

Submission

to the

Reserve Bank of New
Zealand

on the

Consultation paper:
proposed new BS5 –
Guidelines on Anti-Money
Laundering and Countering
Financing of Terrorism

4 September 2015

Submission by the New Zealand Bankers' Association to the Reserve Bank of New Zealand on the Consultation paper: proposed new BS5 – Guidelines on Anti-Money Laundering and Countering Financing of Terrorism

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 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 is grateful for the opportunity to submit to the Reserve Bank of New Zealand (**RBNZ**) on the Consultation paper: proposed new BS5 – Guidelines on Anti-Money Laundering and Countering Financing of Terrorism (**proposed new BS5**) as part of RBNZ's Regulatory Stocktake of the Prudential Requirements Applying to Registered Banks (**Regulatory Stocktake**).
4. The process around the Regulatory Stocktake has been a good example of policy development that has actively involved the industry. NZBA commends the ongoing commitment to meaningful consultation and engagement and appreciates the invitation to participate in this targeted consultation.
5. The following submission provides comments on the proposed new BS5.

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

Antony Buick-Constable
Policy Director & Legal Counsel
04 802 3351 / 021 255 4043
antony.buick-constable@nzba.org.nz

7. NZBA welcomes the proposed changes to bring the proposed new BS5 into line with the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (**AML/CFT Act**).
8. NZBA supports:
- a. The proposed new BS5 continuing to be framed as guidelines issued under section 78(3) of the Reserve Bank of New Zealand Act 1989 (**RBNZ Act**); and
 - b. Paragraphs 3(1) and 3(2) of the guidelines in the proposed new BS5.
9. Paragraphs 3(3)-3(6) (inclusive) of the guidelines in the proposed new BS5 encourage adherence with external sources, namely the Basel Committee on Banking Supervision (**BCBS**) AML/CFT guidance and the New Zealand Police Financial Intelligence Unit (**FIU**) guidelines/information on the reporting of suspicious transaction reports and other reports.
10. NZBA submits that the obligation for reporting entities to have regard to BCBS guidance and FIU guidelines/information should be removed from the proposed new BS5. We expand on this submission below.

BCBS guidance

11. NZBA submits that the obligation for reporting entities to have regard to BCBS guidance should be removed from the proposed new BS5.
12. New Zealand is not a member of BCBS, and previously RBNZ have adopted points that they consider to be desirable and/or appropriate from BCBS' proposals and incorporated them into their own requirements. NZBA is aware that RBNZ has issued guidance on most of the matters covered by BCBS' AML/CFT guidance in guidelines issued under section 132(2)(c)(i) of the AML/CFT Act. NZBA submits that, as New Zealand now has its own AML/CFT regime, it would be more appropriate for RBNZ to issue its own guidance based on BCBS' AML/CFT guidance, rather than requiring New Zealand reporting entities to have regard to BCBS AML/CFT guidance.
13. NZBA submits that if RBNZ considers there are matters in BCBS' AML/CFT guidance which reporting entities should take into account which are not covered in its own AML/CFT Act guidelines (because, for example, the guidelines pre-date BCBS' AML/CFT guidance) RBNZ should update its AML/CFT guidelines accordingly.

14. NZBA submits that the obligation for reporting entities to have regard to BCBS' AML/CFT guidance in the proposed new BS5 is particularly problematic as BS5 clarifies the basis on which a recommendation of cancellation of registration in accordance with section 77(2)(f) (or a direction given in accordance with section 113(1)(e)) of the RBNZ Act can be made. Accordingly, NZBA submits that it is important that the guidelines in the proposed new BS5 be limited to compliance with the AML/CFT Act, rather than include expectations of adherence to external sources such as BCBS' AML/CFT guidance.

FIU guidelines/information

15. NZBA submits that the obligation for reporting entities to have regard to FIU guidelines/information should be removed from the proposed new BS5.
16. NZBA submits that it is unnecessary for RBNZ to require reporting entities to consider FIU guidelines/information through the proposed new BS5 as reporting entities already have a statutory obligation to do so:
 - a. Section 58(2)(g) of the AML/CFT Act requires a reporting entity to have regard to "any applicable guidance material produced by AML/CFT supervisors or the Commissioner relating to risk assessments" when undertaking a AML/CFT risk assessment. The 'Commissioner' in this context is the Commissioner of Police.¹
 - b. FIU guidance material, such as the National Risk Assessment and Quarterly typology reports, are issued under the Commissioner's financial intelligence functions under section 142(b) of the AML/CFT Act.
 - c. The obligation under section 59(1)(a) of the AML/CFT Act on a reporting entity to review its risk assessment and ensure it remains current requires a reporting entity to consider any changes to, or new FIU guidance issued by the Commissioner.

¹ AML/CFT Act, section 5.