

# Submission on 2021 Review of the Financial Markets Authority Funding and Levy

## Your name and organisation

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Organisation (if applicable)	PMG Funds

## Responses to discussion document questions

### Introduction

1 Do you have any feedback on the objectives of the review?

The purpose and objectives of the consultation leave out important matters such as reporting scope, growing financial impact on market participants and clearly outlining tangible benefits for the industry to name a few. In summary we feel that the regulator shouldn't be putting incentives in place for non-licenced participants while at the same time loading up with additional costs/compliance to regulated participants.

#### Regarding Scope

At this point is not clear *what exactly* needs to be reported, therefore we cannot begin to consider what is required in terms of staffing, data capture, preparing reports, hiring consultants, level of FMA support, etc. This is something that the **\*Regulatory impact statement on CRD** states explicitly:

“These proposals will be reliant upon the External Reporting Board developing reporting standards. As the standards have not been developed yet, the impacts and related costs for reporting entities have yet to be established.”

As referenced above, MBIE's own Regulatory impact statement on Climate-related financial disclosures from July 2020 (\*RIS on CRD) itself highlights that the impact and costs cannot be estimated as long as the standards are not developed first. We believe the XRB consultation should be brought forward and the FMA consultation should be put on hold until XRB finishes with the NZCS (New Zealand Climate Standard).

#### Regarding Financial Impact

We find it disappointing that the **\* Regulatory impact statement on CRD** considers that this regulation is only “bringing forward costs that would have been incurred sooner or later anyway”. As stated above, depending on the standards themselves (once developed) the cost of doing business cannot be measured.

We also find it disappointing that this regulation only captures approximately 200 licenced entities leaving them to bear the cost of the levy while private, non-issuer companies and other unlicensed operators (which already pose more risk than licenced operators) with

significant assets are not included. We feel existing market participants are being punished for operating in a transparent, compliant, and responsible manner, for the benefit of New Zealanders, while these other operators are being rewarded and even encouraged to not to adhere to regulations much less CRD.

### Regarding Benefits for the Industry

The **\*Regulatory impact statement on CRD** and this consultation misses the point completely. Benefits for the industry must be showcased upfront, be clear and tangible enough that investors, financial markets professionals and businesses can identify them at glance (this should include the ability to make product comparisons).

For context, the **\*Regulatory impact statement on CRD** refers to “benefits” only 6 times over a 40-page document. Each time is not clear on *what exactly* are the tangible benefits of funding the regulator and/or receiving extra support and guidance as stated on the FMA’s consultation. Rather it goes around the point stating, “that the benefits are intangible” and/or will become “business as usual” for companies already listed on the NZX.

This is not good enough for market participants that are being called to choose fund options nor clear enough for investors to be able to tell what they are getting out from a market participant that chooses one over another of the levy funding options.

While we appreciate one of the benefits will hopefully be a positive impact on the climate, if there is too much financial burden placed on market participants early on - before the CRD is even defined - to pay increased FMA levies, then less can be spent on putting in place carbon reduction measures which ultimately get results.

**\* Regulatory impact statement on CRD** refers to the Regulatory impact statement on Climate-related financial disclosures from July 2020 published by the Ministry for the Environment.

## The funding options

### 2 Do you have any feedback on the criteria for assessing the funding options?

This consultation states that the funding options were assessed against the following criteria:

- Strategic alignment
- Achievability, and
- Good public value (which is a mix of the two above)

Similar to the observations to the objectives of the review, the funding options criteria fall short as it does not consider market participants nor investors perspective but only the regulator. Particularly achievability, which is defined in terms of the FMA regulating participants rather than including how market participants would be able to implement and bear the levy cost in a financially sustainable manner.

For context the recent FSLAA (Financial Services Legislation Amendment Act 2019) went through a much wider consultation process including industry participants under a “Code Working Group”. Effectively this working group shaped in a consented manner what ultimately came to be the Adviser and FAP obligations under the new regime before levies were finalised.

### Funding options – Conduct of Financial Institutions

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?

N/A

4 How would CoFI Option 1 impact you/your business compared to CoFI Option 2?

N/A

5 If you were to make material changes to the CoFI options, how would you do so and on what basis?

N/A

### Implementation – Conduct of Financial Institutions

6 Do you have any feedback on the objectives for the implementation of the CoFI regime?

N/A

7 Do you agree that the CoFI licensing window should begin after financial advice provider transitional licensing window has closed?

N/A

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.

N/A

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)?

N/A

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.

N/A

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?

N/A

12 Do you have any other general comments regarding the implementation timing of the CoFI regime?

N/A

### Funding options – Insurance Contract Law

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?*

N/A

14 *How would ICL Option 1 impact you/your business compared to ICL Option 2?*

N/A

15 *If you were to make material changes to the ICL options, how would you do so and on what basis?*

N/A

### Funding options – Climate-related Disclosures

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?*

We don't agree with the analysis and consider that neither option is appropriate. As stated under item No. 1 without knowing the scope and benefits of the CRD is not possible to even consider what funding option would be adequate.

As a Crown Entity the Crown should be the one funding FMA's core operations. We do not consider that the industry should be called upon to fund upfront the regulator to work out what resourcing and advice is needed prior to regulation even being in place. Once the reporting requirements are known, the extra support/advice that the industry may need from the FMA to comply those CRD requirement could be assessed. Only then, increasing the FMA levies could be considered, and industry consulted with. At this point in time, it just puts too much of the financial burden on the industry - especially during a period of economic turbulence and potential inflationary risks on the horizon.

17 *How would CRD Option 1 impact you/your business compared to CRD Option 2?*

Option 1 is clearly the most onerous one, even more so when considering that there are no tangible benefits for the market participant (something to show for it to potential investors). All benefits are being stated from the FMA side of the equation.

