



SUBMISSION

to

The Ministry

of

Economic Development

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

June 2011

Introduction

1. This Submission is from Trustee Corporations Association of New Zealand Inc (“TCA”) in response to the Discussion Document dated June 2011. We are available to meet with the Ministry to discuss our Submission. We can be contacted at:

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2. TCA is a long established association to which all Trustee Corporations belong. The members of the TCA are Public Trust and each of the Trustee Corporations authorised under the Trustee Companies Act 1967 to act as Corporate Trustee for financial products – being Trustees Executors Limited, The New Zealand Guardian trust Company Limited, New Zealand Permanent Trustees Limited (wholly owned by Public Trust) and Perpetual Trust Limited. Covenant Trustee Company Limited, although not authorised under the Trustee Companies Act 1967, is an associate member of TCA.
3. TCA maintains relationships with government ministries, regulatory bodies and financial sector groups. TCA sets minimum standards as practice guidelines for the performance of Corporate Trustees – standards for integrity, competence, financial capacity, internal controls, powers and duties, standards for conflict of interest management and for reports from scheme operators.
4. Trustee Corporations are most often associated with drawing up wills and trusts, putting in place enduring powers of attorney and handling estates, a service known as Personal Trusts. TCA contends that its members are uniquely qualified to fill this important role which requires independence, experience, professionalism and above all a focus on investor and beneficiary protection.
5. TCA members also provide prudential supervision of a wide range of investment products and financial arrangements in a number of ways and at various levels. In certain instances, fund managers must appoint a Corporate Trustee to meet regulatory requirements before they can offer a financial product to the market.
6. As at 30 June 2010, total Personal Trusts (excluding agencies and administrations) under supervision exceeded 26,000 with a value in excess of \$6.3b. Corporate Trust funds under supervision exceeded \$159b.
7. TCA appreciates this opportunity to comment on the Issues Paper.

TCA Issues Identified:

1. TCA notes that Cabinet has decided that the additional funding required for the institutions that regulate New Zealand's corporate environment and financial markets will be sourced from third party fees and levies. While TCA appreciates the concept of industry levies, there is an aspect of the policy which has received no mention. Accountability. In view of the level of funding being sought from industry, accountability and transparency are required from the institutions receiving the levies proposed. As noted, there are no mechanisms suggested that would enable levy-payers to hold the FMA to account for how well the funds were used although work programmes were mentioned. Some accountability is strongly recommended. Typically levy-payers would expect as a minimum an annual business plan, budget and reporting against budget.
2. The fee for AFAs associated with a QFE being the same as the fee for those AFAs not associated with a QFE does not take into account the different risk and cost profiles and the differing risks for FMA supervising AFAs associated and not associated to QFEs. QFEs have invested heavily in compliance systems so their AFA's levy should be reduced to reflect that investment and the reduced risk profile. The wider issue is that the entity and the entity-systems should be the regulator's focus. Those institutions which had invested heavily in systems to become a QFE are being penalised by the proposed fee structure which ignores the much reduced risk profile of AFAs working for a QFE.
3. Those financial service providers which have decided not to seek QFE status, not only have to meet their employees' AFA and RFA annual fees (\$680 and \$140 respectively) but also have to meet the FMA levy required from financial service providers, ie a further \$910 per AFA (and RFA?).
4. The activities of the regulator that are funded by the FMA levy and those that are funded by the FAA levy, overlap substantially. Both levies cover surveillance and enforcement activities for example, 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. The only cited activity funded solely by the FMA levy is the intelligence function.
5. As a final comment, TCA notes ultimately the consumer will end up bearing the costs imposed on advisers, further reducing the affordability of professional advice.

