

**Proposed fee and levy changes for the  
Financial Markets Authority, External  
Reporting Board, New Zealand  
Companies Office, and Insolvency and  
Trustee Service**

**Discussion Document**

**June 2011**

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## 2. Information for submitters

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Queries, requests for copies of the discussion document, and submissions in response to this discussion document should be sent to either:

Email:	investment@med.govt.nz
Post:	Investment Law Ministry of Economic Development PO Box 1473 Wellington

It would be useful if submissions sent in hard copy were also provided in electronic form (Adobe Acrobat, Microsoft Word or compatible format).

The closing date for submissions is 5.00pm, Friday 8 July 2011.

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### 3. Executive summary

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This discussion document considers a range of potential changes to the fees and levies that fund the institutions that regulate New Zealand's corporate environment and financial markets. Funding changes are necessary to enable government agencies to continue to provide high quality existing services and to fund new functions required to improve the regulatory environment.

Two new regulatory bodies will be, or have recently been, established: the Financial Markets Authority (FMA) and the External Reporting Board (XRB). These organisations are intended to perform functions significantly beyond those performed by previous or current regulators and require additional funding.

In addition, two business units within the Ministry of Economic Development require changes to the funding of their existing business services. Fee changes are required to return the funding of the New Zealand Companies Office (NZCO) to sustainable levels over the medium to long term. There are also shortfalls in the funding of the Insolvency and Trustee Service (ITS) to administer company liquidations.

Cabinet has decided that the additional funding required will be sourced from third party fees and levies. This discussion document consults on proposals for collecting these fees and levies, including:

Financial Markets Authority:

- Either:
  - A Financial Adviser Act 2008 (FAA) levy on Registered Financial Advisers, Authorised Financial Advisers, and Qualifying Financial Entities and the advisers for which they are responsible; and, (Option 1) an FMA levy on either Financial Service Providers and certain issuers, or (Option 2) an FMA levy on all companies and other entities;
  - Or:
    - (Option 3) A combined FAA/FMA levy on either Financial Service Providers and certain issuers, or (Option 4) a combined FAA/FMA levy on all companies and other entities.
- An auditor levy on each licensed auditor and fees for practice reviews payable by the firm under review.

External Reporting Board:

- An XRB levy on all companies and other entities.

New Zealand Companies Office:

- Revised registration fees and a reinstated annual return fee for companies and other entities.

- Revised Personal Property Securities Register search and financing statement/renewal fees.

Insolvency and Trustee Service:

- Liquidation fee for all companies.

We expect that the fees and levies proposed in this discussion document will apply from 1 February 2012. These fees and levies will be reviewed two years after the implementation date, once the number of entities levied and the regulatory and operating changes have been more firmly established, and their costs are clearer.

## 4. Questions for submitters

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### **Financial Markets Authority**

Of the options in this paper:

1. Which is your preferred option?
2. Is there an alternative you would prefer?
3. Why have you chosen your preferred option?

### ***FMA Levy***

4. Which types of entities should be required to pay the Financial Markets Authority (FMA) levy?
5. Is it desirable to vary the amount of the FMA levy applied to different groups?
6. How could this be achieved, given the limited information available for structuring such tiers?

### ***FAA Levy***

7. Are the Financial Adviser Act 2008 (FAA) levy tiers appropriate?
8. Should any other financial service providers pay the FAA levy e.g. brokers?

### ***Auditor Regulation***

9. What are your views on the proposed auditor levy and practice review fees?

### **External Reporting Board (XRB)**

10. Should the XRB levy be paid by all companies, limited partnerships, building societies, credit unions, industrial and provident societies, friendly societies, and contributory mortgage brokers as proposed? If not, who should pay the XRB levy instead?

### **New Zealand Companies Office**

11. What are your views on the proposed companies office incorporation and annual fees?
12. What are your views on the proposed Personal Property Securities Register (PPSR) fees, including the differentiation in fees for wholesale and retail PPSR clients?

### **Insolvency and Trustee Service**

13. What are your views on the proposed liquidation fee of \$2.50 per registered company?

## 5. Introduction

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1. This discussion document considers a range of potential changes to the fees and levies that fund the institutions that regulate New Zealand's corporate environment and financial markets. Funding changes are necessary to enable government agencies to continue to provide high quality existing services and to fund new functions required to improve the regulatory environment.
2. There are a number of recent changes to these institutions involving the establishment of new regulatory bodies. The Financial Markets Authority (FMA) was established on 1 May 2011, by the Financial Markets Authority Act 2011, and is the new consolidated market conduct regulator of New Zealand's financial markets. The External Reporting Board (XRB) will replace the existing Accounting Standards Review Board (ASRB) from 1 July 2011 and will be responsible for all financial reporting and audit and assurance standards-setting. These organisations are intended to perform functions significantly beyond those performed by previous or current regulators and require additional funding.
3. Cabinet has decided the total funding levels for the FMA and XRB, and the amount of Crown funding that will be provided. Cabinet has agreed that additional funding required to reach set funding levels will be sourced from third party fees and levies.
4. There are also pressing funding issues for existing government agencies. The funding of the New Zealand Companies Office (NZCO) and the Insolvency and Trustee Service (ITS) has not been sufficient to cover the costs of the services provided by them, and both are experiencing deficits that must be corrected.
5. Following the analysis of submissions, new levy and fee regulations will be promulgated, as appropriate, under section 68 of the Financial Markets Authority Act 2011, section 10 of the Financial Reporting Amendment Act 2011 (which inserts a new section 42C into the Financial Reporting Act 1993), section 84 of the Auditor Regulation Act 2011, section 372 of the Companies Act 1993 and section 190 of the Personal Property Securities Act 1999. The new fees and levies need to commence by 1 February 2012.
6. Due to the uncertainty inherent in introducing fees and levies to fund new government services, any fees and levies arising from the proposals in the attached discussion document will be reviewed two years after their implementation date, once the number of entities levied and the regulatory and operating changes have been more firmly established and their costs are clearer.

