

21 January 2014

Investment Law
Labour and Commercial Environment Group
Ministry of Business, Innovation and Employment
P O Box 3705
Wellington

investment@mbie.govt.nz

Financial Markets Conduct Act Licence Fees

The Financial Services Council (**FSC**) appreciates the opportunity to make a submission on the Ministry's discussion paper *Financial Markets Conduct Act Licence Fees and Increase of Other Financial Markets Authority Fees*.

The FSC membership covers issuers and managers of life insurance, superannuation and managed funds and includes the majority of KiwiSaver providers.

As financial service providers and fund managers, our members are potentially affected by all fees and levies applicable to financial service providers, including fund managers, DIMS providers, QFEs and advisers.

We provided earlier comments on fees in November 2009 in response to the MED discussion document on FSP and FAA Fees regulations. We also commented previously 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*.

Our general position remains that any proposals to apply fees and/or levies must be supported by evidence of actual costs.

While our views are formed in consultation with our members they do not necessarily represent the position of every member company. Individual members may also make their own submissions.

The main points of our submission are as follows:

- In order to justify the level of fees, the discussion document should provide evidence of the relationship between actual costs involved in processing applications and the proposed fees
- The proposed fee regime should demonstrate compliance with government guidelines for charging regimes and should take into account services paid for in the existing registration regime for financial services providers, the levies currently payable for the Financial Markets Authority ("FMA") and the charges for compulsory membership of an approved dispute resolution scheme.

General Comments

Fund managers and other financial services providers are already required to be registered under the Financial Services Providers (Registration and Dispute Resolution) Act and to pay an annual fee for membership of an approved dispute resolution scheme. They may also have paid for registration as a Qualifying Financial Entity (“QFE”). In addition, financial services providers pay an annual levy to fund the market conduct supervision activities of the FMA.

While we accept that a Crown Entity may charge fees to recover actual costs for services it provides, we consider that the cumulative impact of the full range of fees and levies paid by some financial service providers for market conduct and prudential supervision should be taken into account, particularly if those fees may create barriers to participants’ entry to market.

Responses to Specific Questions

We have provided answers to specific questions in the template below, as requested.

The FSC is happy to work with MBIE officials and the FMA to provide any assistance that may be needed as the regulations are drafted. In the first instance, please contact me on 04 831 0308 or deborah@fsc.org.nz

Yours sincerely,

Deborah Keating
EXECUTIVE OFFICER

No	Questions:	Submission
1.	Do you have any comments on the level of the proposed licensing fees?	<p>While the FMA may be able to justify its estimate of 20 hours to process licence applications this cannot be confirmed as the detailed workings behind the estimate have not been provided.</p> <p>It would have been helpful to have some further explanation in the discussion document linking the estimated average number of hours to process an application to the actual work involved in the process.</p> <p>There is a practical concern as well as a policy point to take into account. Fund managers must forecast budgets to cover these fees and need the costs/time set to be as accurate as possible in order to avoid budget over-runs.</p>
2.	Do you have any comments on the proposed design of the fee – being a flat fee plus an hourly rate?	<p>We support the views in the discussion paper that the cost of processing licence applications should be borne by the individual applicant and the flat fee plus hourly rate approach appears reasonable.</p> <p>The discussion document does not refer to guidelines issued by the Controller and Auditor-General or the Treasury on charging fees for public sector goods and services. It would have been appropriate to refer to the policy basis for setting public sector fees.</p>
3.	Do you have any comments on the proposed approach to multiple licences?	<p>We recommend that there should be more than a 50% reduction in fee for processing a second application where an entity applies for more than one licence. In the example given, where a fund manager also applies for a licence as a DIMS provider, we envisage that there would be minimal additional time required to process the second application. More detailed information is required to support the proposal to charge 50% of the full fee for the second application.</p> <p>We also recommend clarification that this will apply whether or not the multiple licences are applied for at the same time. Given that it is unlikely</p>

No	Questions:	Submission
		that providers will apply for multiple licences at the same time (especially in this initial round of licensing because of the transitional provisions), the fee structure must allow for the subsequent applications to be dealt with in the proposed manner even if the subsequent licence application is lodged at a later date.
4.	Do you have any comments on the proposed approach to variations of licence?	We have no comments on this point.
5.	Do you have any comments on the proposed renewal fee?	<p>We do not support the proposal to require renewal of the licence every 5 years and to charge the same fee for renewal as for the original licence application. While the discussion document states at paragraph 28 that the FMA will conduct a full assessment of a market services provider upon renewal, we do not believe this fee can be justified.</p> <p>As noted in paragraphs 29-30, financial market participants all pay an annual levy to the FMA for on-going supervision and monitoring. If the regulator is undertaking the level of supervision they say they will be, there will be no need to undertake a full re-assessment after 5 years. The cost of renewals should be calculated based on the actual costs to process the application, taking into account (amongst other things) the entities' supervision history. Presumably those that have not come under the regulator spotlight during the FMAs supervision activities will be charged less, given that their assessment will take less time to process.</p>
6.	Do you have any comments on the proposed changes to FMA's existing fees for financial markets participants?	We have no comments on this point.

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