Some related comments:

1. Both individual advisers and QFEs have grounds for arguing they are being over-levied: advisers on the basis of the levy in proportion to the value of their business written, QFEs on the basis of the unfairness of a headcount calculation that does not take into account their investment in compliance and the risk profiles of AFAs and QFEs.
2. While the FAA and FMA levies are discussed separately, Parliament has now combined the levying power into a single section of the legislation. To avoid double-charging of advisers, a single levy is in TCA's view more appropriate rather than two overlapping levies for what are similar regulatory activities.
3. The purpose of the levy is to fund the FMA to regulate financial markets participants "FMPs" (as defined in the FMA Act). 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 - which is what MED

proposes - is we consider unfair, distortionary and could encourage behaviour contrary to the objectives of the Financial Advisers Act. A fairer approach could be a small per capita charge imposed on a very wide population, such as all companies, which indirectly benefit from operating in a well-regulated environment.

4. The mind set of the regulators is "All participants benefit from a well regulated market". MED therefore has the view that those benefiting most from a particular activity should make a proportionate contribution to funding the activity. The key question is how? It would be possible to take a hybrid approach, where (for example) all companies paid (say) \$30 annually and, in addition, financial service providers were levied an additional \$300-\$500 per annum. Thus, instead of an FMA and an FAA levy, there is one FMA levy, partly imposed on the broad population receiving a benefit from the well regulated market and partly imposed specifically on those who are most relevant to the FMA's activities. FMA recommends this option receives more analysis.
5. If that approach were taken, some equitable solution would be needed for QFEs, perhaps by charging them a proportion (for example two-thirds) of the per capita fee for each QFE adviser (excluding any employees not giving advice).
6. While there might be some logic for levying category 1 and category 2 product advisers at different rates, it seems difficult to justify a five-fold difference. A universal (and as discussed above, substantially lower) levy for all advisers would be fairer, affordable, less distortionary and would not disincentive the professionalism at the heart of the Financial Advisers Act.
7. FSPs are a proxy for FMPs because there is no register of FMPs. MED seem confident that they will be able to establish the population of issuers to add to FSPs. While ideally it would be desirable to identify other FMPs (eg accountants) and thus share costs out more equitably, TCA suspects that practically this will be difficult to do. This is another argument for keeping the FSP levy small and for getting the very broad population (of all companies) to shoulder most of the levy load.

Questions for submitters:

o **Financial Markets Authority**

Of the options in this paper:

1. Which is your preferred option?
2. Is there an alternative you would prefer?
3. Why have you chosen your preferred option?

TCA response:

- i. Our preferred option is to simplify administration with the FAA and FMA levies combined as one.*
- ii. AFA's associated with a QFE should have a lower fee than an AFA not supervised by a QFE. The compliance structures implemented by QFE's have been significant and the risk to a QFE is much greater than if it doesn't stand behind their AFA's and allowed them to be self employed contractors as some companies have done. The regulator needs to demonstrate visible support for and confidence in the QFE model.. If the fee structure is identical, there is no incentive for the QFE to take on the greater responsibility?*
- iii. The QFE related Adviser fee for Category 1 products is too high. Given that a QFE does not need to nominate Cat 1 or Cat 2 QFE advisers, this differing fee structure will be impossible to monitor.*

FMA Levy

4. Which types of entities should be required to pay the FMA levy?

TCA response:

All categories that are supervised by FMA but exclude holding and nominee companies.

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

TCA response:

Only if this can be implemented cost effectively.

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

TCA response:

We recommend use of the Companies Office database by categorising registrations.

As a final comment, TCA's view is that Option 1 will create a significant increase in costs which will need to be passed on to the consumer. This clearly is not the primary intention of the legislation.

Option 2 has less direct impact for the consumer and therefore is arguably a better option.

FAA Levy

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

TCA response:

No, for the reasons described above, based on cost to the consumer, and QFE value.

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

TCA response:

Yes brokers and all others who provide financial services who are to be regulated by FMA.

Auditor Regulation

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

TCA response:

Unable to comment on this levy

○ **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?

TCA response:

Agree with the proposed levy and methodology.

○ **New Zealand Companies Office**

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

TCA response:

Support the proposed fee structure.

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?

TCA response:

Support the proposed fee structure.

Insolvency and Trustee Service

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

TCA response:

Prefer that a higher fee is charged to all companies which go into liquidation or receivership so that the register is well maintained and publicised with any surplus on that fee supporting the Insolvency and Trustee Service costs.

**Trustee Corporations Association of New Zealand Inc
8 July 2011**