In Confidence

Office of the Minister of Commerce and Consumer Affairs

Chair, Cabinet Economic Development Committee

Consultation on fees and levies in the new financial advice regime [redacted]

Proposal

1. This paper seeks approval to consult on proposed licensing fees and the Financial Markets Authority (FMA) levy that will apply in the new regulatory regime for financial advice, [redacted] OUT OF SCOPE [redacted]

Executive Summary

2. The Financial Services Legislation Amendment Bill (the Bill) is currently before Parliament. It creates a new regulatory regime for financial advice that will improve access to, and the quality of, financial advice.

Licensing fees

3. All firms who give financial advice to consumers will need a licence granted by the FMA. I am proposing to consult on a flat fee ($363.30) for all transitional licence applications and a tiered fee (ranging from $574.59 to $884.59) for full licence applications. These fees will fully recover the costs to the FMA of processing applications.

4. The proposed fees are lower than the entry fees currently paid by Authorised Financial Advisers and Qualifying Financial Entities. Based on my conversations with industry, the proposed fees are also lower than many are expecting. As such, I expect the proposals will be well received, especially by small firms.

FMA annual levy

5. The majority of the FMA's funding comes from an annual industry levy. New levies need to be set for financial advice businesses in the new regime.

6. I am proposing to consult on a levy based on the number of staff a business engages to give advice on its behalf. Each provider will pay a base levy of $230 plus $179 for every nominated representative it engages, up to a cap of $80,000. Providers will also pay a levy of $1,106 if they give advice on their own account (e.g. through a digital-advice platform). Financial advisers will pay a levy of $267.

7. For single-adviser businesses, the levy is comparable to the current levy. Small to medium sized businesses will pay a considerably lower levy than under the current regime. However large businesses like banks will pay a considerably higher levy. I

am comfortable with these businesses paying a higher levy, recognising the significant benefit they receive from operating in a well-regulated environment.

OUT OF SCOPE

8. OUT OF SCOPE

Background

9. The Bill is currently before Parliament and is awaiting the committee of the whole House stage. The Bill introduces a new regulatory regime for financial advice that will improve access to, and the quality of, financial advice. The Bill will repeal the Financial Advisers Act 2008 (FA Act) and move the regulation of financial advice into the Financial Markets Conduct Act 2013 (FMC Act).

10. The Bill requires anyone who gives financial advice to retail clients to operate under a licence granted by the FMA. I am seeking approval to release a consultation paper which seeks feedback on proposed licensing fees and the FMA levy that will apply under the new regime.

11. OUT OF SCOPE

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Licensing fees

Licensing fees enable the FMA to recover the costs of processing licence applications

13. Under the new regime, anyone who gives regulated financial advice to a retail client will be required to operate under a financial advice provider licence. These licences will be granted by the FMA. Licensing allows the FMA to assess whether a business is fit to provide financial advice and able to meet its statutory obligations. It also improves the FMA's ability to monitor the provision of financial advice in New Zealand, and take enforcement action when necessary.

14. The FMA is able to recover the costs incurred in considering a licence application. It is appropriate that these costs are recovered from the applicant as it receives the benefit of acquiring a licence.

15. The FMA will incur two main costs in considering licence applications: the staff cost of assessing an application, and the cost of an ICT system used to process

applications. The discussion document seeks feedback on proposed licensing fees that will be charged to financial advice firms to recover these costs.

16. There will be two distinct phases to licensing: transitional licensing and full licensing. This two stage licensing process brings forward the benefits of the new regime by introducing the new requirements sooner than would otherwise be practicable.

Objectives in setting licensing fees

17. The main objectives in setting licensing fees are to ensure they are set at a level that:

    17.1 recovers the costs incurred by the FMA in processing applications;

    17.2 minimises cross-subsidy among different groups; and

    17.3 minimises uncertainty for applicants.

The discussion document seeks feedback on a flat fee for transitional licensing

18. Transitional licensing is designed to be relatively straightforward and the FMA will be performing largely the same checks for all applicants. Therefore, the proposal is to set a flat fee for all transitional licence applications.

19. Additional fees will apply where a licence covers an authorised body (a business that can provide financial advice under another business's licence), or includes variations of the conditions of a licence.

20. The proposed transitional licensing fees are as follows:

Transitional licence fees		**Fee (ex GST)**
Financial advice provider application fee		**$363.30**
+	Per authorised body included in an application	**$38.75**
+	Any application to vary licence conditions to add or remove an authorised body	**$100.00** plus $155.00 for every hour or, part-hour pro rata, of work carried out

The discussion document seeks feedback on tiered fees for full licensing

21. When considering an application for a full licence the FMA will undertake a more thorough assessment of whether the financial advice provider has the systems and processes in place to ensure it, and the people it engages, are capable of effectively performing the service.

