



Financial Markets Authority (Levies) 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 68 of the Financial Markets Authority Act 2011, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, makes the following regulations.

Contents

	Page
1 Title	2
2 Commencement	2
3 Principal regulations	2
4 Regulation 3 amended (Interpretation)	2
5 Regulation 4 amended (Meaning of total assets (class 2))	4
6 Regulation 6 amended (Meaning of total supervised interests (class 4))	4
7 Regulation 7 amended (Meaning of total managed assets (class 5))	5

8	Regulation 9 amended (Persons deemed to be included in classes 4 and 5)	5
9	Regulation 10 amended (Certain persons in class 2 exempted from paying levy)	5
10	Regulation 13 amended (Requirements relating to FMA invoicing for levies)	6
11	New regulation 14A inserted (Levies inclusive of GST)	6
	14A Levies inclusive of GST	6
12	Schedule 2 amended	6
	<i>Amendments to come into force on 1 May 2015</i>	
13	Regulation 3 amended (Interpretation)	7
14	Regulation 4 amended (Meaning of total assets (class 2))	8
15	Regulation 10 revoked (Certain persons in class 2 exempted from paying levy)	8
16	Schedule 2 amended	8
	Schedule	9
	Items replaced in Schedule 2	

Regulations

- 1 Title**
These regulations are the Financial Markets Authority (Levies) Amendment Regulations (No 2) 2014.
- 2 Commencement**
- (1) These regulations, except regulations 13 to 16, come into force on 1 December 2014.
 - (2) Regulations 13 to 16 come into force on 1 May 2015.
- 3 Principal regulations**
These regulations amend the Financial Markets Authority (Levies) Regulations 2012 (the **principal regulations**).
- 4 Regulation 3 amended (Interpretation)**
- (1) In regulation 3, definition of **generally accepted accounting practice**, replace “**generally accepted accounting practice—**” with “**GAAP or generally accepted accounting practice—**”.

- (2) In regulation 3, replace the definition of **manager** with:
- “**manager**—
- “(a) has the same meaning as in section 6(1) of the Financial Markets Conduct Act 2013; and
- “(b) includes a reference to a manager as defined in section 2(1) of the Securities Act 1978”.
- (3) In regulation 3, replace the definition of **scheme** with:
- “**scheme**—
- “(a) means—
- “(i) a registered scheme in which managed investment products have been issued pursuant to an FMC offer:
- “(ii) any scheme that is treated as being a registered scheme under clause 22(1)(a) of Schedule 4 of the Financial Markets Conduct Act 2013:
- “(b) includes a scheme (as defined in section 2(1) of the Securities Act 1978) in which securities have been allotted pursuant to an offer of securities to the public within the meaning of section 3 of the Securities Act 1978 (other than an offer coming within section 5(2CB) or (2CBA) of that Act)”.
- (4) In regulation 3, revoke the definition of **security**.
- (5) In regulation 3, revoke the definition of **STSS Act**.
- (6) In regulation 3, insert in their appropriate alphabetical order:
- “**authorised dealer** means a person who,—
- “(a) immediately before the commencement of clause 45 of Schedule 4 of the Financial Markets Conduct Act 2013, is authorised or approved under section 38 of the Securities Markets Act 1988 to carry on the business of dealing in futures contracts; and
- “(b) is treated under clause 45 of Schedule 4 of the Financial Markets Conduct Act 2013 as holding a market service licence, issued under subpart 2 of Part 6 of the Financial Markets Conduct Act 2013, covering the same service as authorised or approved under the Securities Markets Act 1988
- “**custodian** has the same meaning as in section 6(1) of the Financial Markets Conduct Act 2013

“**debt security** has the same meaning as in section 6(1) of the Financial Markets Conduct Act 2013

“**FMC offer** has the same meaning as in section 5(3) of the FSP Act

“**FMS Act** means the Financial Markets Supervisors Act 2011

“**guaranteeing subsidiary** has the same meaning as in section 4(1) of the Non-bank Deposit Takers Act 2013

“**licensed market operator** has the same meaning as in section 6(1) of the Financial Markets Conduct Act 2013

“**listed issuer** has the same meaning as in section 6(1) of the Financial Markets Conduct Act 2013

“**managed investment product** has the same meaning as in section 6(1) of the Financial Markets Conduct Act 2013

“**NBDT** has the same meaning as in section 4(1) of the Non-bank Deposit Takers Act 2013

“**registered bank** has the same meaning as in section 2(1) of the Reserve Bank of New Zealand Act 1989

“**registered scheme** has the same meaning as in section 6(1) of the Financial Markets Conduct Act 2013”.

