NZBA Oral Submission to Commerce Committee on the Financial Markets Conduct Bill – 28 June 2012

Good afternoon. I'm Karen Scott-Howman from the New Zealand Bankers' Association and with me is my colleague Herman Visagie.

The Bankers' Association welcomes this opportunity to address the Committee. We are the banking industry's representative association and our submission is made on behalf of our thirteen member banks.

We are very supportive of the Bill and believe it will do much to promote confident and informed participation in our financial markets and the strengthening of our capital markets.

We also commend the consultation process undertaken by officials to date. Effective consultation with stakeholders is critical to the success of the Bill and as you have already heard from other submitters it is imperative that it continues throughout the process of drafting and finalising regulations.

I want to quickly mention up front what we won't be talking about today. Throughout the course of these hearings, many submitters have addressed the Committee on the liability provisions in the Bill. We agree with much of what you have already heard, particularly the comments made by our member banks, law firms and the Institute of Directors. As liability is an issue which has been well canvassed before you, I do not wish to specifically address the Committee further on the matter.

You've also heard our member banks address you today on the Bill's derivatives regime and some key managed investments scheme provisions. I won't speak to that material now, although I note that representatives from the Association and our member banks would be available to work with officials on technical details with the Committee's permission if you consider that is desirable.

It remains for us to focus our presentation on two of the matters which we raised in our written submission:

- the licensing regime, and
- the Bill's transitional arrangements.

Licensing

In our view, the market services licensing regime in the Bill could helpfully be streamlined to avoid inefficiencies created by duplication of regulation. This duplication will impose costs on market participants that are not outweighed by any commensurate benefits to the market.

The imposition of these costs runs counter to the Bill's stated objective of avoiding unnecessary compliance costs.

Registered banks are already subject to extensive regulation and disclosure requirements. They are required to hold a number of licences and registrations under the Financial Advisers Act 2008, the Reserve Bank Act 1989 and the Financial Services Providers (Registration and Dispute Resolution) Act 2008. Under the Bill, most banking groups will require additional licenses as fund managers, derivatives issuers and discretionary investment management service providers.

Compliance with the Reserve Bank Act alone would likely cover most of the licensing prerequisites for a number of the various market services licenses under the Bill.

It's also important to note that many registered banks are also Qualifying Financial Entities under the Financial Advisers Act. QFEs are subjected to a rigorous process before gaining that status, including satisfying requirements for comprehensive documentation and enhanced compliance.

We would like the Bill to allow for the grant of a single market services licence without requiring applicants to provide the Financial Markets Authority with duplicate information. We ask that where information has already been provided to satisfy licence criteria under a different piece of legislation, that information should not have to be provided again.

This could simply be achieved by requiring the Financial Markets Authority to take such matters as proven.

Transitional arrangements

Turning now to transitional arrangements, it is our submission that these provisions require some amendment. In short, much of the detail of the new regime depends upon the content of the regulations and any other elements of design required by the Bill. These need to be known before transition periods should begin to run.

Given the uncertainty about the details of the regime, a flexible approach is requested. We have suggested that the transition periods in the Bill be set by regulations, rather than in the primary legislation. It would also be of great assistance if priority could be given to the promulgation of key regulations (after appropriate consultation). Among the regulations we think ought to be prioritised are the disclosure and licensing requirements and the governance and registration requirements for managed investment scheme registration.

It is also important to note that the transition will be complex and we believe the industry will require substantial time. For example, a great many disclosure and governance documents will need to be drafted and many licence applications will be required.

Specifically in relation to transitional arrangements, we would like to draw the Committee's attention to an anomaly in respect of products without a prospectus. As the Bill is currently drafted, they would not benefit from the full transition period accorded to products with prospectuses. Products without prospectuses have a 12 month transition under current drafting, whereas those with prospectuses may have 24 months. We are unable to discern any policy reason for this differential treatment.