

**Reprint
as at 1 April 2014**



**Financial Markets Authority
(Levies) Regulations 2012
(SR 2012/121)**

Rt Hon Dame Sian Elias, Administrator of the Government

Order in Council

At Wellington this 5th day of June 2012

Present:

Her Excellency the Administrator of the Government in Council

Pursuant to section 68 of the Financial Markets Authority Act 2011, Her Excellency the Administrator of the Government, acting on the recommendation of the Minister of Commerce and on the advice and with the consent of the Executive Council, makes the following regulations.

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Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.

Note 4 at the end of this reprint provides a list of the amendments incorporated.

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

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Regulations

- 1 Title**
These regulations are the Financial Markets Authority (Levies) Regulations 2012.
- 2 Commencement**
These regulations come into force on 1 August 2012.

Interpretation

3 Interpretation

In these regulations, unless the context otherwise requires,—
annual gross premium revenue has the meaning given in regulation 5

authorised futures dealer means a person carrying on the business of dealing in futures contracts within the scope of an authorisation under section 38(1)(a), or an approval under section 38(1)(b), of the Securities Markets Act 1988

class means a class of specified persons described in column 2, and identified by a number given in column 1, of the levies table

FSP Act means the Financial Service Providers (Registration and Dispute Resolution) Act 2008

generally accepted accounting practice—

- (a) has the same meaning as in section 8 of the Financial Reporting Act 2013 (unless paragraph (b) applies); or
- (b) means generally accepted accounting practice within the meaning of section 3 of the Financial Reporting Act 1993 if the person is required to prepare financial statements in accordance with that practice

leviable event, in relation to a person included in a class, means—

- (a) the event specified for the class in column 3 of the levies table; or
- (b) if regulation 9 applies to the person, the event specified in regulation 9(4)

levies table means the table in Schedule 2

manager has the meaning given in section 2(1) of the Securities Act 1978

overseas company has the same meaning as in section 5(1) of the Financial Reporting Act 2013

registered FSP means a person registered under Part 2 of the FSP Act

scheme means 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)

security has the meaning given in section 2D of the Securities Act 1978

specified licence means a licence—

- (a) issued to an auditor by an accredited body (under section 11 of the Auditor Regulation Act 2011) or to an overseas auditor by the FMA (under section 12 of that Act); and
- (b) in respect of which information supplied to the Registrar of Companies is, or will be, confirmed by the accredited body or the FMA (as the case may be) in an annual confirmation made under section 43 of the Auditor Regulation Act 2011

STSS Act means the Securities Trustees and Statutory Supervisors Act 2011

superannuation trustee has the meaning given in section 2(1) of the Securities Act 1978

total assets has the meaning given in regulation 4

total managed assets has the meaning given in regulation 7

total supervised interests has the meaning given in regulation 6.

Regulation 3 **generally accepted accounting practice**: replaced, on 1 April 2014, by regulation 4(1) of the Financial Markets Authority (Levies) Amendment Regulations 2014 (LI 2014/49).

Regulation 3 **levies table**: amended, on 1 April 2014, by regulation 4(2) of the Financial Markets Authority (Levies) Amendment Regulations 2014 (LI 2014/49).

Regulation 3 **overseas company**: replaced, on 1 April 2014, by regulation 4(3) of the Financial Markets Authority (Levies) Amendment Regulations 2014 (LI 2014/49).

4 Meaning of total assets (class 2)

(1) In these regulations, **total assets**,—

- (a) in relation to a registered bank in class 2, means the total assets of the banking group of the bank as reported in the bank's most recent disclosure statement published for the purpose of section 81 of the Reserve Bank of New Zealand Act 1989; and

- (b) in relation to a deposit taker in class 2, means the total assets of the deposit taker and its guaranteeing subsidiaries (if any) as reported in the most recent audited financial statements (which may be interim financial statements), prepared in accordance with GAAP, for the deposit taker and its guaranteeing subsidiaries (if any).
- (2) If the deposit taker is an overseas company, the financial statements referred to in subclause (1)(b) must be financial statements for the deposit taker's New Zealand business prepared, in accordance with GAAP, as if the deposit taker and its guaranteeing subsidiaries (if any) were companies formed and registered in New Zealand.
- (3) In this regulation, **guaranteeing subsidiary** has the meaning given in regulation 4(1) of the Securities Regulations 2009.

