

**INVESTMENT SAVINGS & INSURANCE ASSOCIATION OF NZ INC**

Submission  
to  
Ministry of Economic  
Development  
on the  
Discussion Document:

Proposed Fee and Levy Changes  
for the FMA, External Reporting  
Board, Companies Office and  
Insolvency and Trustee Service

8 July 2011



**I·S·I**

## **Investment Savings and Insurance Association of NZ Inc.**

### **1.0 Introduction**

- 1.1 Investment Savings and Insurance Association (“ISI”) welcomes the opportunity to comment on the discussion document: *Proposed fee and levy changes for the Financial Markets Authority, External Reporting Board, New Zealand Companies Office, and Insolvency and Trustee Service*.
- 1.2 ISI is the industry association for the companies that issue and manage life insurance, superannuation and managed funds in New Zealand. ISI members are responsible for approximately \$60 billion funds under management. ISI members are also the leading providers of KiwiSaver funds and include the KiwiSaver default providers.
- A list of members is attached.
- 1.3 As providers and managers of financial products, our members are obviously affected by the level of fees and levies applicable to financial service providers, QFEs and advisers. We provided earlier comments on this issue in November 2009 in response to the MED discussion document on FSP and FAA Fees regulations.

### **2.0 Recommendations**

- The majority of Financial Markets Authority (“FMA”) funding should come from general taxation rather than from a levy on third parties – FMA is a public good and should be funded accordingly
- If the proportion of the FMA budget that is third party funded is not reduced we recommend it should be sourced from the wider financial market rather than just FSPs and issuers
- We do not agree with the level of proposed FMA and FAA levies which as proposed would bring in more than the amounts required for the FMA budget
- The FMA levy option 2 should be applied at an adjusted level to allow for a reduction in FAA levies
- We do not agree with the effective double-charging of QFEs – the regulations should not look-through QFEs to advisers and charge the same for QFE advisers as for non-QFE advisers

### **3.0 General Comments**

#### **Public Policy Basis for Fees and Levies**

ISI accepts that the creation of the FMA is likely to improve public confidence in the financial services industry and therefore provide a benefit to the industry as well as to the country as a whole.

However, we consider that the benefit to the industry is far outweighed by the significant public good element in the creation of the FMA and in our view that should be reflected in the proportion of funding that is sourced from third parties.

We recognise that the decision on third party funding has been made by Cabinet and would require a Cabinet decision in order to be changed. As an alternative, the third party funding should be spread sufficiently broadly across financial market participants for it to approximate general taxation.

### **FMA Levy**

We support the points made in paragraphs 35 and 36 of the discussion document that all companies in New Zealand will benefit to a certain extent from the activities of the FMA. We do not agree that there is sufficient justification to apply the FMA levy to participants in one section of the financial market and not to the wider group allowed by section 68 of the FMA Act.

We note the point in paragraph 58 of the discussion document in respect of the Insolvency and Trustee Service that: 'It is in the interests of the commercial community generally that company failures are dealt with in an efficient and orderly manner'. The same approach should be applied in respect of the FMA levy, with collection from the widest possible group of financial market participants.

We also consider there is a case for increasing the FMA levy across the board to, say, \$50 in order to reduce the FAA levy until there is evidence available of where the actual costs lie. The discussion document says the FMA levy will cover monitoring, supervision, surveillance and investigation but it is not clear how much allowance for that is also built into the FAA levy. What is the split between FAA and non-FAA for those functions? We understand that it may be difficult to isolate the costs for supervising advisers from those for supervising issuers but until it is possible to do an approximation we consider that the charges should be levied as broadly as possible in order to avoid distorting the market.

As well as assessing the levies against the numbers registered, the planned review after two years should take into account whether it is possible to identify more specifically where costs are incurred.

### **FAA Levy**

We acknowledge that fees are intended to recover specific costs and levies to provide funding but believe that there should be some relationship between the levy level and the work programme.

More detail should be provided to justify the proposed FAA levy to fund FMA responsibilities under the FAA that are not covered by direct fees or were not already provided by the Securities Commission. Currently it appears that the FAA levy will charge advisers the FMA's adviser-related activities and they will also be charged the FMA levy for non-adviser related activities.

We note that, using the examples of charges in Appendix 1 and the market volume assumptions in Appendix 4, the amount that would be collected in annual charges from QFEs, QFE advisers and RFAs through third party funding would exceed the amounts estimated from the FMA and FAA levies in Appendix 3.

We recommend that the amounts proposed for FAA levies should be reduced until there is evidence available from the work programme to justify the application of

separate FAA levies and FMA levies. The current rates proposed are likely to have a distorting effect on the market and to reduce the number of non-QFE advisers.

