aml

From: [redacted]@nzx.com>
Sent: Friday, 3 December 2021 11:55 am
To: aml
Cc: [redacted]
Subject: NZX Clearing Submission - AML/CFT Consulation
Attachments: NZX Clearing Submission.pdf

Good Morning AML/CFT Act Consultation Team,

Thank you for the opportunity to submit feedback to the review of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (Act).

Please find attached our comments, please contact us for any points of clarification.

Thanks
Roger
--

[redacted]
General Manager, Market Operations

NZX Limited
Level 1, NZX Centre
11 Cable St, Wellington 6011
[redacted]

NZX Limited
Level 1, NZX Centre
11 Cable Street
PO Box 2959
Wellington 6140
New Zealand
Tel +64 4 472 7599

www.nzx.com

3 December 2021

AML/CFT Act Consultation Team
Ministry of Justice
Level 3, 19 Aitken Street
Wellington, 6011

By Email: aml@justice.govt.nz

NZX Clearing - Submission on Consultation Paper: Review of the AML/CFT Act

Introduction

1. Thank you for the opportunity to submit feedback for the Ministry of Justice's (**MoJ**) review of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (**Act**).

2. New Zealand Clearing Limited (**NZC**), New Zealand Depository Limited (**NZD**), and New Zealand Depository Nominee Limited (**NZDNL**, and together **NZX Clearing**) are currently exempted from sections 10 to 71 (inclusive) of the Act. As such, most of our response focuses on the exemption regime, and what potential changes could increase its effectiveness and efficiency.

3. We set out below our submissions in response to the Consultation Paper, with relevant questions individually addressed.

Questions relating to the Exemption process

1.14 – Are exemptions still required for the regime to operate effectively?

4. We consider that the efficient operation of the Act requires the ability for the regulators to grant exemptions, to ensure that the regime can operate in a sufficiently flexible and proportionate manner. Without the ability to provide exemptions, some businesses would face compliance cost for little or no benefit. While many businesses are adequately covered by the risk-based nature of the Act's provisions, exemptions allow for more flexibility when the structure of a business falls outside the type envisioned by the Act.

1.15 – Is the Minister of Justice the appropriate decision maker for exemptions under section 157, or should it be an operational decision maker such as the Secretary of Justice?

5. NZX Clearing believes that where possible, exemptions should be provided by the relevant supervising agency. The agency overseeing the supervision is likely to have a greater understanding of the applying entity so may be better placed to make judgments on the risk of providing an exemption. This would also reduce friction in the regime, as the supervising agency might be able to consider applications more quickly given their greater understanding of the entity. We consider that the effort of creating a framework to ensure that exemptions are applied consistently by all supervising agencies, will be outweighed by the advantages to the effectiveness and efficiency of the regime.

1.18 – Should the Act specify what applicants for exemptions under section 157 should provide? Should there be a simplified process when applying to renew an existing exemption?

6. NZX Clearing believes that holders of current exemptions would benefit from further specificity as to the requirements for reapplying for an exemption. The current regime can create uncertainty, as applicants are not aware of what the MoJ requires. A list of required materials would allow businesses to be more confident when completing applications in future. This does not necessarily need to be accommodated through modifications to the legislation but could be addressed through guidance or 'user guide' template materials prepared by the MoJ (or relevant supervising agency if the exemption regime is modified to accommodate multiple regulators).

7. We note that in our discussions with the MoJ on renewing our exemption, we were advised to provide information on:

    a. any material changes to exempted entities since the last exemption was granted;
    b. any transaction reports; and
    c. any information to confirm re-exemption and convey to the MoJ that there has been no change in risk and compliance.

8. We would support the MoJ continuing to take this approach to the information required when applying for an exemption, and suggest that additional clarity of these and any other relevant factors, is made more accessible. We consider that a change-based approach for re-exemption would reduce administrative effort and cost where there have been no significant changes to an applicant's risk profile.

1.20 – Are there any other improvements that we could make to the exemptions function? For example, should the process be more formalised with a linear documentary application process?

9. NZX Clearing believes that a standardised application process for renewal of exemptions would be beneficial for businesses by reducing risk, and unnecessary detail provided in applications. This would also increase the confidence of businesses applying for re-exemption.

2.48 – Should we issue any new regulatory exemption? Are there any areas where Ministerial exemptions have been granted where a regulatory exemption should be issued instead?

10. We believe that a regulatory exemption should be provided for designated Financial Market Infrastructures (**FMIs**) that operate a clearing and settlement system for securities and Central Securities Depository (**CSD**)**.** Currently this would only affect NZX Clearing. The Reserve Bank of New Zealand's (**RBNZ**) NZClear system falls within this definition, but is already exempt from the Act.