## 6. Proposed fee and levy changes

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7. The proposed options presented in this section are discussed with reference to the following objectives:
  - Administrative simplicity and low transaction costs in collecting fees and levies.
  - Those benefiting from the regulatory functions, or contributing to risks that warrant a regulatory response, should bear the costs of those regulatory functions.
8. The proposed FMA, XRB, NZCO, and ITS fees and levies need to commence on 1 February 2012 and would be reviewed two years from their implementation date.
9. All of the proposed fee and levy changes in this section are presented inclusive of Goods and Services Tax.

### 6.1 Financial Markets Authority

10. Section 68 of the Financial Markets Authority Act 2011 provides that levies may be prescribed to meet a portion of the costs of the FMA in performing or exercising its functions, powers, and duties under the FMA Act and any other enactment.

#### 6.1.1 Separate FAA and FMA levy

##### 6.1.1.1 FAA levy

11. When the Financial Advisers Act 2008 (FAA) was approved, Cabinet decided that this regulatory work, which costs the FMA around \$6.2 million per year, would be fully third party funded. Fees are already charged under the FAA for the authorisation of financial advisers and other direct services. An FAA levy will recover the portion of the appropriation that is not covered directly by FAA fees revenue. The purpose of the FAA levy is to contribute to the funding required by the FMA, the code committee, and the disciplinary committee, in performing their functions and duties under the FAA.
12. Collection of FAA fees began in 2010/11 and has recovered \$2.2 million in 2010/11. Other costs incurred covering the implementation of the regime in the 2009/10 and 2010/11 years, and the enforcement of the regime until the levy begins in 2012, will be recovered retrospectively through the levy. The following FAA levy is proposed:



**Table 1: Proposed Financial Advisers Act 2008 (FAA) levy**

Amount	Payee	Frequency	Collection
\$680	AFA not associated with a QFE	Registration and annually	Online through Financial Service Providers Register with registration and annual confirmation
\$8000	QFE <sup>1</sup>	Registration and annually	Online through Financial Service Providers Register with registration and annual confirmation
\$680	AFA associated with a QFE	Registration and annually	Online through Financial Service Providers Register with registration and annual confirmation
\$680	QFE Adviser (Category 1)	Registration and annually	Invoiced by the Financial Markets Authority, on behalf of the Crown
\$140	QFE Adviser (Category 2)	Registration and annually	Invoiced by the Financial Markets Authority, on behalf of the Crown
\$140	RFA <sup>2</sup>	Registration and annually	Online through Financial Service Providers Register with registration and annual confirmation

13. When the existing FAA fees were consulted on in 2009<sup>3</sup>, MED signalled that the Securities Commission intended to eventually charge an operational levy payable to the Securities Commission under s153 of the FAA, in order to recover costs in respect of the surveillance and enforcement work the Securities Commission would undertake across the entire financial adviser profession.
14. The amount of the FAA levy was to be determined once the actual number and structure of Authorised Financial Advisors (AFAs) and Qualifying Financial Entities (QFEs) was better known, following full implementation of the FAA regime. All AFAs and QFEs were required to be registered by 31 March 2011, so we now have the information necessary to design an appropriate FAA levy. However, section 153 of the FAA was repealed by the FMA Act and replaced by a new levy making authority in Section 68 of the FMA Act. Section 68 is also the authority that will be used to apply a general FMA levy and one option considered below is to combine the FAA levy with the FMA levy.
15. The preferred basis for charging the FAA levy is either per adviser or per entity, and the amount of the levy is varied. Where the FAA levy is applied per adviser, the amount of the FAA levy reflects the regulatory costs relating to the risks associated with the complexity of the products advised upon, and not the organisational structure within which the individual is providing the advice.

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<sup>1</sup> QFEs should expect to be invoiced for the Category 1 and 2 advisers for which they are responsible

<sup>2</sup> Registered Financial Adviser

<sup>3</sup> Discussion Document "Financial Service Providers (Registration and Dispute Resolution) Act 2008 and Financial Advisers Act 2008: Fees Regulations" October 2009

16. QFEs are typically large institutions, like banks, that are authorised by the FMA to take responsibility for the conduct of the financial advisers they employ. The level of the FAA levy applied to QFEs acknowledges the regulatory attention the FMA will need to apply to a QFE in its own right, irrespective of its size. It could be argued that QFEs should have a lower FAA levy to pay for affiliated advisers because they take responsibility for compliance work for that adviser. However, non-QFE firms are expected to have similar compliance systems and controls in place. Under the FAA regime overall, QFEs still benefit from registration and authorisation fee reductions compared to non-QFE firms.
17. Although graduating the amount of the FAA levy in this manner increases administrative complexity, wherever possible, the proposed FAA levy will be collected from advisers online by the NZCO through existing channels, apart from where the FMA will need to invoice QFEs directly for their category one and two advisers. The FAA levy proposal should therefore still achieve the objective of ensuring low administrative complexity and transaction costs in collection.
18. Please note that the proposed FAA levy amounts are sensitive to the market volume assumptions in Appendix 4. If the entity numbers behind the levy calculation change once the number of authorised financial advisers become clear on 1 July 2011 (the date when all financial advisers have to be authorised in order to give financial advice to retail clients), the level of the FAA levy will be revised.

