NEW ZEALAND BANKERS ASSOCIATION

Submission to the Ministry of Business, Innovation and Employment

on the

Content of the annual return as proposed in the exposure draft of the Credit Contracts and Consumer Finance Amendment Regulations 2020

24 February 2020

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About NZBA

1. The New Zealand Bankers' Association (**NZBA**) is the voice of the banking industry. We work with our member banks on non-competitive issues to tell the industry's story and develop and promote policy outcomes that deliver for New Zealanders.

2. The following seventeen 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
- China Construction Bank
- 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
- MUFG Bank Ltd
- Rabobank New Zealand Limited
- SBS Bank
- TSB Bank Limited
- Westpac New Zealand Limited

Introduction

3. Thank you for the opportunity to provide feedback on the proposed content of the annual return due to be provided by creditors to the Commerce Commission (**Commission**) pursuant to s 116AAA of the Credit Contracts and Consumer Finance Act 2003 (**CCCFA**). This submission addresses MBIE's initial proposals regarding the content of that annual return. Those proposals were set out in part 10 of MBIE's initial consultation paper dated November 2019 concerning the Exposure Draft of the Credit Contracts and Consumer Finance Amendment Regulations 2020 (**Consultation Paper**).

4. In summary, our key points in this submission are:

- NZBA supports the Commission receiving additional information, as required, to support its monitoring of creditors, including creditors within the banking sector.

- In respect of the New Zealand registered banks, given the existing level of publicly available information about the lending undertaken by banks, including through information provided to the Reserve Bank of New Zealand (**RBNZ**), the Commission is likely to have a better understanding of the business undertaken in this sector than in other sectors. We, accordingly, recommend that the new reporting requirements should be proportionate to reflect the existing knowledge about the sector and that

any reporting required leverages or aligns with existing reporting by the banks. For context, this submission describes some of that existing reporting and suggests thoughts on what would be appropriate equivalent reporting to the Commission. We would welcome the opportunity to discuss our suggestions further with MBIE.

- We have identified a number of issues with the categories of information that MBIE has included within its initial thoughts on the content of the annual return. These issues arise predominantly because what is currently proposed gives rise to queries around definitions and/or because the banks' systems cannot currently provide the suggested information.

5. In making these submissions, we note that NZBA's understanding is that the intention of s 116AAA of the CCCFA is that the Commission will keep confidential the annual return information that it receives and that, therefore, the information will not be published in relation to individual lenders or in aggregate. Our submission proceeds on this assumption. If this is not a universally held understanding of the Commission's powers or intentions (including when taking into account the Commission's potential approach to Official Information Act requests), we would wish to make further submissions about that and further consider what information should be included in the annual return.

Existing credit-related reporting provided by banks

6. As MBIE will be aware, s 116AAA of the CCCFA was added at select committee report back stage for the Credit Contracts Legislation Amendment Bill. The select committee report noted that the committee saw a need for creditors to provide data on their lending to the Commission to support monitoring and enforcement. This focus on understanding a creditor's business is also apparent in the wording of s 116AAA(2) itself:

> **116AAA Requirement for annual return**
>
> (1) Every creditor under a consumer credit contract must provide an annual return to the Commission in the prescribed manner.
>
> (2) The prescribed manner may include a requirement to provide statistical information in relation to the creditor's business (including its loan book).
>
> (3) The annual return must be provided before the prescribed date and relate to the prescribed 12-month period.
>
> (4) Nothing in this section requires the creditor to provide—
>
> (a) information about an identifiable individual; or
>
> (b) information that is neither in the possession or control of the creditor nor reasonably ascertainable from information that is in the possession or control of the creditor.

7. Pursuant to s 102A(7A), every person commits an infringement offence if the person is subject to s 116AAA and the person breaches that requirement. A person who commits that offence is liable on conviction, in the case of a body corporate, to a fine not exceeding $30,000. The existence of this provision reinforces the need for clarity on what is prescribed in regulations enacted under s 138(1)(jaaa) of the CCCFA and the need for sufficient implementation time to be provided.

8. Related to the need for clarity, the experience of NZBA members (in the context of developing reporting requirements in the prudential regulation space), is that quality reporting is driven by consistent approaches being taken. This requires discussion and development of clear definitions to ensure that all parties report the information in the same way.