22. The length of time required to consider an application for a full licence will vary according to how the financial advice provider chooses to give financial advice. I therefore propose to seek feedback on the following tiered full licensing fees that

reflect the additional scrutiny that will be applied in more complex business scenarios:

22.1 a single adviser business or a financial advice provider that only gives advice on its own account. This category of application will be straight-forward and is expected to take the shortest amount of time to process;

22.2 a financial advice provider that engages multiple financial advisers but no nominated representatives. Applications in this category will be more complex as these providers are subject to additional checks by the FMA; and

22.3 a financial advice provider that engages nominated representatives. This is expected to be the most complex category of application due to the additional obligations imposed on providers that engage nominated representatives.

23. Additional fees will apply in situations where a licence covers an authorised body, and when there is an application to vary the conditions of a licence.

24. As with many other types of licensed financial market service providers (e.g. fund managers), the FMA will be able to recover additional costs when it is considering complex applications that take longer than anticipated. The hourly rate will only be charged after the FMA has informed the applicant.

25. The proposed tiers for full licensing fees are as follows:

Full licence fees	**Fee (ex GST)**
Application fee for financial advice provider that is a single adviser business or gives advice on its own account	**$574.59** plus $155.00 per hour if processing time for application exceeds 2 hours
Application fee for financial advice provider that engages multiple financial advisers (but no nominated representatives)	**$729.59** plus $155.00 per hour if processing time for application exceeds 3 hours
Application fee for financial advice provider that engages nominated representatives	**$884.59** plus $155.00 per hour if processing time for application exceeds 4 hours
+ Per authorised body	**$155.00** plus $155.00 for every hour or, part-hour pro rata, of work carried out
+ Any application to vary licence conditions (including to add or remove an authorised body) (as per current rates already prescribed in the Financial Markets Conduct (Fees) Regulations)	**$100.00** plus $155.00 for every hour or, part-hour pro rata, of work carried out

26. The proposal above ensures that the FMA will fully recover the costs of assessing applications, while minimising the extent to which the fees create a cross subsidy between different groups. The proposal provides certainty to the majority of

applicants, who will pay a relatively low flat fee, while also catering for more complex applications by applying the hourly rate in addition to the flat fee.

How does this compare to current fees?

27. Under the current regime, registered financial advisers (e.g. mortgage and insurance advisers) are not required to pay a licensing fee. Authorised financial advisers (e.g. investment advisers) are required to pay an application fee of $995.56, and Qualifying financial entities (e.g. banks and insurance companies) are required to pay an application fee of $4,248.89.

Amendments to the FMA levy

Levy to be amended to reflect new regulatory regime

28. The majority of the FMA's funding is sourced from an industry levy which is charged annually to financial markets participants.

29. The financial advice industry currently contributes approximately $3.600 million to the FMA's funding per year. I am not seeking adjustments to the FMA's funding. However, given changes to the classifications of financial advisers and advice businesses in the new regime, it is necessary to amend the FMA levy in order to ensure that this amount of funding continues to be collected from those operating in the new regime.

Objectives in setting the levy

30. The objectives used in setting the levy are to ensure that the levy:

30.1 is set at a level that is consistent with the benefits financial markets participants receive from a well-regulated financial market (e.g. larger firms typically pay more);

30.2 will not discourage businesses from providing financial advice; and

30.3 avoids large over and under-collection.

The discussion document seeks feedback on a levy that reflects the size of the business

31. I propose to seek feedback on a preferred option for the FMA levy as follows:

Levy class	Levy (ex GST)
At initial registration	
Financial advice provider and financial adviser on initial registration (current amount prescribed in regulations that applies to all financial service providers)	$460.00
Upon each annual confirmation	
Financial advice provider	$230.00

+	**Per nominated representative**	$179.00
+	**If gives advice on its own account**	$1,106.00
Financial adviser		$267.33

32. The proposal aims to strike the balance between ensuring that the businesses that will receive the greatest benefit from participating in a well-regulated environment pay their fair share, while not discouraging businesses from providing financial advice. In particular, I have sought to reduce the impact of these new levies on small businesses to ensure that the new regime works for them.

33. The proposal includes a cap of $80,000 so that financial advice providers will not be required to pay more than this amount (this cap does not include levies relating to the financial advisers engaged by the financial advice provider which are levied separately). This recognises that many of these businesses may also pay FMA levies under other categories (e.g. as a bank). The cap is intended to address the risk of businesses limiting the availability of advice in order to reduce the amount of levy payable.

34. The discussion document also seeks feedback on two alternative options for setting the levy. Feedback received on these options will be carefully considered before I bring any final recommendations to Cabinet.