18 *If you were to make material changes to the CRD options, how would you do so and on what basis?*

Overall, we believe there are better options to achieve FMA's funding objectives without punishing market participants. For example, designing a Qualmark-inspired solution, or a Homestar-inspired solution that actually encourages participants to join in. Whichever solution it should encourage participation and be aligned under the hood with international CRD standards. In this case having a clear benefit that could be showcased and compared would go a long way with the investing public as it will help them identify firms who do comply with CRD and therefore enable them to make informed decision about which MIS to invest in or not.

A fairer approach would be for the FMA to nominate and charge multiple service providers to enable them to run “a NZCRD assessment” aligned with international standards and FMA requirements. The participants then can decide with whom to get their NZCRD review. This is similar to the AML regime where the FMA does not perform independent AML reviews but regulate them. This also would decrease significantly the FMA need to develop a large inhouse capability on CRD.

Ultimately it must be very clear what the CRD *object* of reporting is, the company holding the assets? the assets themselves? an aggregate?, an average?. In our view rather than the MIS being CRD compliant a Qualmark/Homestar per building/asset/etc. would make more sense. Finally, a benchmark should be issued for reference to understand what good looks like and what to aim for, what is acceptable, etc.

### Funding recovery options

19

*Do you think that the proposed additional funding for the FMA should be wholly levy recovered or should the Crown contribute towards the increase? Why?*

It should be Crown funded (100%). Businesses are already subject to taxes, licences costs, and levies across a range of government organisations. There is only so much cost that can be passed down to businesses before hampering even further New Zealand competitiveness on the international stage particularly when the nation is just recovering from a health and economic crisis.

The more barriers to do business (i.e., continuously escalating costs for doing business) the more likely is NZ will fall behind. Impractical market regulation could ultimately force companies to establish themselves elsewhere or the sector to stop growing altogether.

Achieving good customer outcomes, jobs creation, supporting the economy, paying taxes, giving back to the community, funding the FMA, social causes, it would all decrease if the sector is hampered from growing. It is important to highlight that the financial sector is one of the significant supporters of NZ social and communities causes.

20

*Do you think that the Crown should contribute relatively more to any of the regimes than others? If so, please explain why.*

The Crown should fund all three regimes 100%. Same as above there is only so much cost that can be passed down. The Crown should look into building further efficiencies in a way that can deliver integrated services across all Crown entities without punishing further market participants (i.e.: if the XRB also a crown entity already is developing CRD capability is there really a need to redevelop this capability also at the FMA?, can the FMA leverage better this relationship in a way that fits its strategic goals?).

21

*What is the appropriate Crown/levy split of the FMA’s appropriation and why?*

Same as above.

### The current FMA levy model

22

*Do you have any feedback on the objectives underlying the levy model?*

Same as above.

23

*Do you agree that larger entities should pay a relatively larger portion of any levy increase? If not, please explain why.*

As mentioned under item No. 18 our preferred approach would be for the FMA to nominate (and charge) service providers able to run NZCRD assessments that in turn can be sent to the FMA. This would encourage competition and move away from the levy structure altogether.

No matter how the FMA structure the proposed levy it, as it is it will ultimately tax further market participants who would have nothing to show for it cementing the perception of the levy as an additional cost to run a business. Using NZCRD assessments at the very least market participants could showcase them alongside a PDS or Annual Financial Statements to help investors to make an informed decision.

### Proposed changes to the FMA levy

24 *Do you think the proposed levy changes meet the objectives?*

No, it does not. As mentioned under item No.1 the objectives of the levy are very narrow leaving out how the options benefit market participants and most importantly potential the investing NZ public which in turns fails to meet the mission of the FMA of promoting and facilitating the development of fair, efficient, and transparent financial markets.

As proposed by the FMA ultimately an investor won't understand that a market participant CRD regulated and paying a levy is more *worthy* than the next market participant nor how it even makes a difference vs unlicensed participants on CRD terms. Furthermore, as stressed above other unlicensed operators with significant assets that would not be subject to CRD would not even bother on being environmental conscious defeating the objectives of the levy and the regulation altogether.

25 *Do you have any comments on the proposed new levy classes/tiers? Should further classes be considered?*

As mentioned in the previous items (No. 18 and No. 23) the levy class/tiers approach should be reconsidered. Regardless of how many tiers are there, when a market participant finds itself at the border of any tier there would be an element of perceived unfairness.

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.*

As mentioned in the previous items (No. 18 and No. 23) the levy class/tiers approach should be reconsidered. Regardless of how many tiers are there when a market participant finds itself at the border of any tier there would be an element of perceived unfairness.

27 *Do you think any of the levy classes in Annex 2 should pay an increased levy as a result of these new regimes? If so why?*

Similar to items No.25 and No.26, with so many bands there is an increased risk of misunderstandings, errors, etc. A formula-based approach would be more straightforward.

### Other comments

We understand the importance of CRD and would like to have a proactive approach to it. In fact, as an unlisted entity, we already have a number of environmental initiatives in place, and are publicly reporting on them, even though we are not required to. However, we feel that deeper consultation with the market participants is missing, and the current process is

too short and rushed to properly assess and suggest better ways to go about it.

In summary regarding the approach and levy our main concern is for the FMA in an unintended way ends up incentivising non licensed participants (which pose more risk and still can bring the industry into disrepute) while punishing licensed participants. In practical terms our concern is not having nothing to show for our CRD efforts to potential investors.

Effectively as proposed by the FMA our ESG costs would just duplicate. By adhering to FMA's levy and XRB CRD requirements (despite being unknown) we might have to incur on even more costs converting NZCS reports into industry or globally recognised ESG standards.