

Submission

to the

Financial Markets Authority

on the

Consultation Paper – Short duration derivatives

5 May 2017

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 sixteen 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
 - 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

3. NZBA welcomes the opportunity to provide feedback to the Financial Markets Authority (**FMA**) on the Consultation Paper – Short duration derivatives (**Consultation Paper**) and commends the work that has gone into developing the Consultation Paper and additional material.
4. 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

Key industry submission

5. NZBA and its members fully support the objective of requiring providers of short duration derivatives to be licensed, whilst ensuring that ordinary spot FX contracts are not unintentionally captured under the Financial Markets Conduct Act 2013 (**FMC Act**). NZBA agrees that the ability of unlicensed providers to offer speculative and high risk short duration derivatives to investors in New Zealand (namely CFDs and

binary options), outside the current regulatory perimeter, poses a significant risk of potential harm to New Zealand investors.

6. In our view providers and investors in the New Zealand market have operated until now on the understanding that spot FX Contracts are not regulated as FMC Act financial products.
7. NZBA believes investors see spot FX as a basic transactional service. The lack of legal or operational complexity in respect of these products is such that investors would, in line with legislative intention, not expect the products to be regulated in this way, nor would they derive any substantial benefit due to the products being regulated under the regime.
8. Accordingly NZBA considers that if the FMA were to adopt its revised interpretation articulated in the Consultation Paper, the industry should be able to continue transacting spot FX Contracts on the same basis it has until now. Importantly NZBA maintains this will preserve certainty for investors and can only enhance a well-functioning market.
9. Responses to the specific questions from the Consultation Paper will be addressed by members in their individual submissions.