Existing credit-related reporting provided by banks

9. When considering what information the Commission may require about the banking sector, the significant financial and statistical information that the banks currently provide to the RBNZ and the market should be taken into account. This is a point of difference between banks and other potential creditors caught by s 116AAA. In this regard, while existing reports are geared towards prudential supervision and assurance, they do provide a solid base of information to inform the Commission on activities within the banking sector. It may be helpful to explain this existing reporting further to MBIE (and potentially the Commission) and we are happy to do so. For example:

    (a) The banks provide information quarterly to support the RBNZ's publication of the Financial Strength Dashboard report which provides a summary for each bank (see https://bankdashboard.rbnz.govt.nz/summary). This information includes reporting at a portfolio level about (i) housing loans; and (ii) personal consumer loans. This includes reporting on gross number of loans, non-performing loans (NPL) ratio (%), loans 90 days past due but not impaired, and impaired loans. It also includes geographical information.

    (b) The banks provide information monthly regarding residential mortgages. The RBNZ then publishes a sector summary of the data on its website in the statistical information section (C30-C35) (https://www.rbnz.govt.nz/statistics). This includes data on new residential mortgage lending commitments with a breakdown by loan-to-valuation ratio (LVR) and borrower type. Borrowers are classified as first home buyers, other owner-occupiers, investor or those borrowing for business purposes. The data provided is based on "committed" lending. Lending is treated as committed when final offers have been provided to customers to provide mortgage loans or to increase the loan value of an existing mortgage loan.

    (c) The banks complete a monthly bank balance sheet survey which includes information on household advances and loans. The RBNZ then collates that data across the industry and publishes summary monthly tables. For

example, see https://www.rbnz.govt.nz/statistics/s30-banks-assets-loans-by-sector. The household sector in this context includes individuals, family trusts and estates but excludes advances and loans to individuals, family trusts and estates where the purpose of the loan is for business or residential investor property use. (See the template used and other definitions at https://www.rbnz.govt.nz/statistics/surveys/bank-balance-sheet).

(d) The banks complete a monthly credit card survey. This includes credit card balances at month end for business and personal customers. Again, the RBNZ publishes summaries of this information in the statistics section of its website (C12-13) (https://www.rbnz.govt.nz/statistics).

(e) The banks are required to publish a six-monthly disclosure statement in accordance with requirements set out by the RBNZ and which are published by banks themselves. These reports include a range of information, including about loans and advances but also about fees and income including split between operating segments (eg across retail and business customers).

10. Two key points relating to this existing reporting and data are:

(a) while the existing reporting includes reporting on "retail", "personal" and/or "household" lending, the definitions used do not match those within the CCCFA for what amounts to a "consumer credit contract". As elaborated upon below, significant and costly system changes will be required if banks are required to identify consumer credit contracts only; and

(b) the most detailed reporting that the banks currently provide is in relation to home loans. Other lending products (eg credit cards, personal loans and overdrafts) are typically reported on grouped within the same portfolio. Despite this, the banks do individually collect data on these other lending product types and we are confident that NZBA members could work with MBIE to identify a way in which they could split out the other retail lending products by product type to reflect the reporting currently provided for home loans.

11. In relation to paragraph 10(b) above, for example, we suggest that, as a snapshot in time, reporting for these lending products could cover:

(a) the number of loans held on the book;

(b) the total amount of those loans – on a drawn or committed basis (see comments below under information about the loan book);

(c) the amount of new lending advanced during the reporting period, and

(d) the amount repaid during the reporting period.

That information generally shows the size of a lending book.

12. NZBA members also collect and report information about lending delinquencies and credit loss provisions, including the number of loans that are 30, 60, or 90 days past due. This information generally shows whether there are changes to the "health" of the lending book. We believe this information would be useful to the Commission, particularly from lenders in the wider industry who do not currently report to other regulators.

13. NZBA would welcome the opportunity to discuss this suggested approach to reporting with MBIE.

Specific comments on proposed content of annual return

14. We set out our specific comments on MBIE's initial thoughts on the content of the annual return below. This section is structured by reference to section 10 of the Consultation Paper and addresses each relevant subheading in turn.

15. As you will see, while there are difficulties with much of what has currently been proposed (due to definitional or operational issues), there are some areas that NZBA agrees could sensibly form part of an annual return to the Commission (in addition to those areas which we have identified at paragraphs 11 and 12 above).

