

**FINANCIAL SERVICE PROVIDERS
(REGISTRATION AND DISPUTE
RESOLUTION) ACT 2008
AND
FINANCIAL ADVISERS ACT 2008:
FEES REGULATIONS**

Discussion Document

October 2009

TABLE OF CONTENTS

	Page
Information for Submitters	3
Executive Summary	4
Introduction	6
Legislation	7
Proposed Fees	9
Appendix	14

INFORMATION FOR SUBMITTERS

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

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It would be useful if submissions sent in hard copy or faxed were also provided in electronic form (Adobe Acrobat, Microsoft Word 2000 or compatible format).

The closing date for submissions is 13 November 2009.

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EXECUTIVE SUMMARY

The Financial Service Providers (Registration and Dispute Resolution) Act 2008 and the Financial Advisers Act 2008 were passed in September 2008.

The new legislation requires individuals and entities in the business of providing a financial service in New Zealand to join a consumer dispute resolution scheme and register with the Companies Office. This will assist regulators and members of the public identify and access information about financial service providers, and improve consumer access to redress in the event of a dispute.

Going further, those people who are sufficiently qualified and experienced to give high level financial advice will now be authorised by the Securities Commission. Authorised Financial Advisers will be able to advise on the most complex financial products and services (such as securities), while advisers who are only registered will be restricted to the lower risk products (such as bank term deposits and consumer credit contracts). Over time, the new regime should encourage public confidence in the professionalism and integrity of financial advisers. The government is also working towards trans-Tasman mutual recognition of qualified financial advisers.

Three government agencies have been tasked with implementation of the new financial sector regulatory regime:

Companies Office – to administer the Register of Financial Service Providers

Ministry of Consumer Affairs – to administer the approval process for dispute resolution schemes and establish the Reserve Scheme

Securities Commission – to supervise financial advisers and approve employers as Qualifying Financial Entities.

All three agencies will provide services to assist implementation (and beyond) and the associated costs must be recovered from the users and beneficiaries of that service; the proposed fees do no more than recover costs, they are not set to create profit for the government. The agencies propose to charge the following base fees:

To be a...	One-off charge (incl. GST)	Ongoing annual charge (incl. GST)
Registered financial service provider only or registered financial adviser only	\$350	\$60
Registered and Authorised Financial Adviser	\$1,385	\$410
Registered Qualifying Financial Entity	\$4,630	\$1,140

Additional charges will apply for criminal history checks (\$35 per person) carried out by the Companies Office and/or for a contribution (\$30) to the administration costs of the dispute resolution regime. Those charges depend on the make-up of each provider, and further details of when they will apply are set out in the discussion document and in table form in the Appendix.

In order to keep matters simple, all fees will be collected by the Companies Office regardless of which government agency is providing the service.

The Companies Office has a reputation for delivering high quality online registry services. In 2008, New Zealand business voted the Companies Office the "Most Helpful Government Agency" for the sixth year running.

INTRODUCTION

1. Last year, the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (“the FSP Act”) and the Financial Advisers Act 2008 (“the FAA”) were passed to improve the regulation of financial service providers.
2. The purpose of the new legislation is to:
 - a. Establish a register of all financial service providers for easy access by the searching public and industry regulators;
 - b. Provide comprehensive dispute resolution and redress mechanisms for consumers who deal with them; and
 - c. Enable regulation by the Securities Commission of financial advisers to encourage professionalism and public confidence in the sector.
3. This discussion document proposes fees to be charged by government agencies to recover the costs of implementing aspects of the new legislation. Fee regulations for this purpose are intended to be promulgated under section 44 of FSP Act and section 155 of the FAA in early 2010.
4. The proposed fees have been developed in accordance with the Guidelines of the Treasury and the Auditor-General for Setting Charges in the Public Sector, and based on the following best estimates of financial service providers currently carrying on business in New Zealand:

Registered Banks	18
Other Financial Institutions (incl. Building Societies, Unit Trusts, intermediaries, issuers)	2,900
Insurance companies (General, Life)	175
Superannuation Scheme Individual Trustees	680
<u>Financial Advisers¹</u>	<u>7,500</u>
Estimated total	11,273

5. It is proposed that all of the fees will be reviewed within three (3) years from the date that registration becomes compulsory, when the actual number of registered financial service providers (including advisers) is known.
6. This discussion document builds on feedback received from members of the financial sector and is the latest in a series of discussion documents and staff papers released this year by the Securities Commission, the Ministry of Economic Development, and the Ministry of Consumer Affairs on aspects of the implementation of the FSP Act and the FAA.

