a	n/a	n/a	\$275
• annual confirmation of PDS	n/a	n/a	n/a	\$1,800
FMA levy				
• lodging an offer document	\$2,000	\$2,000	\$1,276.59 (\$425.53 per fund)	n/a
FMA fees				
• review of offer documents	\$327.11	n/a	n/a	n/a
• registering the scheme	\$102.22	n/a	\$713 (\$178.25 per hour x 4 hours assumed)	n/a
• filing financial statements	\$255.55	\$255.55	\$255.55	\$255.55
• filing scheme's annual report^	n/a	\$102.22 (assuming net assets are under	n/a	n/a

		\$3millions)		
Total costs to small fund manager:	\$2,684.88	\$2,357.55	\$4,820.14	\$2,330.55
<i>Fund manager with one scheme* offering 6 funds:</i>				
Register fees				
• registering the scheme	n/a	n/a	\$775	n/a
• lodging 6 funds across 2 PDSs	n/a	n/a	\$3,600	n/a
• lodging scheme's annual report	n/a	n/a	n/a	\$275
• annual confirmation of PDS	n/a	n/a	n/a	\$3,600
FMA levy				
• lodging an offer document	\$2,000	\$2,000	\$2,553.18 (\$425.53 per fund)	n/a
FMA fees				
• review of offer documents	\$327.11	n/a	n/a	n/a
• registering the scheme	\$102.22	n/a	\$713 (\$178.25 per hour x 4 hours assumed)	n/a
• filing financial statements	\$255.55	\$255.55	\$255.55	\$255.55
• filing scheme's annual report	n/a	\$306.66 (assuming net assets are over \$3millions)	n/a	n/a
Total costs to large fund manager:	\$2,684.88	\$2,562.21	\$7,896.73	\$4,130.55

* assuming the scheme is registered under the Superannuation Schemes Act 1989.

^ the fee for filing annual reports under the Superannuation Schemes Act will be discontinued on 1 December 2014 as the Superannuation Schemes Act is repealed.

200 This Ministry has been unable to fully quantify the benefits. The benefits of the options have been assessed by their ability to meet the objectives. The benefits of this option are considered to significantly outweigh the costs. The increased initial direct costs for issuers under the proposed model. must be assessed in the following context:

- The issuer is able to attract investors and raise capital by having a public repository of readily searchable information about its offer and by which it may participate in the FMC regime.
- Investors benefit from improved information disclosure because they can readily access information about investment opportunities, and because the register will promote increased commentary and analysis on those investments and other secondary uses of this information (for example through tools such as the “fund finder” set up by the Commissioner for Financial Literacy and Retirement Income).
- As set out above, the proposed fees remain small in the context of the overall cost of an offering. For example, in paragraph 78, the Ministry has shown that for a small initial public offering of \$22 million, the costs directly attributed to the offer are expected to total \$2.1 million. Therefore, the additional costs in year 1 compared to the current state (an increase of \$2,372.89) is insignificant. In paragraph 80, the Ministry has also shown that for a boutique fund manager offering three funds, their expected annual business expenses are \$267,293. Therefore, the additional costs in year 1 compared to the current state (an increase of \$2,135.26) are only about a 0.8% increase.
- In assessing these costs, we also need to take account of the wider impact of the new FMC regime that will reduce the costs of making an offer in many situations. For example,-
 - subsequent one-off issues of the same class of quoted securities will have substantial savings and not be required to do a PDS but will instead rely on the previous PDS and continuous disclosure to the listed market. One commentator has recently stated: “In time I think we will see smaller IPOs and frequent use of the same class regime to raise more capital later at (hopefully) higher valuations, or for larger parcels of existing shares to be transacted...with active involvement of the subject issuer – something the old law did not permit without a prospectus.” In addition estimates from investment banking operations suggest that legal fee savings alone from use of the exemption are expected to exceed \$100,000 per offer compared to a normal retail debt offer.
 - There are more exemptions suited to smaller enterprises, for example exemptions for small offers of under \$20 million and under 20 investors and for employee share schemes.
 - the register enables information, such as financial statements, to not be included in the offer document, but instead be placed on the register, reducing costs for issuers, particularly around updating this information.

201 While both options two and three would have net benefits over the status quo in ensuring the register is fully funded, the option selected also has the highest net benefits as against the status quo. In particular, this option minimises the risk that a “one size fits all” approach to fees would act as a barrier to new entrants (particularly smaller schemes), create perverse disclosure and governance incentives, and diminish innovation in the market.

Implementation plan

202 The remaining regulations required to implement phase two of the FMC Act are expected to come into force on 1 December 2014. Subject to Cabinet approval, regulations giving effect to the fee proposals in this paper also will take effect from 1 December 2014.

