NEW ZEALAND BANKERS ASSOCIATION

Submission

to the

Ministry of Justice

on the

Consultation Document: AML/CFT Amendment Act Prescribed Transaction Reporting Regulations

30 May 2016

NEW ZEALAND BANKERS ASSOCIATION
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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 welcomes the opportunity to provide feedback to the Ministry of Justice (**MoJ**) on its Consultation Document: Anti-Money Laundering and Countering Financing of Terrorism Amendment Act 2015 Prescribed Transaction Reporting Regulations (**Consultation Document**), and acknowledges the industry consultation undertaken on this matter.

4. If you would like to discuss any aspect of the submission further, please contact:

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Executive Summary

1. NZBA supports the development of Regulations for prescribed transaction reporting (**PTR**) and the overall objective of identifying possible money laundering and terrorist financing activity.

2. The Regulations are a critical part of what will be a material new reporting obligation for the banking industry, and the daily volume of reportable transactions is expected to be very large. It is therefore critical that the Regulations are developed with clarity and

certainty, to enable reporting entities to commence the work required to provide PTRs to the New Zealand Police Financial Intelligence Unit (**FIU**).

3. The volume of PTRs means that reporting entities will need to create an automatic (not manual) solution. For banks, this will require significant cost and resources, and multiple underlying systems to be linked together to provide the required data. We understand that it will take the entire 12 month transition period (until 1 July 2017) for banks to build their final solution(s).

4. We set out our submissions below. In summary:

    a. The policy basis for a PTR is different to that of a suspicious transaction report (**STR**), and therefore differences in the reporting fields between the two are both desirable and justified.

    b. The information required under PTR reporting fields should be both:

        i. relevant; and

        ii. readily available, in the sense that it is either:

            1. routinely collected/captured during the normal New Zealand payments process; and/or

            2. consistent with the information collected under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (**AML/CFT Act**) and the Anti-Money Laundering and Countering Financing of Terrorism Amendment Act 2015 (**AML/CFT Amendment Act**).

    c. We do not support the 'last out, first in' approach proposed in the Consultation Document, as banks acting as intermediaries are more likely to be involved at those touch-points and it will result in over-reporting/duplication. Rather, we submit that only the ordering institution (for outward transfers) or the beneficiary institution (for inwards transfers) in New Zealand should report the PTR to the FIU. Intermediaries should not be required to submit a PTR as this information will be duplicated.

    d. In relation to international wire transfers, the Regulations should include requirements that cover both situations, i.e. when the reporting entity is the first ordering institution or the final beneficiary institution. The PTRs will cover the same information (i.e. who is involved, the amount, the relevant customer etc.), but the Regulations need to address and apply distinctly to both roles that a reporting entity will play.

    e. We seek confirmation that the FIU has appropriate controls in place to protect the security of the information being provided to them through PTRs.

5. We also request clarification of a number of definitions and related matters set out in the Consultation Document.

Clarification requested on definitions and related matters

6. Based on the information in the Consultation Document, NZBA would appreciate clarification and/or consideration of the following:

    a) Based on the definition of a *prescribed transaction* (being a transaction "conducted through" a reporting entity), NZBA proposes amendment of the Regulations to exclude any obligation to report proposed or attempted transactions. Such transactions have yet not been effected (i.e. they have not yet been "conducted through" a reporting entity), and information on them is currently not captured or retained as part of the normal payment process (except where there is suspicion attached, in which case they are captured and reported under the STR obligation). We submit that the words "seeking to conduct a transaction" should also be removed from section 3 of Proposed Schedule 1 as they create the same uncertainty as "proposed transaction".

    b) NZBA understands that the word "international" in reference to a wire transfer relates only to payments where money is coming into, or out of, New Zealand. NZBA supports this approach. In order to clarify the position, NZBA submits that the Regulations should clarify that "international" in the context of an "international wire transfer" does not only apply to payments where both the ordering institution and beneficiary institution are inside New Zealand. This could be addressed by an additional Regulation inserted after the 'mirror' Regulations are developed to address paragraph 4(d) above.

    c) Under section 5 of the AML/CFT Amendment Act, the term *domestic physical cash transaction* means "a transaction in New Zealand involving the use of physical currency". NZBA members interpret this definition to exclude the conversion of physical *foreign* currency equivalent into New Zealand dollars (or vice versa), either by way of cash (physical notes) or deposit into/withdrawal from a bank account. If this is not the case, the Regulations need to make this clear.

