MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
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REGULATORY IMPACT STATEMENT

Financial Markets Conduct Act Licence Fees and Increase of Other Financial Markets Authority Fees

Agency Disclosure Statement

1. This Regulatory Impact Statement (RIS) has been prepared by the Ministry of Business Innovation and Employment (MBIE). It provides an analysis of options to set Financial Markets Authority (FMA) licence fees for market services providers under the Financial Markets Conduct Act (FMC Act) that recovers FMA costs in licensing this group. The policy also proposes an increase to FMA's hourly rate on which fees for certain services to existing financial market participants are based.

2. This RIS addresses the structure and level of the fees set for market services provider licences and the level of fees for some existing financial markets participants.

3. The analysis assumes that the licence is a private good and the benefits of holding a market services providers licence are received by the licensee as it allows them to operate in the regulatory environment established under the FMC Act. Therefore FMA resource costs in issuing a licence should be passed on to the licensee.

4. The analysis of options in regards to fees for licensing market services providers under the FMC Act partially relies on estimated data supplied by FMA. Market services providers are a new group of licensees and the time needed to issue each licence has been estimated by FMA. We have assumed that FMA's knowledge and experience in licensing other financial market participants results in a fairly accurate estimate.

5. The policy also proposes an increase in the FMA hourly rate on which the market services providers' licences will be based. It is proposed that the increased hourly rate will also be used to calculate fees for certain services provided to existing financial market participants.

6. In reviewing the hourly rate FMA has undertaken its own analysis of costing information within the 12 months to 30 September 2013. FMA has used a full absorption costing model. Indirect costs, indirect labour costs and direct labour costs are absorbed by being spread across the direct labour hours. Direct costs are not included and are directly charged to outputs not used in the calculation of the hourly rate. Litigation fund expenses are also excluded.

7. FMA's total costs (excluding litigation costs) were $22.6 million for the 12 months to 30 September 2013. FMA produced 146,200 hours of chargeable time against these costs giving $155 per hour spent. This is an FMA reporting process and is audited each financial year. While the total costs or hours in the calculations have not been audited, these are not dissimilar from FMA's annual results. FMA's annual results can be found in its latest annual report: http://www.fma.govt.nz/about-us/corporate-publications/annual-reports/fma-annual-report-2013/.

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Introduction

8. This RIS presents options to set a fee to recover FMA's costs in licensing market services providers under the FMC Act and how to recover costs from existing financial markets participants for some services currently provided by FMA.

Status quo

9. The FMC Act is a significant overhaul of securities law in New Zealand. It was passed in September 2013 and will begin coming into force on 1 April 2014. The FMC Act will govern how financial products are promoted and sold, and the ongoing responsibilities of those who offer, deal and trade them. It will also regulate the provision of certain financial services. The FMC Act's main purposes are to promote the confident and informed participation by businesses, investors and consumers in New Zealand's financial markets, and to promote and facilitate the development of fair, efficient and transparent markets.

10. The FMC Act introduces licensing requirements for certain market services providers. The new groups of licensees include: fund managers; discretionary investment management service (DIMS) providers; independent trustees of restricted schemes; derivatives issuers; licensed intermediaries such as person-to-person lending services and crowd-funding platforms. The new licensing regime for market services providers will be administered and enforced by FMA.

11. FMA will continue to provide a number of other services including advice, decisions and exemptions and licensing of existing financial markets participants.

12. FMA's funding was agreed by Cabinet in 2011. FMA has been funded via a combination of Crown funding to reflect broader public good (around 60 percent of its total appropriation), and third-party revenue streams where services are provided to specific market participants for their individual or group benefit (the remaining 40 percent). The third-party revenue streams include the FMA levy and also fees charged for specific services. The FMA levy is collected from market participants and registered entities. FMA charges market participants fees for specific services which are of a private benefit nature.

Problem definition

13. This RIS considers two main problems, being:

    A. How to set the structure and level of fees to recover FMA's costs in licensing market services providers under the FMC Act

    B. How to fully recover costs from existing financial markets participants for some services currently provided by FMA.

14. Each main problem set out above also comprises a number of issues that need to be resolved. In order to analyse each problem adequately, they are set out separately below along with a key identifier to enable the options for each problem to be clearly established.

