

Submission

to the

Financial Markets Authority

on the

2021 Review of the Financial Markets Authority Funding and Levy

10 November 2021

About NZBA

1. The New Zealand Bankers' Association (**NZBA**) is the voice of the banking industry. We work with our member banks on non-competitive issues to tell the industry's story and develop and promote policy outcomes that deliver for New Zealanders.
2. The following seventeen 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
 - China Construction Bank
 - Citibank N.A.
 - The Co-operative Bank Limited
 - Heartland Bank Limited
 - The Hongkong and Shanghai Banking Corporation Limited
 - Industrial and Commercial Bank of China (New Zealand) Limited
 - JPMorgan Chase Bank N.A.
 - Kiwibank Limited
 - MUFG Bank Ltd
 - Rabobank New Zealand Limited
 - SBS Bank
 - TSB Bank Limited
 - Westpac New Zealand Limited

Introduction

3. NZBA welcomes the opportunity to provide feedback to the Financial Markets Authority (**FMA**) on its discussion document: 2021 Review of the Financial Markets Authority Funding and Levy (**Discussion Document**). NZBA commends the work that has gone into developing the Discussion Document.

Contact details

4. If you would like to discuss any aspect of this submission, please contact:

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NZBA supports funding a proactive and well-resourced FMA

NZBA acknowledges the FMA's expanding remit with the introduction of the Conduct of Financial Institutions regime (**CoFI**), the changes to Insurance Contract Law (**ICL**) and Climate-related Disclosures (**CRD**). We agree that additional funding is required to enable the FMA to monitor these regimes. A proactive and well-resourced regulator is crucial to ensuring the success of these regimes.

COFI

We support CoFI Option 1. We consider that Option 1 will contribute to the regime's success as it will enable FMA to regulate proactively, rather than being reactive to instances of harm. As a principles-based regime, we consider CoFI is better suited to proactive regulatory engagement, with a lot of guidance and frequent, informal discussions between industry and the FMA.

We look forward to working with the FMA throughout the implementation and licensing application processes. Guidance from the FMA will be essential to assist regulated entities to understand their obligations and work through licensing requirements. We support a funding approach that resources the FMA to provide that support.

While we support Option 1, we note that some aspects of the CoFI regime have not yet been finalised, for example, the obligations regarding the treatment of intermediaries, and licensing requirements. As such, the FMA may find that its resourcing requirements change after implementation and once the licensing process is complete. We agree with the commentary in the Discussion Document around the achievability of Option 1, in particular the observation that it may be difficult to recruit the required number of FTE – NZBA's members are also facing challenges as a result of tight labour market conditions. For those reasons, FMA may wish to retain some flexibility in respect of its resourcing requirements.

We also welcome the opportunity to provide feedback on the process for implementing CoFI. Large financial institutions have made significant progress following the Culture and Conduct reviews. However, it is difficult to comment with certainty on the proposed timeframe for CoFI licensing, given we do not yet have all the details of the regime. In our view, an 18-month window to apply for a conduct licence is likely to be sufficient. We note, however, that banks are large entities with complex governance systems – for that reason, most will need the full time in order to prepare to apply for a conduct licence. While we understand the rationale for the proposal to stagger the license window, we would be very concerned if the effect of that was to leave banks with a shorter window for preparing their applications. We would welcome a licence application that allows banks to use other licences as evidence of compliance, or 'grandfather' from other licenses. We look forward to working with the FMA when it begins development of the conduct licensing requirements and would be happy to meet to discuss how the application process can be managed to mitigate the risk of bottlenecks.

Climate-related disclosures

NZBA also supports proposed Option 1 for CRD. This regime is world-leading and likely to be highly technical, and will benefit from extensive guidance from the FMA providing clear direction on its expectations. That will help to build good industry practice and robust, comparable disclosures, consistent with the policy goals of the regime.

Crown/levy split

With regard to funding recovery, we consider that the current levy/Crown split should be retained. As noted in our previous submission on the FMA's funding dated 28 February 2020, much of the FMA's increased remit has been driven by Government policy rather than by industry innovation requiring the FMA to have more resources. While we agree that levy payers benefit from a well-regulated financial market, the need for additional FMA funding is mostly as a result of Government action and this should be reflected through the maintenance of the Crown/levy split.

Appendix: Discussion Document Questions

#	Question	NZBA Response
1	Do you have any feedback on the objectives of the review?	NZBA supports the objectives of the review. A well-resourced and proactive regulator is vital to the success of CoFI, the proposed CRD framework, and the ICL changes.
2	Do you have any feedback on the criteria for assessing the funding options?	NZBA supports the criteria for assessing the funding options.
<i>CoFI Funding Options</i>		
3	Do you agree with the analysis of the FMA funding options for CoFI? Which option do you consider to be most appropriate and why?	NZBA prefers CoFI Option 1 and refer to our comments above in the body of this submission.
4	How would CoFI Option 1 impact you/your business compared to CoFI Option 2?	CoFI Option 1 would provide significantly greater clarity and certainty to financial institutions in terms of regulatory expectations, compared to Option 2 which appears to be an enforcement-led approach to regulation. We welcome the comprehensive guidance and education that Option 1 would bring and consider this would be more beneficial for our members than Option 2.
5	If you were to make material changes to the CoFI options, how would you do so and on what basis?	We refer to our discussion above regarding the FMA's commentary around the achievability of Option 1, and note that the FMA may wish to retain some flexibility around its resourcing requirements.

