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Purpose of this paper

In the 2014 Budget, the Australian Government announced that it would replace the cost recovery arrangements currently administered by AUSTRAC (known as the AUSTRAC Supervisory Levy) with an industry contribution to fund AUSTRAC’s regulatory and intelligence functions.

As part of implementing the Government’s decision, this discussion paper invites stakeholder input and feedback concerning the AUSTRAC Industry Contribution.

This paper canvasses a proposed model for the calculation of the AUSTRAC Industry Contribution payable by individual reporting entities.

Structure of this paper

This paper contains the following three sections:

- **Part 1 – Introduction** – Provides the background to the AUSTRAC Industry Contribution.

- **Part 2 – The AUSTRAC Industry Contribution** – Explains the processes and timing for the invoicing of entities and outlines a proposed model for calculating the AUSTRAC Industry Contribution payable by individual reporting entities.

- **Part 3 – Administrative mechanisms** – Explains the administrative mechanisms for the AUSTRAC Industry Contribution, including enabling legislation and transitional arrangements.

The discussion paper includes an attachment which provides worked examples for three reporting entities to illustrate the calculation of the AUSTRAC Industry Contribution under the proposed model.

In order to assist stakeholders in considering the proposed model, a Glossary of Terms is set out at page 11.
Consultation process

AUSTRAC invites stakeholders to submit written comments on matters set out in this paper.

If you would like to make a submission, please send it to:

Discussion Paper – AUSTRAC Industry Contribution
Legal and Policy Branch
PO Box 13173, Law Courts
MELBOURNE VIC 8010

Submissions may also be made by email to Policy_Consultation@austrac.gov.au or by facsimile to (03) 8636 0501.

Submissions should include the name of your organisation (or your name if the submission is made as an individual), contact details for the submission, including an e-mail address and contact telephone number where available.

The closing date for submissions is Friday 25 July 2014.

All submissions, and the names of persons or organisations which make a submission, will be treated as public and may be published on AUSTRAC’s website, unless the author clearly indicates to the contrary. A request made under the Freedom of Information Act 1982 for access to a submission marked confidential will be determined in accordance with that Act.

All submissions will be reviewed by AUSTRAC.

Next steps

Following receipt and review of submissions, AUSTRAC will consider the feedback provided during this consultation process.

Legislative amendments will be required to implement the AUSTRAC Industry Contribution and this will be considered and finalised following the consultation process.

Prior to finalising the AUSTRAC Industry Contribution, AUSTRAC will undertake further stakeholder consultation through the release of a draft Ministerial Determination which will set out the proposed model for calculating the AUSTRAC Industry Contribution in respect of individual entities.
Part 1: Introduction

On 13 May 2014 as part of the 2014 Budget, the Australian Government announced changes to the industry contribution administered by the Australian Transaction Reports and Analysis Centre (AUSTRAC). The details of the announcement can be found in the Attorney-General’s Portfolio Budget Statements 2014–15.

Since 2011-12, AUSTRAC has been recovering the cost of delivering its regulatory and supervision activities from the entities it regulates in accordance with the Australian Government’s Cost Recovery Guidelines. The cost has been recovered through the AUSTRAC Supervisory Levy.

Following the 2014 Budget announcement, the existing cost recovery arrangements (the AUSTRAC Supervisory Levy) will be replaced with a new industry contribution. The AUSTRAC Industry Contribution will recover the costs of AUSTRAC’s two complementary functions: as Australia’s anti-money laundering and terrorism financing regulator and as Australia’s Financial Intelligence Unit (FIU).

It is intended that the implementation of the AUSTRAC Industry Contribution will recover 70 per cent of AUSTRAC’s budgeted operating expenditure (including depreciation) in 2014-15, increasing to 90 per cent in 2015-16 and 2016-17 and then to 100 per cent from 2017-18 onwards.

**Simplification and reduced impost on small business**

The AUSTRAC Industry Contribution is not subject to the Government’s cost recovery guidelines. As a result, there is an opportunity to simplify the model for the calculation of the amount payable by individual reporting entities under the arrangements.

As announced in the Budget, the $300 base component under the existing AUSTRAC Supervisory Levy (which is currently recovered from all leviable entities) will no longer apply. Under the AUSTRAC Industry Contribution, amounts will only be recovered from larger entities.