203 There will be a transition period of up to two years to comply with the new disclosure and governance requirements.

Monitoring, evaluation and review

- 204 The implementation of the second tranche of the FMC Act marks the full implementation of the new FMC Act regime. As such, the FMC Act will be subject to an outcome evaluation after five years (in 2019). The market service provider licensing fees established under phase one of the FMC Act have a review period of five years from implementation.
- 205 In addition to the above evaluations, the fee settings discussed in this RIS will also be monitored and evaluated as described below:

FMC Act Registers

- 206 The operating costs of the registers and the revenue collected through fees will be monitored by the Companies Office through a memorandum account.
- 207 In addition, the registers will also collect and store information provided by the issuers of financial product offers and managers of managed investment schemes, and the FMA as regulator of the register. While not all of the information provided by these industry participants is disclosed publicly on the registers, the information stored in the register database is available for the Ministry to extract where appropriate.
- 208 A review period of three years following the commencement of the FMC Act regime is proposed for the FMC Act registers fees. This period allows for the two year transition period and an additional full year for the registers to operate in the new FMC Act environment. Following that period, more accurate information relating to users of the registers is expected to be available as well as more accurate information on the operating costs of the registers.

Other FMA fees

- 209 The FMA fees discussed in this RIS represent a large subset of fees charged by the FMA for functions under the FMC Act. Given the imperfect nature of the information used to set the fees proposed in this RIS, the Ministry intends to review the fee settings earlier than the five year FMC Act outcome evaluation.
- 210 The Ministry proposes to review the FMA fee settings in Part C three years after the commencement of the FMC Act. As with the register fees above, this period allows for the two-year transition period and an additional year for the functions to fully operate in the new FMC Act environment.
- 211 Following that period, a much more comprehensive set of data will be available on the volumes and variety of applications made to the FMA. In addition, the FMA will have gained a better understanding of its costs involved in undertaking its administrative responsibilities in relation to these functions and services.
- 212 The FMA has advised that it keeps registers for applications it receives and processes under particular sections of financial market laws. As such, the FMA has a database of available information about the nature of applications received, the nature of the applicants and the time spent on each application. This information can be accessed (where appropriate) at any time.

FMA levy on review of an offer document

- 213 A review on the FMA levies, which were introduced on 1 August 2011, is due to commence later this year. The \$2,000 levy on the review of an offer document will be considered as part of this review.

Appendix One

How many offers are expected to be made?

214 Based on information derived about current volumes, and taking into consideration new disclosure regime requirements under the FMC Act, the Ministry estimates the following volumes on the Register of Financial Product Offers:

Register	Volumes	Comment
The Ministry estimates 432 offers will be made on the financial products offers register.	currently 325 prospectuses registered each year.	each prospectus = 1 PDS (difficult to predict the impact of new PDS structure and length restrictions on the number of PDSs).
	forecast of 92 PDS (or annual confirmations for these e PDS).	estimated 40 derivative issuers (information from the FMA). We have assumed that 4 issuers will have 10 PDSs, 16 issuers will have 2 PDSs (separate PDSs for classes of products) and the rest will have 1 PDS.
	10 offers under Schedule 1 disclosure document (from year one out).	
	5 offers made by issuers under the FMA exemptions that require registration of alternative offer documents on the register (from year one out).	

How many offer documents relate to managed funds?

215 Of the 432 offers the Ministry estimates will be lodged on the financial product offers register, approximately 159 of these will be considered managed funds under the FMC Act (the remaining 273 would be offers of other financial products). In deriving this figure, the Ministry assessed prospectuses lodged with the Registrar in the year ended 30 June 2013. The 159 prospectuses included offers made through all KiwiSaver schemes, unit trusts, superannuation schemes and a small number of participatory securities.

How many funds are contained in an offer document?

216 The Ministry has also estimated an average of 4.7 funds contained in each offer document. This was calculated by dividing 747 (the total number of funds offered through managed funds each year) by the 159 managed fund offer documents. The estimated 747 total number of funds that would be offered through managed funds each year was derived by adding:

- an estimated 252 KiwiSaver funds (information from Sorted website)
- an estimated 206 superannuation funds (information from a sample of prospectuses relating to this type of managed fund)
- an estimated 254 unit trust funds (information from a sample of prospectuses relating to this type of managed fund)

- an estimate of 35 funds offered through participatory securities (information from a sample of prospectuses relating to this type of managed fund).

How many managed investment schemes are expected to be registered?

217 Based on information derived about current volumes, and taking into consideration new disclosure regime requirements under the FMC Act, the Ministry estimates the following volumes on the register of managed schemes:

Register	Volumes	Comment
866 schemes on the register of managed investment schemes.	currently: 157 KiwiSaver and Superannuation schemes.	Information derived from the Sorted website.
	currently: 357 unit trusts, and 352 participatory securities.	From information currently recorded with the Companies Office.

218 Following the setting of the register fees, the operating costs of the registers and the revenue generated by the fees will be tracked by the Companies Office. This will help to ensure that fees are set at an appropriate level to recover costs over time. In addition to monitoring the costs and revenue, the Ministry intends to undertake a review of the fee setting. This review would appropriately be taken at least three years following the commencement of the new FMC Act regime. This is due to the greater accuracy of information relating to the volumes of offers and schemes that would be available at this time (once all offers and schemes have transitioned into the FMC Act regime and have had a full year to operate in the new environment).