

# Submission

to the

## Ministry of Justice

on the

# Consultation on Proposed Ministerial Exemption for Managing Intermediaries

22 August 2014

# Submission by the New Zealand Bankers' Association to the Ministry of Justice on the Consultation on Proposed Ministerial Exemption for Managing Intermediaries

## About NZBA

1. NZBA works on behalf of the New Zealand banking industry in conjunction with its member banks. NZBA develops and promotes policy outcomes which contribute to a strong and stable banking system that benefits New Zealanders and the New Zealand economy.
2. The following fourteen registered banks in New Zealand are members of NZBA:
  - ANZ Bank New Zealand Limited
  - ASB Bank Limited
  - Bank of New Zealand
  - Bank of Tokyo-Mitsubishi, UFJ
  - Citibank, N.A.
  - The Co-operative Bank Limited
  - Heartland Bank Limited
  - The Hongkong and Shanghai Banking Corporation Limited
  - JPMorgan Chase Bank, N.A.
  - Kiwibank Limited
  - Rabobank New Zealand Limited
  - SBS Bank
  - TSB Bank Limited
  - Westpac New Zealand Limited.

## Background

3. NZBA is grateful for the opportunity to submit on the draft ministerial exemption for managing intermediaries under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (the Act), as proposed in the Anti-Money Laundering and Counter Financing of Terrorism (Class Exemptions) Amendment Notice 2014 (the Amendment Notice).
4. The following submission makes some brief comments on the proposed ministerial exemption.
5. If you would like to discuss any aspect of the submission further, please contact:

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## Submission

### Foreign Financial Institutions

6. NZBA is aware that other market participants have suggested a list of acceptable jurisdictions for the purposes of determining a 'foreign financial institution' in relation to section 2 of Part 4 would be useful. This approach relies on the assumption that it will be difficult to make an assessment based on the definition of foreign financial institution (i.e. "a country with sufficient AML/CFT systems and measures in place").
7. NZBA submits that paragraph (a) of the definition of foreign financial institution is sufficiently clear and does not require a prescriptive list. We caution that a prescriptive approach to defining a foreign financial institution may require reporting entities to re-visit their existing original risk assessments on customers who would fall under this category. Reporting entities should be given the flexibility to rely on a determination based on their existing compliance programs, and on this basis we suggest a list approach would be inappropriate.

### Programme Documentation

8. NZBA submits that section 3(d)(i) of Part 4 is not workable in practice and should be removed as a condition to the exemption under this Part. Compliance programmes often contain information which is confidential and commercial in nature. Because of this, specified financial institutions are likely to be unwilling to provide programme documentation to external parties.
9. Further, if the purpose of obtaining such documentation is to evidence that the specified financial institution is conducting the required customer due diligence on its customers, our view is that the signed confirmation under section 3(d)(ii) and criteria for meeting the definition of 'specified financial institution' are adequate to achieve this.

### Specified Customer Exemption

10. The drafting of the scope of the "specified" customer exemption in the Amendment Notice does not fit with the consultation paper. The draft Amendment Notice for "specified" customers makes the criteria cumulative: being a financial institution; and a foreign financial institution; and a superannuation scheme. The consultation paper appears to be saying that each of these types of institution would be exempt. NZBA submits that the approach set out in the consultation paper is appropriate.

### Impact of Enhanced Due Diligence

11. The requirement to conduct enhanced due diligence as a condition to the exemption in both Part 3 3(b) and Part 4 3(c) of the Schedule has a fundamental impact on the value and workability of the exemption.

12. We are concerned that the practical effect of the section 22 requirements as a condition of the exemption will be to override the exemption in relation to entities that are trusts as a matter of their nature such as superannuation schemes, have nominee shareholders, or be in industries categorised as high risk in reporting entities risk assessments e.g. money remitting.
13. While we recognise the purpose that Part 3 section 3(b) and Part 4 section 3(c) seek to achieve, NZBA submits that the impact of this is to effectively remove the exemption from these financial institutions. We would welcome the opportunity to meet with you to discuss alternatives to the Part 3 section 3(b) and Part 4 section 3(c) conditions.