5 Regulation 4 amended (Meaning of total assets (class 2))

- (1) In regulation 4(1)(b), replace “a deposit taker” with “an NBDT”.
- (2) In regulation 4(1)(b) and (2), replace “the deposit taker” with “the NBDT” in each place.
- (3) In regulation 4(2), replace “the deposit taker’s” with “the NBDT’s”.
- (4) Revoke regulation 4(3).

6 Regulation 6 amended (Meaning of total supervised interests (class 4))

- (1) In regulation 6(1), replace “means the total value of all supervised interests of the person that are securities (as defined in section 4(1) of the STSS Act) on issue,—” with “means the total value of all supervised interests of the person that are debt securities and managed investment products in registered schemes,— ”.

- (2) In regulation 6(1)(a), (b)(ii) and (2), replace “STSS Act” with “FMS Act”.

7 Regulation 7 amended (Meaning of total managed assets (class 5))

In regulation 7(1)(a), replace “(as defined in section 4(1) of the STSS Act)” with “(as defined in section 4(1) of the FMS Act as in force immediately before 1 December 2014)”.

8 Regulation 9 amended (Persons deemed to be included in classes 4 and 5)

- (1) In regulation 9(1)(a) and 9(4), replace “STSS Act” with “FMS Act”.
- (2) In regulation 9(1)(a), replace “a security” with “a debt security or a registered scheme”.
- (3) In regulation 9(3), delete “in respect of securities offered to the public”.

9 Regulation 10 amended (Certain persons in class 2 exempted from paying levy)

- (1) In regulation 10, replace “Part 5D of the Reserve Bank of New Zealand Act 1989 under any of the following:” with “the Non-bank Deposit Takers Act 2013 under any of the following:”.
- (2) In regulation 10, replace paragraphs (a) to (f) with:
- “(a) Deposit Takers (Banks’ Regulatory Capital) Exemption Notice 2014:
 - “(b) Deposit Takers (Charities) Exemption Notice 2014:
 - “(c) Deposit Takers (Funding Conduits) Exemption Notice 2010:
 - “(d) Deposit Takers (Payment Facility Providers) Exemption Notice 2009:
 - “(e) Deposit Takers (Propertyfinance Securities Limited) Exemption Notice 2014:
 - “(f) Deposit Takers (Public Trust) Exemption Notice (No 2) 2010:”.

10 Regulation 13 amended (Requirements relating to FMA invoicing for levies)

- (1) In regulation 13(1), delete “11,”.
- (2) Replace regulation 13(2) with:
“(2) A listed issuer must be invoiced for the levy as soon as practicable after the end of a financial year of the licensed market operator with which the listed issuer has a listing agreement.”
- (3) In regulation 13(3), delete “or 11”.

11 New regulation 14A inserted (Levies inclusive of GST)

After regulation 14, insert:

“14A Levies inclusive of GST

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

12 Schedule 2 amended

- (1) In Schedule 2, item relating to class 2, column 2, replace “registered banks or deposit takers (as defined in the Reserve Bank of New Zealand Act 1989)” with “registered banks or NBDTs”.
- (2) In Schedule 2, item relating to class 4, column 2, replace “licensed under the STSS Act in respect of a security” with “supervisors licensed under the FMS Act in respect of the supervision of debt securities and managed investment products in registered schemes”.
- (3) In Schedule 2, item relating to class 5, column 2, delete “offered to the public”.
- (4) In Schedule 2, item relating to class 6, column 2, replace paragraph (a) with:
“(a) persons authorised to undertake trading activities on licensed markets, other than natural persons; or”.
- (5) In Schedule 2, item relating to class 6, column 2, replace paragraph (c) with:
“(c) persons registered for the financial service described in section 5(ic) of the FSP Act; or
“(ca) persons registered for the financial service described in section 5(k) of the FSP Act; or”.