AUSTRAC estimates that more than 3,600 of the 4,667 entities currently subject to the AUSTRAC Supervisory Levy will not be subject to the AUSTRAC Industry Contribution. When combined with other entities not subject to the arrangements, approximately 85 per cent of reporting entities regulated by AUSTRAC will not be subject to the AUSTRAC Industry Contribution.
The AUSTRAC Industry Contribution

Entities regulated by AUSTRAC are vulnerable to being used for money laundering and terrorism financing purposes. Reporting entities obtain a benefit through being regulated by AUSTRAC:

- By complying with the requirements of the AML/CTF Act, the risk that a reporting entity will be used for money laundering or terrorism financing purposes is reduced.
- To the extent that reporting entities operate internationally, they obtain a benefit from operating in a jurisdiction that complies with the recommendations of the Financial Action Task Force.
- Implementation of effective AML/CTF regulation is linked to financial stability and the integrity of the global financial system on which wealth creation and prosperity depends.
- AML/CTF regulation protects reporting entities from internal corruption and high risk customers that may undermine their business activities, profitability and reputation.

Reporting entities also directly benefit from AUSTRAC’s intelligence holdings. Law enforcement agencies use AUSTRAC’s data to disrupt criminal activities targeting financial institutions, for example:

- in detecting the embezzlement of funds by employees
- investigating major loan fraud committed upon reporting entities
- disrupting international scams involving malicious emails that can adversely affect reporting entities
- following the money trail where major corporate crimes have been committed in Australia and reporting entities or their customers are creditors or investors and have suffered losses
- identifying criminal syndicates operating in gaming venues.

In addition to these benefits, the business operations of regulated entities, particularly larger commercial operations, also benefit more indirectly through the work of law enforcement and regulatory agencies in enhancing and maintaining business and community stability and safety within Australia.
Part 2: The AUSTRAC Industry Contribution

Invoicing and administrative arrangements

AUSTRAC’s internal processes and procedures that are currently in place for the invoicing and payment of the existing AUSTRAC Supervisory Levy will continue to apply under the new AUSTRAC Industry Contribution.

The timing of invoices will remain the same, with the exception of the 2014-15 invoicing period. AUSTRAC expects to invoice entities for the AUSTRAC Industry Contribution in early February 2015 for the 2014-15 financial year. The scheduled timing for invoices will revert to the same annual cycle as the existing AUSTRAC Supervisory Levy (that is, invoices issued in late July/early August) from the 2015-16 financial year onwards.

Consistent with existing arrangements, once an invoice is issued, a reporting entity will have a minimum period of 30 days in which to pay. Failure to pay the industry contribution on or before the due date will attract a late payment penalty. The late payment penalty will be 20% of the amount outstanding.

Existing review mechanisms will also apply under the AUSTRAC Industry Contribution.

Entities subject to the AUSTRAC Industry Contribution

As at 30 April 2014 a total of 13,904 reporting entities were enrolled with AUSTRAC in accordance with the obligations under the AML/CTF Act. Approximately 8,300 of these businesses were non-leviable entities and not subject to the AUSTRAC Supervisory Levy. Reporting entities which were non-leviable entities for the purposes of the AUSTRAC Supervisory Levy will continue not to be subject to the AUSTRAC Industry Contribution.

It has been announced that additional entities will become non-leviable entities under the AUSTRAC Industry Contribution. It is proposed to exclude from the AUSTRAC Industry Contribution a reporting entity or Billable Group with domestic earnings of less than $100 million where that reporting entity or Billable Group’s minimum payment under the AUSTRAC Industry Contribution would be less than $1,000.

The rationale for excluding such entities from the AUSTRAC Industry Contribution is that, in aggregate, the amount that would be collected by reporting entities or billable groups with an Industry Contribution calculated to be less than $1,000 would amount to only approx. 0.2 per cent of the total amount recoverable. The cost of collecting this amount from these entities is not proportionate to the amount recovered.
Proposed method for calculating the new industry contribution

The industry contribution will fund AUSTRAC’s activities as Australia’s anti-money laundering and counter-terrorism financing regulator and financial intelligence unit and will be calculated as a percentage of AUSTRAC’s operating costs, including amortisation and annual depreciation costs of assets used by AUSTRAC in the above activities, for example, AUSTRAC’s information systems and data bases.