11. Designated FMIs in New Zealand are subject to Designation Orders created by the RBNZ and Financial Markets Authority. Once the Financial Market Infrastructures Act 2021 is implemented, it is likely that FMIs will also be required to comply with the CPMI-IOSCO Principles for Financial Market Infrastructures.

12. Securities clearing and settlement systems and CSDs in New Zealand are inherently low risk, as:

    a. There are very generally very few customers;
    b. All customers are wholesale;
    c. All customers are already reporting entities; and

d. The transactions are of a low-risk nature.

13. As we outlined in our initial application, exempting clearing and settlement facilities from the AML/CFT regime would be in line with international precedent. In particular, we noted that clearing and settlement systems in Australia, Canada, and the United Kingdom are not required to comply with AML/CFT regimes. Additionally, clearing and settlement systems in Singapore are not subject to any CDD requirements.

Other questions addressed in the Consultation paper

1.52 – Should there be an AML/CFT-specific registration regime which complies with international requirements? If so, how could it operate, and which agency or agencies would be responsible for its operation?

14. We are not generally opposed to an AML/CFT-specific registration regime, though we do not support the introduction of a new regime which would duplicate requirements on reporting entities. For example, NZX Clearing is currently required to register as a Financial Services Provider, because we are an AML reporting entity. We consider that there is limited value in creating a regime which merely duplicates efforts by reporting entities. We would support the creation of a regime that doesn't duplicate compliance requirements, such as by taking information already provided under the FSP registration regime.

1.55 – Should there be an AML/CFT licensing regime in addition to a registration regime?

15. NZX Clearing does not believe that a licensing regime is necessary in addition to a registration regime, and as below, does not support a levy. If a licensing regime is created, we believe its application should be limited to those companies that are high-risk, as suggested in the consultation paper.

1.60 – Would you support a levy being introduced for the AML/CFT regime to pay for the operating costs of an AML/CFT registration and/or licensing regime?

16. NZX Clearing agrees that additional funding would make the regime more effective, but does not believe that it should be obtained by creating a levy on reporting entities. Our reasoning for this is as below:

    a. The benefits of the AML/CFT regime are to New Zealand's economy and broader wellbeing as a whole, rather than specifically to reporting entities.
    b. Reporting entities already face significant internal compliance costs.
    c. Some of the suggested changes in this paper are already likely to increase compliance costs for reporting entities
    d. If a levy were put in place, the costs are likely to be passed to consumers.

17. For these reasons, we believe it would be appropriate for the Government to continue to bear the cost of regulating this regime.

1.61 – If we developed a levy, who do you think should pay the levy?

18. NZX Clearing does not have a view on how a levy might be distributed between reporting entities that are subject to the operative provisions of the Act. We do believe, however, that if a business is provided an exemption, they should not be required to contribute to levies as they are not subject to the costs of

continued regulatory oversight to the same extent of reporting entities that are required to comply with the regime.

3.25 – Would broadening the scope of civil sanctions to include directors and senior management support compliance outcomes? Should this include other employees?

19. It is possible that doing this might increase compliance, but we do not believe that the benefit will outweigh the negative impact on both directors and senior managers, particularly in large businesses. New Zealand already has a limited pool of directors, and the cost of obtaining Directors' and Officers' insurance is steadily increasing. We consider that if this regime is extended, it will provide a further disincentive for those who might otherwise be directors, and could open them to significant liability, especially in large companies with substantial compliance requirements.

20. We consider that large companies are likely to have significant resourcing dedicated to AML/CFT compliance, and therefore broadening the scope in this manner is unlikely to provide substantial benefit. While there might be some benefit in mandating this for smaller companies, we consider that a blanket policy in this regard would not achieve the purpose above.

4.188 – Should the Act mandate that compliance officers need to be at the senior management level of the business, in line with the FATF standards?

21. We do not believe that compliance officers should necessarily be at the senior management level of the business, as for complex and larger businesses a manager who has closer interaction with the entity's AML compliance activities may be better placed to understand the manner in which the regime should be complied with. If, however, the Act is altered to create additional liabilities for directors and senior managers, compliance officers may need to be at the senior management level of the business, in order to ensure senior management level input.

General

22. We would like to thank the MoJ for the opportunity to provide this submission and feedback on the AML/CFT regime in New Zealand. We are happy to discuss any of the points raised with you further, should you want additional clarification.

Yours sincerely,

General Manager, Market Operations

Head of Policy and Regulatory Affairs