#	Question	NZBA Response
<i>CoFI Implementation</i>		
6	Do you have any feedback on the objectives for the implementation of the CoFI regime?	NZBA supports the objectives for the implementation of the CoFI regime.
7	Do you agree the CoFI licensing window should begin after financial advice provider transitional licensing window has closed?	NZBA strongly supports staggering the financial advice provider (FAP) transitional licensing window and the CoFI licensing window. Preparing a licencing application is resource and time intensive and it is preferable for banks to focus on implementation projects one at a time. In that regard, we note the overlap between the FAP transitional window and the implementation of the CCCFA changes put significant strain on resources.
8	Are there other areas of regulatory reform in the financial services sector, where implementation overlaps with the proposed timeframes above, and that you consider it would be preferable to align CoFI implementation with those timeframes from an efficiency perspective? If so, please provide examples	We consider that the FMA should have regard to the proposed introductions of the Deposit Takers Bill and a Consumer Data Right Bill. Both these pieces of legislation are likely to require significant resource from financial institutions and would be very difficult to implement alongside CoFI. We acknowledge that CoFI has been signalled for some time, but ask that the FMA work closely with colleagues at RBNZ and MBIE to ensure there is as little overlap as possible in relation to implementation timelines of these, and other material regulatory reforms.
9	Do you have any feedback on the proposed 18-month window between applications for a conduct licence opening and all the obligations of the CoFI Bill coming into force (including having a conduct licence)?	We think the proposed 18-month window between licence applications opening and the full regime coming into force is likely to be sufficient, depending on the complexity of the application process. However, it is difficult to comment with certainty on the timeframe given we do not yet have all the details of the regime (including in relation to intermediaries) some of which will be set out in regulations. We also note that our members will need the full 18-month period if the licensing process is not straightforward. We consider that to have a conduct programme designed and implemented (in accordance with the legislation and regulations once finalised) in an 18-month timeframe would be tight even with the significant progress large financial institutions have made following the Culture and Conduct reviews.

#	Question	NZBA Response
		We would welcome a licence application that allows banks to use other licences as evidence of compliance, or 'grandfather' from other licenses. We look forward to working with the FMA when it begins development of the conduct licensing requirements.
10	Do you think a phased approach to CoFI licensing would be preferable, compared to a single licensing window for all types of financial institutions? Please provide reasons.	<p>As noted above, financial institutions will require the full 18-month period to prepare their licence application. As we understand it, a phased approach to CoFI licensing could mean some entities will not have the full 18-month period to prepare their applications. We are keen to work with the FMA to develop an approach that mitigates concerns of an "application bottleneck".</p> <p>It would assist industry if the FMA were to provide guidance where required, and ensure that the application requirements and guidance are provided well in advance.</p>
11	If a phased approach to CoFI licensing would be preferable, what factors do you think should be considered in determining the order of phasing?	In our view, the FMA should consider the complexity of the entity's business model in determining the order of phasing. Those entities with greater intermediated relationships and distribution channels will have a more difficult implementation process than entities with simpler models. These more complex entities will require a longer application time.
12	Do you have any other general comments regarding the implementation timing of the CoFI regime?	NZBA notes that the implementation timeframe should take into account the significant work MBIE and the FMA need to undertake before the Bill is passed, for example, the details around intermediaries and sales incentives.
<i>ICL Funding Options</i>		
13	Do you agree with the analysis of the FMA funding options for ICL? Which option do you consider to be most appropriate and why?	NZBA has no comments at this stage.
14	How would ICL Option 1 impact you/your business compared to Option 2 ICL?	NZBA has no comments at this stage.

#	Question	NZBA Response
15	If you were to make material changes to the ICL options, how would you do so and on what basis?	NZBA has no comments at this stage.
<i>CRD Funding Options</i>		
16	Do you agree with the analysis of the FMA funding options for CRD? Which option do you consider to be most appropriate and why?	NZBA supports CRD Option 1 and refer to our comments above in the body of this submission.
17	How would CRD Option 1 impact you/your business compared to CRD Option 2?	Option 2 could be problematic for reporting entities as many climate-related disclosures are not black and white; there is an element of subjectivity to the reporting. If FMA is not resourced with technical experts that are able to understand and engage with detailed climate-related reporting it will struggle to effectively undertake monitoring and enforcement, which would in turn create difficulties for the reporting entities that are supervised by it.
18	If you were to make material changes to the CRD options, how would you do so and on what basis?	NZBA has no comments at this stage.
<i>FMA Funding Recovery Options</i>		
19	Do you think that the proposed additional FMA funding should be wholly levy recovered or should the Crown contribute towards the increase? Why?	We refer to our comments above in the body of this submission.
20	Do you think that the Crown should contribute relatively more to any of	NZBA has no comments at this stage.

#	Question	NZBA Response
	the regimes than others? If so, please explain why.	
21	What is the appropriate Crown/levy split of the FMA's appropriation and why?	In our view, the status quo split is appropriate.
<i>The FMA Levy</i>		
22	Do you have any feedback on the objectives underlying the levy model?	NZBA has no comments at this stage.
23	Do you agree that larger entities should pay a relatively larger portion of any levy increase? If not, please explain why.	We support levies being proportionate to the size and scale of the entity.
24	Do you think the proposed levy changes meet the objectives?	NZBA has no comments at this stage.
25	Do you have any comments on the proposed new levy classes/tiers? Should further classes be considered?	We suggest a new tier in the funding structure. We consider that the \$10bn - \$50bn tier is very wide – the nature of a \$10bn entity is likely very different to a \$50bn entity. We would welcome a review of the bands to consider whether they remain fit for purpose based on the size of the entities in the market.
26	Do you have any feedback on the impacts of the proposed changes to the levies presented in Annex 1? How would the proposed changes impact your business? Please provide examples.	NZBA has no comments at this stage.
27	Do you think any of the levy classes in Annex 2 should pay an increased	NZBA has no comments at this stage.

#	Question	NZBA Response
	levy as a result of these new regimes? If so why?	