MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

COVERSHEET

Minister	Hon Kris Faafoi	Portfolio	Commerce and Consumer Affairs
Title of Cabinet paper	**Financial Markets Authority (Levies) Amendment Regulations 2020**	**Date to be published**	1 June 2020

List of documents that have been proactively released		
Date	**Title**	**Author**
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Information redacted	NO

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In Confidence

Office of the Minister of Commerce and Consumer Affairs

Chair, Cabinet Business Committee

Financial Markets Authority (Levies) Amendment Regulations 2020

Proposal

1. This paper seeks authorisation for submission to the Executive Council of the Financial Markets Authority (Levies) Amendment Regulations 2020.

Background

2. The Financial Markets Authority (FMA) is New Zealand's main conduct regulator of financial markets. In recent years the FMA has faced an expansion of its remit and broader cost pressures across its operations.

3. Accordingly, on 6 April 2020, Cabinet agreed to increase the FMA's appropriation by $24.805 million and that this increase will be phased-in over the three years to 2022/23. Cabinet also agreed that the majority ($23.501 million by 2022/23) of this increase will be funded via an increase in the existing levy on financial service providers [CAB-20-MIN-0155.05].

4. On 8 April the Cabinet Business Committee (CBC) agreed to amend the FMA levy model to implement the above increase in appropriation and the amount to be recovered via the levy [CBC-20-MIN-0029]. Specifically the levy was amended to:

    4.1. increase levy amounts to recover the first year of increased FMA funding;

    4.2. revise figures for each levy class's portion of the total amount of FMA levy recovered;

    4.3. update forecasts of the estimated populations within each levy class; and

    4.4. add or adjust classes to reflect market developments.

5. The attached regulations give effect to the above previous Cabinet decisions on the new levy amounts for the first year of phased FMA funding increase. This paper does not contain new policy proposals.

Policy

6. A well-resourced financial conduct regulator is particularly important in times of market stress and potential economic downturn like we are currently experiencing with COVID-19.

7. The FMA has advised that it will be re-allocating its resources in response to current and upcoming market conditions. This is needed because the risk of misconduct

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increases in times of market stress. More supervision and engagement is needed with the financial services sector at this time, and the FMA needs to be resourced to do this. This reinforces Cabinet's recent decision to provide the FMA with greater funding.

8. The attached Financial Markets Authority (Levies) Amendment Regulations 2020 give effect to previous Cabinet's approvals for the first year of new levies that will recover the majority of the increase in the FMA's funding via an increase in the levy.

9. The regulations also revoke financial advice related changes made to the FMA levy regulations in 2019 which are due to come into force on 29 June this year. These changes need to be revoked before they come into force to reflect the recent delay in commencement of the new financial advice regime.[1]

10. Annex One contains a summary of the current and 2020/21 levy amounts for financial service providers. I will seek further decisions from Cabinet in late 2020 to give effect to the remaining two years of phased levies and to set the levies needed for the commencement of the new financial advice regime (now expected to come into force in early 2021).

The previously agreed FMA levy proposals were amended as a result of COVID-19

11. To take into account the potential economic impact of COVID-19 on the financial services sector, the funding and levy proposals agreed to by Cabinet on 8 April [CBC-20-MIN-0029] included adjustments to phase the increases in over three years instead of two as originally planned. This was to lessen the impact that an increase in levy would have upon financial services businesses at a time when revenues may be lower because of the economic impact of COVID-19.

12. This adjustment complements the many other lines of support the Government is currently providing businesses to cushion the impact of COVID-19, including slowing the pace of regulatory change for the financial services sector. This will relieve the FMA of some immediate resourcing pressure, but work on upcoming regulatory reforms and implementation will still need to continue, albeit at a slower pace.

Risk of increasing the levy

13. When consultation was undertaken on the funding proposals the vast majority of submitters stated that the Crown should maintain at least its current percentage of the FMA's funding (25 per cent). As a result of Cabinet's decision to recover most of the increase in the FMA's funding from levy payers, all providers will see at least modest increases in the levies they pay over the next three years.

14. Given this, there may be a strong reaction from financial services providers about any levy increase at all, especially given the Crown will be reducing the relative portion of the FMA's funding it pays. There is also a risk that an increase in the levy on the financial services sector could put additional stress on financial services businesses in the context of COVID-19.

[1] As part of the Government's response to the impact of COVID-19, the commencement of the new regime regulating financial advice was delayed from June 2020 to early 2021.

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15. However, in addition to phasing the increases over three years and the other government support available for businesses, most financial services are essential services and have continued operating through COVID-19 in some form.

16. I would like to emphasise that a well-resourced financial conduct regulator is crucially important in times of market stress and potential economic downturn. The FMA has advised that it will be allocating its resources in response to current and upcoming market conditions. This is needed because the risk of misconduct increases in times of market stress. More supervision and engagement is needed with the financial services sector at this time, and the FMA needs to be resourced to do this. It is also important that those that benefit from the FMA's activities and operating in well-regulated financial markets make a contribution towards its costs.

