Submission

By

The Insurance Brokers Association of New Zealand Inc

To

The Ministry of Economic Development

On

Proposed fee and levy changes for the Financial Markets Authority, External Reporting Board, New Zealand Companies Office, and Insolvency and Trustee Service

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1. Introduction

The Insurance Brokers Association of New Zealand Inc (IBANZ) is pleased to make this submission to the Ministry of Economic Development (MED) on the discussion document issued in June 2011 regarded the **Proposed fee and levy changes for the Financial Markets Authority (FMA), External Reporting Board (XRB), New Zealand Companies Office (NZCO), and Insolvency and Trustee Service (ITS)**.

1.1 About IBANZ

IBANZ is New Zealand's professional body representing the interests of fire and general insurance brokers, risk managers and consumers in New Zealand.

We have 180 member firms employing in excess of 2200 staff many of whom are financial advisers and therefore would be subject to the proposed FMA and FAA levies. Members write $2.3 billion of premiums annually out of a gross market premium of approximately $3.5 billion.

The organisation advises members, government, consumer groups and other stakeholders on key insurance issues and provides training, technical advice, guidance on regulation and business support.

1.2 Release of information

We have no objection to the public release of any information contained in this submission.

2. Executive Summary

2.1 Lack of information

The purpose of the levy is to fund the FMA to regulate financial markets participants (FMP). In the absence of measures/statistics to fairly apportion the costs of regulatory effort across different classes of FMPs, reliance solely on a per capita levy imposed only on a subset of FMPs is unfair, creates market distortion and encourages behaviour contrary to the objectives of the Financial Advisers Act.

A fairer approach is a small per capita charge imposed on a wide population, such as all companies, which indirectly benefit from operating in a well-regulated environment. We suggest two alternative approaches for doing this while ensuring advisers pay their fair share – see 3.2 below.

2.2 Market distortion

Under the preferred option in the discussion document the bulk of the FMA levies will end up being paid by about 7,000 AFA and RFA Advisers with QFEs paying far less. Financial service providers will restructure businesses as a result of these costs. A less distortionary option should be adopted.

2.3 Double charging

There is substantial overlap between the activities of the regulator that are funded by the FMA levy and those that are funded by the FAA levy. For example, both levies cover surveillance and enforcement activities, so in effect advisers are being double charged, first for FAA-related surveillance and enforcement and then for surveillance and enforcement conducted by the FMA on non-adviser work.

In addition, we recommend that care be taken to avoid double imposts in situations where advisers work within corporate structures, where the company and the adviser were both being levied.

2.4 Impact of FAA/FMA levy funding on consumers

The fundamental objectives of the legislation are focused on the consumer. There is limited information in the discussion document as to what analysis has been carried out regarding the effect of these fees and levies on the consumer.

Ultimately the consumer will end up bearing the costs imposed on advisers, further reducing the affordability of professional advice. With these levies, there will almost certainly be a reduction in the numbers of advisers, particularly independent advisers which is clearly not in the consumer's interest.

Ideally the levies should be structured to minimise the impact on consumers.

2.5 Public versus private funding

We note that subsequent to the release of the discussion document, you have made available parts of the Cabinet Paper supporting the imposition of an FAA levy on industry. While this confirms Cabinet's decision, it sheds little light on the rationale for recovering some of the FMA's costs from industry. We do not oppose the principle of partial funding of the regulator by industry. However, we believe decisions about how the levies should be raised (including those relating to the questions in your discussion document) would be far clearer if there existed a statement of principles regarding industry funding.

Furthermore, although the regulator must be able to operate in an independent and unfettered manner, we suggest that some form of reporting back and/or industry liaison arrangements by the FMA would be desirable, so that industry received some indication of how their levy had been spent. Normal accountability mechanisms are one thing: giving levy-funders some ownership and interest in the regulator goes a step further, offering potential benefits to the regulator, industry and – most importantly – to a strengthened relationship between them.

3. Comments

We make these comments in response to the questions posed in the discussion document.

3.1 Financial Markets Authority

1. Which is your preferred option?

We prefer Option 4. (We assume that the payee covers not just the wide range of entities listed in the discussion document but also all financial service providers, including individuals.) However, we note that Option 4 is far from optimal because, as you state in paragraph 39 of the discussion document: "distributing the costs of FAA regulation across a broader group does not reflect the objective that: those benefiting from regulatory functions provided, or contributing to risks that warrant a regulatory response, should bear the costs of those regulatory functions."

We do not support Options 1 or 3 because costs of regulating **financial markets participants** are (a) imposed on a subset of that population, namely **financial service providers** and (b) levied on a per capita basis with no adjustment to reflect the size or regulatory risk of each business paying the levy. We note that the per capita cost would be, for many of our members, a material business cost. Given the range of business models in which financial adviser services are provided in New Zealand, we believe either of these options would distort the market, most notably imposing significantly more cost on a registered financial advisers than on a QFE adviser. We believe these options encourage behaviour contrary to the objectives of the Financial Advisers Act, for example by effectively incentivising non-advice selling (as advice gets increasingly expensive) and discouraging advisers from aspiring to AFA status (because the costs are too great).