¹ Of the total estimated number of financial advisers, an estimated 5,000 would be categorised as Authorised Financial Advisers, 2,000 would be in the category of advisers that need to be registered but not authorised, and 200 would be in the category of Qualifying Financial Entities.

7. A range of options were considered in respect to when and how the proposed fees would be paid to the various government agencies involved. The options considered included (1) all agencies collecting their own fees, with applicants being asked to pay separate fees at different times to multiple agencies and (2) one central agency accepting responsibility for the collection and onward distribution of fees paid. To reduce unnecessary confusion, the Companies Office has agreed in this instance to be the 'one-stop shop' collection point for all of the fees detailed in this paper.
8. This discussion document does not consult on the following government levies that are still under development:
 - i **The levy payable by members of the reserve dispute resolution scheme (s77 FSP Act).** The variable costs of reserve scheme (for example, those associated with considering complaints) will be directly levied to members of the reserve scheme. This will be consulted on in a separate discussion paper scheduled to be released in November 2009.
 - ii **An operational levy payable to the Securities Commission (s153 FAA).** The FAA allows the Securities Commission to charge an operational levy to fund costs arising from the performance of any or all of the Securities Commission's functions and duties under the FAA. The Securities Commission proposes to impose such a levy to recover costs in respect of the surveillance and enforcement work the Securities Commission will undertake across the entire financial adviser profession. The amount of the levy will be determined once the actual number and structure of AFAs and QFEs is better known, following full implementation of the FAA regime in December 2010.

LEGISLATION

The Financial Service Providers (Registration and Dispute Resolution) Act 2008

9. The FSP Act was passed in September 2008. It reforms the law relating to financial service providers and sets up a registration system that will:
 - identify persons (including entities) in the business of providing or offering to provide a financial service;
 - provide easy public access to information about financial service providers;
 - ensure that the controlling owners, directors and senior managers of financial service providers do not have certain criminal convictions, are not bankrupt, and are not the subject of a management ban under companies, securities or consumer legislation;
 - assist New Zealand meet its anti-money-laundering obligations under the Financial Action Task Force (FATF) Recommendations.
10. The Register of Financial Service Providers (FSPR) will effectively operate as a public notice board, where the details of those people in the business of providing a financial service are registered and searched.

11. The FSP Act also establishes a comprehensive, industry-based dispute resolution system to improve consumer access to redress in the financial sector. The FSP Act requires the provision of consumer dispute resolution as a mandatory requirement of registration for those offering financial services to the public.
12. The FSP Act provides for regulations to be enacted dealing with matters including fees payable by applicants to the Registrar of Financial Service Providers. The aim is for the regulations to be in place by 1 May 2010, the proposed date for opening of registration applications.

The Financial Advisers Act 2008

13. The purpose of the FAA is to promote the sound and efficient delivery of financial advice, and to encourage public confidence in the professionalism and integrity of financial advisers. The FAA specifies who may perform a financial adviser service and the financial products and services on which they may advise. The FAA replaces the existing statutory obligations for investment advisers, brokers and share-brokers.
14. The FAA establishes different obligations for financial advisers according to the complexity and risk posed by the advice given. Those who advise on complex financial products, such as most securities, or who provide a financial planning service, will be required to register on the FSPR and be authorised by the Securities Commission². Those who provide advice on less complex products, such as bank term deposits, will be required to be registered but not authorised.
15. The FAA also provides for an entity licensing model, under which advisers who operate as part of a qualifying financial entity (QFE) may provide certain financial adviser services without being registered or authorised in their personal capacity. In this case, the entity takes on the responsibility of ensuring that the individual advisers within its organisation comply with the requirements of the FAA. To become a QFE, the entity must register and obtain approval from the Securities Commission.
16. The FAA provides for regulations to be enacted dealing with matters relating to fees, charges, and costs payable to the Securities Commission. This discussion document proposes fees to recover the costs to the Securities Commission of approving QFEs, authorising financial advisers (AFA), and some of the supervision costs incurred by the Securities Commission under the FAA. It is expected that regulations providing for these fees will be in place by 1 May 2010.

² Except where the individual adviser is an employee of a qualifying financial entity and the advisory service they are providing is in regard to a product issued by the qualifying financial entity (section 17(2) of the FAA).