#### **6.1.1.2 FMA levy**

19. When establishing the FMA, the government decided that the additional funding required to reach set funding levels for the FMA would be sourced from third party revenue.
20. An “FMA levy” is proposed for the purpose of funding the FMA’s general monitoring, supervision, surveillance, and investigation of financial markets. The FMA levy needs to recover the FMA’s costs that are not funded by the Crown through direct fees for services (e.g. AFA authorisation fee), or by more targeted levies (e.g. proposed trustee levy). For example, in 2014/15 the FMA levy will need to recover \$7.644 million.

**Table 2: FMA levy options**

Options	Amount	Payees	Frequency	Collection
Option One (Preferred option)	\$910	Financial service providers who are required to be registered under the Financial Service Providers (Registration and Dispute Resolution) Act 2008 and issuers who are required to file financial statements under the Financial Reporting Act 1993.	Registration and annually	Online through the Financial Service Providers Register at registration and with annual confirmation <sup>4</sup>
Option Two	\$20	All companies, limited partnerships, building societies, credit unions, industrial and provident societies, friendly societies, and contributory mortgage brokers.	Registration and annually	Online through the appropriate New Zealand Companies Office register at registration and with annual return

21. There are estimated to be 9,500 payees under Option One. Market volume assumptions for Option 2 can be referred to in Appendix 4.

### Option One

22. Section 68 of the FMA Act provides authority to levy a very broad range of financial market participants and other entities or “specified persons”, who benefit from the regulatory functions of the FMA to a greater or lesser degree, and some of whom are difficult to identify for the purposes of collecting a levy.
23. For example, the definition of financial markets participants in Section 4 of the FMA Act is not thought to be an appropriate practical basis for the purposes of charging the FMA levy. For example, the definition of financial markets participant includes an expert within the meaning of the Securities Act 1978, and such a person does not benefit directly from the actions of the financial markets regulator and is not able to be readily identified for the purposes of collecting a levy.
24. In practice, the majority of financial markets participants are either financial service providers who are required to be registered under the Financial Service Providers (Registration and Dispute Resolution) Act 2008 or issuers who are required to file financial statements under the Financial Reporting Act 1993. Therefore, the preferred option is to charge a levy from the stated financial service providers and issuers.

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<sup>4</sup> There might be a small number of issuers who aren't registered on the FSPR, for which an alternative method of collection will need to be considered.

25. Your feedback is sought on whether Option 1 applies the FMA levy to the appropriate groups. This decision needs to be balanced against the practicalities of collecting the levy. Theoretically, there is a small remaining number of financial markets participants not captured by Option 1. For example, while public issuers listed on NZX would be levied under the proposed definition, some private companies have their shares traded also, through platforms such as Unlisted, but would not be levied. Another example might be day-traders who trade in futures in their own name on behalf of other investors.
26. Option 1 proposes that a greater share of the FMA levy be targeted at firms who are more heavily involved in New Zealand's financial markets. Although a more targeted levy increases administrative complexity, wherever possible, the proposed fees and levies will be collected online by the NZCO through existing channels.
27. Option 1 is preferred because it best balances the objective that: those benefiting from regulatory functions provided, or contributing to risks that warrant a regulatory response, should bear the costs of those regulatory functions; against the objective of low administrative complexity and transaction costs in collecting fees and levies.
28. In addition, Option 1 may increase the accountability of the FMA for its use of resources. The FMA levy will be targeted at a relatively small number of market participants who each pay more, rather than applying the FMA levy to all companies and other entities. The drawback is that the total costs of the FMA would be divided among a smaller number of levy payers than in Option 2 and the amount paid by each would therefore be significantly higher.
29. Many businesses benefit from the regulation of financial markets through lower financing costs. Although these businesses may not contribute directly to the cost of this regulation by paying the proposed FMA levy under Option 1, they still contribute indirectly through general taxation and the Crown component of FMA funding.

#### Basis for graduating the FMA levy

30. Under Option 1, it may be desirable to tier the FMA levy for different groups, some of whom would pay more than \$910 and some who would pay less. It may be desirable to tier the FMA levy because some groups benefit more than others from well regulated financial markets, and because some participants contribute more risk to the operation of financial markets. One example of a situation where it may seem better to tier the FMA levy is in its application to Authorised Financial Advisers (individuals) and Qualifying Financial Entities (typically large institutions like banks). It is possible that smaller entities and individuals may seek more cost effective operating structures in response to a flat FMA levy.
31. A tiered structure for the FMA levy has not been proposed here because there did not seem to be an effective way to distinguish between classes of financial service providers and issuers based on the information currently collected. For example, information about the nature and number of financial services carried out by a financial service provider is collected through the FSPR, but a financial service provider can register for multiple financial services so it is difficult to identify distinct classes of financial service provider.

32. Submissions on the Financial Markets (Regulators and KiwiSaver) Bill were split on the preferred basis for graduating the levy. It is not clear what criteria to use when allocating costs within categories to achieve an efficient and equitable solution. Also, graduating the FMA levy increases complexity and the costs of collection. Your feedback is particularly appreciated on this issue.

## **Option Two**

33. Option 2 provides a relatively broad base for collecting an FMA levy. One reason for applying the FMA levy to a broader range of companies and other organisations is that the FMA will be enforcing financial market laws in respect of all companies in New Zealand. For example, section 13 of the Securities Markets Act prohibits misleading or deceptive conduct in relation to any dealings in securities (such as shares and debt). This includes the shares and debt of all companies, both large stock market-listed companies and also small unlisted companies.
34. The FMA is tasked with facilitating the development of financial markets for the benefit of all companies in New Zealand. All companies in New Zealand benefit from fair, efficient, and transparent financial markets. Countries with well-functioning financial markets have a lower cost of capital. These businesses contribute to the cost of regulation indirectly through general taxation and the Crown component of FMA funding. Under Option 2, these organisations would also contribute directly through the FMA levy.
35. Collecting from all relevant entities will be less complex and therefore somewhat easier to administer than alternatives that target particular entities. However, it may be argued that businesses that benefit more than average from financial markets, or who consume more FMA resources than average, ought to pay a greater share of the FMA's general costs, as in Option 1. Therefore, Option 2 is not preferred compared to a more targeted basis for charging the FMA levy.