- (6) In Schedule 2, item relating to class 6, column 2, replace paragraph (d) with:
- “(d) persons that provide the licensed market service of acting as a derivatives issuer as defined in section 6(1) of the Financial Markets Conduct Act 2013; or
 - “(da) persons who are authorised dealers (as defined in regulation 3 of these regulations); or”.
- (7) In Schedule 2, item relating to class 6, column 5, replace paragraph (a) with:
- “(a) if the person is authorised to undertake trading activities on licensed markets, \$7,500:”.
- (8) In Schedule 2, item relating to class 6, column 5, replace paragraph (c) with:
- “(c) if the person is registered for the financial service described in section 5(ic) of the FSP Act, \$2,000:
 - “(ca) if the person is registered for the financial service described in section 5(k) of the FSP Act, \$2,000:”.
- (9) In Schedule 2, item relating to class 6, column 5, replace paragraph (d) with:
- “(d) if the person is licensed to provide the licensed market service of acting as a derivatives issuer, \$2,000:
 - “(da) if the person is an authorised dealer, \$2,000:”.
- (10) In Schedule 2, item relating to class 8, column 2, replace “Public issuers (as defined in section 2(1) of the Securities Markets Act 1988)” with “Listed issuers (as defined in section 6(1) of the Financial Markets Conduct Act 2013”.
- (11) In Schedule 2, replace the items relating to classes 9 and 10 with the items relating to classes 9 and 10 set out in the Schedule of these regulations.
- (12) In Schedule 2, revoke the item relating to class 11.

Amendments to come into force on 1 May 2015

13 Regulation 3 amended (Interpretation)

- (1) In regulation 3, revoke the definition of **NBDT**.
- (2) In regulation 3, insert in its appropriate alphabetical order:
- “**licensed NBDT** has the same meaning as in section 4(1) of the Non-bank Deposit Takers Act 2013”.

14 Regulation 4 amended (Meaning of total assets (class 2))

- (1) In regulation 4(1)(b), replace “an NBDT” with “a licensed NBDT”.
- (2) In regulation 4(1)(b) and (2), replace “the NBDT” with “the licensed NBDT”.
- (3) In regulation 4(2), replace “the NBDT’s” with “the licensed NBDT’s”.

15 Regulation 10 revoked (Certain persons in class 2 exempted from paying levy)

Revoke regulation 10.

16 Schedule 2 amended

In Schedule 2, item relating to class 2, column 2, replace “or NBDTs (but *see* regulation 10)” with “or licensed NBDTs”.

Schedule
Items replaced in Schedule 2

r 12(11)

9	Persons that lodge a product disclosure statement (PDS) under section 48 of the Financial Markets Conduct Act 2013	Lodging a PDS	Registrar of Financial Service Providers	\$2,000 (except for a PDS for a managed fund (as defined in regulation 5(1) of the Financial Markets Conduct Regulations 2014)) \$425 (per fund (as defined in regulation 5(1) of the Financial Markets Conduct Regulations 2014) covered by the PDS, in the case of a managed fund)
	Specified persons that deliver a prospectus, or on whose behalf a prospectus is delivered, to the Registrar of Financial Service Providers for registration under section 42 of the Securities Act 1978	Delivering the prospectus	Registrar of Financial Service Providers	\$2,000
10	Licensed market operators (other than those licensed under section 317 of the Financial Markets Conduct Act 2013)	Giving a report on compliance to the FMA under section 337 of the Financial Markets Conduct Act 2013	FMA	\$20,000

2014/334

Financial Markets Authority (Levies)
Amendment Regulations (No 2) 2014

Schedule

Michael Webster,
Clerk of the Executive Council.

Explanatory note

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

These regulations, which amend the Financial Markets Authority (Levies) Regulations 2012 (the **principal regulations**), come into force on 1 December 2014, with the exception of regulations 13 to 16, which come into force on 1 May 2015.

The principal regulations prescribe classes of financial markets participants and other persons registered or incorporated under specified Acts who are required to pay levies under section 68 of the Financial Markets Authority Act 2011 (the **Act**). The primary purpose of the levies is to fund a portion of the costs of the FMA in performing or exercising its functions, duties, and powers under the Act and other enactments.

The amendments that come into force on 1 December 2014 are to—

- take account of provisions of the Financial Markets Conduct Act 2013, the Financial Markets (Repeals and Amendments) Act 2013, and related legislation coming into force on 1 December 2014, so that the provisions of the regulations concerning descriptions of classes of financial markets participants and other persons and the provisions concerning payment and collection of the levies align with changes to the existing legislation on which the levies are based;
- confirm that all amounts prescribed are inclusive of goods and services tax.

The amendments that come into force on 1 May 2015 concern NBDTs (or non-bank deposit takers) within the meaning of the Non-bank Deposit Takers Act 2013. They change every reference to an NBDT in the principal regulations to a reference to a licensed NBDT so that the principal regulations align with the provisions of that Act and, in particular, the requirement for all NBDTs to be licensed under the Act before 1 May 2015.

2014/334

**Financial Markets Authority (Levies)
Amendment Regulations (No 2) 2014**

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.