A. Setting the structure and level of fees to recover costs in licensing market services providers

15. This RIS considers options towards answering the following problems:

    - **Issue A1:** A model and level of fee needs to be set to fully recover market services provider licence application costs.

    - **Issue A2:** A model and level of fee needs to be set to fully recover FMA's costs in issuing variations of licence.

- **Issue A3:** A model and level of fee needs to be set to fully recover FMA's costs when market services providers apply for a renewal of licence.
- **Issue A4:** FMA has advised that some economies of scale may be applied when the same individual or entity makes multiple applications for different licence types. Therefore a fee model and level needs to be set to fully recover FMA's costs in issuing multiple licences to the same individual or entity.

B. Recovering costs from existing financial markets participants for some services currently provided by FMA

16. FMA has informed MBIE that some of its existing fees are not fully recovering costs. This RIS considers the following problems:

    - **Issue B1:** The hourly rate used to calculate FMA's fees has been in place since 1998 at the time of FMA's predecessor, the Securities Commission. FMA has stated that it is not allowing full cost recovery.
    - **Issue B2:** The existing fee for statutory supervisors and trustees is not fully recovering FMA's costs in licensing this group of financial markets participants.

Objectives

17. For all of the problems outlined above the key policy objective in setting FMA fees for services to financial market participants is to fully recover costs directly from those who will benefit from the service. The following criteria were used to assess the fee options:

    - Ensure a user pays system that covers FMA resource costs used to process each application, minimising cross-subsidisation and over-recovery
    - Certainty and fairness to users – including knowing the cost of the fee at the outset
    - Ease of implementation.

Options analysis

18. The licensing regime will result in additional costs for FMA. If a fee for licensing market services providers is not charged then the cost of licensing would need to be absorbed into FMA's operating costs and be drawn from either Crown funding or the existing FMA levy. This was not considered as an option because it goes against established funding arrangements and government fee setting guidelines. If it comes from Crown funding the costs fall back on the taxpayer and if from levy funding the costs would be spread across all levied financial market participants and cause cross-subsidisation. The licence is a private good, therefore it is not appropriate for FMA's costs in issuing licences to come from Crown or levy funding.

Fee model for the application fee for market services providers (Issue A1)

19. There are many ways in which a fee can be designed. In developing possible fee models MBIE considered three main options:

    a. Flat fee – based on the estimated average number of hours needed to process all applications

    b. Hourly rate - the hourly rate incorporating FMA resource costs will be charged

    c. A flat fee plus an hourly rate – a combination of a flat fee plus an hourly rate for applications that exceed a threshold number of hours based on the estimated time taken to process a 'standard application'.

20. The options are outlined in the table on the following page. Each option is assessed against the specific policy objectives stated in paragraph 17.

21. Within the model for flat fee plus hourly rate, the flat fee is based on FMA's estimate of how long it would take to process a 'standard' application under each licence category. Specifically, the flat fee is an estimated average of a low to medium risk individual or entity rather than an average of the licence group as a whole, which would include high-risk and resource intensive applications. Removing outliers from the estimation process for the flat fee should allow a relatively low fee for the majority of applicants. The hourly rate component of the model allows FMA to recover costs from resource intensive applications such as those deemed high risk, complex and those who submit incomplete or inadequate applications.

