

Submission

to the

Ministry of Business,
Innovation & Employment

on the

Consultation paper: Reviews
of the Financial Markets
Authority funding, the
Financial Markets Authority
levy, the External Reporting
Board levy and Companies
Office fees

22 August 2016

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 that contribute to a strong and stable banking system that benefits New Zealanders and the New Zealand economy.
2. The following fifteen registered banks in New Zealand are members of NZBA:
 - ANZ Bank New Zealand Limited
 - ASB Bank Limited
 - Bank of China (NZ) 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 welcomes the opportunity to provide feedback to the Ministry of Business, Innovation & Employment (**MBIE**) on its Consultation Paper: Reviews of the Financial Markets Authority funding, the Financial Markets Authority levy, the External Reporting Board levy and Companies Office fees (**Consultation Paper**), and commends the work that has gone into developing it.
4. Rather than answering each individual question posed in the Consultation Paper, we set out below the industry's key submissions.
5. If you have any questions about this submission, or would like to discuss any aspect of the submission further, please contact:

Antony Buick-Constable
Policy Director & Legal Counsel
04 802 3351 / 021 255 4043
antony.buick-constable@nzba.org.nz

FMA's proposed funding options and overall level of funding

6. NZBA notes that its members may make their own individual submissions on the Financial Markets Authority's (**FMA**) proposed funding options and the proposed overall level of funding set out in the Consultation Paper.
7. In responding to the Consultation Paper, NZBA and its members recognise that they will need to pay a reasonable share of the levies funding the FMA and acknowledge the benefits derived from well-regulated markets generally. However, NZBA notes that its members overall will likely bear a considerable increase to the levies payable based on members' activities. Members will have to consider how to absorb these increases. NZBA also notes that the FMA's regulatory approach is described as risk based, but the levies that are being applied are by business or activity type. Generally, NZBA and its members consider that levies should reflect relative risk market participants pose to consumers, investors and the economy generally. NZBA also notes that it would be desirable for further detailed consideration to be given to designing a framework for a sustainable and well understood funding model that ensures future certainty for market participants and the regulator.
8. NZBA and its members recognise the benefits of a well-funded and resourced FMA, including how this is articulated in the Consultation Paper under the enhanced case. However, we submit that if the enhanced case is adopted the bank levy portion of the FMA funding should be capped at the level banks are currently charged under the existing fees and levies arrangements (i.e. current levy noted in the table on page 53 of the Consultation Paper). In our view this reflects that banks comprise an industry of willing compliers who, under the current Qualifying Financial Entity (**QFE**) model, have significantly invested in self-regulation (which can be fully expected to continue under the proposed new Financial Advisers Act model). Accordingly, our submission also seeks to address how the funding burden could be shared equitably and sustainably among Government and financial market participants.

NZBA has some concerns around the consultation timeframes

9. NZBA and its members note that the compressed submission timeframes provided under the Consultation Paper may result in MBIE receiving submissions that are not as fully considered and substantive as they could have been had a longer timeframe been proposed.

Government contribution

10. The Government contribution of \$11m was set in 2011/2012 (which was the same level as the Securities Commission received). It is the view of NZBA and its members that given "the expectations of the FMA in terms of engagement with the industry and to operate as an effective conduct regulator are considerably higher than those of the Securities Commission" AND "well-regulated financial markets are vitally important to New Zealand's economy and the financial well-being of every New Zealander", the proportion of funding borne by Government (rather than the \$ amount) should remain the same. Under every funding model proposed in the Consultation Paper, the proportion of overall funding from Government decreases.

11. NZBA submits that this should be addressed by a formal framework for determining the Government contribution that recognises the proportion to which the FMA's activities are 'public good' driven, rather than supervisory and be scaled accordingly. This would also help to ensure the FMA's funding is equitable and sustainable.

