NEW ZEALAND
BANKERS ASSOCIATION

Submission

to the

Ministry of Economic Development

on the

Proposed Financial Markets Authority levies discussion document

15 July 2011

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Submission by the New Zealand Bankers' Association to the Ministry of Economic Development

About the New Zealand Bankers' Association

1. The New Zealand Bankers' Association (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 safe and successful banking system that benefits New Zealanders and the New Zealand economy.

2. The following twelve registered banks in New Zealand are members of NZBA:
    - ANZ National Bank Limited
    - ASB Bank Limited
    - Bank of New Zealand
    - Bank of Tokyo-Mitsubishi, UFJ
    - Citibank, N.A.
    - 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.

Issues

Introduction

3. NZBA appreciates this opportunity to make a supplementary submission on the *Proposed fee and levy changes for the Financial Markets Authority, External Reporting Board, New Zealand Companies Office, and Insolvency and Trustee Service* discussion document (discussion document).

4. This submission is solely in respect of the levy proposals to fund the activities of the Financial Markets Authority (FMA).

5. In constructing its second submission, NZBA has applied the four criteria that we understand the Ministry of Economic Development (MED) is applying in its levy design:
    - Proportionality of levies to benefits received
    - Coherence and compatibility
    - Minimising the risk of unintended consequences
    - Minimising complexity.

6. NZBA considers that these are sound principles for the development of a levy framework.

7. Option 1 and Option 2 are not feasible models for the FMA levy, as outlined in NZBA's initial submission. Therefore, we limit this supplementary submission to the two models that we consider could reasonably be put in place: a tiered model based on the market activities of participants (a variant of Option 3 in the discussion document), or a low, flat levy applied across all companies (Option 4 in the discussion document). Each option has its own advantages and disadvantages.

8. NZBA had intended to provide more detail in this submission regarding the design of a tiered Option 3 variant model. However, for the reasons outlined below, NZBA now believes that a low, flat levy is the best solution until the review of the levies model is completed.

Tiered Model

9. Under this model, market participants will pay a combined FAA-FMA levy determined by the activities they carry out in the market. In order to make such a model work, the following features are needed:

   - Categories must cover all major market participants, for example authorised financial advisers (AFAs), registered financial advisers (RFAs), insurers, etc
   - Each category must be further broken down into tiers in order to recognise the larger relative benefits from regulation that may accrue to larger organisations, with resulting levy differentials across those tiers
   - Rules should exist to cover situations where a single entity sits in multiple categories (for example, these could be that such an entity pays all relevant levies or pays only the highest levy it is caught by).

10. It is important that the range of levies that participants in each category can pay be appropriate to the level of benefit accrued by the category's members.

11. It should be possible to determine the entities that act in each key market participant category using existing centralised lists. There are numerous ways that the market could be subdivided, depending on how simple or complex officials want the model to be. One example could be as follows on the next page:

Payer category	Identification method
Financial service provider	Register of Financial Service Providers (FSPR)
RFA (natural persons)	FSPR
Class/wholesale advice entity	FSPR
AFA	FSPR
Qualifying financial entity (QFE)	FSPR
Bank	FSPR
Insurer	FSPR
Non-bank deposit taker	FSPR
Broker	FSPR
Statutory supervisor	FSPR
Unit trust manager	Registered with FMA
KiwiSaver manager	Named in scheme registration with FMA
Contributory mortgage broker	FSPR
Manager of participatory securities	FSPR
Manager of superannuation scheme	Named in scheme registration with FMA
Trustee of superannuation scheme	Named in scheme registration with FMA
Authorised futures dealer	FMA licence
Registered securities exchange	Licensed by FMA
Registered futures exchange	Licensed by FMA
Designated settlement system	Licensed by FMA
Issuer of listed securities	NZX

12. This is one example of how quite a complete list of types of participants at the core of financial markets in New Zealand could be gathered. As indicated above, centralised lists of these participants exist and could be used to determine the exact numbers of participants in each category. However, although these lists are obtainable, using them to develop a comprehensive picture of the market will require significant additional work. This includes accessing each list from the three organisations that hold them, drawing the necessary information out and checking for double-ups, of which there will be many including, for example, between fund managers of different types of scheme.