Table assessing options for market services provider licence application fees

Fee	Key policy objective: recover FMA costs in licensing market services providers from licensees	Policy objective: each applicant pays a fee that reflects the cost of FMA resource used to process their application, minimising cross-subsidisation and over-recovery.	Policy objective: Certainty and fairness to financial markets participants	Policy objective: ease of implementation
Option One: Hourly rate	It would produce the most accurate cost recovery method for FMA. ✓✓	It would produce the most accurate fees for market services providers; the fee would only cover the time taken to process their application. ✓✓	There would be uncertainty in the fee setting process, in that providers would not know the final cost of the fee until their application has been processed. ✓	Time would need to be spent on administration and FMA would need to recover these costs from licensees. ✖
Option Two: Flat fee plus an hourly rate (preferred option)	Any additional time spent on resource intensive applications could be captured by the hourly rate. ✓✓	Some straightforward applications may be charged more than if they were charged only the hourly rate, and some more complex applications will be charged less than if they were charged only the hourly rate. However because FMA would have the ability to apply an hourly rate to resource intensive applications, the estimated flat fee could be set at a relatively low rate. This rate would be based on an estimated number of hours it would take to process a 'standard application'. Cross-subsidisation and over-recovery would be minimised under this method but not eliminated entirely. ✓	MBIE expects it will introduce a degree of certainty into the licensing regime. We anticipate that the majority of applicants will only have to pay the flat fee. However there will still be some uncertainty in the fee setting process, in that providers will not know the final cost of the fee until their application has been processed. ✓✓	Time would need to be spent on administration to assess if applications incur the hourly rate in excess of the flat fee and to calculate and charge the extra rate. These costs would need to be recovered from licensees. As most applications would only incur the flat fee, administration costs would be lower than in option one. ✓
Option Three: Flat fee	The cost of all applications would be covered by the flat fee. However FMA have advised that if the fee is set too low it can result in under-recovery. ✓	By averaging out the FMA resource needed to process all applications the cost of some resource intensive applications may be shared amongst all applicants, resulting in cross-subsidisation. ✖	A flat fee would produce certainty within the licensing regime, but may not result in a fair fee due to the potential for cross-subsidisation. ✓	A flat fee would be straight-forward to administer. ✓✓

Key
✓✓Meets the policy objectives
✓Partially meets the policy objectives
✖Does not meet the policy objectives

Fee model for variations of market services provider licences (Issue A2)

22. A market services provider may apply to vary the conditions of a licence. The nature of the variation may be, for example, to vary a condition that imposes restrictions on the services that can be provided under the licence.

23. MBIE considered two main options for a variation of licence fee. The options are outlined below. Each option is assessed against the specific policy objectives stated in paragraph 17.

Table assessing fee options for variations of market services provider licences

Fee	Key policy objective: recover FMA costs in licensing market services providers from licensees	Policy objective: each applicant pays a fee that reflects the cost of FMA resource used to process their application, minimising cross-subsidisation and over-recovery.	Policy objective: Certainty and fairness to financial markets participants	Policy objective: ease of implementation
Option One: A flat fee of (for example, at 20% of the initial licence fee) plus an hourly rate charged if additional FMA resource is needed to process the variation	The time spent on assessing a variation is likely to fluctuate between applications, making a standard fee difficult to calculate. Although the use of an hourly rate beyond the standard fee should ensure the FMA's costs are recovered, there is the potential for over-recovery. ✓	If a flat fee was set for variations of licence it could lead to over-recovery and cross-subsidisation. This is because the time spent on a variation is not standardised and can fluctuate depending on the nature of the variation requested. ✖	A flat fee does introduce some certainty into the licensing regime, but because the time spent could vary greatly between applicants it is anticipated that the hourly rate within the model would be applied more readily, reducing the certainty of the flat fee within the model. ✓	Because the time spent on the applications could vary greatly, the need to recover costs through the hourly rate is likely to be used frequently. Time would need to be spent on administration to assess if applications incur the hourly rate in excess of the flat fee and to calculate and charge the extra rate. These costs would need to be recovered from licensees. The level of a standard fee would also have to be revised if the level is deemed incorrect. ✖
Option Two: An hourly rate only (preferred option)	An hourly rate produces the most accurate cost recovery method for FMA. ✓✓	It produces the most accurate fee for market services providers. Applicants only pay for the FMA resource needed to process their application. ✓✓	An hourly rate produces uncertainty for applicants as they will not know the cost of the fee until after the application has been processed. ✓	Time would need to be spent on administration and FMA would need to recover these costs from licensees. ✖

24. The preferred option takes into account the difficulty of setting a standard fee due to the lack of a standardised variation process. Applicants could be requesting changes to one or more specific conditions or requirements of a licence, making one application for variation fairly unique in comparison to another. A standard fee for all licences is not appropriate where the application itself is not a standardised process.