5 Meaning of annual gross premium revenue (class 3)

- (1) In these regulations, **annual gross premium revenue**, in relation to a person in class 3, means the premium revenue for a financial year, before the deduction of any reinsurance premiums, of the person and its subsidiaries (if any)—
 - (a) as reported in the most recent audited financial statements, prepared in accordance with GAAP, for the person and its subsidiaries (if any); or
 - (b) if there are no such financial statements, as calculated—
 - (i) for the person's most recently completed accounting period; and
 - (ii) as if for the purpose of preparing financial statements for the person and its subsidiaries (if any) in accordance with GAAP.
- (2) If the person is an overseas company, the financial statements referred to in subclause (1) must be financial statements for the person's New Zealand business prepared, in accordance with GAAP, as if the person and its subsidiaries (if any) were companies formed and registered in New Zealand.
- (3) In this regulation, **subsidiary** has the same meaning as in section 5(1) of the Financial Reporting Act 2013.

Regulation 5(3): replaced, on 1 April 2014, by regulation 5 of the Financial Markets Authority (Levies) Amendment Regulations 2014 (LI 2014/49).

6 Meaning of total supervised interests (class 4)

- (1) In these regulations, **total supervised interests**, in relation to a person in class 4, 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,—
- (a) as reported by the person to the FMA under section 25 of the STSS Act most recently before the leviable event or, in the case of a person deemed to be included in class 4 under regulation 9, at the time of the leviable event; or
 - (b) if the person has not reported to the FMA, as calculated—
 - (i) for a date as near as possible to the leviable event; and
 - (ii) as if for the purpose of preparing a report to the FMA under section 25 of the STSS Act.
- (2) In this regulation, **supervised interest** has the meaning given in section 4(1) of the STSS Act.

7 Meaning of total managed assets (class 5)

- (1) In these regulations, **total managed assets**, in relation to a person in class 5, means the total value of the assets of all schemes for which the person is the manager or superannuation trustee other than—
- (a) a KiwiSaver scheme for which the person is the Kiwi-Saver trustee (as defined in section 4(1) of the STSS Act); or
 - (b) a scheme, for which the person is the manager, in relation to participatory securities that are shares in a building society or in an industrial or provident society registered under the Industrial and Provident Societies Act 1908.
- (2) The assets of a scheme are its total assets—
- (a) as reported in the most recent audited financial statements, prepared in accordance with GAAP, for the scheme; or
 - (b) if there are no such statements, as calculated—
 - (i) for a date as near as possible to the leviable event; and

- (ii) as if for the purpose of preparing financial statements for the scheme in accordance with GAAP.

Levies

8 Persons included in prescribed classes of specified persons must pay levy

- (1) Every person that is included in a class at the time of the leviable event for the class must pay the levy specified in column 5 of the levies table.
- (2) The levy must be paid—
 - (a) at the time of the leviable event (unless subclause (3) applies); and
 - (b) to the collector specified for the class in column 4 of the levies table.
- (3) Despite subclause (2)(a), if the leviable event involves the issue of an invoice, the levy must be paid within the time frame specified in that invoice.
- (4) This regulation is subject to regulations 9 to 12.

9 Persons deemed to be included in classes 4 and 5

- (1) This regulation applies to a person that is—
 - (a) licensed under the STSS Act in respect of a security; and
 - (b) not registered under Part 2 of the FSP Act.
- (2) The person is deemed to be included in class 4.
- (3) However, if the person is also a manager or superannuation trustee in respect of securities offered to the public, then the person is deemed to be included in both class 4 and class 5.
- (4) The leviable event is the person's delivery, for the first time in any year commencing on 1 July, of a report to the FMA under section 25 of the STSS Act.
- (5) Despite regulation 8(2)(b), the person must pay the levies for class 4 and (if applicable) class 5 to the FMA.

10 Certain persons in class 2 exempted from paying levy

A person in class 2 is not required to pay the levy for that class if, at the time of the leviable event, the person is exempted

from compliance with 1 or more provisions of Part 5D of the Reserve Bank of New Zealand Act 1989 under any of the following:

- (a) Deposit Takers (Charitable and Religious Organisations) Exemption Notice 2010:
- (b) Deposit Takers (Funding Conduits) Exemption Notice 2010:
- (c) Deposit Takers (In Receivership or Liquidation) Exemption Notice 2009:
- (d) Deposit Takers (Moratorium) Exemption Notice 2009:
- (e) Deposit Takers (Payment Facility Providers) Exemption Notice 2009:
- (f) Deposit Takers (Public Trust) Exemption Notice (No 2) 2010.

