



# **Financial Markets Conduct (Fees) Amendment Regulations (No 2) 2014**

Jerry Mateparae, Governor-General

## **Order in Council**

At Wellington this 3rd day of November 2014

Present:

His Excellency the Governor-General in Council

Pursuant to section 548 of the Financial Markets Conduct Act 2013 and section 67 of the Financial Markets Authority Act 2011, His Excellency the Governor-General makes the following regulations, acting—

- (a) on the advice and with the consent of the Executive Council; and
- (b) on the recommendation of the Minister of Commerce and Consumer Affairs given after the requirement in section 549 of the Financial Markets Conduct Act 2013 has been met.

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## Regulations

- 1 **Title**  
These regulations are the Financial Markets Conduct (Fees) Amendment Regulations (No 2) 2014.
- 2 **Commencement**  
These regulations come into force on 1 December 2014.
- 3 **Principal regulations**  
These regulations amend the Financial Markets Conduct (Fees) Regulations 2014 (the **principal regulations**).
- 4 **Regulations 3 to 5 replaced**  
Replace regulations 3 to 5 with:
- “3 **Interpretation**  
In these regulations, unless the context otherwise requires,—  
“**Act** means the Financial Markets Conduct Act 2013  
“**crowd funding service** has the same meaning as in regulation 185 of the Financial Markets Conduct Regulations 2014  
“**peer-to-peer lending service** has the same meaning as in regulation 185 of the Financial Markets Conduct Regulations 2014

“vary, in relation to the conditions of a licence, means to vary, revoke, add to, or substitute any of those conditions.

**“4 Application fees and costs**

- “(1) The fees and costs set out in Schedule 1 are payable to the FMA by an applicant in respect of the matters set out in that schedule.
- “(2) If Part 1 of Schedule 1 specifies that a fee is to be charged on an hourly basis, the fee—
- “(a) must be determined in accordance with the table of hourly rates set out in Part 2 of Schedule 1; and
  - “(b) is payable for every hour and, on a pro rata basis, for every part-hour of work that is carried out.
- “(3) If Part 1 of Schedule 1 specifies that a fee is to be charged on an hourly basis for hours exceeding a specified number, the hourly fee—
- “(a) must be determined in accordance with the table of hourly rates set out in Part 2 of Schedule 1; and
  - “(b) is payable for every hour and, on a pro rata basis, for every part-hour of work that is carried out in excess of the specified number; but
  - “(c) is payable only if the FMA has—
    - “(i) notified the applicant, in writing, that the hourly fee will or may be payable; and
    - “(ii) given the reasons why the number of hours spent on the application has exceeded, or is likely to exceed, the specified number.

**“5 Payment of application fees and costs**

- “(1) The fees in Part 1 of Schedule 1, other than those payable on an hourly basis, must accompany the relevant application.
- “(2) All other fees and costs in Schedule 1 are payable—
- “(a) on the issue of an invoice by or on behalf of the FMA; and
  - “(b) within the time frame specified in the invoice.”

**5 Regulation 7 replaced (Fees inclusive of GST)**

Replace regulation 7 with:

**“7 Fees payable to FMA to be collected by Registrar**

- “(1) A fee of \$255.55 is payable to the Registrar on behalf of the FMA for lodging financial statements under section 461H of the Act.
- “(2) The fee is payable on the lodgement of the statements by the person lodging the statements.

**“8 Other fees payable to FMA**

- “(1) The fees set out in Schedule 2 are payable to the FMA for the work carried out, by FMA members and employees in performing functions and providing services, in relation to the matters set out in that schedule.
- “(2) If Schedule 2 specifies that a fee is to be charged on an hourly basis, the fee is payable for every hour and, on a pro rata basis, for every part-hour of work that is carried out.
- “(3) The fees in Schedule 2 that are charged on an hourly basis are payable—
- “(a) on the issue of an invoice by or on behalf of the FMA; and
  - “(b) within the time frame specified in the invoice.
- “(4) All other fees in Schedule 2 must accompany the relevant documents or request.

