

Submission

to the

Ministry of Business,
Innovation and Employment

on the

Financial Markets Conduct
Act Register Fees and
Other Financial Markets
Authority Fees and Levies

30 June 2014

Submission by the New Zealand Bankers' Association to the Ministry of Business, Innovation and Employment on the Financial Markets Conduct Act Register Fees and Other Financial Markets Authority Fees and Levies Discussion Document

About NZBA

1. NZBA works on behalf of the New Zealand banking industry in conjunction with its member banks. NZBA develops and promotes policy outcomes which contribute to a strong and stable banking system that benefits New Zealanders and the New Zealand economy.
2. The following fourteen registered banks in New Zealand are members of NZBA:
 - ANZ Bank New Zealand Limited
 - ASB Bank Limited
 - Bank of New Zealand
 - Bank of Tokyo-Mitsubishi, UFJ
 - Citibank, N.A.
 - The Co-operative Bank Limited
 - Heartland Bank Limited
 - The Hongkong and Shanghai Banking Corporation Limited
 - JPMorgan Chase Bank, N.A.
 - Kiwibank Limited
 - Rabobank New Zealand Limited
 - SBS Bank
 - TSB Bank Limited
 - Westpac New Zealand Limited.

Background

3. NZBA is grateful for the opportunity to submit on the proposed fees and levies structure under the Financial Markets Conduct Act 2013 (the Act).
4. The process around the development of the Act has been a good example of policy development that has actively involved the industry. NZBA commends the on-going commitment to meaningful consultation and engagement.
5. The following submission makes some brief comments on the draft fee structure as set out in the discussion document.
6. If you would like to discuss any aspect of the submission further, please contact:

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Question 1 – Register Establishment Costs

7. NZBA submits that more consideration should be given to the proposal to apply the full establishment and operating costs of the register to suppliers of financial services. The discussion document acknowledges at paragraph 4 that the register will provide the FMA an important regulatory tool in the monitoring and enforcement of financial market conduct. However, there is no reflection in the proposed fee and levy structure that the register is a public good. A split fee structure between market participants and government, similar to the operation of the Companies Office Register, would accurately reflect the nature of the register being produced. While some of the cost is appropriately borne by the industry, a split fee structure recognises the value of the banking industry to the New Zealand economy.

Question 2 – Ongoing Fees

8. NZBA submits that the annual confirmation fee for continuous debt issuers of \$3000 is very high, and does not reflect the fact that the confirmation is likely to be a simple document, in most instances doing nothing more than confirming that nothing has changed. We suggest that there is an appropriate comparison with the filing fees paid at the Companies Office for the filing and registration of something like the annual review document. The annual review document is not checked by the Companies Office, and we understand that the annual confirmation document will not need to be checked by the FMA.
9. In addition, the proposed fee is based on an assumption that there will be a total of 60 confirmations per year across the industry. However, some members have indicated that they may require as many as 40 confirmations annually per bank. Under the proposed annual confirmation structure, there is a high likelihood that there will be an over-recovery of fees. One advantage of a lower ongoing confirmation fee is that it removes any incentive for market participants to seek to bundle a number of product disclosure statements (PDSs) into one more complicated document to avoid the fees associated with filing multiple documents. On this basis we submit that the \$3000 annual confirmation fee is reconsidered.

Question 3 – Distribution of Costs

10. NZBA is interested to understand further the basis for the 75:25 allocation of costs as outlined at paragraph 17 of the discussion document. In relation to question one, it is difficult to provide feedback as to the appropriateness of the 75:25 split where the factors used to justify the distribution have not been outlined. On this basis, we submit that more information should be made available to illustrate the basis for this cost allocation.

Question 15 – KiwiSaver and Superannuation Scheme Trust Deed Review

11. The proposed change to fees under the KiwiSaver Regulations 2006 and Superannuation Schemes (Fees) Regulations 1992 as outlined at paragraph 44 of

the discussion document from a flat fees basis to an hourly rate of \$178.25 is problematic because market participants have no oversight or control over how long the review process could and should take. NZBA submits that a flat fee model is preferable on the basis that it is consistent and allows applicants to plan for costs incurred in the review process.

General

12. We also note that the underlying assumption as to the cost of the system appears to be based in current IT costs without any concept of what the ongoing cost might be. NZBA submits that it is important for the industry to have some oversight on the structure of the register, what it would cost to maintain, and if possible some visibility as to the tendering process for the creation of the register. It would also be useful to understand how the savings from the discontinuation of the costs of maintaining the current registers has been factored into the costs of the new registers.
13. NZBA suggests that more specific provision should be made to review the fees and levies model after a set period to determine whether the fees are set at an appropriate level. Thought must also be given to what approach will be taken in the event of over-collection of fees and levies.
14. We note that page 5 of the discussion document notes that “[r]egulations should also assist businesses to bring good opportunities to market.” We are concerned that the document does not adequately demonstrate the additional benefits the registers will bring to financial service providers who are already paying significant amounts for the regulation of the industry under the Financial Advisers Act 2008, the Financial Service Providers (Registration and Dispute Resolution) Act 2008, and the existing FMA fees and levies and other costs (NZX etc).
15. We welcome the opportunity to meet with you after submissions close to discuss the detail of these submissions, and appreciate the continued open and collaborative approach MBIE has taken to the consultation process.