

# Submission

to the

The Ministry of Business,  
Innovation and Employment

on the

Regulatory Systems  
Amendment Bill: Exposure  
Draft

29 January 2016

# Submission by the New Zealand Bankers' Association to the Ministry of Business, Innovation and Employment on the Regulatory Systems Amendment Bill: Exposure Draft

## 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 that contribute to a strong and stable banking system that benefits New Zealanders and the New Zealand economy.
2. The following fifteen registered banks in New Zealand are members of NZBA:
  - ANZ Bank New Zealand Limited
  - ASB Bank Limited
  - Bank of China (NZ) 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 Regulatory Systems Amendment Bill: Exposure Draft (**Bill**).
4. NZBA commends the Ministry of Business, Innovation and Employment's (**MBIE**) commitment to meaningful consultation and engagement, and appreciates the invitation to participate in this consultation.
5. The following submission makes some brief comments on clause 99 of the Bill.
6. If you would like to discuss any aspect of the submission further, please contact:

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7. Section 427 of the Financial Markets Conduct Act 2013 (**FMCA**) provides that a person must not provide a discretionary investment management service (**DIMS**) if there is a false or misleading statement or omission in the relevant disclosure statement (until a new disclosure statement is provided).
8. NZBA and its members interpret this section to mean that if there is a false or misleading statement or omission in a DIMS disclosure statement that the DIMS must in effect go "off market" until such time as the disclosure statement is rectified. During this "off market" period, DIMS providers would not be able to exercise their discretion to manage their client's portfolio, even if it would be in the client's best interests to do so (for example, to respond to movements in the share market).
9. NZBA and its members understand that the Financial Markets Authority (**FMA**) is aware of this issue, and understand that the FMA were going to raise it with MBIE.
10. While clause 99 of the Bill amends section 427 of the FMCA, it does not do so in a manner that addresses the above issue. NZBA and its members submit that the Bill should further amend section 427 of the FMCA to address the issue identified above.