### **6.1.2 Combined FMA and FAA levy**

36. As an alternative for collecting the FMA and FAA levies, the discussion document consults on a combined option which ensures administrative simplicity. Essentially, this replicates Options 1 and 2 for the FMA levy, but the FMA levy is now combined with the FAA levy and recovered from the same payees. A combined levy is therefore far less complex than the options already proposed. As a result, a combined levy would be much easier to collect, but would lose the benefits of targeting and the tiers that have been presented with the FAA levy proposal above.

**Table 3: Combined FMA and FAA levy**

Options	Amount	Payee	Frequency	Collection
Option 3	\$1800	Financial service providers who are required to be registered under the Financial Service Providers (Registration and Dispute Resolution) Act 2008 and issuers who are required to file financial statements under the Financial Reporting Act 1993.	Registration and annually	Online through the Financial Service Providers Register at registration and with annual confirmation <sup>5</sup>
Option 4	\$40	All companies, limited partnerships, building societies, credit unions, industrial and provident societies, friendly societies, and contributory mortgage brokers.	Registration and annually	Online through the appropriate New Zealand Companies Office register at registration and with annual return

37. The main advantage of a combined levy is that it would dramatically reduce the amount payable by each FAA entity or individual. This represents a disadvantage to the broader groups of financial service providers, companies, and other entities who would be expected to contribute to the costs of financial adviser regulation with a combined levy.
38. A combined levy has other disadvantages compared to the proposal for a separate, tiered FAA levy, including that:
- smaller entities and individuals will bear a disproportionate levy burden compared to larger entities. This does not reflect the risks associated with the entities financial service activities. For example, a sole trader financial adviser will pay the same amount as a large financial institution that conducts banking, issuing, broking, and credit providing activities.
  - smaller entities and individuals may seek more cost effective operating structures e.g. any individual providing financial advice could avoid the levy by operating within a QFE structure, which is immensely flexible due to the QFEs capacity to nominate advisers.
39. A combined levy is not preferred. Although it is administratively simple, distributing the costs of FAA regulation across a broader group does not reflect the objective that: those benefiting from regulatory functions provided, or contributing to risks that warrant a regulatory response, should bear the costs of those regulatory functions.

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<sup>5</sup> There might be a small number of issuers who aren't registered on the FSPR, for which an alternative method of collection will need to be considered.

### 6.1.3 Auditor regulation

40. The Auditor Regulation Act 2011 creates a new auditor oversight function for the FMA. Section 84 of the Auditor Regulation Act provides the authority for regulations to set charges in relation to aspects of the FMA's new functions.
41. The new auditor oversight regime is expected to begin on 1 July 2012. However, the FMA will need to carry out some preliminary activity before that to establish the qualifying criteria for being a licensed auditor and being a registered auditing firm. Therefore, the FMA will incur some costs in 2011/2012 developing a proposal, consulting with stakeholders and finalising those criteria. The direct costs of these activities are likely to be about \$50,000. The total annual costs to the FMA of auditor oversight are assumed to be \$550,000. The proposed "auditor levy" assumes that the FMA will be overseeing 80 licensed auditors.

**Table 4: Auditor regulation**

Charge	Description
Auditor levy	\$7900 applied annually to each licensed auditor
Practice review fees	Each firm will pay the actual costs of the practice review carried out for that firm.

42. The auditor levy may appear slightly high. However, it is anticipated that this levy will be passed on to issuers as part of the fee charged by auditors for their services and, as a consequence, will result in only a minimal increase in costs for issuers.
43. The Auditor Regulation Act 2011 also charges the FMA with responsibility for monitoring and reporting on the adequacy and effectiveness of NZICA's regulatory systems and processes. This will include the FMA, as part of its process for monitoring accredited bodies, undertaking a sample of full scope reviews of licensed auditors and individual audit files on a rotational basis. The practice reviews which the FMA will carry out will help to ensure that members of professional accounting bodies have the on-going competence to carry out issuer audits. The cost of conducting practice reviews will be recovered directly and is not part of the auditor levy.

## 6.2 External Reporting Board

44. The Accounting Standards Review Board will be reconstituted as the External Reporting Board on 1 July 2011 under the Financial Reporting Amendment Act 2011. Section 10 of the Financial Reporting Amendment Act 2011 (which inserts a new section 42C into the Financial Reporting Act 1993) provides for a levy prescribed by regulations.
45. The proposed XRB levy is derived by dividing the forecast shortfall in the funding of this organisation, averaged over the first five years of its existence, by the forecast number of entities, which we estimate will be 462,000.

**Table 5: Proposed XRB levy**

Levy	Amount	Payee	Frequency	Collection
XRB levy	\$10	Companies, limited partnerships, building societies, credit unions, industrial and provident societies, friendly societies, and contributory mortgage brokers.	Registration and annually	Online through appropriate New Zealand Companies Office register at registration and with annual return

46. The standards made by the XRB must be used by entities that are required or choose to prepare general purpose financial reports. For other companies, IRD filing obligations provide the starting point for their financial reports. Generally accepted accounting practice provides the foundation for the IRD's requirements. In addition, NZICA requires its members to carry out all audits, whether regulated or not, in accordance with approved standards.