PROPOSED FEES

INITIAL REGISTRATION AND APPLICATION FEES

The following fees (including GST) will be payable once and collected by the Companies Office at the time of registration on the FSPR:

Financial Service Providers

Financial Service Provider (FSP) application for registration fee	\$350
Criminal history check fee (per person) ³	\$35
Consumer Dispute Resolution regime administration contribution	\$30

Authorised Financial Advisers and Qualifying Financial Entities Only

The above fees plus:

Authorised Financial Adviser (AFA) authorisation application fee	\$750
Qualifying Financial Entity (QFE) approval application fee	\$4,000
Base minimum annual supervision fee	\$250

*Exceptions apply. Please see the **table attached at Appendix 1** for details of those exceptions and how they affect the total.*

ONGOING CONFIRMATION AND RENEWAL FEES

The following fees (including GST) will be payable annually and collected through the FSP register:

Financial Service Providers

Registration Annual Confirmation fee	\$60
Criminal history check fee (per person)	\$35
Consumer Dispute Resolution regime administration contribution	\$30

Authorised Financial Advisers and Qualifying Financial Entities Only

The above fees plus:

Authorised Financial Adviser (AFA) authorisation renewal fee	\$100
Qualifying Financial Entity (QFE) approval renewal fee	\$800
Base minimum annual supervision fee for AFAs and QFEs	\$250

*Exceptions apply. Please see the **table attached at Appendix 1** for details of those exceptions and how they affect the total.*

³ including all directors, senior managers and controlling owners (if individuals)

Comment on proposed fees

Companies Office

17. Under the FSP Act, the Registrar of Financial Service Providers (“the Registrar”) is required to maintain a register of financial service providers carrying on business in New Zealand. The FSPR will be one of several business registries operated by the Companies Office, part of the Business Services Branch of the Ministry of Economic Development.
18. In addition to initial registration, the FSP Act requires registered financial service providers to file an annual confirmation with the Companies Office once a year after registration (with the exception of the first year).
19. The Companies Office operates its registers according to the principle of cost recovery and it is intended that the costs of establishing and maintaining the FSPR be recovered through fees. In order to recoup the cost of maintaining the FSPR, fees need to be charged for:
 - a. Applications by financial service providers to be registered; and
 - b. The filing of annual confirmations.
20. The Companies Office component of the registration and annual confirmation fees has been set at a rate designed to do no more than recover the costs of maintaining the register. The costs of undertaking the registration process, arranging for the necessary criminal history checks, and the ongoing maintenance of a financial service provider’s registration have all been taken into account.
21. In setting the fees, regard has been had to minimising business compliance costs, recovering all costs associated with the register and maximising the integrity of the registered information. The rates are in line with comparable fees charged for other registers maintained by the Companies Office. It is proposed that the FSPR registration and annual confirmation fees will be reviewed after three (3) years, when an assessment of actual registration and searching volumes can be carried out.
22. The legislation establishes the FSPR as an electronic register. The fully electronic nature of the new register enables the registration and annual confirmation fees to be kept to a minimum.

Criminal History Checks

23. Applicants who apply to be registered must not be disqualified by virtue of (amongst other things) having been convicted of a crime involving dishonesty (or against the FSP Act) in the last five (5) years, or having at any time been convicted of a money laundering or terrorism financing offence. Such convictions will not only disqualify individuals who apply, but also an incorporated entity if any of its current directors, senior managers or its controlling owner have such a criminal history.

24. In order to maintain the integrity of the register, the Registrar has instructed the Companies Office to check each applicant's criminal history (in respect to the relevant offences only) with the Ministry of Justice. The checks against the Clean Slate database will be carried out initially when an application for registration on the FSPR is made and also when the provider's registration details are updated by way of the provision of the name of a new director, senior manager or controlling owner. These checks will be carried out by the Registrar independently of any police checks individuals have previously been subject to in the course of their employment, and the financial service provider will be asked to pay the fees charged by the Ministry of Justice. All registered financial service providers on the FSPR will be asked to confirm in their annual confirmation that they have not become disqualified from registration by reason of any of the matters in section 14 in the last year. It is envisaged that, for at least the first two (2) years of the FSPR, the Companies Office will undertake repeat criminal history checks when the annual confirmation is filed.