The proportions of AUSTRAC’s operating costs to be recovered under the industry contribution are:

- 2014-15 - 70%
- 2015-16 - 90%
- 2016-17 - 90%
- 2017-18 (and onwards) - 100%

The industry contribution will not be used to recover the costs incurred under AUSTRAC’s international technical assistance and training programs, or any other expenditures related to programs which are not funded by Government appropriation. Under the Industry contribution the total amount that AUSTRAC will collect will not exceed the expenditure incurred as Australia’s AML/CTF regulator and FIU.

The industry contribution will be invoiced in advance based on AUSTRAC’s budget for the upcoming financial year.

AUSTRAC’s annual budget for any given financial year is determined by the Government, and is set out in the budget papers under the line item “Revenue from Government”. For the purposes of the AUSTRAC Industry Contribution, the expenditure for depreciation and amortisation will be added to this amount in order to determine AUSTRAC’s operating costs. The inclusion of depreciation and amortisation is necessary in order to recognise the capital costs associated with maintaining AUSTRAC’s infrastructure and asset base.

Details of the proposed method

AUSTRAC has developed the following proposed model for calculating the industry contribution. The proposal comprises the following components:

(i) An amount per Transaction Report submitted to AUSTRAC in a reporting period

(ii) An additional amount based on the total value of transactions reports submitted to AUSTRAC in the same reporting period

(iii) An earnings component which applies to a reporting entity or billable group with domestic earnings of $100 million or more

(iv) A minimum amount the calculated charge must reach before the reporting entity or billable group is charged for a particular reporting period
(v) A maximum amount which applies where an individual reporting entity or Billable Group has earnings of $5 billion or more, or a reported dollar value of $200 billion or more.

These components are described in greater detail below.

**Volume and value of transaction reports submitted to AUSTRAC**

These amounts are based on the volume and value of all transaction reports submitted to AUSTRAC in the preceding calendar year between 1 January and 31 December. A reporting entity will be charged a specified amount for each transaction report submitted to AUSTRAC, and will also be charged an amount calculated on the total value of transaction reports submitted to AUSTRAC during the relevant reporting period.

This component is consistent with the transaction reporting component that was included in the calculation of the AUSTRAC Supervisory Levy.

**Earnings component**

Reporting entities or Billable Groups with earnings of $100 million or more will be charged an additional component based on earnings. The earnings component will be calculated as a nominated percentage of domestic earnings (0.05%), and will be capped to a maximum component charge of $500,000. It should be noted that the use of a rate to determine the earnings component is different to the approach to determining the large entity component under the AUSTRAC Supervisory Levy. The reason for moving to a rate is that using different earnings ‘bands’ under the Supervisory Levy had the potential for a disproportionate impact on those entities whose earnings were at the margins of the bands. Further, it is not proposed to include the ‘foreign entity component’ in the AUSTRAC Industry Contribution. This component of the AUSTRAC Supervisory Levy relates to an entity which is a foreign company or a subsidiary of a foreign company, and imposes the minimum large entity component in cases where the earnings for that entity and any related companies in aggregate globally is greater than or equal to $100 million. This component generated a number of waiver requests from the entities caught under the previous arrangements on the grounds that their local earnings were disproportionate to the levy charged.

The definition of earnings is consistent with the definition of earnings used in the calculation of the large entity component of the existing AUSTRAC Supervisory Levy.

**Minimum payment amount**

In order to further reduce the burden on smaller entities, it is proposed that a minimum payment amount (or ‘payment floor’) of $1,000 will apply to a reporting entity subject to the AUSTRAC Industry Contribution. The minimum payment amount means that the total AUSTRAC Industry Contribution amount calculated for report volume, report value and earnings components must reach $1,000 in aggregate before a reporting entity or Billable Group will be required to pay the industry contribution. If the total calculated amount does not reach the payment floor, the entity or Billable Group will not be required to pay the industry contribution.
### Maximum payment amount

It is also proposed that a maximum amount apply to the entities or Billable Groups with the highest reporting value. The maximum payment amount operates in a similar manner to the transaction reporting cap used in the calculation of the AUSTRAC Supervisory Levy. The concept has been retained in order to address feedback from previous industry consultations concerning the high volume of related transactions between larger banks, for example, where a large proportion of the transaction reports submitted to AUSTRAC relate to another bank’s customers as a result of correspondent banking arrangements.

