

Submission

to the

Ministry of Justice

on the

Consultation Paper: *Review of the
AML/CFT (Class Exemptions)
Notice 2018*

15 September 2023



About NZBA

1. The New Zealand Banking Association – Te Rangapū Pēke (**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 eighteen 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.
 - KB Kookmin Bank Auckland Branch
 - Kiwibank Limited
 - MUFG Bank Ltd
 - Rabobank New Zealand Limited
 - SBS Bank
 - TSB Bank Limited
 - Westpac New Zealand Limited

Contact details

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

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Introduction

4. NZBA welcomes the opportunity to provide feedback to the Ministry of Justice (**MoJ**) on the Consultation Paper: *Review of the AML/CFT (Class Exemptions) Notice 2018 (Consultation Paper)*. NZBA commends the work that has gone into developing the Consultation Paper.
5. Overall, NZBA supports the MoJ's proposed amendments to existing class exemptions. However, we have provided additional comments in respect of certain Parts of the AML/CFT (Class Exemptions Notice) 2018 (**Notice**) for consideration, and propose two new class exemptions for the MoJ's consideration.

Parts 5 and 6 | Reporting entities whose customers are licensed / specified managing intermediaries

6. NZBA supports, in principle, the removal of subsection 1(b) in relation to licenced managing intermediaries (**LMIs**) on the basis that the amended definition of "beneficial owner" under regulation 5AA of the AML/CFT (Definitions) Regulations 2023 (**Regulations**) seems to render this subsection unnecessary.
7. However, we do note that the amended definition of "beneficial owner" has been made through secondary legislation, and is not captured within the AML/CFT Act 2009 (**Act**) itself. It would be helpful if further clarity was provided to confirm that reporting entities do not need to look through their LMI customers and perform CDD on their beneficial owners. This could, for example, be achieved by carrying the amendments made by the Regulations across to the Act, or through more explicit clarity being provided in the Notice. Until further clarity is provided, we submit that the subsection 1(b) exemption should not be removed entirely.
8. We further submit that the same argument can be made in respect of the removal of subsection 1(b) in relation to the specified managing intermediary (**SMI**) exemption in Part 6.
9. Regarding the reliance provisions set out in s 33 of the Act, s 33(3) sets out that, despite permitting a reporting entity (Reporting Entity A) to rely on another reporting entity's (Reporting Entity B's) CDD, Reporting Entity A is ultimately responsible for ensuring that CDD is carried out correctly.
10. Although s 33(3A) provides an exemption to this where the reporting entity being relied on is an approved entity or within an approved class of entity, we understand that no "approved entities" have ever been designated.
11. Further, it would in our view be impractical to use s 33 in lieu of a class exemption, as a large number of bilateral agreements would need to be established to implement the reliance model that the exemption currently facilitates without these agreements in place.



Part 13 | Designated issuers that issue debt securities to specified subscribers through intermediaries

12. NZBA recommends extending the application of the Part 13 class exemption for debt securities (**Part 13 Exemption**) to also include perpetual preference shares (**PPS**).
13. In our view, there are strong arguments to support broadening the definition of securities to include PPS (as set out in paragraph 14 below), given the reasons the Part 13 Exemption was granted for debt apply equally to PPS:
 - 13.1. While PPS are considered equity securities under the Financial Markets Conduct Act 2013, they have similar characteristics to debt securities.
 - 13.2. PPS are distributed in the same way as debt securities and by the same intermediaries (including brokers, banks and fund managers) that New Zealand banks typically deal with when issuing debt.
 - 13.3. PPS have the same AML/CFT risk profile as debt securities and are a low-risk product from a money laundering perspective.
 - 13.4. Previous AT1 perpetual subordinated debt instruments (which shared many characteristics with PPS) were covered by the Part 13 Exemption.
14. We propose the below amendments to Part 13:
 - 14.1. Replace all references to “debt securities” with “specified securities” (except for the definition of “debt securities” in clause 2).
 - 14.2. Insert the following defined terms in clause 2:
 - **specified securities** means debt securities or equity securities
 - **equity securities** has the same meaning as in section 8(1) of the Financial Markets Conduct Act 2013
15. We submit that reliance on the Part 5 (Reporting entities whose customers are licensed managing intermediaries) class exemption, rather than the Part 13 Exemption, for recent PPS transactions in the New Zealand retail market has added significant complexity and execution risk to the distribution process.

Additional Class Exemptions

MoJ Recommendation 132

16. NZBA would support a class exemption to implement R132 of the Ministry of Justice’s [Report on the review of Anti-Money Laundering and Countering Financing of Terrorism Act 2009 \(July 2022\)](#) (**Report**).



17. R132 recommended to:

“Issue regulations enabling a senior manager of a customer (that has been identified and verified in accordance with sections 19-20) to delegate authority to employees to act on behalf of the customer by electronic means. The senior manager must provide the delegated employees’ authorised contact details (e.g., email address) to the reporting entity, with the reporting entity then exempt identifying and verifying the full name and date of birth for those delegated employees. These changes should then be amended in the Act itself.”

18. The Report notes that situations where a customer may have multiple employees acting for it is a “particularly problematic aspect” of the Act.¹ Further, the Report agrees that this imposes “significant compliance costs on both the organisation and any reporting entity conducting CDD, which is not justified by the risks associated with the relationship.”²
19. We submit that a class exemption would provide an effective way to achieve this objective without having to implement the Report’s recommendations in regulation, which may take some time.

Government Services

20. NZBA would also support a class exemption for conducting CDD in relation to services provided to Government entities.
21. Although there are carve-outs in relation to conducting simplified CDD of Government entities under s 18(1) of the Act, it is unclear how this applies to certain services that Government entities provide to other individuals, and what the requirements are to conduct CDD on those individuals.
22. Conducting CDD in these circumstances would in our view be overly burdensome compared to the low risk of money laundering or terrorism financing in this situation.
23. Further, if R132 was not enacted, there may also be significant burden in conducting CDD on persons acting on behalf of Government entities, where the risk of money laundering or terrorism financing is likely even lower than private companies.
24. We submit that a class exemption would be the most effective way of achieving this without waiting for clarification in terms of legislative change.

Conclusion

25. NZBA is happy to provide further detail on any of the above submissions if useful.

¹ At [714].

² At [714].