11 Levies payable by persons in 2 or more classes of specified persons

A person that is included in 2 or more classes must, under section 68(7) of the Financial Markets Authority Act 2011, pay the levy prescribed for each of those classes.

12 Payment of levies by persons in group

- (1) This regulation applies to—
 - (a) a person in class 2 that is in a group that includes 1 or more other persons that are also in class 2;
 - (b) a person in class 3 that is in a group that includes 1 or more other persons that are also in class 3.
- (2) Despite regulation 8,—
 - (a) the persons in the group are jointly and severally liable to pay only 1 levy in the class; and
 - (b) the amount of the levy is,—
 - (i) for class 2, the amount that would be payable by a person in class 2 if the person's total assets equalled the consolidated total assets of all the persons in the group that are included in class 2; and
 - (ii) for class 3, the amount that would be payable by a person in class 3 if the person's annual gross premium revenue equalled the consolidated an-

- nual gross premium revenue of all the persons in the group that are included in class 3; and
- (c) the levy must be paid at the time of the leviable event for whichever person in the class is to pay the levy on behalf of the group (as notified to the Registrar of Financial Service Providers under the Financial Service Providers (Registration) Regulations 2010).
- (3) In this regulation, **group** has the same meaning as in section 5(1) of the Financial Reporting Act 2013.

Regulation 12(3): replaced, on 1 April 2014, by regulation 6 of the Financial Markets Authority (Levies) Amendment Regulations 2014 (LI 2014/49).

13 Requirements relating to FMA invoicing for levies

- (1) This regulation applies to a levy payable by a person in class 8, 10, 11, or 13 on an invoice issued by or on behalf of the FMA.
- (2) A person in class 8 must be invoiced for the levy as soon as practicable after the end of a financial year of the registered exchange with which the person has a listing agreement (within the meaning of section 2(5) of the Securities Markets Act 1988).
- (3) A person in class 10 or 11 must be invoiced for the levy no earlier than the date that is 3 months after the end of the person's financial year.
- (4) A person in class 13 may be invoiced for the levy before or after the FMA makes the annual confirmation required by section 43 of the Auditor Regulation Act 2011.

14 FMA may waive levy in whole or in part

- (1) This regulation applies to a levy payable by a person in any of classes 1 to 13.
- (2) The FMA may waive the levy, in whole or in part, if the FMA is satisfied that the exceptional circumstances or characteristics of the person, when compared with the circumstances or characteristics of other persons in the class of specified persons for which the levy is payable, would make it inequitable for the person to pay the levy.

- (3) The FMA must not waive a greater proportion of the levy than is reasonably necessary considering the exceptional circumstances or characteristics of the person.
- (4) If the FMA decides to waive the levy, in whole or in part, the FMA must—
 - (a) notify the decision in the *Gazette*; and
 - (b) publish the decision, and the FMA's reasons for the decision (including why the waiver is appropriate), on an Internet site maintained by or on behalf of the FMA.
- (5) A notification in the *Gazette* for the purposes of subclause (4)(a) need not include the reasons for the decision.

Application, savings, and transitional provisions

Heading: inserted, on 1 April 2014, by regulation 7 of the Financial Markets Authority (Levies) Amendment Regulations 2014 (LI 2014/49).

15 Application, savings, and transitional provisions relating to amendments made to these regulations after 1 January 2014

The application, savings, and transitional provisions set out in Schedule 1 (which relate to amendments made to these regulations after 1 January 2014) apply for the purposes of these regulations.

Regulation 15: inserted, on 1 April 2014, by regulation 7 of the Financial Markets Authority (Levies) Amendment Regulations 2014 (LI 2014/49).

Schedule 1

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Application, savings, and transitional provisions relating to amendments made to these regulations after 1 January 2014

Schedule 1: inserted, on 1 April 2014, by regulation 8 of the Financial Markets Authority (Levies) Amendment Regulations 2014 (LI 2014/49).