Fee model for the market services provider renewal fees (Issue A3)

25. MBIE considered two main options when assessing the options for the renewal fee model for market services providers. The options are outlined below. Each option is assessed against the specific policy objectives stated in paragraph 17.

Table assessing options for market services provider renewal fees

Fee	Key policy objective: recover FMA costs in licensing market services providers from licensees	Policy objective: each applicant pays a fee that reflects the cost of FMA resource used to process their application, minimising cross-subsidisation and over-recovery.	Policy objective: Certainty and fairness to financial markets participants	Policy objective: ease of implementation
Option One: Full fee at renewal (this may include an hourly rate portion if the application fee model is introduced as a flat fee plus an hourly rate) (preferred option)	This fee would be based on the application fee. Assuming that the model for the application fee allowed FMA to recover its costs, the renewal fee would also recover costs. ✓✓	This fee would be based on the application fee. Assuming that the model for the application fee ensured over-recovery and cross-subsidisation was minimised, the renewal fee would also. ✓✓	Applicants would know the cost of the application fee they had paid and would therefore expect to pay the same fee at renewal. ✓✓	This model would be relatively straight-forward to administer as it would be the same as the application fee. ✓✓
Option Two: Partial fee at renewal.	The fee would only recover FMA's costs if they were planning to do a partial assessment of the individual or entity at renewal. However FMA have advised MBIE that they plan to do a full assessment at renewal. This is due to the 'risk based' approach that will be applied to monitoring and therefore the re-licensing event may be the only time that an entity or individual is subject to a full re-assessment by FMA. ✗	This model would only result in a fee that reflects FMA's resource costs if FMA was planning to do a partial assessment at renewal. FMA intends to undertake a full assessment at renewal. ✗	The fee would be based on a percentage of the original fee, reflecting the level of FMA resource needed to do a partial assessment. ✓✓	This model would be relatively straight-forward to administer as it would be based on a percentage of the application fee. ✓✓

Fee model for multiple market services provider licences (Issue A4)

26. Based on information provided by FMA, MBIE has analysed options involving economies of scale when an individual or entity makes applications for several different types of licences. This model is based on FMA's advice that in any two applications there would be duplication of information and the duplicated information need only be assessed once, therefore reducing the time spent on the second application.

27. Feedback received from submissions (outlined in more detail under the consultation section of this RIS) proposed that the multiple licence discount should also be applied within a set timeframe due to the transitional requirements under the FMC Act. The length of time in which information remains current between applications is the main issue with this proposal. FMA estimates a period of up to six months would be appropriate.

28. A further complicating factor when considering options for discounts to multiple licence applications is the variable nature of resource needed in assessing different types of markets services provider licences. Some licence types are more resource intensive than others, as additional and specific licence requirements need to be considered.

29. The options for multiple market services provider licences are analysed in the table below against the policy objectives. Briefly, the way in which the options are designed is outlined below:

    - Option one refers to applications made on the same day only and results in the full flat fee charged for the most resource intensive application and a 50% discount of the flat fee for any additional applications.
    - Option two allows for the discount to be applied across a timeframe of six months. The first application would be charged the full flat fee and any additional applications would be charged at 50% of the flat fee. The discount is applied according to the timing in which the applications are made and does not take into account whether the application requires a high or low level of FMA resource to process it.
    - Option three (preferred option) also allows for the discount to be applied across a timeframe of six months but the level of FMA resource required in processing the applications is taken into account in this option. The most resource intensive application would be charged at 100% of the flat fee and any other less resource intensive applications would be charged at 50% of the flat fee. If a less resource intensive application is applied for first then FMA would need to take this into account when the second application is received and adjust the flat fee accordingly for the second application. This would most likely result in additional administration for FMA.

30. For all of the options, the discount applies only to the flat fee. Applicants would also be charged an hourly rate on top of the reduced flat fee if their application required additional FMA resource.