**“9 Fees and charges payable to Registrar**

- “(1) The fees and charges in Schedule 3 are payable in respect of the matters set out in that schedule.
- “(2) The fees and charges are payable—
- “(a) to the Registrar;
  - “(b) at the times prescribed in Schedule 3;
  - “(c) by the persons who lodge the relevant documents.

**“10 Fees and charges inclusive of GST**

The fees and charges prescribed by these regulations are inclusive of goods and services tax.”

**6 Schedule amended**

- (1) Replace the Schedule heading with:

**Schedule 1**

r 4

**Application fees and costs payable to  
FMA”.**

- (2) In the Schedule, Part 1, after item 4, insert:
- |   |  |   |
|---|--|---|
| 5 | Application under section 315 of the Act for a licence to operate a financial product market                       | On the hourly basis specified in Part 2 |
| 6 | Application under section 322 of the Act to vary the conditions of a licence to operate a financial product market | On the hourly basis specified in Part 2 |
| 7 | Application under section 330 of the Act for approval of a market rule or market rule change                       | On the hourly basis specified in Part 2 |
- (3) In the Schedule, replace Part 2 with the Part 2 set out in Schedule 1 of these regulations.
- 7 New Schedules 2 and 3 inserted**  
After the Schedule, insert as Schedules 2 and 3 the Schedules 2 and 3 set out in Schedule 2 of these regulations.

**Schedule 1**

r 6(3)

**Part 2 of Schedule replaced****Part 2****Fees charged on an hourly basis**

<b>Category</b>	<b>Fee</b>
For each hour of work carried out by a member of the FMA	\$230.00
For each hour of work carried out by an employee of the FMA who is qualified in accountancy, auditing, business, commerce, economics, or law	\$178.25
For each hour of work carried out by an employee of the FMA who the FMA is satisfied has a professional level of skills, training, or experience in financial markets matters of the kind to which the application relates	\$178.25

**Schedule 2** r 7  
**New Schedules 2 and 3 inserted**

**Schedule 2** r 8  
**Other fees payable to FMA**

Part 1  
Schedule of fees

Section of the Act	Description	Fees
109	Request for consent to amend or replace trust deed	On the hourly basis specified in Part 2
122(2)(b)	Request for consent to remove supervisor	On the hourly basis specified in Part 2
126(2)(e)(iii)	Request for certificate of compliance	On the hourly basis specified in Part 2
131(1)(c)	Request for consent to change the conditions of entry or the way in which conditions of entry are applied	On the hourly basis specified in Part 2
134(1)(b)	Request to direct the removal of the registration of a registered scheme as a particular type of scheme	On the hourly basis specified in Part 2
134(3)	Request to direct the registration of a scheme as a particular type of scheme	On the hourly basis specified in Part 2
139(1)(a)	Request for consent to amend or replace governing document	On the hourly basis specified in Part 2
140(1)(a)	Request for consent to amend or replace governing document	On the hourly basis specified in Part 2
171(1)	Request for consent to allow scheme property to revert to contributor who is not a participant	On the hourly basis specified in Part 2
179(3)	Request for permission to transfer scheme participant without participant's consent	On the hourly basis specified in Part 2
181(1)	Request for consent to transfer scheme participants to another scheme	On the hourly basis specified in Part 2
186(4)(c)	Request to appoint temporary manager	On the hourly basis specified in Part 2
190(2)(a)	Request for consent to withhold information or retain copy of information	On the hourly basis specified in Part 2
193(2)(b)	Request for consent to remove supervisor	On the hourly basis specified in Part 2

Schedule 2—*continued*Part 1—*continued*

<b>Section of the Act</b>	<b>Description</b>	<b>Fees</b>
195(1)(c)	Request to direct that registration of a registered scheme be cancelled	On the hourly basis specified in Part 2
213(1)(b)	Review of financial statements on winding up	\$255.55
213(2)	Request to extend period for compliance	On the hourly basis specified in Part 2
224(2)(b)	Request to authorise non-compliance	On the hourly basis specified in Part 2
596	Request to approve a scheme as a Schedule 3 scheme	\$178.25
Sch 4, cl 26(2)	Request for consent to amend or replace governing document	On the hourly basis specified in Part 2
Sch 4, cl 27(3)(a)	Request for consent to rescind existing and execute new governing document	On the hourly basis specified in Part 2
Sch 4, cl 28(3)(a)	Request for consent to rescind existing and execute new governing document	On the hourly basis specified in Part 2