17. I believe these factors, when combined with the Government's other COVID-19 business support measures should sufficiently minimise the potential impact of higher levies on financial service providers.

Timing

18. The provision in the regulations that revokes the Financial Markets Authority (Levies) Amendment Regulations 2019 will come into force on 26 June 2020. The remainder of the regulations (including the new levy amounts) will commence on 1 July 2020 to coincide with the start of the new financial year.

Compliance

19. Section 68(4) of the Financial Markets Authority Act 2011 requires that levies must be prescribed on the basis that the following costs should be met fully out of the levies:

    19.1. a portion of the costs of the FMA in performing or exercising its functions, powers, and duties, where the size of the portion to be met by the levies under the Act is determined by the Minister; and

    19.2. the costs of collecting the levy money.

20. The regulations comply with each of the following:

    20.1. the principles of the Treaty of Waitangi;

    20.2. the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993;

    20.3. the principles and guidelines set out in the Privacy Act 1993;

    20.4. relevant international standards and obligations;

    20.5. the Legislation Guidelines (2018 edition), which are maintained by the Legislation Design and Advisory Committee.

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Regulations Review Committee

21. I do not consider that are any grounds for the Regulations Review Committee to draw the regulations to the attention of the House of Representatives under Standing Order 319.

Certification by Parliamentary Counsel

22. The draft regulations have been certified by the Parliamentary Counsel as being in order for submission to Cabinet.

Impact Analysis

23. A Regulatory Impact Assessment was prepared in accordance with the necessary requirements, and was submitted at the time policy approvals for the contents of the regulations were obtained [CBC-20-MIN-0029].

Publicity

24. MBIE will communicate the publication of the regulations to key industry stakeholders once the regulations have been gazetted.

Proactive release

25. This paper will be published on MBIE's website, subject to withholdings as appropriate under the Official Information Act 1982.

Consultation

26. The FMA was consulted during the drafting of the regulations in this paper.

27. The Treasury and the Reserve Bank of New Zealand were consulted on the contents of this paper. The Department of Prime Minister and Cabinet was also informed.

Recommendations

I recommend that the Cabinet Business Committee:

1. **note** that on 8 April 2020 the Cabinet Business Committee [CBC-20-MIN-0029] agreed to make changes to the Financial Markets Authority levy to reflect;

   1.1. the first year of increased levies to recover most of the Financial Markets Authority's funding increase;

   1.2. revised forecast levy populations and portions of the total amount of Financial Markets Authority's levy recovered from each levy class;

   1.3. market developments that justify new or adjusted levy classes;

2. **note** that the Financial Markets Authority levy proposals previously agreed by Cabinet [CBC-20-MIN-0029] took into account the impact of COVID-19;

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3. **note** that agreement to the second and third years of phased levies and levies for the new financial advice regime will be sought from Cabinet in late 2020;

4. **note** that the attached regulations are prescribed in accordance with section 68 of the Financial Markets Authority Act 2011 and will give effect to the decision referred to in recommendation 1 above;

5. **authorise** the submission to the Executive Council of the Financial Markets Authority (Levies) Amendment Regulations 2020.

Authorised for lodgement

Hon Kris Faafoi
Minister of Commerce and Consumer Affairs

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Annex One: Changes to the FMA levy

Levy class	Type of levy (fixed levy or tiers)	Current levy (excl. GST)	2020/21 levy (excl. GST)	2020/21 levy (incl. GST)
Class 1 New financial service provider (FSP) registrations	Fixed levy	$460	$480	$552
Class 2 Registered FSPs that are registered banks or licensed NBDTs	Total assets exceed $50 billion	$535,000	$900,000	$1,035,000
	Total assets exceed $10 billion but not $50 billion	$130,000	$240,000	$276,000
	Total assets exceed $2 billion but not $10 billion	$38,000	$72,600	$83,490
	Total assets exceed $1 billion but not $2 billion	$22,000	$37,000	$42,550
	Total assets exceed $500 million but not $1 billion	$10,500	$13,300	$15,295
	Total assets exceed $40 million but not $500 million	$7,700	$8,400	$9,660
	Total assets do not exceed $40 million	$2,400	$2,500	$2,875
Class 3 Registered FSPs that are licensed insurers	Annual gross premium revenue exceeds $500 million	$150,000	$300,000	$345,000
	Annual gross premium revenue exceeds $100 million but not $500 million	$38,000	$70,000	$80,500
	Annual gross premium revenue exceeds $50 million but not $100 million	$24,000	$41,000	$47,150
	Annual gross premium revenue exceeds $10 million but not $50 million	$11,000	$16,000	$18,400
	Annual gross premium revenue does not exceed $10 million	$2,200	$4,200	$4,830
Class 4 Registered FSPs that are supervisors licensed in respect of the supervision of debt securities and managed investment products in registered schemes	Total supervised interests exceed $5 billion	$138,000	$200,000	$230,000
	Total supervised interests exceed $1 billion but not $5 billion	$76,000	$90,000	$103,500
	Total supervised interests exceed $100 million but not $1 billion	$26,000	$35,000	$40,250
	Total supervised interests do not exceed $100 million	$6,400	$9,200	$10,580
Class 5	Total managed assets exceed $10 billion	$380,000	$460,000	$529,000