Provisions relating to Financial Markets Authority (Levies) Amendment Regulations 2014

1 Interpretation

In clause 2, **amendment regulations** means the Financial Markets Authority (Levies) Amendment Regulations 2014.

2 Transitional provision

- (1) These regulations, as amended by regulations 4 to 6 of the amendment regulations, apply in relation to accounting periods that commence on or after 1 April 2014.
 - (2) These regulations, as in force before 1 April 2014, continue to apply in relation to accounting periods that commence before that date as if the amendment regulations had not been made.
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Schedule 2 Levies

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Column 1 Class	Column 2 Description	Column 3 Leviable event	Column 4 Collector	Column 5 Amount of levy
1	Persons that, on or after 1 August 2012, apply under section 15 of the FSP Act to be a registered FSP	Making the application	Registrar of Financial Service Providers	\$350
2	Registered FSPs that are registered banks or deposit takers (as defined in the Reserve Bank of New Zealand Act 1989) (but <i>see</i> regulation 10)	Supplying an annual confirmation to the Registrar of Financial Service Providers under section 28 of the FSP Act	Registrar of Financial Service Providers	If the person's total assets— (a) exceed \$50 billion, \$350,000; or (b) exceed \$10 billion but do not exceed \$50 billion, \$80,000; or (c) exceed \$2 billion but do not exceed \$10 billion, \$25,000; or (d) exceed \$1 billion but do not exceed \$2 billion, \$15,000; or (e) exceed \$20 million but do not exceed \$1 billion, \$7,500; or

Schedule 2

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Column 1	Column 2	Column 3	Column 4	Column 5
Class	Description	Leviable event	Collector	Amount of levy
				(f) do not exceed \$20 million, \$2,000
3	Registered FSPs that are licensed insurers (as defined in the Insurance (Prudential Supervision) Act 2010)	Supplying an annual confirmation to the Registrar of Financial Service Providers under section 28 of the FSP Act	Registrar of Financial Service Providers	<p>If the person's annual gross premium revenue—</p> <p>(a) exceeds \$250 million, \$150,000; or</p> <p>(b) exceeds \$50 million but does not exceed \$250 million, \$35,000; or</p> <p>(c) exceeds \$10 million but does not exceed \$50 million, \$10,000; or</p> <p>(d) does not exceed \$10 million, \$2,000</p>

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Regulations 2012

Schedule 2

Column 1	Column 2	Column 3	Column 4	Column 5
Class	Description	Leviable event	Collector	Amount of levy
4	Registered FSPs that are licensed under the STSS Act in respect of a security (but <i>see</i> regulation 9)	Supplying an annual confirmation to the Registrar of Financial Service Providers under section 28 of the FSP Act	Registrar of Financial Service Providers	<p>If the person's total supervised interests—</p> <p>(a) exceed \$5 billion, \$100,000; or</p> <p>(b) exceed \$1 billion but do not exceed \$5 billion, \$60,000; or</p> <p>(c) exceed \$100 million but do not exceed \$1 billion, \$20,000; or</p> <p>(d) do not exceed \$100 million, \$5,000</p>

Column 1 Class	Column 2 Description	Column 3 Leviable event	Column 4 Collector	Column 5 Amount of levy
5	Registered FSPs that are managers or superannuation trustees in respect of securities offered to the public (but <i>see</i> regulation 9)	Supplying an annual confirmation to the Registrar of Financial Service Providers under section 28 of the FSP Act	Registrar of Financial Service Providers	<p>If the person's total managed assets—</p> <p>(a) exceed \$2 billion, \$100,000; or</p> <p>(b) exceed \$1 billion but do not exceed \$2 billion, \$80,000; or</p> <p>(c) exceed \$500 million but do not exceed \$1 billion, \$60,000; or</p> <p>(d) exceed \$100 million but do not exceed \$500 million, \$40,000; or</p> <p>(e) exceed \$50 million but do not exceed \$100 million, \$20,000; or</p> <p>(f) exceed \$20 million but do not exceed \$50 million, \$10,000; or</p> <p>(g) do not exceed \$20 million, \$2,000</p>

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 Regulations 2012
 Schedule 2

