

Financial Markets Conduct Act Licence Fees and Increase of Other Financial Markets Authority (FMA) Fees

Submission by New Zealand Bankers' Association

No	Questions:	Submission
1.	Do you have any comments on the level of the proposed licensing fees?	<p>Fee regime needs to take into account other funding and cost recovery</p> <p>In principle NZBA believes that any fee or levy that is recovered from the industry must be justified through robust evidence of actual costs. While the discussion document included estimates of the average time to process each class of application, the industry would like to see further information about what these estimates were based on. The absence of such information makes it difficult to effectively comment on the proposals. In particular, it creates it impossible for potential applicants to estimate the actual costs that they are likely to incur.</p> <p>In addition, the proposals in the discussion document do not appear to take into account the existing FMA levies, or other sources of FMA income. The industry would like to see more detailed evidence of the need for these new fees, given the other levies and charges already being recovered from industry participants.</p> <p>Derivatives issuers</p> <p>NZBA believes the proposals relating to derivatives are not well aligned with those relating to other licence classes.</p> <p>As the consideration of licence applications largely focuses on the suitability of the applicant, there is an acknowledged overlap between different licence applications. With this in mind, NZBA suggests that there is unlikely to be a great variation in the time taken to consider different types of licences.</p> <p>As a result, NZBA questions the assumption in the discussion document that a licence application from a derivatives issuer will take approximately 60 hours to process, especially when compared with the stated 20 hours for DIMS and Fund Manager applications.</p>

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		<p>We note that the paper explains that the increased number of hours is a reflection of the increased complexity of the application. While derivatives are a complex product, the licence application should not, and does not, consider the nature of the products but instead properly focusses on the issuer itself. In this context, the amount of information to be assessed and the complexity of the application is unlikely to be three times greater than for a DIMS issuer or a Fund Manager.</p> <p>We acknowledge that some matters, such as those relating to hedging and margining, may be more complex and require a degree of increased information disclosure. Accordingly, we accept that the time estimate for such cases must be slightly higher, but not so much higher than other licence types. We would be grateful if you would provide further any information you have which would better explain the difference.</p> <p>Under the current proposal a reduction in the estimate should not have adverse impacts on FMA, as any cost of an application in excess of the estimated average is able to be recouped on an hourly basis. However, setting the estimated average (and hence the flat fee) too high will have adverse financial impacts on applicants whose applications take less than the average time. This is likely to lead to unnecessary barriers to entry, which would be a negative outcome for the market.</p>
2.	Do you have any comments on the proposed design of the fee – being a flat fee plus an hourly rate?	<p>The proposed fees structure</p> <p>As discussed above, NZBA believes that any fee charged must be justified though evidence of the actual costs associated with that activity. By taking an average number of hours as the basis for the fee, there is a risk that outlying providers (smaller and larger providers) will potentially either over-estimate or under-estimate their actual licensing costs. In the absence of transparency as to how these estimates are reached, this approach creates significant uncertainty and makes it practically impossible to for many applicants accurately estimate licensing costs.</p> <p>Concerns regarding the basis for the flat fees</p> <p>If the current model is retained, NZBA also has some concerns around the estimates used to calculate the flat fees. We reiterate or above request for further information to enable us to comment effectively on the proposals.</p>