    d) Under section 5 of the AML/CFT Amendment Act, the term *prescribed transaction* means "a transaction conducted through the reporting entity…". In relation to domestic physical cash, we would appreciate clarification as to where the reporting obligation lies for cash transactions conducted through a third party bank, where that party is acting on behalf of the bank that holds the account relationship. Does the reporting obligation lie with the third party bank, or with the relationship bank?

    e) Under section 13A of Anti-Money Laundering and Countering Financing of Terrorisms (Definitions) Regulations 2011, the *applicable threshold value* for wire transfers is defined as "more than (NZ)$1,000". This value is different to the applicable threshold value for wire transfer transactions referred to on page 3 of the Consultation Document, which is stated as "$1,000 or more". Please confirm the definition to be used as the applicable threshold value.

    f) With regard to Proposed Schedule 1, section 2(c), NZBA requests clarification whether "mode" and "nature" are interchangeable or have distinct meanings. The examples provided in the Consultation Document of "in person" or "electronic" do not make this clear. The FIU draft schema requires the "transmode_code" (how

the transaction was conducted), as defined by table 5.6 Conduction type. NZBA requires clarity that this fulfils the mode/nature requirement.

Prescribed transaction report fields

Proposed alignment with suspicious transaction reports

7. MoJ proposes to utilise the current STR requirements specified in Schedule 1 of the Anti-Money Laundering and Countering Financing of Terrorism (Requirements and Compliance) Regulations 2011 (**Requirements and Compliance Regulations**) for details to be included in PTRs, with some exceptions.

8. NZBA submits that the policy basis for a PTR is different from an STR. Therefore the requirements for a PTR should be developed in insolation, rather than via retrofitting STR requirements.

9. The trigger for a PTR is any relevant transaction over the applicable threshold value, compared to an STR, over which there is a subjective overlay applied in determining it is 'suspicious'. The information required for a PTR is also likely to come from multiple systems operated by the reporting entity.

10. The process for preparation and submission of a PTR must be automated because the relevant trigger will occur both frequently and as a matter of fact. By contrast, the process for preparation and submission of an STR can be manual, because the trigger occurs less often and the volumes are therefore lower.

11. NZBA submits that the volume of STRs submitted by reporting entities is a fraction (less than 1%) of the total number of transactions that will need to be reported under the PTR requirements.

Proposed prescribed transaction reporting fields

12. NZBA submits that the information required under PTRs should be:

    a. relevant; and

    b. readily available, in the sense that it is either:

        i. routinely collected/captured during the normal New Zealand payments process; and/or

        ii. consistent with the information collected under the AML/CFT Act and AML/CFT Amendment Act.

13. NZBA submits that the Regulations, in setting out fields required in a PTR, should be drafted to cater for both applicable threshold values. Not all fields relevant to a PTR for a domestic physical cash transaction >$10,000 will be relevant to an international wire transfer >$1,000. Therefore, the Regulations should provide flexibility by using the words "if relevant" at the start of each topic area relating to the fields required.

14. NZBA submits that the Regulations should also use the words "if readily available", so that reporting entities are not compelled to supply information where they do not hold

it. An example of this is in respect of bank customers on-boarded prior to June 2013 and the enactment of the AML/CFT Act. In some instances, these customers may not have yet been upgraded to the standard of the AML/CFT Act's customer due diligence (**CDD**) requirements. Therefore, the reporting entity may not have certain information about that customer available which would, as currently proposed, be required to complete a PTR. This "if readily available" approach alleviates any risk that the system may reject a PTR that does not include information in every required field because the reporting entity is not able to provide that information.

15. It will also create significant complexity for reporting entities if all information that is available (in the sense that it is held by the reporting entity) is required to be reported in a PTR. For example, information might be held in documentary form (e.g. Source of Wealth documents in pdf formats), or held in other systems that cannot be easily extracted from. The "readily available" approach will help to ensure that the required information can be readily accessed in a manner that will not require a disproportionately complex systems build.

16. Finally, this "relevant and readily available" approach is also necessary to ensure that reporting entities can continue to meet the requirements of other legislation, such as the Privacy Act 1993, which places parameters on how agencies that collect personal information can use or disclose that information. Relevance and availability are necessary to ensure that reporting entities do not breach their terms and conditions with customers and are able to supply the information under the standing exemption provided under Information Privacy Principle 11(e), for disclosing information required by law.

