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Financial Markets Policy

Building, Resources and Markets

Ministry of Business, Innovation & Employment

Via Email: FMALevyReview@mbie.govt.nz

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2021 Review of the Financial Markets Authority Funding and Levy

Submission from: Financial Advice New Zealand

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ENTITY:	FINANCIAL ADVICE NEW ZEALAND
ORGANISATION TYPE:	INCORPORATED SOCIETY WITH AROUND 1600 FINANCIAL ADVISER MEMBERS
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Financial Advice New Zealand is a professional membership body for financial advisers in New Zealand. It represents around 1600 members.

Thank you for the opportunity to submit our views on the 2021 Review of the Financial Markets Authority Funding and Levy.

Our members are excluded from the proposed levy changes, but are impacted by the new legislation and therefore have an interest in the timeframes, guidance, and enforcement resourcing available to the FMA.

In general, we support a fully funded regulator. We believe good quality guidance, monitoring and enforcement benefits all sector participants.

We have submitted on the questions which have the most relevance to our members, and our objectives as they relate to consumers.

Questions

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

No comment to make.

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

No comment to make.

COFI questions

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?

We support COFI Option 1. It is encouraging to see Deloitte had been consulted to provide expert opinion on the baseline review which gave us confidence the modelling has integrity.

The passing of new legislation for the sector is the ideal time to ensure we have a well-functioning regulator which can have a more in depth understanding of the sector based on research and evidence and be both proactive and reactive to the changing environment, plus have the necessary resources to develop guidance, and tools for enforcement when needed.

Together the regulator and the sector can, through CoFI, lift public confidence and trust through a concerted effort leading to better consumer outcomes.

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

Financial Advice NZ believes Option 1 would provide more opportunity for FMA guidance documents, which help all those in the sector including financial advisers, understand the FMA's expectations.

CoFI is a significant piece of new legislation, increased guidance on the FMA's expectations particularly in the area that affects financial advisers - supervision, monitoring and training components - is welcomed.

Increased guidance is also likely to lead to more uniformity of understanding by financial institutions, meaning financial advisers are less likely to have greatly different requirements demanded of them under the "CoFI" umbrella.

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

No comment to make.

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

We support the dual objectives of allowing an appropriate amount of time for all impacted parties to prepare, and to minimise unnecessary compliance costs and burden.

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

Yes, Financial Advice NZ strongly supports the plan that the CoFI licensing window does not open until after the deadline for FAPs to move from a transitional licence to a full licence closes.

As the professional body for advisers, we are doing what we can to encourage our members and their FAPs to apply for their full licence as soon as possible, but as happened with transitional licensing, we expect a fair number will not submit their application until the deadline is close.

Any bottlenecks at the FMA due to resource constraints could have a severe negative effect on advice businesses who cannot operate at that date without a FAP full licence.

We thank the FMA for this consideration.

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.

No comment to make.

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)?

Financial Advice NZ supports a 24 month window. We recognise that CoFI represents a significant shift in how financial institutions are regulated, and requires new conduct programmes to be designed, implemented and embedded into operations.

CoFI will also have an impact on financial advisers and FAPs, as financial institutions implement the supervision, monitoring and training components of CoFI as currently drafted in the Bill progressing through Parliament. A 24 month window allows the opportunity for advice businesses to concentrate on the changes required under their full licence conditions first, before having the pressure from financial institutions as they work to ensure full compliance with CoFI requirements.

However, we do recognise, and support, that some financial institutions may apply for their licence and implement their conduct programmes ahead of any statutory deadline.

We feel this 24 month window before all the obligations come into force best supports the overall goals of both the new FAP licensing regime, and CoFI.

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.

Financial Advice NZ supports a phased approach. CoFI requires big changes within the sector. More time and a focused approach will, in our opinion, provide better overall outcomes for the industry and for consumers. It will allow the FMA to focus their efforts and maximise their learnings which in turn should lead to better guidance notes and consistency of understanding for all participants.

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?

No comment to make.

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

No additional comments to make.

Insurance Contract Law questions

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?

Financial Advice NZ supports Option 1. As for our answer to question 3, the passing of new legislation for the sector is the ideal time to ensure we have a well-functioning regulator which can have a more in depth understanding of the sector based on research and evidence and be both proactive and reactive to the changing environment, plus have the necessary resources to develop guidance, and tools for enforcement when needed.

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

Financial Advice NZ understands the impact of Option 1 funding would be comprehensive guidance documents from the FMA, something we fully support and encourage.

Although we don't know the design of the ICL regime or the content of the ICL Exposure Draft, we anticipate they will require significant changes to the process of on-boarding new customers, and in the management of existing customers with legacy products.

The impact is likely to be considerable for both product providers, financial advisers and FAPs. Guidance from the FMA to the financial sector, and to the public, will be crucial to ensure expectations are understood, and therefore that compliant implementation can be achieved.

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

No comment to make.

Climate-related disclosure questions

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?

No comment to make.

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

No comment to make.

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

No comment to make.

Crown vs levy funding questions

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

Financial Advice NZ believes there should be a mix between government and sector contributions for the funding as is the present position. There is no evidence provided which would indicate any reason to change from a shared model of funding.

A shared model is based on the dual public interest and the industry interest. What needs to be considered is how great is the public benefit outside of just the industry benefit of having a well-functioning regulator.

The FMA has previously discussed its two roles:

1. to promote and facilitate the development of fair, efficient and transparent financial markets by working and engaging with industry, investors and customers

2. to seek to identify and mitigate risks to achieving these conditions.

In both of these roles, the sector and the public obtain the benefit. Efficient allocation of capital benefits the broader economy and the government through growth and increased taxes.

Based on the roles of the FMA there is no reason to believe proportionality of new funding should be different from the current model.

Therefore, a fair and equitable approach is for both government and the sector to contribute to the additional funding requirements.

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

There is no rationale presented for why the Crown should contribute more or less for any of the particular new regimes.

21 What is the appropriate Crown/levy split of the FMA's appropriation and why?

There does not appear to have been any financial analysis performed on the split between government and sector benefits from the FMAs intended work programme in these three regimes.

There has been no evidence that there has been financial modelling performed on where the split should be proportioned. It is our understanding the current split is based on a principles approach, and on what was presented and accepted in Cabinet in 2016.

We have not been able to obtain or see that any financial analysis was presented to Cabinet in 2016 when Cabinet approved the split 75%/25% (or there abouts).

Having a principles-based split, not backed up by robust modelling for this level of additional annual spend does not seem prudent. Neither the government nor the sector should accept a share of this cost without robust justification for the apportionment, which has not been provided.

Without such modelling, and our ability to review this modelling, it is impossible to recommend a suitable apportionment.

Notwithstanding the above, there is no doubt there should be a split between government and the sector for the funding. In the absence of further analysis, we cannot see how any recommendation to change the split can be justified.

If no robust modelling is available, the current split must remain, or a 50/50 split be introduced on the principle of fairness to both the government and the sector.

Levy model

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

No comment to make.

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

No comment to make.

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

No comment to make.

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

No comment to make.

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.

No comment to make.

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?

Financial Advice NZ strongly supports the proposal to exclude those entities who are not directly in scope of the new regimes. With particular focus on Classes 6F, 6G and 6H.

Kind regards

KMShanks

Katrina Shanks
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Financial Advice NZ