### **Double-charging QFEs**

Section 20F(1)(b) of the FAA says that a QFE is considered to be the financial adviser where one of its advisers gives advice. Accordingly, it is inappropriate to charge a \$680 FAA levy for every Category 1 adviser within the QFE and as well as the proposed \$8,000 annual FAA levy applied to the QFE.

Similarly for Category 2 advisers within a QFE, it is not justifiable for the same \$140 levy to apply.

We do not support the proposal in paragraph 15 of the discussion document that the FAA levy should reflect the complexity of the products advised on rather than the organisational structure within which the individual is providing the advice. Both of those factors should be taken into account.

The discussion document suggests (para 16) that non-QFE firms will have similar compliance systems and controls as QFE firms. However, the responsibility imposed by section 20F does not apply to non-QFE firms. QFEs will be responsible for the activities of their QFE advisers, even beyond what is required under section 20F of the Act. That responsibility will include maintaining an ABS, training employees, maintaining compliance systems and processes and all of the other responsibilities outlined in the terms and conditions of QFE status. It is therefore appropriate that either the QFE levy or the levy charged to QFEs for their advisers is reduced accordingly.

With regard to the FMA levy, we have recommended above that it should be allocated across as wide a spectrum of the financial market as possible in order to reflect the public good aspect of the FMA.

## **4.0 Questions for submitters**

Of the options in this paper:

### **1. Which is your preferred option?**

Of the options in the paper our preference would be for Option 2.

### **2. Is there an alternative you would prefer?**

We would prefer to see Option 2 amended to increase the FMA levy to, say, \$50 and the FAA levy reduced until evidence is available of the costs of administering the FAA regime. This would be similar to Option 4 but would retain an FAA levy applicable only to advisers, although at a much lower rate.

### **3. Why have you chosen your preferred option?**

We consider that the extent of third party funding of the FMA is disproportionate to the benefits likely to accrue to the financial services industry and accordingly should be spread as widely as possible. In addition, the application of both the FMA levy and the FAA levy to advisers has not been backed by evidence and we consider the FAA levy for all advisers should be reduced to a minimum until evidence is available to justify the additional levy.

In addition, we consider that the FAA levy should be lower for a QFE adviser than for an adviser not associated with a QFE to take account of the extent of supervision by the QFE and the double charging implicit in the current proposal.

#### ***FMA Levy***

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

We have selected Option 2 which would apply the FMA levy to all companies and other entities, based on section 68 of the FAA.

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

No, as long as the FMA levy is applied across a broad range of financial participants it should not need to be varied.

We do, however, recommend that more consideration should be given to a 'user-pays' approach to funding the code committee and the disciplinary committee.

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

#### ***FAA Levy***

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

- It may be appropriate (still to be supported by evidence) that advisers should have to pay an annual levy but it should, at least initially, be lower than the rates proposed
- It may be appropriate that AFAs should pay more than RFAs on the grounds that the FMA will supervise them more but there is, as yet, no evidence to back this up. In the initial two years until the review we believe that a much lower flat rate should apply.
- It is not appropriate that the level for QFE advisers should be the same as for non-QFE advisers

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

- Yes, brokers should pay the same levy as RFAs
- While we have not recommended a combined FMA/FAA levy we believe any additional levy applicable only to advisers should be at a very low rate.

#### ***Auditor Regulation***

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

No comment on this question.

**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?**

No comment on this question.

**New Zealand Companies Office**

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

No comment on this question.

**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?**

No comment on this question.

**Insolvency and Trustee Service**

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

No comment on this question.

## List of ISI Members

### ISI MEMBERS

AIA NZ  
AMP Financial Services/ AXA New Zealand  
Asteron Life Ltd  
BNZ Investments and Insurance  
CIGNA Life Insurance NZ Ltd  
Dorchester Life  
Fidelity Life Assurance Co Ltd  
FNZ  
Gen Re LifeHealth  
Hannover Life Re of Australasia Ltd  
Kiwibank Ltd  
Mercer  
Munich Reinsurance Co of Australasia Ltd  
OnePath New Zealand Ltd  
Pinnacle Life  
Public Trust  
RGA Reinsurance Co. of Australia Ltd  
Sovereign Ltd  
Swiss Re Life & Health Australia Ltd  
TOWER New Zealand  
Westpac/ BT Funds Management Ltd

### Associate Members

Bell Gully  
BNP Paribas  
Bravura Solutions  
Burrows & Co  
Chapman Tripp  
Davies Financial & Actuarial Ltd  
Deloitte  
DLA Phillips Fox  
Ernst & Young  
InvestmentLink (New Zealand) Ltd  
KPMG  
Kensington Swan  
Melville Jessup Weaver  
Minter Ellison Rudd Watts  
Morningstar Research Ltd  
PricewaterhouseCoopers  
Russell McVeagh  
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