The maximum amount will apply where an individual reporting entity or Billable Group has earnings of $5 billion or more, or a reported transaction report value of $200 billion or more.

### Figure 1: Summary of proposal for 2014–15

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Proposed amount/value</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Transaction Report volume</strong></td>
<td>Amount charged per Transaction Report lodged by the entity</td>
<td>$0.01 per Transaction Report</td>
</tr>
<tr>
<td><strong>Transaction Report value</strong></td>
<td>An additional amount based on the total value of transaction reports submitted to AUSTRAC in the same reporting period</td>
<td>An amount to be determined after calculating all other components. The <em>indicative</em> factor for the majority of entities will be $0.000007512 (75.12 cents per $100,000). Will be set yearly by Ministerial Determination.</td>
</tr>
<tr>
<td><strong>Minimum payment/Payment floor</strong></td>
<td>Minimum amount the calculated charge must reach before the specified reporting entity is charged for a particular reporting period</td>
<td>$1,000</td>
</tr>
<tr>
<td><strong>Maximum payment/Payment ceiling</strong></td>
<td>Applies where an individual reporting entity or Billable Group has earnings of $5 billion or more, or a reported dollar value of $200 billion or more. These entities, which are lodging the highest value of transaction reports, are charged the same amount, which is in proportion to the value of reports lodged by those entities.</td>
<td><em>Indicative</em> amount is $4.144 million</td>
</tr>
<tr>
<td><strong>Earnings component</strong></td>
<td>This component applies to an reporting entity or Billable Group with domestic earnings of $100 million or more.</td>
<td>0.05% of domestic earnings, capped at $500,000</td>
</tr>
</tbody>
</table>
Part 3: Administrative arrangements

Enabling legislation

In order to provide AUSTRAC with authority to impose and collect the revised industry contribution, the Government will amend the following legislation:

- *Australian Transaction Reports and Analysis Centre Supervisory Cost Recovery Levy (Collection) Act 2011*

It is proposed that the legislative amendments will be considered by the Australian Parliament in the Spring Sittings period which commences on 26 August 2014.

It is expected that the existing mechanism whereby the levy is set each year by Ministerial Determination will continue for the industry contribution. The use of a legislative instrument made by the Minister ensures that the structure of the industry contribution has the flexibility to be responsive to changes in the regulatory population and in AUSTRAC’s supervision and intelligence activities. It provides an opportunity for annual consultation with industry as to the most appropriate allocation of costs across industry sectors and individual reporting entities. Any new Ministerial Determination will be subject to further stakeholder consultation prior to finalisation.

Transitional arrangements

During the first year of operation, certain transitional arrangements are likely to apply. AUSTRAC anticipates that entities will be invoiced later in the 2014-15 financial year than they would be in subsequent years.
## Glossary

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>AML/CTF Act</td>
<td><em>Anti-Money Laundering and Counter-Terrorism Financing Act 2006</em></td>
</tr>
<tr>
<td>AUSTRAC supervisory Levy</td>
<td>The existing levy which was introduced in 2011-12 through which AUSTRAC recovers the cost of its regulatory activities from reporting entities.</td>
</tr>
<tr>
<td>Base component</td>
<td>A flat rate amount (set at $300) that is required to be paid by all reporting entities as a component of the AUSTRAC supervisory levy under the existing cost recovery arrangements. This component will not form part of the proposed new industry contribution model.</td>
</tr>
</tbody>
</table>
| Billable Group                | A collective term used to describe a group of reporting entities that have a shared holding company. The calculation of the AUSTRAC Industry Contribution for the Billable Group will be the aggregation of chargeable components of all reporting entities in that group.  