Information about the loan book (paragraphs 128–136)

16. One of the overarching issues identified about the proposed loan-book related information in the Consultation Paper is that members do not currently clearly delineate in their systems as to what is, and what is not, a consumer credit contract. For example, all home loans may be recorded for internal purposes as "consumer credit contracts" even when they are not. This is because banks tend to over-comply with the CCCFA and so meet CCCFA requirements for customers who are not, as a matter of law, actually caught by the CCCFA. For example, where the borrower is a trust or other corporate entity but using a product that is also available for consumers, banks will tend to still comply with all CCCFA requirements for that customer (eg regarding affordability, disclosure and fees).

17. This means that, while it would be possible to report how many home loans have been granted in the last year, it would be far more difficult to identify how many of those were consumer credit contracts. It would require significant system updates to identify such information. We would like to work with MBIE to ascertain whether the required level of investment is proportionate to the benefit the Commission would receive from this data.

18. We note further that, if it is determined that this level of granularity is required, the required system changes would not be able to be made for reporting over the last year by April 2021. The data would also, in any event, only likely be provided on a forward-looking basis (ie not existing loans). In that regard, we do not consider that it would be proportionate for banks to be required to now review their existing loan portfolios to delineate between CCCFA regulated and non-CCCFA regulated lending.

19. Against this background, and consistent with what we have proposed at paragraphs 11 and 12 above, we suggest that, in respect of their loan books, creditors report

only on the number and total dollar amount, by class of contract, of any credit contract that may be consumer contracts, as if the credit is fully drawn.

Total dollar amount of consumer credit provided

20. We recommend that reporting is based on classes of contract (eg home loan, credit card, personal loan and overdraft), rather than all consumer credit reported on within a single portfolio. We anticipate that this would be of the most assistance for the Commission.

21. A clear definition of what total dollar amount of consumer credit "provided" means will also be required. For all loans we recommend that this should be based on the amount available to be drawn under the credit contract (ie the committed amount). This is consistent with the approach adopted in RBNZ reporting and would provide clarity as to what should be reported in respect of revolving credit contracts.

Total dollar amount of consumer credit outstanding as at the end of the period

22. We recommend that the language in the reporting requirements better reflects the language in the CCCFA to avoid interpretation issues. We, therefore, suggest that the language of this information request would need to be aligned with "unpaid balance" amounts, as defined in s 5 of the CCCFA.

23. We note that, assuming that "total dollar amount of consumer credit provided" (above) is reported on a committed lending basis, that the metric proposed here is complementary to that as it provides a better insight into actual lending. This is because reporting particular products on a committed basis can provide a skewed impression of the size of a loan book (eg for credit cards, overdrafts and other revolving facilities where facilities are not fully drawn).

Proportion of revenue coming from interest, fees, default interest and default fees

24. We query the appropriateness of reference to "revenue" in this proposal, given the CCCFA regulates the inclusion of profit elements within fees. We suggest a focus instead on the "amount" of interest and fees charged.

The number of consumer credit contracts entered into for which a security interest is or may be taken under the contract

25. Our suggested approach of reporting by class of contract should help address this suggestion. However, we consider it is better to simply report the number of consumer credit contracts entered into for which a security interest ***is*** taken. This is because the terms of many unsecured credit contracts may still allow a creditor to require security but only in exceptional circumstances. As such, requiring reporting of credit contracts that may require security would distort reporting results and not reflect where security is actually held by lenders.

Number of high-cost consumer credit contracts and related consumer credit contracts

26. While not relevant to NZBA members, we observe that this requirement would overlap with the suggested requirement to report the number of consumer credit contracts within particular interest rate bands (paragraph 133).

The number of consumer credit contracts provided over specific ranges of interest rates

27. This requirement needs further refinement and definition. Specifically, as currently described, it gives rise to a number of issues which would provide difficulties for creditors and give rise to consistency issues. These issues include:

(a) It is unclear for what period the interest rates are to be reported, given interest rates change over time. For example, this could be referring to the initial interest rate or the interest rate at the time of reporting. These will often not be the same rate and could be significantly different in the case of a loan with an initial interest free period. Interest rates may also fluctuate within a reporting period.

(b) Some lending products have multiple interest rates that may be charged at the same time. For example, credit cards can have multiple interest rates applicable from day one (eg where there are different interest rates paid for purchases compared to interest rates applied to cash withdrawals). It is unclear therefore, in this example whether both rates would be required.

