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Ministry of Business, Innovation and Employment
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Response to the discussion paper on financial advice provider licensing fees and changes to the FMA levy

This submission is from the Financial Services Council of New Zealand Incorporated (**FSC**) on the discussion paper on financial advice provider licensing fees and changes to the FMA levy. We thank MBIE for the useful and informative conversations during the consultation period.

The Financial Services Council is a non-profit member organisation and the voice of the financial services sector in New Zealand. Our 35 members comprise 95% of the life insurance market in New Zealand and manage funds of more than \$47.5bn. Members include the major insurers in life, disability and income insurance, fund managers, KiwiSaver, professional services and technology providers to the financial services sector.

Our submission has been developed through consultation with FSC members, and represents the views of our members and our industry. We acknowledge the time and input of our members in contributing to this submission. Where our members have differing views, we have noted these views in our response.

The FSC's guiding vision is to be the voice of New Zealand's financial services industry and we strongly support initiatives that are designed to deliver:

- Strong and sustainable consumer outcomes;
- Sustainability of the financial services sector; and
- Increasing professionalism and trust of the industry.

Our members generally support the proposed approach, agreeing that the FMA should be sufficiently resourced to efficiently meet its objective to 'promote and facilitate the development of fair, efficient, and transparent financial markets' (Financial Markets Authority Act 2011, s8). The following pages provide our responses to questions 1-10 of the discussion paper.

I can be contacted on 021 0233 5414 or richard.klipin@fsc.org.nz to discuss any element of our submission.

Yours sincerely

Richard Klipin

Chief Executive Officer

FMA licensing fees

1

Do you agree with the identified objectives for fee setting? Are there other objective which should be considered?

We agree with the objectives identified for fee setting.

The proposed regime seeks to balance access to advice with quality of advice. It is important that fees do not discourage the supply of financial products or services and that there is certainty and transparency regarding the time taken to process applications and the fees associated.

We suggest an additional objective, that fees and levies should not be a barrier to new financial advice providers entering the market. Barriers to entry reduce access to financial advice, and any barriers should exist only to set minimum standards of quality and reliability.

2

Do you have any comments on our proposed transitional licensing fees as set out in the discussion document?

We agree with the approach for setting out transitional licensing fees.

To minimise uncertainty, we ask for clarification on those instances in relation to variation applications where MBIE/FMA would expect an extra charge to apply. For transparency, we ask that FMA build a step into their process for informing applicants about any extra charges arising from variation applications.

To minimise the administrative burden on the FMA and applicants of requiring both a transitional and a full license, some of our members suggest that the ability to proceed directly to full licensing be available for those entities that are ready to proceed early. If this option were available, it would be important to ensure that all questions asked during transitional licensing were asked at the initial full license application.

3

Do you have any comments on our assessment of the proposed full licensing fees as set out in the discussion document?

Without knowing the requirements of the full licence application and/or criteria for each advice category, it is difficult to understand the basis of the proposed flat application fee for each category and proposed hourly rate for 'complex' applications.

'Complex' cases and the hourly rate

We note there is no definition of 'complex'. This leaves open the risk that the licensing fee proposal will fail in its objective of limiting uncertainty to applicants as to the likely total amount of the fees they will be required to pay. We understand anecdotally that existing Financial Markets Conduct Act licence holders were charged materially more than the stated licence fee when hourly rates were included. It is important that fees represent what will actually be charged, so they do not mislead applicants. Fee information disclosed to potential applicants should enable them to make an informed decision about how they will structure their businesses for licensing. This requires them to have a fair idea of what they may actually be charged to obtain a licence.

It will also be important that the licensing requirements are clear and unambiguous so that

applicants can provide high quality applications and therefore have greater potential to stay within the processing time included in the set fee.

Some of our members also suggest that it would be helpful to provide a historic view of actual fees charged to existing licence-holders. Useful historic information would include:

- The percentage (by licence type) who were charged additional fees at an hourly rate.
- The range and frequency of costs paid per applicant by licence-type.

We support the recommendation that the FMA advise an applicant of any additional costs before charging those additional costs. We ask that this communication take place before the FMA incur any extra costs, and that thought be given to how the FMA will manage those cases where the applicant queries the extra charges.

We request clarification that the hourly rate will not apply to any queries received before an application is submitted.

FMA controls

To provide certainty that the use of the flat fee and hourly rate is appropriate, the FMA should disclose what controls are in place to ensure applications are assessed efficiently and in a timely manner and enable the FMA to work with the market to continue to make improvements. Please see our response to question 10 for further explanation.

Renewal fee

At this stage we note that the FMA does not propose to include a separate renewal fee and any applications to renew a licence appear as if they would be charged the full application fee. When more information regarding the FMA's review of the removal of licence expiry dates, the renewal process, and associated costs, are known we ask that the industry is consulted on any renewal fees. We expect that the FMA may retain an ability to create licenses with expiry dates, so transparency on fees for those cases will be required.

Licensing process for existing advice providers

We ask for clarification around the application process for existing advice providers, in particular QFEs that are proposing minimal changes to their adviser business. For example, are such businesses able to expedite their application process? And, if so, how?