### **6.3 New Zealand Companies Office**

47. In consultation with an external accounting firm, a costing model was formulated after an extensive fees review. The cost allocation process was derived from an analysis of volumes and services provided in the administration of the registers for registered entities, cost outputs, and the number of staff. The allocation of costs across each service allows the true cost of providing the service to be calculated.
48. The fees outlined below do no more than recover the cost of providing the services required under relevant statutes. This method of calculation is in accordance with *Audit Office Guidelines on Costing and Charging for Public Sector Goods and Services* and the *Treasury Guidelines for Setting Charges in the Public Sector*.

#### **6.3.1 Registration and Annual Return Fees**

49. In light of all the factors outlined in the appendices, and based on the costing model, we propose that a company annual return fee be re-introduced. The online company annual return fee was \$15 when it was last charged in 2004. The NZCO currently charges \$30.67 for manual company annual returns. At the same time that the company annual return fee is re-introduced, we propose that the company incorporation fee be lowered, to take account of the company incorporation fee no longer being a "life time" fee for a company.
50. Changes are also proposed to the registration and annual return fees for limited partnerships, building societies, credit unions, industrial and provident societies, friendly societies, and contributory mortgage brokers.



**Table 6: NZCO Registration and Annual Return Fees**

Fee	Current	Proposed	Payee	Frequency	Collection
Registration fee	\$153.33	\$110	Companies	Registration	NZCO companies register at registration
	\$276	\$250	Limited partnerships, building societies, credit unions, industrial and provident societies, friendly societies, and contributory mortgage brokers.	Registration	Appropriate NZCO online register at registration
Annual return fee	Free	\$22.50	Companies	Annually	NZCO companies with annual return
	Free - \$357.78	\$40	Limited partnerships, building societies, credit unions, industrial and provident societies, friendly societies, and contributory mortgage brokers.	Annually	Appropriate NZCO online register with annual return

### 6.3.2 Personal Property Securities Register

51. Changes are also proposed to Personal Property Securities Register (PPSR) fees. The PPSR has provided a stable revenue stream for the NZCO since its inception in 2002, but the cost allocation model indicates that fees no longer quite cover the costs associated with this register. In addition to addressing this funding shortfall, the cost allocation model was used to look at the possibility of establishing what would effectively be a wholesale and retail fee structure. The result was the following proposal:

**Table 7: Proposed PPSR fees**

Client	Current	Proposed	Fee
PPSR Wholesale Client	\$1.02	\$0.50	PPSR search fee.
	\$3.07	\$4.00	PPSR financing statement/renewal
PPSR Retail Client	\$1.02	\$1.00	PPSR search fee.
	\$3.07	\$9.00	PPSR financing statement/renewal.

52. The PPSR has two broad types of client: firstly “government to business” clients (wholesale clients) such as credit agencies like Veda Advantage and Dun and Bradstreet who make use of PPSR services by connecting their systems to the PPSR; and secondly, those clients who make use of the PPSR services via the internet (retail clients). The wholesale clients have for some time urged the NZCO to assess the differential in cost of providing services to the two types of clients. The cost allocation model determined that the costs of providing services to wholesale clients are lower than the costs of providing PPSR services to retail clients.

53. Wholesale clients currently have lower costs associated with the services that they use. For example, they do not make use of the Contact Centre and require a lower amount of IT related services within the NZCO compared to retail clients. Therefore, a lower fee appears to be justified for wholesale clients.
54. This proposed wholesale/retail fee structure is aligned with the NZCO's desire to move more towards the model of offering services to stakeholders via third party offerings where feasible.
55. Although we propose to increase the financing statement registration/renewal fee for wholesale clients, the decrease in the proposed search fee for these clients will lead to an overall reduction in the fees paid by them. The current financing statement registration/renewal fee for retail clients is much lower than the cost of providing this service, resulting in the large proposed increase in this fee. However, the search fee for these clients is proposed to remain the same as it is now.

## 6.4 Insolvency and Trustee Service

56. As discussed in the appendices, the Official Assignee is appointed by the Court as a company liquidator for around 5% of the total number of liquidations per annum. In general, these companies have few, if any, assets which can be recovered to offset the costs of undertaking the administration of the liquidation.
57. As part of the insolvency law review, which culminated in the Insolvency Act 2006, a review of the Official Assignee's fees and charges for liquidations was undertaken, and the fees chargeable by both private liquidators and the Official Assignee as liquidator were amended at that time. Even with the increase in rates of the Official Assignee's remuneration for company liquidations, revenue has fallen well short of covering the actual cost of undertaking this function, primarily due to the fact that in most cases the Official Assignee is acting as a liquidator of last resort in respect of companies with few (if any) assets which are able to be realised to pay for the costs of the liquidation.
58. It is in the interests of the commercial community generally that company failures are dealt with in an efficient and orderly manner. A key feature of such a system is that an impartial government agent such as the Official Assignee is available to undertake the role of liquidator of last resort.

**Table 8: Proposed liquidation fee**

Fee	Amount	Payee	Frequency	Collection
Liquidation fee	\$2.50	Registered companies	Annually	Online through New Zealand Companies Register with annual return

59. The fee of \$2.50 per registered company was calculated by allocating to each registered company a pro-rata percentage of the funding deficit to the Insolvency and Trustee Service for the provision of liquidation services.