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		<p>In the absence of additional information regarding how the estimated times to process applications were calculated, the most relevant point of comparison is perhaps the Statutory Supervisor and Trustee licensing regime. The consultation document acknowledges that the flat fee for Statutory Supervisor and Trustee licence applications was insufficient to recover the costs of the application. The current flat fee for Statutory Supervisors and Trustees was based on 30 hours per application, and it is proposed in the discussion document that this is increased to 45 hours per application (plus an hourly rate if applicable).</p> <p>NZBA understands that the application process for Statutory Supervisor and Trustee licences is less complex than that being proposed for FMCA licences. With this in mind it is difficult to understand how the low estimates included in the discussion document will be sufficient to process even a standard FMCA licence application.</p> <p>NZBA recognises that the Statutory Supervisor and Trustee licensing regime is different, and that FMA will have to adopt a more pragmatic approach to FMCA licensing due to the number of applications that will be received and the time available to process the applications. If this is the case, this needs to be expressly acknowledged to give the industry greater certainty around the likely time required (and as a result the associated costs) to process licence applications.</p> <p>If, however, FMA is intending to apply the same level of scrutiny as was applied for Statutory Supervisor and Trustee licences, NZBA has some concern that the proposed 20 hours for Fund Manager and DIMS licences will often be insufficient. If this is the case it is likely to result in significantly higher costs than those proposed, particularly for larger providers with more complex structures.</p> <p>Potential amendments</p> <p>NZBA believes MBIE should consider including additional measures to ensure that the fee structure is more equitable. Two possible solutions that we have identified are:</p> <ul style="list-style-type: none"> • Capping or bundling the licensing costs where a provider (and/or their associated bodies) may be applying for multiple licences. Much of the information supplied may be the same or very similar to satisfy various licensing categories.

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		<ul style="list-style-type: none"> Including a lower base fee for smaller applications where the applicant is already subject to another regime (for example QFE licensing or Reserve Bank prudential regulation) and therefore have less information to provide as certain aspects of the applications will be deemed to be satisfied. <p>These approaches would not only mean a fairer method to recover costs, but would also give providers a better indication of the expected costs of their application, based on the size and structure of their businesses.</p>
3.	Do you have any comments on the proposed approach to multiple licences?	<p>NZBA notes, and agrees with, the proposal in the consultation document regarding a reduced charge for subsequent licence applications due to the duplication between licence applications. However, one area where we would appreciate further clarification is whether this will apply even in cases where licences are not applied for at the same time. Given the scale of the task for larger entities such as banks, it is unlikely that providers will apply for multiple licences at the same time (especially in this initial round of licensing because of the transitional provisions).</p> <p>NZBA believes that the fee structure should be amended to clarify that any reduced fee structure (including a cap as mentioned above) should apply even if a subsequent licence application is lodged at a later date. While we acknowledge that there may be limits to the timeframe, we suggest that the reduction should apply for a period of two years after a licence is applied for. In the alternative, FMA should enable applicants who already hold another licence to either certify that nothing already considered has changed, or to proactively identify any significant changes. This would reduce the time taken to assess the application, and thus reduce the overall cost to the applicant and create greater efficiencies for the FMA more generally.</p>
4.	Do you have any comments on the proposed approach to variations of licence?	
5.	Do you have any comments on the proposed renewal fee?	<p>NZBA believes the proposals regarding renewal do not accurately reflect the nature of the ongoing licensing relationship envisaged by the regime. In the consultation paper it is stated that the current proposal is that licences will need to be renewed every five years, and the fee for renewals will be the same as the initial application fee. The stated reason for this is that FMA intends to conduct a full assessment of a market services provider upon renewal.</p>

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		<p>This approach does not reflect the ongoing monitoring and market oversight role of FMA. Services providers will be required to comply with the conditions of their licences throughout this period. The regime includes both formal notification obligations on licence holders, and a requirement to have a culture whereby licence holders willingly and openly engage with regulators. If properly designed the conditions will ensure that the licensees are meeting minimum standards in respect of those services. Any further assurances required could be achieved by regulators focussing their supervisory and investigative activities in a risk-based, proportionate way, including theoretically through the use of periodic risk reviews.</p> <p>FMA has indicated that it is considering its approach to ongoing monitoring, including a risk-based approach, and has indicated that terms of licences may vary considerably. Both of these factors will impact the cost of assessing an application for a renewal of a licence. Accordingly, NZBA believes it is premature to set the cost of renewal fees until FMA has formed a view as to what type of assessment it will conduct when licences expire.</p>
6.	Do you have any comments on the proposed changes to FMA's existing fees for financial markets participants?	