Table assessing options for multiple market services provider licence fees:

Fee	Key policy objective: recover FMA costs in licensing market services providers from licensees	Policy objective: each applicant pays a fee that reflects the cost of FMA resource used to process their application, minimising cross-subsidisation and over-recovery.	Policy objective: Certainty and fairness to financial markets participants	Policy objective: ease of implementation
Option One: Applicants would pay 100% of flat fee for the most resource intensive application and 50% of any other flat fee for licence applications made on the same day.	The level of discount directly relates to the amount of duplicated information. If the most resource intensive application is charged at 100% this will allow adequate cost recovery. And, based on FMA's estimates of duplicated information, 50% of any other applications received will allow cost recovery from subsequent applications. ✓✓	Over-recovery is limited under this option as FMA is not charging a fee for information that has already been assessed. ✓✓	This option is not fair to licensees because it does not take into account the transitional requirements for licensees under the FMC Act and allows only a narrow window for the multiple licence discount to be applied. ✗	The multiple licence discount will require some additional FMA resource to administer. ✓
Option Two: The first licence application would be charged 100% of the flat fee and subsequent applications made within a six month period would be charged 50% of the flat fee irrespective of the level of FMA resource required to assess the application.	Applications for a subsequent licence that is more resource intensive would not allow adequate cost recovery (applications are more resource intensive where they have specific and additional criteria that would not be duplicated across applications). Applying a 50% discount to a resource intensive application would not reflect the cost of FMA resource needed to process it. ✗	Over-recovery is limited under this option as FMA is not charging a fee for information that has already been assessed. However, because the fee paid would not reflect the cost of FMA's resource required to process the application under-recovery would occur, which would most likely lead to cross-subsidisation. ✗	Establishing a timeframe in which multiple licence discounts may be applied is a fairer approach, particularly given the fact that licensees may be transitioning to the new regime under the FMC Act at different times. ✓✓	The multiple licence discount will require some additional FMA resource to administer. ✓

Table assessing options for multiple market services provider licence fees:

Option Three: Within a six month period the most resource intensive licence would be charged at 100% of the flat fee and any additional applications would be charged at 50% of the flat fee. (preferred option)	This option would take into account the amount of duplicated information between licence applications and ensure that FMA can recover its costs for the additional and specific licence requirements considered as part of a more resource intensive application. ✓✓	Over-recovery is limited under this option as FMA is not charging a fee for information that has already been assessed. ✓✓	Establishing a timeframe in which multiple licence discounts may be applied is a fairer approach, particularly given the fact that licensees may be transitioning to the new regime under the FMC Act at different times. ✓✓	The need to take into account the level of FMA resource required when applying the discount would result in additional administration for FMA in comparison to the other options. ✗

Impact of the introduction of fees for market services providers (Issues A1, A2 & A4)

31. MBIE's consultation noted that the preferred model was a flat fee plus an hourly rate. Based on figures provided by FMA and utilising the estimated flat fee under this model, the market impact for introducing licence fees to market services providers is outlined below.

32. Based on an estimate from figures provided by FMA, the cost of licensing market services providers will be $2.7 million over the first three years. Most market services providers will have two years from 1 December 2014 to transition to the new regime, although actual transitional requirements are still being finalised. The estimates are based on the approximate number of applications FMA expects to receive in each licence category (outlined below) multiplied by the proposed flat fee. The estimated figures do not take into account applications for variations of licence or discounts received when multiple applications for different licences are made. They also do not take into account the use of the hourly rate when applied to resource intensive applications.

Type of Market Services Provider	Flat Fee (Estimated average number of hours per application multiplied by FMA's hourly rate)	Approximate number of applications FMA expects to receive
Fund Manager	$3,565.00	220
DIMS	$3,565.00	200 - 400
Independent Trustee of a Restricted Scheme	$2,139.00	80
Derivatives Issuer	$10,695.00	50
Regulated Intermediary (such as person-to-person lending services and crowd-funding platforms)	$6,238.75	Crowd funders: 10 Person-to-person lenders: 5

Full cost recovery through FMA's existing hourly rate (Issue B1)

33. FMA's hourly rate seeks to recover costs directly from financial markets participants who will benefit from the service provided by FMA. In line with the options analysis provided for market services providers, if FMA's hourly rate does not fully recover costs for the services provided then the costs would need to be absorbed into FMA's operating costs and be drawn from either Crown funding or the existing FMA levy. This was not considered as an option because it goes against the established funding arrangements and fee setting guidelines. The services provided are a private good, meaning it is not appropriate for FMA's costs in issuing licences to come from Crown or levy funding.

