Submission

to the

NZX

on the

NZX Listing Rule Review – Discussion Paper

17 November 2017

About NZBA

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.

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

Bank of Tokyo-Mitsubishi, UFJ

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

NZBA welcomes the opportunity to provide feedback to NZX on the NZX Listing Rule Review – Discussion Paper (**Review**) and commends the work that has gone into developing the Review.

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

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Introduction

In summary, NZBA considers that the Review provides an opportunity to simplify and improve the Listing Rules and generally supports the changes proposed in the Review.

In this submission, capitalised terms which are not otherwise defined have the same meaning as in the Listing Rules.

Question 13

NZBA considers that NZX should play a part in promoting and facilitating the issuing of green bonds in New Zealand, rather than playing an enforcement role regarding green bond principles or standards. Environmental and social investment is very topical and we support the NZX releasing guidance on ESG reporting.

Question 32

NZBA supports an amendment to the Listing Rules to remove the need for the standard waiver that registered banks are able to provide their quarterly (semi-annual going forward) disclosure statements instead of complying with NZX Listing Rules 10.3 and 10.4. That is because, in our view, the requirement to disclose the relevant waivers in offer documents creates an unnecessary compliance burden.

**Question 53**

# NZBA agrees that spread and free float requirements should be removed.

# While NZBA recognises the importance of liquidity to enable retail investors to exit their positions as needed, the spread requirements are not necessary to achieve this.

# Developments in the debt market over recent years have led to Debt Securities being held by fewer registered holders (even though the number of beneficial owners may still be large). Sufficient liquidity can exist in a secondary market for Debt Securities with a smaller number of security holders.

# Further, Issuers do not have control over trading of their bonds in the secondary market, the number of holders of bonds, or the manner in which bonds are held. A number of Issuers also provide liquidity to the debt market through market-making activities.

# Therefore, the spread requirement imposes an unnecessary compliance burden, both in terms of resources to determine whether the spread requirements have been met (where it is often difficult to obtain information on holdings from brokers and custodians) and in the cost and delays in obtaining waivers.

# NZBA is of the view that the majority of new Issuers seek a waiver around this due to the uncertainties inherent in a new issue process and the number of holders that an Issuer will have on the day after the issue. NZBA’s members are confident that bonds would be very widely held on retail bond issues.

# NZBA also suggests that consideration be given to the impact of removing the 100 holder requirement on the IRD test for Approved Issuer Levy (**AIL**) zero rating. NZBA notes that an evidence based approach may provide the necessary support for the AIL zero rating to continue to apply to listed issues.

# **Question 54**

# NZBA considers that listing of hybrid and perpetual issues on a price basis can materially harm their liquidity. NZBA therefore prefers a yield-based approach.

# The challenge in implementing a yield-based approach is making an assumption around the time horizon to which the yield is calculated. However, NZBA is of the view that a clearly expressed assumption (eg priced to the first potential call date) is a sensible way to deal with this issue. While an assumption is required, and could potentially cause confusion, this approach is more investor-friendly and relevant than price quotation.

# Consideration could be given to incentives or requirements for lead managers of issues to maintain adequate secondary pricing on the exchange. This requirement should not be onerous, however the lead or lead(s) should be expected to maintain a secondary market presence for the term on the issue.

# **Question 55**

# We believe that this is a function of ensuring ease of listing. Removing the spread requirements will assist in that regard.

# **Question 56**

# NZBA is not convinced that there is demand for the listing of wholesale debt instruments. However, NZBA would support the listing of wholesale debt instruments in the following circumstances:

## listing fees are reduced;

## administration procedures are streamlined and simple, clear rules are introduced;

## the period between first approaching NZX and launching a wholesale issue is reduced (eg to 3-5 business days); and

## wholesale listed issuances qualify for zero percent AIL.

**Question 57**

NZBA considers that NZX should consider amendments to Rule 7.11.1 of the Listing Rules, which requires bonds to be allotted within 5 days of the offer closing.

With the introduction of the Quoted Financial Product exemption (where a full disclosure document is not required for issues of quoted products of the ‘same class’ as a product that is already listed) under the Financial Markets Conduct Act, Issuers are looking for an extension to the selling period longer than the five day timeframe after the closing date. We consider that a 10 business day requirement would better meet the needs of the market.

**Question 58**

NZBA considers that the following should be permanent features of the Listing Rules:

## No supervisor is required to be appointed for issues of debt securities by registered banks in accordance with NZX Listing Rule 3.2.1(a) (given registered banks are not required to have a trustee for their debt instruments).

## In relation to convertible fixed interest instruments, the ten business day notice requirement in NZX Listing Rule 7.12.2 does not apply to routine payments of interest, provided details of the interest rate setting process and the interest rate determined are disclosed in the applicable offer document and announced via NZX on or before the issue date.

## The ability to decline to make a transfer where this would result in the transferor or transferee holding debt instruments with a face value of less than a prescribed minimum amount.

## The ability to decline to make a transfer where this would not comply with certain Australian selling restrictions.

**Question 59**

NZBA reiterates its response to question 32 (set out above at paragraph [8]).

**Question 76**

NZBA supports the proposal to amend the current requirement under Listing Rule 5.2.2(b) so that Issuers are not required to provide evidence of an Organising Participant receiving authority to act from NZX provided they remain accredited.

**Question 79**

NZBA considers that Listing Rule 2.2.1 should be amended to provide Issuers with greater clarity and certainty in respect of what is required to comply with this obligation.

The current obligation for an Issuer to take “all steps within its powers” to ensure compliance by its Subsidiaries imposes a very onerous and uncertain standard. From a practical perspective, it is difficult to envisage how this could be achieved. As the Issuer is ultimately responsible for compliance with the applicable Listing Rules, this rule is not required in the current all-encompassing form. Accordingly, we consider this rule should be modified to state “Every Issuer will be responsible for ensuring that: …”.

Alternatively, the rule could be modified to include a requirement for the Issuer to take “reasonable steps” to ensure compliance, or, to have in place adequate and effective policies and processes that are likely to ensure compliance by Subsidiaries with the Listing Rules. We note that this latter requirement corresponds with the obligations imposed under the Standard Conditions for market services licensees under the Financial Markets Conduct Act.