28. These uncertainties could be fixed with a clear definition of what interest rate is intended to be included. We are happy to discuss this issue further with MBIE.

The number of consumer credit contracts where the terms of the loan were extended or the loan was rolled over or refinanced

29. This type of information cannot be easily captured using existing bank systems and so, again, significant system changes would be required to include it within the annual return. We also query what real insight this information would provide the Commission in the context of bank lending and, accordingly, ask that a proportional approach is taken given potential system investment costs to effect any change.

30. In terms of context, in many situations presently, the banks do not record that a particular loan is refinanced. Instead, while systems record when credit lines are opened and when they are closed, they do not necessarily capture the relationship between two credit lines ie that loan A was renegotiated into loan B, but no new lending was advanced. The loans will simply be recorded as different loans. If a bank "refinances" a loan that a customer has held at another financial institution, this is also not captured.

31. In terms of definitions, "rolled over" is unclear. "Refinance" is also uncertain, particularly in the context of banks who may offer several products. A customer may, for example, move from a credit card to a personal loan, or vice versa, but the banks would not necessarily treat this as a refinance. In addition, in some

instances, rather than completing an agreed variation of a loan (eg in a top-up situation), some banks (eg for systems-related reasons) re-document loans. This has the effect of refinancing the existing loan, albeit a "refinancing" was not the lender's or the customer's purpose or need.

32. Against the background of these issues, we would appreciate gaining a better understanding of MBIE's intention in respect of this proposal. We may then be able to provide alternate suggestions to better reflect industry practice and what is operationally possible.

The average term of the loan

33. It would be difficult for the banks to produce this metric as it is currently described. We also query how meaningful this metric is in a banking context (versus a high-cost lending context). In particular, we note that:

(a) Revolving credit contracts often have no term.

(b) For term lending, customers frequently alter the terms of their contract which can then impact on the term. However, the documented term will usually remain the same, unless the contract is varied to extend the term, but the 'maturity' date will alter depending on changes to payment amounts and frequencies.

34. If reporting of average loan terms is required, we, therefore, suggest limiting this to the loan term documented in initial disclosure for the consumer credit contract, where this is ascertainable.

Information to be provided in relation to car finance (paragraphs 140–144)

35. As a starting point, NZBA is unsure why car finance has been identified as a particular area that requires inclusion in the annual return. Further explanation of this would be helpful and may aid our ability to make further submissions.

36. Regarding the scope of what is currently proposed, we assume that the information request is only intended to apply to loans provided solely for car financing. For example, it would not capture residential mortgage lending where a top-up could be used to purchase a car. A definition of "car finance" would be helpful to provide clarification on this point. We note that, if banks were required to isolate car purchases on a whole book basis (eg where a personal loan is used to buy a car), this would require system developments over and above what is currently contemplated to respond to the new responsible lending requirement for lenders to record purpose information.

37. In terms of the suggested reporting itself, we note the following information proposed relating to insurance:

(a) the number of loans which included insurance (para 140);

(b) the number of loans where a claim was lodged (para 142); and

(c) the number of loans with insurance where a claim was approved and paid out (para 143).

We consider that these proposals give rise to both definitional and operational issues.

38. In this regard, we observe in respect of the current wording of these requirements that:

(a) the references to "insurance" in the proposal should be limited to "credit-related insurance" as defined by the CCCFA, if this is the scope that MBIE intends to capture. In that respect, in considering the intended scope, further thought may be required as to whether the intention is to capture all credit-related insurance or a sub-set of policy types caught by that definition. For example, policy types caught by the definition can include income and disability policies which provide cover for loan payments and also vehicle insurance in respect of the car itself; and

(b) structurally, it would be unusual for insurance to be "included" within a loan agreement itself. An insurance contract is typically a stand-alone contract, which, pursuant to the CCCFA, is then caught within the responsible lending provisions if it is a credit-related insurance contract and the insurance is arranged by the lender. It is not deemed by the CCCFA to be part of the consumer credit contract.