Changes to the FMA Levy

4

Do you agree with the identified objectives for setting the levy amounts that will apply in the new financial advice regime? Are there other objectives which should be considered?

We agree with the objectives identified for setting the levy amounts that will apply in the new regime, and understand that it is a balancing act between ensuring that the cost of levies are appropriate and also reflecting the benefits of operating in a well-regulated environment.

5

Do you have any comments on the proposed levy? Are there any further advantages or disadvantages to our proposal?

We generally support the proposed levies and the approach that any increases to the levy will be incremental so that businesses will be not discouraged from providing financial advice.

We acknowledge that the proposed levy is calculated on the basis of the fees currently collected by the FMA and does not account for any additional resources the FMA may need in the future. We understand that there will be further reviews, and potentially consultations, on any future increases in the levy.

We note however that even with the proposed cap, the annual confirmation levy is a significant increase for existing QFEs – from \$460 plus GST to several thousand dollars. We note that the consultation paper refers to the levy being for ‘the relative benefit that each participant receives from operating in a well-regulated environment’ (page 13). Some of our members note that insurers already pay substantial levies under schedule 2 of the Financial Markets Authority (Levies) Regulations 2012 <http://www.legislation.govt.nz/regulation/public/2012/0121/latest/DLM4491364.html>. Given that a Financial Advice Provider (FAP) will continue to be the frontline regulator for its nominated representatives, we question what additional benefits there will be for FAPs with nominated representatives and for consumers to justify the increase in cost.

We also request clarification on the approach that will be taken by the FMA in the event of over-collection of fees and levies, including the reporting back to the industry in such an event.

\$80,000 cap

Our members have a diversity of views in relation to the proposed cap – some in support, others not in support.

To ensure that no business faces dis-proportionate licensing costs we suggest consideration should be given to a sliding scale cap (proportionate to the size of the business and up to the proposed level of \$80,000). This will ensure the cap meets the stated objective of ‘the cost of the levy for market participants [being] consistent with the benefits they receive from a well-regulated market’.

We also suggest that the cap include any payments made by a FAP on behalf of any financial advisers in respect of their levies (although note we support the proposal for financial advisers to pay their own levies). Otherwise there is a disincentive for financial advice providers engaging nominated representatives to qualify them as financial advisers.

From a process perspective, we note that large financial advice providers who engage nominated representatives are likely to have regular changes to their personnel. We ask how the levy will be applied when the number of nominated representatives changes regularly.

6

Should the levy relating to financial advisers be payable by the financial adviser as proposed, or the financial advice provider?

Our members have a range of views on this issue.

We generally agree that to avoid over recovery, financial advisers should be responsible for paying the levy. We understand that providing an option of invoicing either the financial adviser or the financial advice provider is not a preferred solution, although note that in practice financial advice providers may choose to pay the fees on behalf of their financial advisers.

7

Do you have any comments on the alternative options set out in the discussion document? Are there other options, or variations on the alternative options, that should be considered?

We agree with the proposed approach rather than the alternative approaches. However, if the alternative tiered levy approach is adopted, consideration should be given to scaling tiered fees so they do not disincentivise financial advice providers from growing. This may require multiple tiers with modest increases which could add an unintended level of complexity to the process.

8

What would the costs and benefits be of providing relief to single adviser businesses?

We are supportive of relief being provided to single person FAPs in relation to both the initial registration levy and the annual levy.

Regarding the annual levy, we do not consider relief on this (by not having to pay the financial adviser levy of \$267 ex GST) would discourage a business from engaging additional advisers.

Overall, our members support a solution that ensures the availability and quality of financial advice, making it easy for consumers to access advice when and how they want to. This goal will be served by ensuring regulatory costs are not prohibitive for the large number of financial advisers who operate as sole traders.

Changes to levies relating to authorised bodies

9

Do you have any comments on the proposed changes to the levies that relate to authorised bodies?

We agree with the alternative proposal that the financial advice provider and its authorised bodies should be charged levies based on their total activity together.

Levies should not provide incentives to produce complex business structures to minimise those levies. This creates market inefficiencies. The proposal to consolidate the activities of all entities in a single licence to calculate levies is sensible.

Assumptions

10

Do you have any comments on the assumptions used in this paper as outlined in Annex 1 of the discussion document?

Full licensing requirements are yet to be confirmed

Without knowing the requirements of the full application process for each advice category it is difficult to understand how long it will take the FMA to process an application, especially for more complex applications (current estimates are based on the average time required to process a relatively straightforward application). The FMA should also take into account their own experience of assessing other types of FMCA licence applications to refine their assumptions around estimated costs and processing time of licence applications. Please see our response to Question One.

Unknown ICT costs

The estimated ICT system costs need more detail as the information provided lacks clarity on implementation time, contingency plans and actual costs. Experience shows that technology systems can cost more than originally estimated and take longer to implement. We are concerned about the potential impact of any extra system costs on fees, including how any extra costs might be fairly apportioned across applicants.

FMA staff processing times

In relation to staff processing times, further clarity is required as to what staff will be involved with processing, any variations based on their experience (senior versus junior staff, for example) and what applications, if any, will be subject to review, such as peer review or monitoring. In addition, will similar applications of business of a comparable size and scale be confidentially compared as part of any form of scaling exercise?