34. The only option that was considered was an increase to FMA's hourly rate to ensure costs would be fully recovered in future. The analysis that went into solving this problem was to ensure that the method used to review the hourly rate was robust and would not result in either over or under-recovery in future. The method FMA has used to review its hourly rate is presented below.

35. FMA has undertaken its own analysis of costing information within the 12 months to 30 September 2013. FMA has used a full absorption costing model. Indirect costs, indirect labour costs and direct labour costs are absorbed by being spread across the direct labour hours. Direct costs are not included and are directly charged to outputs, not used in the calculation of the hourly rate. Litigation fund expenses are also excluded.

36. FMA's total costs (excluding litigation costs) were $22.6 million for the 12 months to 30 September 2013. FMA produced 146,200 hours of chargeable time against these costs giving $155 per hour spent ($178.25 GST inclusive). This is an FMA reporting process and is audited each financial year. While the total costs or hours in the calculations have not been audited, these are not dissimilar from FMA's annual results. FMA's annual results can be found in its latest annual report: http://www.fma.govt.nz/about-us/corporate-publications/annual-reports/fma-annual-report-2013/.

Impact of an increase to FMA's hourly rate (Issue B1)

37. An increase to FMA's hourly rate will impact a number of existing financial markets participants. Accurate figures for those affected are not available as the increase in hourly rate applies to a range of actions under Securities Markets (Fees) Regulations 2003, exemptions under Securities (Fees) Regulations 1998 and various actions under Auditors Regulations (Part 2).

Fee model and level of existing fee for statutory supervisors and trustees (Issue B2)

38. Related to the problem of full cost recovery through FMA's hourly rate is the model and level of the existing fee for statutory supervisors and trustees. The current fee is a flat fee only and is set too low for FMA to fully recover its costs in licensing this group of financial markets participants. The existing flat fee is based on approximately 30 hours of FMA resource time. The options considered in solving this problem are outlined in the table below along with an assessment of their effectiveness against the key policy objectives.

Table assessing options for trustee and statutory supervisor licence fees

Fee	Key policy objective: recover FMA costs in licensing market services providers from licensees	Policy objective: each applicant pays a fee that reflects the cost of FMA resource used to process their application, minimising cross-subsidisation and over-recovery.	Policy objective: Certainty and fairness to financial markets participants	Policy objective: ease of implementation
Option One: Raise the existing flat fee based on an average number of hours across all licence applications	FMA has existing data and knowledge of licensing this group so the costs could be averaged out across the whole group. ✓✓	Based on existing FMA data, there was a considerable difference between low resource and resource intensive applications. If a flat fee were introduced the outliers of this regime would have part of their costs covered by those who submit less resource intensive applications. This would cause cross-subsidisation.✖	A flat fee results in certainty for licensees. ✓✓	A flat fee is simple to administer. ✓✓

Option Two: Change the fee model for this group to a flat fee and hourly rate. (preferred option)	The flat fee would be used to recover costs from the majority of licensees and the hourly rate would be used to recover costs from resource intensive applications. ✓✓	As with the model that was analysed for market services providers this option would still result in an increase to the flat fee but it would be based on an average of 'low-medium' risk applications rather than the provider population as a whole. Under this option the increase would not be as great as raising the existing flat fee to reflect an average of all applications. Resource intensive applications would be charged the hourly rate. ✓	The use of the hourly rate in this model introduces a degree of uncertainty to the licensing regime. ✓	The use of the hourly rate makes this model more administratively complex. ✓

Impact of changes to the fee model and level of the existing fees for statutory supervisors and trustees (Issue B2)

39. Statutory supervisors and trustees will be significantly affected by the policy proposals. MBIE consulted on a preferred model for this group of a flat fee plus an hourly rate. In addition, the flat fee would be increased. Along with the increase in FMA's hourly rate the proposed flat fee for this group will be increased to 45 hours per application instead of approximately 30 hours per application as it is currently. The combination of these factors means the flat fee will be raised from $4,968.00 (GST inclusive) to $8,021.25 (GST inclusive), an increase of just over 60%.