## **Appendix 2: Functions of the FMA, XRB, NZCO, and ITS**

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### **Financial Markets Authority**

60. The FMA is a new, consolidated market conduct regulator for New Zealand's financial markets. The FMA was established on 1 May 2011 by the Financial Markets Authority Act 2011 to promote and facilitate the development of fair, efficient, and transparent financial markets in New Zealand.
61. The FMA has assumed the existing regulatory functions of the Securities Commission (the current market conduct regulator) and the Government Actuary (the current regulator of superannuation and KiwiSaver schemes), and certain regulatory functions of the Ministry of Economic Development (mainly prospectus review and enforcement of governance laws that apply to financial markets participants) and the Minister of Commerce (exchange rule approval).
62. The FMA focuses on facilitating the development of financial markets and promoting fair, efficient, and transparent financial markets. It has a more active surveillance and enforcement role in relation to those markets, and has additional functions and powers, compared to the regulators it replaces.
63. The functions of the FMA include:
  - Monitoring compliance with, investigating contraventions of, and enforcing securities and investment law, financial reporting law, and companies law, in respect of financial markets participants.
  - Promoting confident and informed participation of businesses, investors, and consumers in the financial markets. This includes collecting and disseminating information or research, issuing warnings, reports, or guidelines, and providing education about financial markets.
  - Licensing and supervising financial market participants, including financial advisers, trustees, auditors, and exchanges.
  - Monitoring and conducting inquiries into financial markets and financial market participants.
  - Keeping the law under review.
64. To achieve the FMA's objectives requires a significant step up in capability, particularly in resources devoted to market intelligence, supervision, investigation and enforcement. It also requires some increase in the resources across other functions of the FMA.

### **External Reporting Board**

65. The ASRB will be reconstituted as the XRB on 1 July 2011 under the Financial Reporting Amendment Act 2011. The Amendment Act aims to establish a more coherent and strategic approach to financial reporting and audit and assurance standards-setting.

66. The Amendment Act consolidates all financial reporting and audit and assurance standards-setting responsibilities in the new XRB. Much of this responsibility has previously sat within NZICA and some of the costs were met by the members of that organisation. The consolidation of all of the standards-setting functions will allow for a more coherent and strategic approach and ensure that New Zealand's standards-setting framework is of the highest quality.
67. The reconstitution of the ASRB into the XRB is a move from a virtual to a real entity – the ASRB has no offices and no staff whereas the XRB will require both of these. The XRB will also have a considerably greater level of responsibility and will be expected to provide a wider range of services.
68. The XRB will be responsible for all aspects of financial reporting and auditing and assurance standards-setting. This includes performance of the following functions and services:
  - Preparing and issuing financial reporting standards.
  - Preparing and issuing auditing and assurance standards.
  - Developing and implementing overall strategy for the issue of financial reporting standards and auditing and assurance standards (including a strategy for tiers of financial reporting).
  - Preparing and issuing professional and ethical standards that will govern the professional conduct of statutory auditors.
  - Liaising with international or national organisations that exercise functions that correspond with, or are similar to, those conferred on the board.

## **New Zealand Companies Office**

69. The NZCO performs the functions of the Registrar of Companies by administering a number of corporate registers, the largest of which is the companies register. All registers are operated electronically, and the NZCO provides a range of online and some manual services. Services provided include:
  - Searching.
  - Company name reservations.
  - Incorporations and restorations.
  - Filing of annual returns and company maintenance.
  - Amalgamations.
  - Registration of insolvency documentation (for receiverships, liquidations and voluntary administrations).

70. The Registrar of Companies is also responsible for establishing, administering and maintaining 17 other registers under various legislation including personal property securities, motor vehicle traders, retirement villages, charitable trusts, incorporated societies, mutual organisations (e.g. credit unions, industrial and provident societies and friendly societies), limited partnerships and financial service providers.
71. The Registrar of Companies is also obliged to carry out various compliance and enforcement functions. Although the FMA will assume some of these functions in relation to financial markets participants, there will still be a large number of entities to which the Registrar's compliance and enforcement functions will continue to apply.

## **Insolvency and Trustee Service**

72. The ITS is the government agency responsible for performing the statutory functions of the Official Assignee under the Insolvency Act 2006 and the Companies Act 1993. As well as administering all personal insolvencies in New Zealand, the Official Assignee may be appointed by the Court as a company liquidator.
73. Although private sector liquidators are appointed in respect of the majority of liquidations, the ITS typically undertakes around 5% of the total number of liquidations nationwide. For example, the ITS undertook 240 liquidations in the year ending 30 June 2010 out of the total of 4,566 liquidations in that year. Usually the Official Assignee is appointed as liquidator of last resort in relation to companies with few or no assets.

## Appendix 3: Funding Requirements

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### Financial Markets Authority

74. The basis of the FMA's funding is the amount of funding previously appropriated for the Securities Commission and that part of MED that will transfer across to the FMA. The Securities Commission was appropriated \$18.0 million for 2010/11 (comprising operating and litigation funds), the MED amount to transfer was estimated to be \$1.1 million. The total amount of Crown funding for these appropriations was \$11 million, with the remainder amount third party funded. However, as discussed in Appendix 2, the FMA performs significant additional functions compared to the Securities Commission. Cabinet therefore decided to significantly increase the total amount appropriated for the FMA (Crown plus third party funding) so that the FMA will receive up to \$28.2 million from 2014/15 onward.
75. The additional funding for the FMA will come from a number of sources. There will be one-off Crown funding for transition costs in 2011/12, but no additional Crown funding thereafter, so the new funding for the FMA will largely come from third party levies and fees, as follows:
  - The transfer of third party revenue from the Ministry of Economic Development (MED) to the FMA to fund the tasks that the FMA has assumed from MED. This funding is sourced from Companies Office third party revenue for the prospectus, financial statement review, and enforcement work, and from third party superannuation and KiwiSaver fees and Crown funding from the Insurance and Superannuation Unit of MED.
  - Fees and levies paid by statutory supervisors and trustees to fund the FMA's licensing and supervision of those organisations under the Securities Trustees and Statutory Supervisors Act 2011. These fees and levies were separately consulted on in the discussion paper: "Securities Trustees and Statutory Supervisors Regulations". Submissions closed on 17 November 2010.
  - Fees and levies to fund a variety of additional or amended licensing regimes arising out of the Securities Law Review (SLR), including those covering, fund managers, derivatives dealers, and providers of discretionary portfolio management services. These fees and levies will be consulted on at a later date.
  - The proposed "auditor levy" on licensed auditors to fund the FMA's licensing and supervision of those organisations under the Auditor Regulation Act 2011 and separate charges to recover the direct cost of conducting practice reviews.
  - The proposed "FAA levy" to fund the proportion of the FMA's responsibilities under the Financial Advisers Act 2008 (FAA) that is not funded through direct fees for services, such as the authorisation of advisers. One option discussed in Section 2 is to combine the FAA levy with the proposed FMA levy below.