Overall bank contribution

12. NZBA and its members acknowledge that all participants, including banks, benefit from well-regulated markets. However, NZBA submits that with the number of new market participants that now come within the levy regime there does not appear to be a reasonable justification to adjust the banks' portion of the levy back to approximately 11.2% of the total levy settled upon. Therefore, we submit the bank levy should be capped as noted in paragraph 8 above. All financial market participants and their relevant levy should be considered in scope for this purpose and apportioned on a transparent, justifiable and equitable basis.
13. For example, potential alternative categories are:
 - Debt issuers that are not banks and Non-Bank Deposit Takers (**NBDT**). This reflects a category of participant that is not levied twice as is the case for both banks/NBDTs and other Financial Market Conduct Act 2013 (**FMC**) licensed issuers. Banks/NBDTs pay a levy as both a bank/NBDT and to register a Product Disclosure Statement (**PDS**), or PDS equivalent, which is also the position for FMC licensed issuers who pay in the relevant levy category and for PDS registration. Most other issuers only pay for registration of a PDS, which does not reflect the relative risk that could be posed by the Regulated Offer to consumers, investors and the economy generally.
 - General insurers (which may or may not also be QFEs).
 - QFEs that do not otherwise fall into another levy category given they are regulated by the FMA in the financial adviser space. This category should also account for a presumed change stemming from the proposed Financial Adviser Act reforms where more entities than individual Authorised Financial Advisers may seek 'financial adviser firm' licences (given Registered Financial Advisers are not levied but also will no longer exist) and will allow robo-advice providers (who are not also an QFE/Financial Adviser Firm) to be levied as well.
 - Derivatives Issuers could also be charged on a tiered basis utilising the relevant Net Tangible Assets / financial position, to reflect the size / risk of these financial market participants.

To this extent, NZBA notes that the fee for registration as a Financial Service Provider (**FSP**) is quite low (potentially leading to some of the issues seen in this space).

14. For completeness, we note that banks typically white-label general insurance products, and accordingly any general insurer levy would need to expressly clarify that it is the manufacturer of the general insurance that pays the levy in this category, not the distributor (as banks already pay under the bank levy).

Funds under management

15. NZBA and its members submit that it is difficult to determine how risks in this category increase on the scale proposed and the how costs associated with the larger funds increase proportionately. A greater risk-based lens should be applied. While a form of tier system is inevitable, in NZBA's view the proposed increase is disproportionate to the risk. Further, the proposal to lower the levy at the smaller end of the fund size scale "to encourage competition" is at odds with the FMA's "risk based" approach advocacy and instead infers a 'deepest pockets pays' approach.

Proposed levy classes

16. NZBA and its members make the observation that compared with the current prescribed levy classes, it is difficult to identify accurately classes in the table (proposed in the Consultation Paper) that their respective organisations may be levied in.
17. For example, it is unclear whether a derivatives issuer is also to be levied in the 'foreign exchange trader' class. A definition of 'foreign exchange trader' would provide clarity on this point. It is also unclear whether a 'broker' also pays the 'trading activities on licensed markets' levy. To the extent that there are no other 'traders on a licensed market' who are not also a broker this could be removed and a single 'broker' levy applied.
18. An alternative could be an 'aggregation' approach similar to that in place under the current regime that aggregates 'classes' of service together so only one amount is payable, whichever is greatest. Using the above examples in paragraph 17, an organisation would only pay under the highest category where there is overlap – i.e. if the above are within the same 'classes', the affected organisation would pay the 'derivatives issuer' and 'trading on a licensed market' levies only. In NZBA's view the proposed table does not make this clear, making it difficult to determine whether or not activities are in the same 'class'.
19. In the 'bank and NBDT' category, NZBA and its members submit where a bank owns an NBDT related company then only one levy, albeit at the highest level, should be payable (as is the case under the current regime).
20. As a general comment, we assume the relevant levy for entities will be identified through FSP registrations at each annual renewal of FSP status (which we note is also levied to the extent that a FSP is not levied in another category). It would be helpful if MBIE could ensure that any language it is going to use to define or identify a levy category matches up with language used in the Financial Service Providers (Registration and Dispute Resolution) Act. We note that differences in the legislation and the actual registrations that can be selected online under the FSP module were not matched in the past and caused confusion – and that MBIE completed remedial work to address these differences.

GPR for licenced insurers

21. NZBA and its members submit that gross premium revenue (**GPR**) is an appropriate measure for determining the levy in this category.

External Reporting Board levy

22. Finally, NZBA and its members agree with the option to reset the External Reporting Board (**XR**B) levy, and also that the actual and forecast over-recovery of the XRB levy should be factored into the levy re-set.