Dispute Resolution Regime

25. In order to be registered on the FSPR, financial service providers who provide services to the public must be either a member of an approved dispute resolution scheme or the reserve (dispute resolution) scheme appointed by the Governor General on the recommendation of the Minister.
26. The FSP Act requires a reserve scheme to be established in recognition that not all financial service providers are able to co-ordinate themselves to form industry schemes. The reserve scheme is provided as a fallback for those financial service providers who do not have an industry scheme to join. A reserve scheme is required regardless of how many members may join.
27. It is proposed that every financial service provider who must join a dispute resolution scheme will contribute to the cost of the administration of the dispute resolution regime (regardless of which scheme they go on to join as a member). However, those financial advisers who are employees or nominated agents of a financial service provider entity (which is a member of a dispute resolution scheme) are not required to separately join a dispute resolution scheme and are therefore not required to pay the dispute resolution fee.
28. The dispute resolution regime contribution will be collected at the time of registration on the FSPR and annually thereafter, by the Companies Office. The fee will cover the costs of administering the dispute resolution regime established by the FSP Act. A proportion of this fee will be allocated to cover basic fixed reserve scheme operating costs. These include the fixed costs associated with having a reserve scheme in place irrespective of the number of members. (The establishment of a reserve scheme ensures the integrity of the overall dispute resolution regime and the fee ensures the reserve scheme is available regardless of the possibility that it may not have any members.) The dispute resolution fee contribution to the reserve scheme has been set at recovering no greater than twenty percent of the overall costs of the reserve scheme.

29. In setting the dispute resolution fee, regard was had to the fact that all financial service providers benefit from a mandatory dispute resolution framework. The provision of (free) access to consumer redress encourages market standards and discipline, which in turn engenders market confidence and participation.
30. The fees collected, based on an estimate of 6,000⁴ financial service providers required to pay the fee, will be around \$180,000. This covers:
 - a part-time resource to administer the dispute resolution regime (for example, the approval process for dispute resolution schemes and monitoring the effectiveness of the regime and individual schemes) and to liaise with the reserve scheme provider;
 - a very basic retainer for the reserve scheme service provider; and
 - the costs of the proposed reserve scheme advisory body.

Securities Commission

31. Under the FAA, the Securities Commission is responsible for approving or declining applications from individuals seeking to be Authorised Financial Advisers (AFAs). The Securities Commission is also responsible for approving or declining applications from entities seeking to take responsibility for their financial advisers by becoming a Qualifying Financial Entity (QFE).
32. In addition to considering initial applications, the FAA provides that AFAs and QFEs may apply to the Securities Commission for approval to renew their status once the original approval or authorisation has expired.
33. The financial advisers' regime relies on the Securities Commission maintaining ongoing regulatory supervision over all financial advisers and QFEs, including supervising and monitoring the compliance of financial advisers and QFEs with the FAA.
34. The Securities Commission's costs are to be fully cost-recovered by charging fees for the following activities:
 - a. initial applications for QFE approval or AFA authorisation;
 - b. applications for the renewal of QFE approval or AFA authorisation; and
 - c. core annual minimum supervision of QFEs and AFAs.
35. The initial, one-off authorisation application fee for QFEs and AFAs recovers the cost to the Securities Commission of processing initial applications. A component of the authorisation fee for financial advisers will also cover the one-off cost of establishing the assessment system to support the minimum competency standards required for financial adviser authorisation.

⁴ Best estimate (from the total of 11,200) of those financial service providers who will not be covered by their employer's scheme.

36. The renewal fee for QFEs and AFAs recovers the cost to the Securities Commission of processing applications for the renewal of QFE or AFA authorisation when it expires. The assessment of a renewal application will include, for example, the Securities Commission checking that an AFA has complied with the minimum professional standards prescribed in the Code of Professional Conduct for financial advisers. Frequency of renewal will be determined by the Securities Commission, having regard to various factors including, for example, the risk profile of the AFA or QFE at the time authorisation or approval is granted.
37. To reduce the cost of administering the renewal fee, the annual average of the renewal fee will be collected each year when the AFA or QFE pays its annual supervision fee and files its FSPR annual confirmation. For example, if an AFA is required to renew every five (5) years and the renewal fee is \$500 then he/she will pay \$100 of this amount each year.
38. The base minimum annual supervision fee recovers the minimum direct cost to the Securities Commission of annual supervision, whether it applies to an AFA or QFE. Every year, Securities Commission staff will review the annual report and any ad hoc reports from the QFE. The Securities Commission will update its risk profile for every AFA and QFE. This is the minimum supervision interaction in respect of each AFA and QFE. The base minimum annual supervision fee will be collected at the time an initial application is made and annually when the AFA or QFE files its FSPR annual confirmation.
39. In order that AFA authorisation and QFE approval applications can be made at the same time as an application for registration (if desirable), advisers will submit their applications to the Securities Commission via the Companies Office FSPR website. The Companies Office will be the “one-stop shop” for all financial service providers, including all financial advisers, to make applications for registration and authorisation. The fees above will therefore be collected by the Companies Office on behalf of the Securities Commission.
40. The proposed Securities Commission fees are being determined as part of an independent fees review of the Securities Commission. This review is analysing and commenting on the methodology and fees model used to calculate the costs expended in performing the various functions involved in the FAA authorisation and supervision regime. This will ensure a robust and accurate (allowing for assumptions resulting from the level of uncertainty that accompanies the introduction of a new regime) cost evaluation process, with the intention of providing an efficient and effective regime.