   The definition of a Billable Group is also subject to certain conditions as set out in the AML/CTF Rules. |
| Calculation period            | Refers to the reporting component, and is the calendar year ending on the 31st December immediately preceding the commencement of the new financial year on 1 July.                                                |
| Designated service            | Designated service has the meaning given by the list of services described in Tables 1 – 3 of section 6 of the AML/CTF Act. These designated services cover a wide range of business activities undertaken within the financial services, bullion and gambling sectors. |
| Domestic earnings             | Where a reporting entity is not a foreign company, domestic earnings will comprise the total earnings of the entity from all operations. If an entity is a subsidiary of a foreign company, earnings will be determined from that entity’s operations in Australia.    

   Further information on the definition of earnings is contained in the [calculating earnings fact sheet](#). |
<p>| Earnings component ceiling    | The maximum amount of the earnings component to be charged to entities or Billable Groups.                                                                                                                  |
| Earnings component ceiling    | The earnings component ceiling will apply to larger reporting entities that have reported earnings over $100 million.                                                                                      |
| Earnings component            | Refers to the proposed earnings component of the industry charge, which will apply to larger reporting entities that have reported earnings over $100 million.                                                |</p>
<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Exempt entity</strong></td>
<td>A defined term in the <em>Australian Transaction Reports and Analysis Centre Supervisory Cost Recovery Levy Act 2011</em> and applies in the context of the existing cost recovery arrangements. Exempt entity, for a financial year, means a leviable entity that, by operation of the AML/CTF Rules made under section 229 of the AML/CTF Act, or by instrument made under section 248 of that Act, was, on the census day for that year, exempt from Part 7 of that Act.</td>
</tr>
<tr>
<td><strong>Industry contribution</strong></td>
<td>A new charge on industry regulated under the AML/CTF Act to replace the existing ASTRAC supervisory levy.</td>
</tr>
<tr>
<td><strong>Large entity</strong></td>
<td>A term used under the existing ASTRAC Supervisory Levy arrangements introduced in 2011-12. A large entity is a reporting entity or Billable Group with declared earnings which exceed $100 million.</td>
</tr>
<tr>
<td><strong>Large Entity Component</strong></td>
<td>A variable amount that is required to be paid by large entities as a component of the ASTRAC supervisory levy under the existing cost recovery arrangements.</td>
</tr>
<tr>
<td><strong>Large Entity Component tier structure</strong></td>
<td>The methodology used to determine the amount of the large entity component payable by large entities as a component of the ASTRAC supervisory levy under the existing cost recovery arrangements.</td>
</tr>
<tr>
<td><strong>Leviable entity</strong></td>
<td>Those reporting entities which are subject to the ASTRAC cost recovery levy in a given financial year. This is a defined term in the <em>Australian Transaction Reports and Analysis Centre Supervisory Cost Recovery Levy Act 2011</em>, and applies in the context of the existing cost recovery arrangements. Leviable entity is defined in terms of a particular financial year. Leviable entity, in relation to a financial year (the current year), means a person who:</td>
</tr>
<tr>
<td></td>
<td>(a) is a reporting entity (within the meaning of section 5 of the AML/CTF Act at any time in the previous financial year; and</td>
</tr>
<tr>
<td></td>
<td>(b) on the census day for the current year:</td>
</tr>
<tr>
<td></td>
<td>i. is entered on the Reporting Entities Roll under Part 3A of that Act; or</td>
</tr>
<tr>
<td></td>
<td>ii. is required, under section 51B of that Act, to apply to be entered on the Reporting Entities Roll; and</td>
</tr>
<tr>
<td></td>
<td>(c) is not an exempt entity for the current year.</td>
</tr>
<tr>
<td><strong>Maximum payment ceiling</strong></td>
<td>The maximum charge payable by an individual entity or Billable Group, regardless of whether the calculated total of reporting and earnings components exceeds this amount.</td>
</tr>
<tr>
<td><strong>Payment floor</strong></td>
<td>The minimum charge payable by an individual entity or Billable Group. If the calculated total of reporting and earnings components falls below this amount, no charge is payable.</td>
</tr>
<tr>
<td>Term</td>
<td>Definition</td>
</tr>
<tr>
<td>-------------------------------------------</td>
<td>-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Reporting entity</td>
<td>The businesses on which the AML/CTF regime places regulatory obligations because the businesses provide designated services under the AML/CTF Act.</td>
</tr>
<tr>
<td>Reporting Entities Roll (the Roll)</td>
<td>The Roll maintained by AUSTRAC in accordance with Chapter 62 (Reporting Entities Roll) of the AML/CTF Rules and which records the enrolments details of all reporting entities in accordance with the provisions of Part 3A of the AML/CTF Act.</td>
</tr>
</tbody>
</table>
| Transaction report                        | Means a report submitted to AUSTRAC by a reporting entity as follows: Threshold Transaction as detailed at section 43 of the AML/CTF Act for any transaction involving the transfer of physical currency, or e-currency, and where the total amount of physical currency transferred is not less than $10,000. Refer to section 43 of the AML/CTF Act.  