How does this compare to current levies?

35. The total levy owed by a single-adviser business is comparable to what is owed under the current regime, while small-medium sized businesses will pay a significantly lower levy than the status quo. Many larger businesses do not currently pay a levy for their financial advice service if they pay a levy under another category (e.g. banks and insurance companies) and will be required to pay a larger levy under this proposal.

Proposed changes to levies relating to authorised bodies

36. The discussion document also seeks feedback on some proposed amendments to how authorised bodies (an entity that is covered by a separate entity's market services licence) are levied. Currently, authorised bodies are treated inconsistently, and there is a risk that the full extent of a licensed provider's businesses might not be taken into account in the charging of the levy.

37. It is proposed that all authorised bodies will be required to pay a levy of $460.00, with the main licensee paying a levy based on the services provided by it, and the authorised bodies covered under its licence.

OUT OF SCOPE

38. Paragraphs 38-43 are out of scope

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42. [redacted]

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Consultation

44. The FMA, the Treasury and the Department of the Prime Minister and Cabinet (Policy Advisory Group) have been consulted on this paper.

Financial Implications

Consultation on proposed licensing fees and FMA levy

45. There are no financial implications from the release of the attached discussion document. The discussion document does not propose changes to the FMA's funding, or the amount collected by the levy. It simply proposes amending the levy to reflect the new regulatory regime for financial advice.

46. As previously noted by Cabinet [CAB-16-MIN-0336 refers], the FMA may require additional funding to effectively regulate financial advice in the new regime. However, the FMA has sufficient cash reserves to oversee the initial implementation of the new regime. I will revisit this once we have more information about the FMA's costs of operating in the new regime.

OUT OF SCOPE

47. OUT OF SCOPE

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Legislative Implications

49. The release of the discussion document does not raise any legislative implications. Amendment regulations will need to be prepared under the Financial Markets Conduct Act 2013, the Financial Service Providers (Registration and Dispute Resolution) Act 2008 and the Financial Markets Authority Act 2011 to give effect to the proposals in the discussion document.

Impact Analysis

50. The Regulatory Quality Team at the Treasury has determined that no separate Regulatory Impact Assessment is required in support of the proposal to issue the discussion document, since the analysis at this stage is covered in the discussion document.

51. A Regulatory Impact Statement will be prepared prior to final recommendations on these regulations being submitted to Cabinet.

Human Rights

52. There are no inconsistencies between the proposals in this paper and the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993. There are no gender or disability perspective implications from the proposals in this paper.

Publicity

53. MBIE will post the discussion document and two-page summary on its website, provide copies to interested parties and proactively engage with the industry to seek feedback on the proposals. The closing date for submissions will provide the industry sufficient time to consider and make submissions on the proposals.

54. The proposed levies may be controversial for some businesses who are not currently required to pay a levy in respect of their financial advice service, but are levied for other financial services (e.g. banks and insurance companies). The proposals have been structured to reflect the likely benefit that firms will receive from operating in a well-regulated environment in accordance with MBIE's objectives. MBIE will consider feedback received during consultation and will make necessary adjustments to the levy.

55. The relatively low fees may raise questions about the robustness of the FMA's licensing process. For example, the full licence application fee for providers that engage nominated representatives is calculated assuming 3 hours of FMA staff time. Some could raise concerns that 3 hours is not sufficient for checking the processes of a large bank.

56. However, the FMA will take longer to assess some applications and recover its costs through the hourly rate charging mechanism. The FMA will identify which applications require more time to assess based on responses to its licensing application form and its other intelligence tools.

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Proactive Release

58. The Ministry of Business, Innovation and Employment will publish a copy of this paper on its website.

Recommendations

The Minister of Commerce and Consumer Affairs recommends that the Committee:

1. **note** that the attached discussion document *Financial advice provider licensing fees and changes to the FMA levy* requests feedback on proposed licensing fees and the FMA levy that will apply in the new financial advice regime;

2. **agree** to the Minister of Commerce and Consumer Affairs releasing the attached document *Financial advice provider licensing fees and changes to the FMA levy* and the two-page summary for public consultation, subject to minor amendments consistent with the policy outlined in the paper;

3. **invite** the Minister of Commerce and Consumer Affairs to report back to Cabinet on the outcome of the consultation and submit final recommendations on regulations for Cabinet approval in 2019;

4. **note** that the Minister of Commerce and Consumer Affairs will issue a media statement when the discussion document is released;

Paragraphs 5-9 are out of scope

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10. **note** that the Ministry of Business, Innovation and Employment will publish a copy of this paper on its website.

Authorised for lodgement

Hon Kris Faafoi

Minister of Commerce and Consumer Affairs