39. In relation to paragraphs 37(b) and 37(c) above, we also query the relevance of this information in light of the CCCFA regime. The lender responsibility principles relating to "relevant insurance contracts" in s 9C(5) concern: reasonable inquiries as to meeting a borrower's needs and requirements; affordability; and assisting a borrower to make informed decisions about the insurance. A focus on claims, therefore, does not readily align with these obligations. We suggest, therefore, that any focus should only be on the number of insurance contracts arranged. Based on those numbers, the Commission could then use its powers to request further information and monitor whether or not those insurance sales met the responsible lending requirements.

40. For the avoidance of doubt, to the extent that this may have been MBIE's intention, NZBA does not consider that it is the Commission's role to assess the value of insurance products. We consider that that jurisdiction, including against current and planned insurance and conduct related law reform, sits most appropriately with the Financial Markets Authority.

41. Aside from these identified legal and jurisdictional issues, what is proposed also raises operational difficulties. While a lender may arrange insurance for a borrower, that insurance will often be with a third party insurer. The lender's ability to collect information in relation to the insurance will, therefore, be restricted. In relation to (a), therefore, while a lender may know at the outset that an insurance contract has been arranged, it will not necessarily know that that insurance was put in place (including if cooling off periods were utilised). Further, in relation to (b) and (c), in many situations, the lender will not know whether a claim has been made and would need to rely on the insurer to provide this information.

Information about loans (paragraphs 145–159)

The number of unique borrowers (ie where each borrower is only counted once regardless of how many times they borrowed)

42. Where two joint borrowers take out a single loan, clarification is required as to how these borrowers should be counted (ie as one or two unique borrowers). We also note that collecting unique borrower data has implications in relation to requirements to count the number of loans, specifically whether this would count as one loan with two joint borrowers or two separate loans.

Information about consumer credit in brackets of total income before tax and other compulsory deductions (ie including all sources of income)

43. Paragraph 147 of the Consultation Paper proposes that the information in paragraphs 148–150, is provided as: (a) a total across all consumer credit provided; and (b) as totals for all consumer credit provided in specified brackets of total income before tax and any other deductions.

44. In relation to (a), as above, our recommendation is that any data provided is divided into classes of consumer credits, rather than in one portfolio.

45. In relation to (b), it does not appear that banks retain "total income" information for borrowers at present such that banks could satisfy the requests in paragraphs 148–150. Accordingly, if this information was required, significant systems improvements and investment would be required together with a substantial lead in time.

46. In this regard, while creditors capture income information for affordability assessment purposes, this information is not necessarily saved in a way that records "total income". For example, creditors might not capture particular sources of income if they are not part of the creditor's affordability assessment, or creditors may save only income amounts with "haircuts" applied. This means that the information currently recorded may not align with the intended meaning of "total income" in the Consultation Paper.[1] Given these uncertainties, NZBA considers that the Commission may be able to seek more useful data regarding "total income" from Statistics New Zealand than the banks.

The number of consumer credit contracts entered into, broken down into the number that were new customers and the number that were returning customers

47. We are uncertain what value this information will provide the Commission. Movement between lenders should be encouraged and supported, as it may indicate an active market for credit with consumers making informed choices as to their credit provider. Considering lending volumes between new and existing customers is unlikely to be of significant value, other than in showing that a lender may be effective at drawing in new lending, which may be the result of effective brand marketing, not lending marketing.

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1 Similarly, we note that, while the banks do provide some reporting to the RBNZ about debt to income ratios in relation to residential mortgages, it is not clear that a consistent approach is taken to calculating debt and income across the industry.

48. Furthermore, the concepts of "new customers" and "returning customers" require further consideration. For example, new customers may be: (i) completely new customers to the bank; or (ii) existing customers but with new lending (eg versus previously only having held a transactional account); or (iii) new customers but who have had a relationship with the bank in the past. If kept, therefore, we suggest that this requirement is limited to differentiating between new customers who have no existing products, including lending products, with the lender, and existing customers.

The number of applications for consumer credit that were declined, broken down into the number that were new customers and the number that were returning customers

49. As above, we question the value of breaking this information down between new and existing borrowers. Further, for many banks, this proposal would require the capture and reporting of new information, which may require significant changes to systems and processes.

50. Members do see value in this information, as it may show where credit reforms have impacted access to credit. However, sufficient time will be needed to implement.

The number of applications for consumer credit that were withdrawn

51. The intended meaning of "withdrawn" is unclear. For example, if a lender issues pre-approval for consumer credit, but the customer does not then take up the loan, it is unclear whether this would constitute a "withdrawn" application. Alternatively, it may be necessary for the customer to specifically report to the creditor that it has decided to withdraw its application to constitute a "withdrawn" application.

