

Submission

to the

Ministry of Business,
Innovation and Employment

on the

Securitisation Exemption
Regulations Consultation
Document

18 September 2014

Submission by the New Zealand Bankers' Association to the Ministry of Business, Innovation and Employment on the Securitisation Exemption Regulations Consultation Document.

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 which contribute to a strong and stable banking system that benefits New Zealanders and the New Zealand economy.
2. The following fourteen registered banks in New Zealand are members of NZBA:
 - ANZ Bank New Zealand Limited
 - ASB Bank 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 potential regulations granting exemptions in relation to securitisation under the Credit Contracts and Consumer Finance Act 2003 (CCCFA) and the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (FSP Act).
4. NZBA commends the ongoing commitment to meaningful consultation and engagement and appreciates the invitation to participate in this targeted consultation.
5. The following submission makes some brief comments on the discussion document.
6. If you would like to discuss any aspect of the submission further, please contact:

James Pearson
Associate Director – Policy

General

We note that the discussion document has closely followed discussions that NZBA has had with MBIE to date. Accordingly, we support the position adopted and commend MBIE for the content of the discussion document. In our view, the provisions MBIE has proposed are in fact required, and do not miss anything that we believe should be included in the proposal.

In particular, NZBA supports a definition which provides an exemption based on the type of entity concerned.

Specific Questions

NZBA makes the following points in response to questions raised in the discussion document:

Question A

NZBA agrees that the proposed approach is necessary in addition to a definition by entity type, as this will allow the exemption to cover a range of funding structures that are used by banks. In particular, the exemption should recognise that funding structures do not always use an SPV or involve the granting of security and should also allow for the re-transfer of credit contracts to the originating creditor or its affiliate at the end of the funding arrangement or for other reasons relating to the funding. For this reason, the NZBA believes it is necessary to include two further formulations of the exemption which relate to the terms of the debtor's relationship with the existing creditor (see Question B below).

Question B

Given the limitations of the SPV definition (in relation to paragraph 8(b)), the NZBA considers that the exemption also needs to cover the following two situations:

- (a) a transfer to a person which is made on serviced terms; and
- (b) a transfer by a securitisation SPV or a transferee to the creditor from whom the consumer credit contract was acquired (the original creditor), the sponsor or a related entity of the original creditor or sponsor.

In each of the above two scenarios, the standard market position is that the transferee will take either an equitable assignment of the consumer credit contract or an absolute assignment under section 50(1) of the Property Law Act 2007 (PLA) but, in each case, no notice of the assignment under section 51(2) of the PLA is given to the underlying borrower. From a practical and administrative perspective, these scenarios are intended to preserve the existing servicing relationship between the underlying borrower and the creditor.

In relation to a transfer made on serviced terms, the NZBA agrees with MBIE's proposal that the formulation is best defined by reference to the borrower's relationship with the creditor. However, the exemption needs to cover the broad range of "servicing" arrangements being carried out by both the initial creditor and a separate servicer (including a "back-up" servicer).

The consultation paper notes that a provision will be required to enable transfer of a loan at the end of the term of the loan. However, there may be a number of other circumstances in which this is required, including where the loan no longer meets the eligibility criteria to be able to be held by the SPV, or the originator needs to reconfigure the profile of the loans in the securitisation structure to meet changing rating agency requirements.

The NZBA agrees with the comment in the consultation paper that this exemption needs to take account of restructurings of originators (or servicers) during the period that the loan is assigned to the SPV. To deal with this issue, the exemption should extend to transfers to affiliates or related parties of the originator as well as transfers back to the originating creditor. From a borrower's perspective, it is unlikely that they would experience any material change in the nature of the servicing relationship that they had with the originator before the loan was "transferred back" to an affiliate or related party of the originator.

Question C

Yes.

Question D

Yes, such a transfer should be notified to the debtor.

We note that in the event of a true sale to a third party the third party will want notice to be given, because the debtor's relationship is being transferred to the third party, and this is likely to be a requirement of the transfer between the initial creditor and the third party.

Question E

NZBA endorses the proposed scope of the exemption.

Question F

As noted above, in our view the proposed exemption covers the necessary transactions, but does not over or under capture creditors.