17. We do not support the following PTR fields currently proposed by MoJ, as they are not relevant and not readily available:

Proposed field	Relevancy	Availability
Proposed new field: 2(f) – "the Internet Protocol Address of the originator and/or beneficiary (if applicable)"	The relevance of this information is unclear. This information appears to be primarily relevant for investigations of patterns identified following analysis of PTR information, and for STR purposes.	This information is currently not captured as part of the normal payment process in relation to any transaction, including wire transfers processed through either the Settlement Before Interchange (**SBI**) or SWIFT payment conduits. Such information cannot be captured for incoming wire transfers (this is not provided as part of incoming transaction information), and substantial and complex system amendment, including to the New Zealand payments system itself, would be required for it to be captured for outgoing wire transfers, if it is even possible.
Schedule 1 of the Requirements and Compliance Regulations:	This information does not appear strictly relevant for PTR purposes.	Imposes a higher standard than the current CDD obligations imposed by the AML/CFT Act.

3(g) and (h) - Source of wealth or funds and documentation related to persons acting on behalf	This information appears to be primarily relevant for investigations of patterns identified following analysis of PTR information, and for STR purposes.	This information would be available for new customers (post 30 June 2013), however may not be available for pre-existing customers. NZBA members would need to revisit and update their existing customer base to the same standard as new customers by 1 July 2017 (this is not achievable and would require a number of years to complete). This information will be very complex to build into an automated solution as the information will be required to be extracted from other, possibly multiple, source systems.
Schedule 1 of the Requirements and Compliance Regulations: 4 and 5 – Beneficial owner due diligence information (for trusts or other entities)	This information does not appear to be strictly relevant for PTR purposes (it is more relevant for investigative / STR purposes).	Imposes a higher standard than the current CDD obligations imposed by the AML/CFT Act. This information would be available for new customers (post 30 June 2013), however may not be available for pre-existing customers. NZBA members would need to revisit and update their existing customer base to the same standard as new customers by 1 July 2017 (this is not achievable and would require a number of years to complete). This information is not normally included as part the payment processing flow. This information will be very complex to build into an automated solution as the information will be required to be extracted from other, possibly multiple, source systems.
Schedule 1 of the Requirements and Compliance Regulations: 7(a)(iii) - Account signatory due diligence information	This information does not appear to be strictly relevant for PTR purposes (it is more relevant for investigative / STR purposes).	This information is not normally included as part the payment processing flow. This information will be very complex to build into an automated solution as the information will be required to be extracted from other, possibly multiple, source systems.

Multiple reporting entities involved in wire transfers

Preferred approach: Report by ordering institution or beneficiary institution in New Zealand

18. NZBA does not support the 'last out, first in' approach proposed in the Consultation Document, as banks acting as intermediaries are more likely to be involved at those touch-points, and it will result in over-reporting/duplication.

19. NZBA submits that only the ordering institution (for outward transfers) or the beneficiary institution (for inwards transfers) in New Zealand should report the PTR to the FIU. Intermediaries should not be required to submit a PTR as this information will be duplicated.

20. This approach reflects that an international wire transfer starts its journey by leaving a reporting entity (reflecting their customer's payment) before concluding its journey by its final arrival at another when it reaches the customer of that reporting entity (being the beneficiary of the transaction).

21. In our view, only the New Zealand reporting entity involved in either the originating first or final beneficiary transaction should be required to submit a PTR. No intermediaries should be required to submit a PTR as this would be a straight duplication of information. The effect of this approach is that the reporting entity who "owns" the customer will be required to report (i.e. the customer originating the payment out of New Zealand or the customer who is the beneficiary of the money into New Zealand).

22. This submission is made on the assumption that the Regulations will require no more information to be reported than that which is contained in the relevant SWIFT message fields (and not the other additional CDD information – please see paragraph 12(b)(i) above).

23. In a situation where an international wire transfer does not reach the end reporting entity because it is rejected by an intermediary, if the ordering institution is in New Zealand, that reporting entity will have submitted a PTR, so the information will be available to the FIU. If the ordering institution is not in New Zealand, that money will never reach our jurisdiction.

Ordering institution v beneficiary institution

24. NZBA also submits that, in relation to international wire transfers, the Regulations should include requirements that cover both situations for when the reporting entity is the first ordering institution or the final beneficiary institution. The PTRs will cover the same information (i.e. who is involved, the amount, the relevant customer etc.) but the Regulations need to address and apply distinctly to both roles that a reporting entity will play.

Security of information provided

25. NZBA seeks confirmation that the FIU has appropriate controls in place to protect the security of the high volume of information being provided to them through PTRs.