QUESTIONS FOR SUBMITTERS

- (1) Are our best estimates of financial service providers currently doing business in New Zealand accurate and/or reasonable in the current economic environment?
- (2) Have all feasible options been considered in respect to how the fees detailed in this paper will be paid and the method of collection?

APPENDIX

INITIAL REGISTRATION AND APPLICATION FEES

Payable once and collected by the Companies Office on registration on the FSPR.

Please note that AFAs and QFEs should refer directly to the 'AFA' and 'QFE' columns in the table below. They have been designed especially for you. The 'FSP' columns are only relevant to those financial service providers who do not intend to apply for AFA or QFE status.

Charge	Amount (incl. GST)	FSP	AFA	QFE	Service delivered by:
Financial Service Provider (FSP) application for registration	\$350	✓	✓	✓	Companies Office
Criminal check on each individual name in application for registration (including directors, senior managers and the controlling owner of the entity)	\$35 per person	✓	✓	✓	Ministry of Justice
Administration costs associated with the dispute resolution regime	\$30	✓ ⁵	✓ ⁶	✓	Ministry of Consumer Affairs
Authorised Financial Adviser (AFA) application ⁷	\$750		✓		Securities Commission
Qualifying Financial Entity (QFE) application	\$4000			✓	Securities Commission
Base minimum annual supervision per QFE/AFA	\$250		✓	✓	Securities Commission
Total amount payable through FSP register at time of initial registration		\$350 + \$30 + \$35 per criminal check	\$1385 + \$30 if AFA's employer has not joined a dispute resolution scheme	\$4630 + \$35 per criminal check + applicable charges for any AFAs within the QFE	

⁵ Only if the FSP provides services to the public

⁶ Only if AFA's employer has not already joined a dispute resolution scheme

⁷ Includes recovery of cost of assessing authorisation application as well as a component to recover the cost of ETITO establishing a level 5 competency standard and assessment system for AFAs

ONGOING CONFIRMATION AND RENEWAL FEES

Payable annually and collected through the FSP register at time of registration confirmation.

Please note that AFAs and QFEs should refer directly to the 'AFA' and 'QFE' columns in the table below. They have been designed especially for you. The 'FSP' columns are only relevant to those financial service providers who do not intend to apply for AFA or QFE status.

Charge	Amount (incl. GST)	FSP	AFA	QFE	Service delivered by:
Financial Service Provider annual confirmation fee	\$60	✓	✓	✓	Companies Office
Criminal check on each individual name in application for registration (including directors, senior managers and the controlling owner of the entity) ⁸	\$35 per person	✓	✓	✓	Ministry of Justice
Administration costs associated with the dispute resolution regime	\$30	✓ ⁹	✓ ¹⁰	✓	Ministry of Consumer Affairs
Example Authorised Financial Adviser (AFA) authorisation renewal	\$100 ¹¹		✓		Securities Commission
Example Qualifying Financial Entity (QFE) approval renewal	\$800 ¹¹			✓	Securities Commission
Base minimum annual supervision per QFE/AFA	\$250		✓	✓	Securities Commission
Total amount payable through FSP register with annual registration confirmation		\$60 + \$30 + \$35 per criminal check as applicable	\$410 + \$30 if AFA's employer has not joined a dispute resolution scheme + \$35 per criminal check as applicable	\$1140 + \$35 per criminal check as applicable + applicable charges for AFAs within the QFE	

⁸ For all individuals living in New Zealand the criminal check will be conducted annually for the first two to three years of the life of the Financial Service Providers Register then every three years.

⁹ Only if FSP provides services to the public.

¹⁰ Only if AFA's employer has not already joined a dispute resolution scheme.

¹¹ The annual average of the renewal fee will be collected each year when the AFA or QFE pays its annual supervision fee and files its annual confirmation of registration. For example, if an AFA is required to renew every 5 years and the fee is \$500 then the AFA will pay \$100 of this amount each year. If a QFE is required to renew every 5 years and the fee is \$4000 then the QFE will pay \$800 of this amount each year.