

Submission

to the

Reserve Bank of New Zealand

on the

Enforcement Principles and Criteria:
Consultation Paper

23 November 2021

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. NZBA welcomes the opportunity to provide feedback to the Reserve Bank of New Zealand (**RBNZ**) on the Enforcement Principles and Criteria: Consultation Paper (**Consultation Paper**). NZBA commends the work that has gone into developing the Consultation Paper.

Contact details

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

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Summary

NZBA welcomes the fact that the RBNZ's proposed framework appears to be broadly consistent with the Financial Market Authority and Commerce Commission's enforcement criteria, and the RBNZ's breach reporting framework. We strongly support collaboration between financial sector regulators where enforcement falls within the remit of more than one regulator. We set out some comments on the framework below:

- **Proportionality principle:** we suggest that RBNZ expressly notes that the nature of the entity can be relevant to the enforcement response – banks should be held to the standard reasonably expected of an institution of their size. We acknowledge that the RBNZ refers to 'calibration to the individual entity', but we think this section would benefit from clarity.
- **Transparency principle:** we note that enforcement action is mostly likely to occur in response to events that are highly commercially sensitive. In recognition of that, it may be appropriate for this principle to acknowledge that commercial sensitivity may in some circumstances be a counterbalance to transparency, and that in those cases RBNZ will work with the affected entity (within reason) to come to agreement on what is published, and how that agreement will occur.
- **Responsiveness criteria:** we suggest that it may be appropriate to note that in some circumstances, having regard to the entity's responsiveness (and other criteria), and the joined-up nature of the supervisory and enforcement functions, it will be appropriate for there to be no enforcement action. The final example on page 10 is a good example of a situation where 'no action' may be an appropriate outcome. For reference, that example is "if the entity promptly and voluntarily brought the matter to our attention, cooperated with our investigation, and took proactive steps to remedy the breach".
- **Guidance:** we would welcome further guidance on how RBNZ will navigate the balance between deterrence and the seriousness of the conduct on one hand, and maintaining public confidence in the financial system on the other hand.