52. In any event, information regarding "withdrawals" is presently unavailable and we also believe that it would be difficult to capture and report on a forward-looking basis. We would, therefore, welcome the opportunity to discuss this aspect further with MBIE.

The number of loans which were defaulted on or fell into arrears within one month of taking out the loan

53. We do not consider that this requirement as currently expressed will provide meaningful reporting about responsible / irresponsible lending in the banking context, albeit it may do in the high-cost lending sector.

54. Short-term lending defaults in connection with bank lending are unlikely to be determinative of lending that is unaffordable or unsuitable. For example, a consumer may exceed their credit limit intraday on their overdraft, but self-correct when a payment is received into the account. For bank lending, we track lending that is 30 days, 60 days, and over 90 days in default. In our experience, for our products, lending in default after a longer period of time is more likely to indicate a customer in financial distress.

55. Further, short-term defaults may be as much caused by consumer behaviour as whether the initial lending was responsible. For example, consumers may overdraw their accounts by small amounts accidentally and self-correct. They may do this even with an arranged credit contract in place. In addition, customers may fail to set up an automatic payment or direct debit, or fail to transfer funds between accounts on due dates. Reporting defaults shortly after facilities are drawn may, therefore, not necessarily indicate irresponsible lending practices.

56. We strongly suggest that MBIE engage further with the industry to ensure that this aspect is refined appropriately. NZBA members have indicated that a threshold of 60 to 90 days would more align with internal thresholds for defaults on loans.

The number of loans which were repaid in full by taking out a new loan with the creditor

57. NZBA considers that, as currently worded, this requirement may capture more than is intended. In this respect, as currently phrased it would be problematic for banks and may not indicate responsible lending issues. The suggested information is also not information that banks currently collect and so a requirement to collect the information would require significant system and process changes – again with a substantial lead in time.

58. Many lenders (and customers) will replace existing loans with new loans for a range of reasons, usually operational in nature. It is not uncommon for loans to be restructured for a number of reasons other than repaying loans – restructuring can include a credit limit increase, change of rate, change of product (eg from one home loan type to another) or change of term. For example, instead of varying a loan, some creditors will simply re-document a loan. In some instances, a loan may even be re-documented to reduce lending but given this is technically a "new loan", it will be captured.

59. It is also unclear how this requirement would apply where creditors offer multiple products. For example, banks would not necessarily treat a customer taking out a new credit card but cancelling their overdraft as repaying one loan by taking out another loan.

The number of loans which included an assignment of wages

60. The banks do not take out assignments on customers' wages.

The number of loans with attachment orders, as a result of default

61. While it may technically be possible for banks to provide this data, we note there may be difficulties in doing so. For example, banks often outsource debt collection at a certain point to a third party debt collection agency. That third party may have an attachment order after judgment has been obtained via the District Court. To provide data in this situation, therefore, would require reliance on debt collection agencies. Members are, therefore, considering the practical issues here and whether provision of this information from the creditors direct is appropriate.

The number of consumer credit contracts for which debt collection action was undertaken (for example, by being transferred to an internal debt collection team, by contracting a debt collector to collect the debt, or by on-selling the debt to a debt collector)

62. We strongly suggest that the language in this provision aligns with the CCCFA provisions associated with debt collection disclosure. In particular, repayment reminders should not be captured, only steps associated with debt collection.

63. We also suggest that, if this proposal is kept, the information is provided as at a particular point in time, and records the number of consumer credit contracts that have commenced debt collection. Capturing lending for which debt collection was undertaken may capture loans that had defaulted, but are now complying with their terms and not in default. This information could distort reporting results. Instead, lenders should report on the number of loans currently in debt collection at the time of reporting.

64. NZBA members are also continuing to consider the practicalities of this proposal. Depending on the definition of "debt collection" ultimately adopted, systems changes would potentially be required as banks do not necessarily record data on how many customers are transferred to an internal debt collection team.

The number of hardship applications received and the number of hardship applications approved in this period

65. Banks would be able to provide this information. While the number of hardship applications itself is unlikely to indicate responsible lending issues, given that hardship applications may only be made in situations of unforeseen hardship (eg job loss, illness and relationship breakdowns), we recognise that the difference between the number of hardships made and the applications approved could potentially provide insights on either the handling of hardship claims or on responsible lending practices.