Column 1	Column 2	Column 3	Column 4	Column 5
Class	Description	Leviable event	Collector	Amount of levy
6	Registered FSPs that are— (a) exchange participants (as defined in section 2(1) of the Securities Markets Act 1988, but excluding public issuers and natural persons); or (b) contributory mortgage brokers (as defined in section 2(1) of the Securities Act 1978); or (c) persons registered for the financial service described in section 5(k) of the FSP Act; or (d) authorised futures dealers (as defined in regulation 3); or (e) brokers (as defined in section 77A of the Financial Advisers Act 2008); or (f) authorised financial advisers (as defined in section 5 of the Financial Advisers Act 2008)	Supplying an annual confirmation to the Registrar of Financial Service Providers under section 28 of the FSP Act	Registrar of Financial Service Providers	One of the following amounts (being whichever applicable amount is the greatest): (a) if the person is an exchange participant, \$7,500; (b) if the person is a contributory mortgage broker, \$2,000; (c) if the person is registered for the financial service described in section 5(k) of the FSP Act, \$2,000; (d) if the person is an authorised futures dealer, \$2,000; (e) if the person is a broker, \$1,000; (f) if the person is an authorised financial adviser, \$400

Column 1	Column 2	Column 3	Column 4	Column 5
Class	Description	Leviable event	Collector	Amount of levy
7	Registered FSPs that are not included in any of classes 2 to 6	Supplying an annual confirmation to the Registrar of Financial Service Providers under section 28 of the FSP Act	Registrar of Financial Service Providers	\$350
8	Public issuers (as defined in section 2(1) of the Securities Markets Act 1988)	Being issued with an annual invoice by or on behalf of the FMA in accordance with regulation 13	FMA	\$2,000
9	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

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 Financial Markets Authority (Levies)
 Regulations 2012
 Schedule 2

Column 1	Column 2	Column 3	Column 4	Column 5
Class	Description	Leviable event	Collector	Amount of levy
10	Registered exchanges (as defined in section 2(1) of the Securities Markets Act 1988)	Whichever of the following applies: (a) giving an annual report to the FMA under section 36YA of the Securities Markets Act 1988; or (b) if no annual report is given to the FMA, being issued with an invoice by or on behalf of the FMA in accordance with regulation 13	FMA	\$20,000

Column 1	Column 2	Column 3	Column 4	Column 5
Class	Description	Leviable event	Collector	Amount of levy
11	Authorised futures exchanges (as defined in section 37(1) of the Securities Markets Act 1988) that are not included in class 10	Whichever of the following applies: (a) giving an annual report to the FMA under the person's terms of authorisation; or (b) if no annual report is given to the FMA, being issued with an invoice by or on behalf of the FMA in accordance with regulation 13	FMA	\$20,000
12	Accredited bodies (as defined in section 6(1) of the Auditor Regulation Act 2011)	Making an annual confirmation under section 43 of the Auditor Regulation Act 2011	Registrar of Companies	\$2,000 for each specified licence (as defined in regulation 3)
13	Overseas auditors holding a specified licence (as defined in regulation 3)	Being issued with an annual invoice by or on behalf of the FMA in accordance with regulation 13	FMA	\$2,000

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Regulations 2012

Schedule 2

Column 1	Column 2	Column 3	Column 4	Column 5
Class	Description	Leviable event	Collector	Amount of levy
14	Persons that make an application for registration or incorporation under— (a) the Building Societies Act 1965; or (b) the Companies Act 1993; or (c) the Friendly Societies and Credit Unions Act 1982; or (d) the Limited Partnerships Act 2008	Making the application	The person to whom the application is made	\$10
15	Persons that are registered or incorporated, and required to make an annual return, under— (a) the Building Societies Act 1965; or (b) the Companies Act 1993; or (c) the Friendly Societies and Credit Unions Act 1982; or (d) the Limited Partnerships Act 2008	Making the annual return	The person to whom the annual return is made	\$10

Reprinted as at
1 April 2014

**Financial Markets Authority (Levies)
Regulations 2012**

Rebecca Kitteridge,
Clerk of the Executive Council.

Issued under the authority of the Legislation Act 2012.
Date of notification in *Gazette*: 7 June 2012.

Reprints notes

1 *General*

This is a reprint of the Financial Markets Authority (Levies) Regulations 2012 that incorporates all the amendments to those regulations as at the date of the last amendment to them.

2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

4 *Amendments incorporated in this reprint*

Financial Markets Authority (Levies) Amendment Regulations 2014 (LI 2014/49)