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Registered FSPs that are managers	Total managed assets exceed $5 billion but not $10 billion	$270,000	$320,000	$368,000
	Total managed assets exceed $2 billion but not $5 billion	$120,000	$160,000	$184,000
	Total managed assets exceed $1 billion but not $2 billion	$80,000	$100,000	$115,000
	Total managed assets exceed $500 million but not $1 billion	$45,000	$58,000	$66,700
	Total managed assets exceed $100 million but not $500 million	$25,000	$26,500	$30,475
	Total managed assets exceed $20 million but not $100 million	$6,400	$7,200	$8,280
	Total managed assets do not exceed $20 million	$1,400	$1,700	$1,955
Class 6 Registered FSPs where One of the following amounts (being whichever applicable amount is the greatest):	(a) the person is an entity authorised to undertake trading activities on licensed markets	$4,500	$6,600	$7,590
	(b) the person is a contributory mortgage broker	$1,800	$2,700	$3,105
	(c) the person is registered for the financial service described in section 5(1)(k) of the FSP Act, other than — (i) persons included in class 6A, 6B, 6C, or 6D; and (ii) DIMS wholesale providers	$5,300	$8,000	$9,200
	(d) the person holds a market services licence that covers the service of acting as a derivatives issuer	$9,600	$13,500	$15,525
	(e) authorised financial advisers	$330	$380	$437
Class 6A Registered FSPs that are DIMS retail providers	Funds under management exceed $2 billion	$36,000	$57,000	$65,550
	Funds under management exceed $500 million but not $2 billion	$14,000	$24,000	$27,600
	Funds under management exceed $100 million but not $500 million	$4,800	$8,100	$9,315

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	Funds under management exceed $50 million but not $100 million	$2,400	$3,900	$4,485
	Funds under management do not exceed $50 million	$950	$1,600	$1,840
Class 6B Registered FSPs that are providers of a regulated client money or property service other than persons in class 6(a) or 6C	Fixed levy	$1,800	$2,800	$3,220
Class 6C Registered FSPs that are custodians and persons providing custodial services	Fixed levy	$6,300	$9,100	$10,465
Class 6D Registered FSPs that provide a crowd funding service or a peer-to-peer lending service	Fixed levy	$2,600	$2,900	$3,335
Class 6E Registered FSPs that are licensed to provide the licensed market service of acting as an administrator of a financial benchmark	Fixed levy	N/A new class	$17,500	$20,125
Class 7 Registered FSPs that are not included in any of classes 2 to 6D	Fixed levy	$460	$540	$621
Class 8 Listed issuers other than persons included in class 8A	Fixed levy plus any debt collection costs incurred in relation to the persons	$2,600	$3,600	$4,140
Class 8A Listed issuers with a market capitalisation less than $60 million or $100 million in the case of listed issuers that issue quoted managed investment products	Fixed levy plus any debt collection costs incurred in relation to the persons	N/A new class	$900	$1,035
Class 9	All except for PDS of a managed fund	$2,600	$3,500	$4,025

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Persons that lodge a PDS	Per fund, multi-fund investment option, or life-cycle stage covered by a PDS, in the case of a managed fund	$530	$700	$805
Class 10 Licensed market operators that operate 1 or more conventional markets	Fixed levy plus any debt collection costs incurred in relation to the persons	$29,000	$48,000	$55,200
Class 10A Licensed market operators that operate 1 or more growth markets (other than persons included in class 10)	Fixed levy plus any debt collection costs incurred in relation to the persons	N/A new class	$7,000	$8,050
Class 11 FMC reporting entity	Fixed levy	$48	$60	$69
Class 12 Accredited bodies	Fixed levy per specified licence	$2,600	$4,000	$4,600
Class 13 Overseas auditors holding a specified licence	Fixed levy plus any debt collection costs incurred in relation to the persons	$2,600	$4,400	$5,060
Class 14 Persons that apply for registration or incorporation	The Building Societies Act 1965	$9	$17.39	$20
	The Companies Act 1993	$9	$17.39	$20
	The Friendly Societies And Credit Unions Act 1982	$9	$17.39	$20
	The Limited Partnerships Act 2008	$9	$17.39	$20
Class 15 Persons that are registered or incorporated, and make an annual return	The Building Societies Act 1965	$9	$17.39	$20
	The Companies Act 1993	$9	$17.39	$20
	The Friendly Societies And Credit Unions Act 1982	$9	$17.39	$20
	The Limited Partnerships Act 2008	$9	$17.39	$20

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