40. There are currently eleven licensees in this group of financial markets participants. However the increase in fee will not have an immediate effect on the market. Aside from requests for a variation, the existing licences will otherwise not need to be reviewed by FMA until 2017 or 2018.

Consultation

41. Public consultation was undertaken from 26 November 2013 until 21 January 2014. A discussion document was published on MBIE's website and submissions sought on a specific list of questions about the fee model and increase to FMA's hourly rate.

42. A total of eight submissions were received on the proposals in the discussion document, mainly from key industry groups.

Key feedback from submissions that impacted upon decisions on the fee model and level of fees

43. **Fee model for market services providers licence application fee (Issue A1):** There was general support for the preferred fee model of flat fee plus hourly rate, confirming MBIE's preference for this fee model. Five submitters supported the model in principle. However half of the submissions received had concerns about the estimated number of hours used to calculate the flat fee and wanted more information about how the estimates had been reached. In response to these concerns MBIE sought further information from FMA about the estimates and is satisfied that due consideration and FMA experience in issuing licences to existing groups of market participants has been utilised in the estimation process.

44. **Fee model for variation of licence for market services providers (Issue A2):** The possibility of charging variations of licence on an hourly rate basis was raised by one submitter and MBIE added this possibility to the list of options considered for variations of licence.

45. **Fee model for the renewal of market services providers licences (Issue A3):** There was considerable opposition to a full fee charged at renewal. Six submissions received were opposed to this option. Submitters stated that if licensees are subject to FMA monitoring then there would be no need to do a full assessment at renewal and therefore charge a full fee, except, for instance, if FMA had some specific concerns about the individual or entity. In response to submissions MBIE undertook further consultation with FMA to confirm that charging a full fee at renewal was appropriate in all circumstances. MBIE understands that a 'risk based' approach will be applied to monitoring and therefore the re-licensing event may be the only time that an entity or individual is subject to a full re-assessment by FMA. Therefore, FMA's intention to do a full assessment at renewal remains justified.

46. **Fee model for multiple applications for market services providers licences (Issue A4):** Feedback from half of the submissions received on multiple licences suggested that the discount on subsequent applications should also apply within a definite timeframe, say six months. As a result of submissions MBIE considered this as an option.

47. **Fee model for statutory supervisors and trustees (Issue B2):** Two submissions were received on the fee model and level for statutory supervisors and trustees. Both submissions requested more information about the process used to estimate the flat fees. In response to these concerns MBIE sought further information from FMA about the estimates.

Conclusions

48. Following the options analysis presented above and the feedback gained from submissions, MBIE is making the following recommendations:

Fee model and level for the application fee for market services providers (Issue A1)

49. After public consultation and further consultation with FMA, MBIE recommends that the fee model of flat fee plus hourly rate is adopted for market services providers. On balance, the flat fee plus hourly rate largely achieves the intended policy objectives:

- It ensures FMA can recover its costs in licensing market services providers from those who will benefit from holding a licence
- By setting a relatively low flat fee (utilising a risk-based assessment) it is anticipated that cross-subsidisation and over-recovery will be limited
- It is expected that the majority of applicants will only be paying the flat fee and those that will be charged an hourly rate will be given early warning that this will be the case. Both of these factors introduce a degree of certainty to the fee model
- The flat fee plus hourly rate model is easier to implement as it is less administratively complex than a straight hourly rate model, although the hourly rate portion of the fee model will produce some administrative complexity.

