

Submission

to the

Financial Markets Authority

on the

Consultation on including an annual declaration of compliance in regulatory returns and updating the standard regulatory returns condition

14 May 2018

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 seventeen 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
 - MUFG Bank, Ltd
 - China Construction Bank
 - Citibank, N.A.
 - The Co-operative Bank Limited
 - Heartland Bank Limited
 - The Hongkong and Shanghai Banking Corporation Limited
 - Industrial and Commercial Bank of China (New Zealand) 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 Financial Markets Authority (**FMA**) on including an annual declaration of compliance in regulatory returns and updating the standard regulatory returns condition (**Consultation Paper**).
4. If you would like to discuss any aspect of the submission further, please contact:

Antony Buick-Constable
Deputy Chief Executive & General Counsel
04 802 3351 / 021 255 4043
antony.buick-constable@nzba.org.nz

Introduction

5. NZBA welcomes the significant changes outlined in the consultation paper (particularly in respect of sign-off requirements and process) compared to the previous proposals for the annual declaration (November 2015 and June 2016).

Question one

6. NZBA supports this approach, however, we do not consider that the confirmation necessarily needs to be by way of resolution. We note that Boards and oversight committees may operate under different governance frameworks. For instance, oversight committees may not necessarily agree matters by 'resolution' and may otherwise 'approve' them in accordance with the applicable framework. To ensure flexibility for those bodies to approve (and document) such matters within their existing frameworks, we consider that requirement should be to 'confirm' the matters required by the declaration. In some cases that confirmation will take the form of a resolution, and in other cases that could be an approval of the oversight committee.
7. We also note that licensees may operate multiple oversight bodies. In those cases, licensees should be able to determine the most appropriate body to provide the confirmation, for example, the primary oversight body.

Question two

8. NZBA supports the proposal to include the annual declaration of compliance as part of the regulatory return, rather than having a separate requirement. We consider that this provides for a more efficient compliance process for licence holders. However, we consider that licensees should have flexibility to choose another period for compliance to align with financial reporting or other internal compliance and reporting processes as required (ie different to that in which they complete the regulatory returns process).

Question three

9. NZBA supports this approach.
10. However, NZBA considers that boards or oversight committees should be able to provide the confirmation on the basis that they have made 'all reasonable enquiries' and a materiality threshold should apply.
11. NZBA considers that this requirement should fall on the 'Board or Oversight Committee' of the MIS manager (as opposed to the supervisor, or both).

Question four

12. NZBA supports the proposal to allow a delegated person to confirm online that the required resolution has been passed by the oversight body (or Board, where applicable). We also note that there should be no additional requirements imposed by the FMA in relation to evidencing such a delegation.