Number of loans for which there was a guarantor

66. We see potential issues with collecting this information and recommend further refinement of the requirement if MBIE and the Commission continue to wish it to be captured. For example, under the CCCFA only certain types of guarantees will be relevant guarantees. Guarantees from companies, for example, are not caught. If this layer of granularity is required, significant data resource would be necessary to capture and report.

67. If it would assist, the banks are happy to provide further information to MBIE now relating to the typical situations in which guarantees are taken. In the banking sector, this is predominantly in home lending situations.

Number of loans where the guarantor was asked to repay the debt

68. For similar reasons as above, we believe many lenders would have difficulties collecting and reporting this information. Demand may be made on a guarantor, at the same time as demand is made against a debtor; however, the debtor may meet

the demand and the guarantee will not be enforced further. The number of loans where enforcement action was taken against the guarantor may be a better metric.

Information about complaints (paragraphs 160–161)

69. We refer to our earlier submissions to MBIE dated 5 February 2020 regarding the need for "complaints made to the creditor" to be appropriately defined. As it stands, the scope of "complaint" is very broad, and is not specifically related to complaints about a consumer credit contract or complaints that, if upheld, would constitute a breach of the CCCFA.

70. More generally, we note that the banks are in the process of undertaking improvements to better capture and report on complaints. In this regard, the industry is currently collaborating with the Banking Ombudsman to develop a complaints reporting scheme based on the Australian Securities and Investments Commission's (**ASIC**) categorisation initiative. This should be kept in mind with respect to any annual reporting requirements to ensure that there is no duplication of work or, at least, that there is consistency as to what is reported.

71. Similarly, we consider the obligation on financial dispute resolution providers to refer material concerns to the Commission regarding CCCFA compliance should also be taken into account when considering this proposed requirement (ie s 67(1) of Financial Service Providers (Registration and Dispute Resolution) Act 2008 as amended by the Financial Services Legislation Amendment Act 2019).

Proposed period of reporting and timing

72. While NZBA has no particular issues regarding the proposed term of the annual year and the date set for reporting, further clarification will be required regarding the time period to be applied. In this regard, for some metrics included in the proposal, it is unclear whether the information is to be provided at a particular point in time or intended to capture the whole year.

73. Logically, what is required in this respect may need to differ depending on the information request. We also note the option of banks (consistent with what is provided to the RBNZ) generating monthly snapshots of particular metrics which could then be included within an annual return.

74. In terms of implementation timing, as referred to above, depending on what content is ultimately prescribed, lenders will need to make significant system and process changes. Adequate time should be provided for this, particularly given the offence provisions connected with the annual return requirement.

75. We strongly submit, therefore, that an appropriate transition period is provided before reporting begins. Depending on the final extent of information required, this may be a minimum of three years, albeit information of the nature described at paragraphs 11 to 12 above could be provided earlier than this. This is because it may take two years to make the system changes needed to be able to collect the data required, and then a further 1 year after that to collect data for annual reporting.

76. Further thought will also need to be given as to whether particular requests should apply to new lending only, not existing lending. This will depend on the final form of the requests and whether information will be available for existing loans.

Responsibility for report in assignment situation

77. For a securitisation or covered bonds transaction, as contemplated in the various securitisation regulations and described at reg 22(2), we would expect the obligation to provide current data and information about the consumer credit contracts to fall on the contract manager as that will be the entity that actually manages the consumer credit contracts and should therefore have such information readily available.

78. In this respect, we consider that the regulations would need to reflect that in securitisation / covered bonds situations, while certain information about the credit contracts can be provided by the contract manager, other information should not be required. Specifically, information that relates to origination practices or the consumer credit contract prior to being transferred to the new creditor could not be provided by the contract manager.

79. We further note that paragraphs 148 and 149 of the Consultation Paper (information on number of credit contracts entered into or declined, broken down into new and returning customers), relate to the consumer credit contract prior to transfer to the new creditor, and assumes that there will be a single creditor that will remain unchanged for the life of the credit contract. Other items, such as paragraph 131 (number of consumer credit contracts entered into for which a security interest is or may be taken), are also likely to differ depending on whether the original creditor or the new creditor was completing the annual return.

Contact details

80. If you would like to discuss any aspect of this submission, please contact:

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