- The remaining additional funding for the FMA will come from the proposed “FMA levy”, collected for the purpose of funding general financial markets monitoring, supervision, surveillance, and investigation.

### **Estimated FMA funding including proposed fees and levies**

<b>\$ millions</b>	<b>2011/12</b>	<b>2012/13</b>	<b>2013//14</b>	<b>2014/15</b>	<b>2015/16</b>	<b>1/7/16-31/12/16</b>
Total operating appropriation	26.775	27.461	29.770	28.184	28.184	14.092
Total operating appropriation comprises:						
Crown funding	15.322	11.007	11.007	11.007	11.007	5.504
Third party funding	11.453	16.454	18.763	17.177	17.177	8.589
Third party funding comprises:						
FAA fees	0.223	0.223	0.223	0.223	0.223	0.111
All exemption fees	0.280	0.280	0.280	0.280	0.280	0.140
Transfer from MED	0.873	0.873	0.873	0.873	0.873	0.437
SLR fees and levies	0	1.218	0.196	0.196	0.196	0.098
Trustee fee and levy	0.320	0.640	0.640	0.640	0.640	0.320
Auditor levy	0.275	0.550	0.550	0.550	0.550	0.275
FAA levy	6.448	6.771	6.771	6.771	6.771	3.386
FMA levy	3.034	5.899	9.230	7.644	7.644	3.822

## **External Reporting Board**

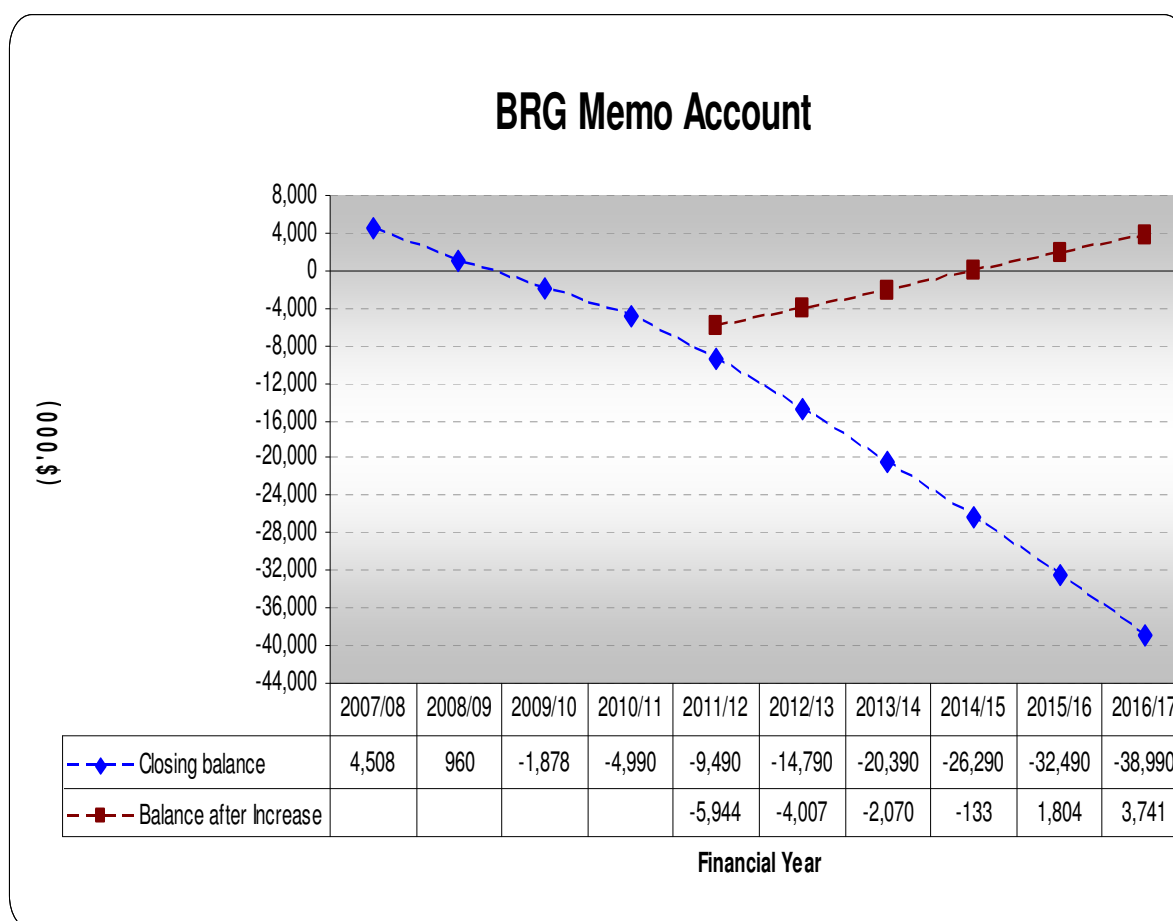
76. At present, the ASRB’s primary role is to decide whether to approve the financial reporting standards submitted to it by NZICA. Its annual funding is \$1.125 million: \$830,000 of which is obtained from Companies Office revenues, with the remaining \$295,000 Crown funded. This level of funding will continue for the XRB.
77. The XRB will receive \$4.41 million in 2011/12 and outyears to cover its operational costs. This means that additional funding of \$3.285 million will be needed in 2011/12 and outyears for the XRB’s operational costs.
78. The ASRB has received an additional \$225,000 in transitional funding in 2010/11 to meet XRB establishment costs. The transition funding will need to be recovered from third parties. In addition, the XRB is expected to commence operations on 1 July 2011 and the shortfall in funding of \$1.6425 million before the levy comes into force in 1 January 2012 will need to be recovered.