13. Once a comprehensive list of core market participants has been built, further information would be needed to reveal the relative size of the players of each type. This information is vital to the design of any tiered levy framework because it:

    - Assigns members to the tiers and
    - Allocates the amount to be levied between them.

14. Relative size could be determined differently in each category, as appropriate for the activities of the participants in question. Selection of an appropriate metric would need to be discussed with the industry participants under each category.

15. With quality information on the numbers and sizes of participants in each category, a levy model could be developed that would satisfy to a high degree the objectives of

coherence and proportionality to benefits received and should be able to minimise unintended consequences.

16. However, in order to achieve these objectives it will be crucial to collect comprehensive data, as outlined above, and to consult further with industry. Further consultation on a draft tiered levy model is vital if this option is selected, as the discussion document did not contain a detailed proposal of this nature. In order to respond effectively, industry needs to be able to consider the detail of a full proposal. Further consultation will be necessary in order to minimise the risk of severe unintended consequences such as significant over- or under-collection or accidental over-levying of certain market participants, resulting in market distortions. For example, disproportionately high levies imposed on QFEs could cause a move among product providers away from giving financial advice to “information only” distribution, as outlined in NZBA’s first submission.

17. This proposal would be relatively complex in operation and administration.

Low Levy Across All Companies

18. This model is Option 4 in the discussion document.

19. This option performs very well against three of MED’s four criteria. The model would be coherent and comprehensive with no gaps in the model, as it would apply to all companies and other entities.

20. Furthermore, Option 4 minimises unintended consequences and distortions. With the same levy applied to all entities there would be little scope to game the system. The only method that occurs to NZBA would for “one-man-band” businesses to abandon their company structure and avoid the levy by working as a sole trader. However, given the very low levy and the substantial benefits of operating through a company this does not seem a material risk.

21. This option would also be very simple to design, draft and administer. As noted in the discussion document, this levy could be easily collected via annual returns processed online by the Companies Office.

22. This option does not, however, apportion the levy very well relative to the benefits received. Although all companies will benefit from quality financial market regulation, we acknowledge that they do not benefit as much as do direct financial market participants and their related entities. If this is of significant concern to officials, NZBA notes that the problem could be reduced by granting exemptions for entities that ought not, in MED’s opinion, be subject to the levy. For example, an exemption could be granted to very small businesses that would be unlikely to seek development capital by way of an exemption similar to the “sole adviser practice” exemption from the Financial Service Providers (Registration and Dispute Resolution) Act 2008.

23. However, any such exemption would add complexity and a risk of unforeseen distortions, eroding the benefits of this simple model.

Comparison and Recommendation

24. NZBA considers that a tiered model developed along the lines of the above is the best long term option despite its relative complexity, as it best satisfies the requirement that levies paid should be proportional to benefits enjoyed. However, as outlined above, developing this option will require significant further work and

additional industry consultation. If the deadline of having the levy regulations promulgated before the General Election remains in place NZBA doubts that this work can be completed in time.

25. Therefore, NZBA submits that the alternative of a low levy across all companies is both reasonable and achievable, as it has the advantage of being considerably easier to develop and implement. Given the time pressures at play and the significant additional work and consultation required to develop an effective tiered levy model, NZBA suggests that Option 4 is the best interim solution.

26. Once the securities law review has clarified the lie of the market by licensing the majority of central participants, and once the FAA and FMA have bedded down, it will be considerably easier to develop a sustainable long term model based on the tiered approach above.

Final Notes

27. If a tiered model is chosen and implemented before the election, as has been suggested, NZBA is of the view that a one year review would be needed, as there are likely to be significant unforeseen consequences if such a model is developed so quickly and without additional industry consultation. Further to this, NZBA notes that member banks, as large industry players, will be greatly affected by a tiered levy model in particular. As such, if a tiered model is selected by officials NZBA would expect significant additional consultation.

28. Whatever general option is eventually selected by officials, NZBA staff and member banks will be happy to continue to work with officials and contribute to the design of the FMA levy model.

29. Please do not hesitate to contact me if you have any queries.

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