   International Funds Transfer Instruction as defined sections 46 and 47 of the AML/CTF Act |
| Transaction report value                  | The proposed charge that is to be based on the total gross value of reports lodged with AUSTRAC by a reporting entity during the Calculation Period.                                                             |
| Transaction report volume                 | The proposed charge that is to be based on the total number of reports lodged with AUSTRAC by a reporting entity during the Calculation Period.                                                                   |
Attachment 1: Worked examples

The following examples provide *indicative* calculations of the industry contribution payable under this proposal.

The amount of the charge has been modelled on the assumption that the total industry contribution from all entities will equal 70% of AUSTRAC’s budgeted operating expenditure for 2014–15.

Four different entities have been used to demonstrate the calculation of the industry contribution. The situation for each entity is different, but is nonetheless representative of entities currently on the Roll.

<table>
<thead>
<tr>
<th>Item</th>
<th>Entity A</th>
<th>Entity B</th>
<th>Entity C</th>
<th>Entity D</th>
</tr>
</thead>
<tbody>
<tr>
<td>Latest declared domestic earnings</td>
<td>$150,000,000</td>
<td>$5,500,000,000</td>
<td>$900,000,000</td>
<td>$20,000,000</td>
</tr>
<tr>
<td>Number of transaction reports lodged (report volume)</td>
<td>25,000</td>
<td>3,890,000</td>
<td>0</td>
<td>10,000</td>
</tr>
<tr>
<td>Value of transaction reports lodged (report value)</td>
<td>$3,890,000</td>
<td>$200,000,000,000</td>
<td>0</td>
<td>$940,000</td>
</tr>
</tbody>
</table>

For the above four entities the Industry Contribution would be calculated as follows:

<table>
<thead>
<tr>
<th>Item</th>
<th>Entity A</th>
<th>Entity B</th>
<th>Entity C</th>
<th>Entity D</th>
</tr>
</thead>
<tbody>
<tr>
<td>Earnings component</td>
<td>$75,000.00</td>
<td>$2,750,000.00</td>
<td>$450,000.00</td>
<td>$0.00</td>
</tr>
<tr>
<td>Report volume</td>
<td>$250.00</td>
<td>$38,900.00</td>
<td>$0.00</td>
<td>$100.00</td>
</tr>
<tr>
<td>Indicative Report value</td>
<td>$29.00</td>
<td>$1,502,400.00</td>
<td>$0.00</td>
<td>$7.00</td>
</tr>
<tr>
<td>Calculated Charge</td>
<td>$75,279.00</td>
<td>$4,291,300.00</td>
<td>$450,000.00</td>
<td>$107.00</td>
</tr>
<tr>
<td>Invoice Amount</td>
<td>$75,279.00</td>
<td>$4,144,000.00</td>
<td>$450,000.00</td>
<td>$0.00</td>
</tr>
</tbody>
</table>

**Notes:**

- The actual charge for Entity A is the calculated charge. The minimum and maximum limits do not apply.
- The report value was calculated using an *indicative* factor which for the majority of entities will be $0.000007512.
- The actual charge for Entity B is the expected maximum amount, as this entity has reached the maximum ceiling for this option. Entity B has earnings of $5 billion or
more, or a reported dollar value of $200 billion or more and is therefore one of the six largest entities.

- The actual charge for Entity C is the calculated charge. The minimum and maximum limits do not apply.

- The actual charge for Entity D is $Nil. The minimum payment floor applies, as the calculated charge is below $1,000.00.