50. The following table outlines the proposed level of fee for each type of market services provider.

Type of Market Services Provider	Estimated average number of hours to process an application	FMA hourly rate (GST inclusive)	Flat Fee (Estimated average number of hours per application multiplied by FMA's hourly rate)
Fund Manager	20 hours	$178.25	$3,565.00
DIMS	20 hours	$178.25	$3,565.00
Independent Trustee of a Restricted Scheme	12 hours	$178.25	$2,139.00
Derivatives Issuer	60 hours	$178.25	$10,695.00
Regulated Intermediary (such as person-to-person lending services and crowd-funding platforms)	35 hours	$178.25	$6,238.75

Fee model for variation of licence for market services providers (Issue A2)

51. MBIE recommends that the fee for variation of market services providers licences be an hourly rate only.

Fee model for the renewal of market services providers licences (Issue A3)

52. MBIE recommends that a full fee be charged at renewal based on FMA's intention to undertake a full assessment at renewal.

Fee model for multiple applications for market services providers licences (Issue A4):

53. MBIE recommends that the multiple licence discount is applied to applications by the same individual or entity within a six month period. MBIE recommends that applicants be charged 100% of the highest fee and 50% of any other licence applications made within the six month period.

Full cost recovery through FMA's existing hourly rate (Issue B1)

54. MBIE recommends that FMA's hourly rate is increased from $166.62 to $178.25 (both GST inclusive). The increase applies to the following fees:

Type of Fee	Application fee	Current hourly rate (GST inclusive)	Proposed hourly rate (GST inclusive)
Request to waive levy	N/A	$166.62	$ 178.25
Advice/Decisions/Exemptions under Securities Markets (Fees) Regulations 2003	$115.00	$166.62	$ 178.25
Application for exemption under Securities (Fees) Regulations (1998)	$115.00	$166.62	$ 178.25
Various actions under Auditors Regulations (Part 2)	$115.00	$166.62	$ 178.25

Fee model and level of existing fee for statutory supervisors and trustees (Issue B2)

55. MBIE is recommending that the fee model for statutory supervisors and trustees is changed from a flat fee only to a flat fee plus an hourly rate.

Type of Market Services Provider	Proposed Flat Fee (Estimated average number of hours per application multiplied by FMA's hourly rate)	Proposed Hourly rate in excess of Flat Fee (GST inclusive)
Trustees and Statutory Supervisors	$8,021.25	$178.25
Variation of licence for Trustees and Statutory Supervisors	$1,604.25	$178.25

Implementation plan

56. Subject to Cabinet approval, the regulations giving effect to the fee proposals will take effect from 1 April 2014. The implementation of the FMC Act – as it relates to market services providers – will be in two phases as outlined below:

Phase	Commencement	Provisions in force
One	1 April 2014	FMA will begin licensing applicants and crowd funding and peer-to-peer lenders will be able to operate under the new regime.
Two	1 December 2014	Licensing conduct obligations for all market services providers come fully into force.

57. The phased approach will allow time for all those who need to be licensed to obtain licences in advance of 1 December 2014 when licensing conduct obligations come into force, alleviating the creation of a 'bottle-neck' around that date and ensuring all those who need to obtain licences have time to do so. In addition, most market services providers will have 2 years from 1 December 2014 to transition to the new regime, although actual transitional requirements are still being finalised.

58. The increase to FMA's hourly rate will apply from 1 April 2014 and the fee model and level of fee for statutory supervisors and trustees will be changed from this date.

Monitoring, evaluation and review

59. A review period of three years is proposed for the fee model and fee level for the new licences issued to market services providers under the FMC Act.

60. A review period of five years is proposed for the fee model and fee level for statutory supervisors and trustees. Because the policy proposals are based on current figures rather than estimates MBIE is satisfied that the fee model and levels do not need to be reviewed as soon as for market services providers.

61. The main criteria that will be reviewed in both evaluations will be the extent to which the fees are recovering FMA's costs from individual licensees, in particular, whether FMA's hourly rate is ensuring cost recovery. The fee models will also be reviewed to ensure the number of hours required to process a 'standard application' across all market services provider groups is accurate and is not causing over or under-recovery.