We do not support Option 2 in so far as it would be imposed on our members because the proposed FMA levy primarily relates to the non-adviser work of the FMA. We would support this option if it were not accompanied by a separate FAA levy (see our Alternative B below). Imposition of Option 2 in addition to an FAA levy amounts to double charging the adviser sector – once for their own regulatory costs and once for the costs of regulating others in the market.

2. Is there an alternative you would prefer?

We propose two alternatives.

We acknowledge that there are no easy, reliable methods for determining the size of an advisory business or its degree of regulatory riskiness. However, a per capita allocation of all the FAA costs results in distortions, no matter how they may be apportioned between QFEs, RFAs and AFAs.

EITHER Alternative A: Our preferred alternative is a hybrid approach that offers a pragmatic way of not unfairly burdening smaller advisory businesses.

We suggest all the FMA costs **and a portion of the FAA costs** be apportioned to the population described in Option 4, to result in a levy of around $30 (for all financial service providers, companies, limited partnerships, building societies, credit unions, industrial and provident societies, friendly societies, and contributory mortgage brokers.). The balance of FAA costs could then be attributed to advisers on a basis similar to that proposed by you, noting that the per capita costs will reduce and thus lower the chances for material market distortions occurring.

OR Alternative B: Impose the FAA levy as proposed by you on advisers but exempt advisers from payment of any FMA levy.

3. Why have you chosen your preferred option?

Because as discussed above it is the only option that avoids material market distortions.

3.2 FMA Levy

4. Which types of entities should be required to pay the Financial Markets Authority (FMA) levy?

A broad range of entities benefit from a well regulated market and therefore we would support the imposition of at least some of the FMA levy on all financial service providers companies, limited partnerships, building societies, credit unions, industrial and provident societies, friendly societies, and contributory mortgage brokers. However, we acknowledge that subsets of that population – such as advisers – contribute risks that warrant a greater regulatory response – and so should bear a greater share. The challenge is to find a fair way of doing so that neither disincentivises the giving of good advice nor distorts the costs paid by the end client. Our suggested alternatives attempt to address this challenge.

5. Is it desirable to vary the amount of the FMA levy applied to different groups?

Yes, for the reasons stated above. We support the attribution of at least some of the FAA costs only to the advisory industry. The only reason we suggest that **not all** FAA costs should be imposed solely on the advisory industry is that there is no easy, reliable method for doing so. That being the case, we recommend that the bulk of the regulator's costs (FMA plus some FAA) should be spread evenly over the population that directly benefits from a well-regulated market.

6. How could this be achieved, given the limited information available for structuring such tiers?

See our suggested alternatives.

3.3 FAA Levy

7. Are the Financial Adviser Act 2008 (FAA) levy tiers appropriate?

Yes. We suggest an activity test should be applied so that the levy is not payable in respect of advisers who are inactive (ie do not provide any financial adviser service) in a given period. This would be based on a declaration by the adviser, or in the case of QFE advisers, by the QFE.

8. Should any other financial service providers pay the FAA levy e.g. brokers?

No. However, note our suggestion above that some of the FAA costs should be apportioned across the broad population for these reasons (a) everyone benefits from a well-regulated market, including a well-functioning adviser sector and (b) this is the fairest way of avoiding levy-induced market distortions.

3.4 Auditor Regulation

9. What are your views on the proposed auditor levy and practice review fees?

In paragraph 42 of the discussion document you anticipate that the levy will be passed on by auditors to issuers. On that basis, would it not be fairer to apportion this to issuers who are required to file financial statements under the Financial Reporting Act 1993?

3.5 External Reporting Board (XRB)

10. Should the XRB levy be paid by all companies, limited partnerships, building societies, credit unions, industrial and provident societies, friendly societies, and contributory mortgage brokers as proposed? If not, who should pay the XRB levy instead?

The broader population of companies does not benefit from the XRB's activities. A more focused allocation of this levy is recommended, for example to issuers who are required to file financial statements under the Financial Reporting Act 1993.

3.6 New Zealand Companies Office

11. What are your views on the proposed companies office incorporation and annual fees?

We support the proposed changes.

12. What are your views on the proposed Personal Property Securities Register (PPSR) fees, including the differentiation in fees for wholesale and retail PPSR clients?

We support the proposed changes.

3.7 Insolvency and Trustee Service

13. What are your views on the proposed liquidation fee of $2.50 per registered company?

Given the immateriality of this fee, we suggest it be incorporated with one of the other charges that are attributed to all companies.