79. The shortfall, to be funded by the new fees and levies discussed in this document, will be \$16.650 million over the first five years of the XRB's operations.

## New Zealand Companies Office

80. The NZCO predominantly operates on third party funding, derived on a user-pays basis from fees for services. For the companies register and limited partnerships register, these fees are currently primarily derived at the time of incorporation.
81. Over the past 10 years, the NZCO has operated a long term fees policy which has seen fees set below cost with the aim of returning a \$25 million memorandum account<sup>6</sup> surplus to its stakeholders. This surplus has now been exhausted and, as a result of economic conditions, the number of entities incorporating has declined dramatically. The memorandum account is now in deficit and is worsening. There is a need for a fees model with a more predictable and reliable income stream that is not so vulnerable to economic downturns, which tend to hit incorporations and registrations first.
82. The graph below illustrates the declining balance in the memorandum account for the NZCO. The graph includes projections through to 30 June 2013 based on the assumption of no changes to the current set of fees and charges.



<sup>6</sup> Memorandum accounts are notional accounts to record the accumulated balance of surpluses and deficits incurred for outputs operating on a full cost recovery basis. They are intended to provide a long-run perspective to the pricing of outputs.

83. In mid-2007, when the surplus in the memorandum account was at \$6.5 million, fees were reviewed and amended to cost, with the aim of stopping the depletion of the memorandum account and thereby holding an acceptable balance in that account against unexpected downturns in revenue. One option considered at that time was the re-introduction of the company annual return fee. Given the upward trend of company incorporations at the time, and in an effort to minimise compliance costs, the option of increasing the company incorporation fee to make it a “life time” fee was adopted instead.
84. In 2007/08, the decline in the memorandum account plateaued briefly as a consequence of the incorporation fee increase. However, the current economic downturn has had a significant negative impact on revenue. Since 2007, there has been a large decline in the number of company incorporations as depicted below:

**Decline in company incorporations**

	<i>2006-07</i>	<i>2007-08</i>	<i>2008-09</i>	<i>2009-10</i>	<i>2010-11 estimate</i>
Number of company incorporations	74,197	60,679	49,548	49,592	41,900

85. The NZCO has ameliorated this decrease in revenue through the implementation of cost containment measures, but these measures have not been sufficient to stop the growing deficit in the memorandum account and the current fees are not sustainable over the medium to long term without a material impact on services.
86. In this current financial year, the NZCO is still in cost containment mode for discretionary spending, but has seen operating costs escalate as it is incurring costs from migrating its register to Enterprise (the new online registry application) and implementing the Financial Service Providers Register. The registration fees from the Financial Service Providers Register are offsetting these costs to some extent, but this will only be a one-off source of revenue, and even with this, the negative balance in the memorandum account is forecast to reach almost \$5 million by the end of 2010/11.
87. The NZCO plans to continue to constrain discretionary costs where it can and these cost containment measures will be supplemented with the realisation of staff savings arising from the implementation of the Enterprise system. Modest additional cost reductions are considered achievable, although increased IT depreciation from new systems will partially offset these.
88. The deficit is forecast to grow at an increasing rate from 2011/12 onwards as the number of incorporations continues to stay below cost recovery (partially as the result of the tax reforms which reduced the desirability of loss attributing qualifying companies), producing a gap between revenue and expenditure in the order of \$5 million per annum. In addition, the NZCO needs to recover revenue in excess of costs to recover the negative balance in the memorandum account. This would mean that an additional \$6-7 million of revenue a year would be needed to bring the memorandum account back to a projected balance of zero by 31 December 2016.

89. The NZCO engaged a professional accountancy firm to review its funding and costs of providing services. The NZCO is proposing an amendment to some of its current fees based on the costing model prepared, with a further fees review in two years' time when it has completed the migration of registers to Enterprise and undergone organisational change. This will coincide with the proposed fees review for the FMA and XRB, discussed earlier in this paper.

## **Insolvency and Trustee Service**

90. In relation to the administration of company liquidations, the ITS is partially funded by remuneration derived on a time/cost basis from the realisable assets of a company in liquidation. The hourly rates were set following the passage of the Insolvency Act 2006.
91. Because the Official Assignee typically acts as a liquidator of last resort for companies which have few (if any) assets, this remuneration falls well short of the costs involved in undertaking the Official Assignee's statutory functions. The annual shortfall is estimated to be in the order of \$0.900 million per annum.

## Appendix 4: Supporting volume assumptions

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All figures are approximate

### Financial Advisers

Type	Volume
AFAs not associated with a QFE	720
QFEs	75
AFAs associated with a QFE	1,180
QFE Advisers (Category 1 products)	3,500
QFE Advisers (Category 2 products)	20,000
RFAs	5,000

### Companies and other entities

Type	Volume
Registered companies	420,000
Expected new company registrations annually	41,000
Industrial and provident societies	105
Building societies	15
Limited partnerships	850
Credit unions	30
Friendly societies	150
Contributory mortgage brokers	100
<b>Total</b>	Approx 462,000