

Submission

to the

Commerce Select Committee

on the

Regulatory Systems (Commercial Matters) Amendment Bill

30 November 2016

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 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 welcomes the opportunity to provide feedback to the Commerce Select Committee (**Committee**) on the Regulatory Systems (Commercial Matters) Amendment Bill (**Bill**), and commends the work that has gone into developing it.
4. If the Committee or officials have any questions about this submission, or would like to discuss any aspect of the submission further, please contact:

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Support for the Bill and NZFMA Submission

5. NZBA supports the Bill and its amendments to:
 - a. Close-out netting (clauses 27 and 28 of the Bill)
 - b. Defective DIMS disclosure (clauses 69 to 71)

- c. Construction Contracts Act 2002 (clause 138)
6. NZBA also supports the submission of the New Zealand Financial Markets Association (**NZFMA**) and its members on the Bill, and the other issues relating to netting which have been identified and explained in that submission.
 7. The issues identified in the NZFMA's submission (including the other issues relating to netting) are extremely important for banks to have resolved. In particular, the various drafting which needs to be remedied has the potential to impact New Zealand's ability to participate in the global derivatives market as well as increase the costs for New Zealand businesses and government entities in connection with managing their interest rate and foreign exchange costs and risks.

Additional submission

8. In addition to the above support, NZBA has one comment on the Bill's amendments which relate to defective DIMS disclosure.
9. Generally, NZBA support the changes. However, with regard to the changes to sections 426A and 427 (clauses 69 and 70, respectively) there is a degree of uncertainty as much of the relevant detail is yet to be prescribed. In particular, it is not clear whether the licensee or authorised body can continue to provide the service without providing a new disclosure statement if no manner has been prescribed for providing that statement (section 427(4)).
10. NZBA submits that section 427(4) could therefore be amended to provide (changes tracked):

(4) Subject to subsection (3), if the licensee or authorised body *may* continues to provide the service to A, *provided that in the prescribed circumstances (if any) and in the prescribed manner (if any)* the licensee or authorised body must, ~~in the prescribed manner,~~ provide ~~to A~~ a new disclosure statement that is not defective in terms of subsection (1)(a) and (b).