## Part 2

## Fees charged on an hourly basis

<b>Category</b>	<b>Fee</b>
For each hour of work carried out by a member of the FMA	\$230.00
For each hour of work carried out by an employee of the FMA who is qualified in accountancy, auditing, business, commerce, economics, or law	\$178.25
For each hour of work carried out by an employee of the FMA who the FMA is satisfied has a professional level of skills, training, or experience in financial markets matters of the kind to which the request relates	\$178.25

### Schedule 3 Registry fees

r 9

In this schedule,—

**fund** has the meaning given to it in regulation 5(1) of the Regulations

**managed fund** has the meaning given to it in regulation 5(1) of the Regulations

**Regulations** means the Financial Markets Conduct Regulations 2014.

Description of fee	Time when payable	Provision of Act	Provision of Regulations	Amount of fees
Offer document registration fee	Payable on the lodgement of a product disclosure statement (PDS) for a managed fund	s 48(1)(b)		\$600 per fund covered by the PDS
	Payable on the lodgement of a PDS for a financial product (other than a managed investment product in a managed fund)	s 48(1)(b)		\$2,700
	Payable on the lodgement of a limited disclosure document for a managed fund	Sch 1, cl 26(3)	Sch 8	\$600 per fund covered by the limited disclosure document
	Payable on the lodgement of a limited disclosure document for a financial product (other than a managed investment product in a managed fund)	Sch 1, cl 26(3)	Sch 8	\$2,700
Annual confirmation fee	Payable on the lodgement of an annual confirmation for a managed fund	s 97	r 52	\$600 per fund covered by the annual confirmation

Schedule 2

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Schedule 3—*continued*

<b>Description of fee</b>	<b>Time when payable</b>	<b>Provision of Act</b>	<b>Provision of Regulations</b>	<b>Amount of fees</b>
	Payable on the lodgement of an annual confirmation for a financial product (other than a managed investment product in a managed fund)	s 97	r 52	\$2,700
Managed investment scheme annual report fee	Payable on the lodgement of an annual report	s 97	r 62	\$275
Managed investment scheme registration fee	Payable on application for registration of managed investment scheme	s 126		\$775
	Payable on the lodgement of a governing document for a managed investment scheme	Sch 4, cl 22(1)(b)		\$775

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Schedule 2

Michael Webster,  
Clerk of the Executive Council.

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### **Explanatory note**

*This note is not part of the regulations, but is intended to indicate their general effect.*

These regulations, which come into force on 1 December 2014, amend the Financial Markets Conduct (Fees) Regulations 2014 (the **principal regulations**) to introduce new fees and charges for the purposes of the Financial Markets Conduct Act (the **Act**) and the Financial Markets Conduct Regulations 2014.

The regulations prescribe—

- fees payable to the Financial Markets Authority (the **FMA**)—
  - for applications to operate financial product markets and to vary the conditions of licences to operate financial product markets:
  - for applications to approve market rules or changes to market rules:
  - for lodging financial statements under section 461H of the Act:
  - for other work carried out by the FMA in performing functions and providing services under the Act:
- fees payable to the Registrar—
  - on the registration of financial products and managed investment schemes:
  - on the lodgment of annual confirmations for financial products and annual reports for managed funds.

### **Regulatory impact statement**

The Ministry of Business, Innovation, and Employment produced a regulatory impact statement to help inform the decisions taken by the Government relating to the contents of this instrument.

A copy of this regulatory impact statement can be found at—

- <http://www.med.govt.nz/business/business-law/current-business-law-work/financial-markets-conduct-act/fmc-registers-fees-and-other-fma-fees-and-levies>
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Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*: 4 November 2014.

These regulations are administered by the Ministry of Business, Innovation, and Employment.

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