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To: aml
Cc: [REDACTED]
Subject: NZX Wealth Technologies - AML/CFT Review
Attachments: NZXWT Submission - Review of AML-CFT Act.docx.pdf

Hi,

Attached is our response to the Ministry of Justice's consultation paper regarding its review of the AML/CFT Act.

Kind regards,



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3 December 2021

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NZX Wealth Technologies Limited's Submission: Ministry of Justice's Review of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (AML/CFT Act)

NZX Wealth Technologies Limited (**NZXWT**) submits this response to the Ministry of Justice's consultation paper regarding its review of the AML/CFT Act (**Consultation Paper**).

NZXWT is a wealth management business wholly owned by NZX Limited and is registered to provide a number of financial services including custodial services. NZXWT provides online platform functionality to enable investment advisers and providers to effectively manage, trade and administer their clients' investment assets. NZXWT also provides a comprehensive range of reporting services and investment administrative services to investment advisers and providers.

NZXWT endorses the Ministry of Justice's efforts for the AML/CFT Act to retain its status as a high calibre and effectual regime against the risks of money laundering and the financing of terrorism, without affecting the ability to do business or disproportionately affecting New Zealanders. NZXWT also endorses the Ministry of Justice's desire to make sure that the regime contains sufficient flexibility to enable proportionate obligations to be imposed on reporting entities relative to the risk of money laundering and financing of terrorism.

NZXWT encourages the Ministry of Justice to consider opportunities to increase efficiencies within the AML/CFT Act in the areas of custodian/nominee companies and the use of electronic customer due diligence providers. NZXWT also encourages the Ministry of Justice to provide guidance on New Zealand's AML/CFT Act framework against international standards to assist with entities that regularly trade internationally.

Our further detailed comments on selected questions from the Consultation Paper are set out below. Thank you for the opportunity to provide this submission.

Yours sincerely,



Chief Operating Officer

Feedback: Review of the AML/CFT Act

Date:	3 December 2021	Number of pages:	4
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Questions 1.7 and 3.2: What could be improved about New Zealand’s framework for sharing information to manage risks? If the AML/CFT Act supervisory model were to change, what supervisory model do you think would be more effective in a New Zealand context?

Comment

The AML/CFT Act has different supervisors, who should (and do) govern entities relevant to their area of expertise. This is helpful as it allows supervisors to have appropriate background and knowledge as to the processes and internal controls of the entities that they supervise. This saves time and increases efficiency for reporting entities when working within the AML/CFT Act.

NZXWT believes that there is value in setting out minimum standards within each sector of business based on FATF recommendations, under which annual reports and risk assessments could then be reviewed across those sectors to identify any outliers within that sector (with associated risk determined accordingly).

Questions 1.14, 1.17, 2.39, 2.50, 4.36 and 4.174: Exemptions and Approved Entities

Comment

NZXWT operates in a heavily regulated environment and the investment advisers and providers who it regularly interacts with are licensed managing intermediaries (LMIs) or specified managing intermediaries (SMIs) (so lower risk in terms of the AML/CFT Act). NZXWT relies on section 33 of the AML/CFT Act, as well as Parts 5 and 6 of the Schedule of the Anti-Money Laundering and Countering Financing of Terrorism (Class Exemptions) Notice 2018, to utilise these entities to assist with customer due diligence obligations on their underlying customers.

NZXWT relies heavily on this framework to meet its AML/CFT obligations, as it operates in a business environment where it does not have direct contact or a relationship with its investment advisers’ underlying customers. While NZXWT still has obligations under the AML/CFT Act as a provider of financial services (for example, if concerns are raised as to the investment adviser’s AML/CFT Act practices, or enhanced customer due diligence is required), NZXWT’s reliance on such third parties is appropriate and reasonable in the circumstances. NZXWT is heavily in favour of retaining the ability for reliance on third parties (and associated exemptions) under the AML/CFT Act and associated regulations, as without this, NZXWT would struggle to carry out full and appropriate AML/CFT Act compliance on its underlying customers.

Following on from the above, NZXWT recommends that the AML/CFT Act introduce the concept of “approved entities”, and that additional entities or types of entities start to be approved as such for example LMIs or SMIs. In this way, when a business interacts with those “approved entities”, it is confident that such businesses are sufficiently licensed and regulated so that they can be relied on for AML/CFT Act compliance. This would greatly reduce compliance and inefficiencies in the AML/CFT Act for entities that interact with such “approved entities”.

In addition, NZXWT believes that the obligation for nominee entities to complete annual reports should be removed and be required only at the “parent level”, as this obligation often involves double ups of the same information with limited benefits.

Question 1.28: Should the FIU be able to request information from businesses which are not reporting entities in certain circumstances (e.g. requesting information from travel agents or airlines relevant to analysing terrorism financing)? Why or why not?

Comment

NZXWT believes that government entities should have the necessary powers required to combat terrorism financing. This includes the FIU having the power to gather and review information from non-reporting entities on an ongoing basis for this purpose. If this power was given to the FIU, its effect on the Privacy Act 2020 would need to be considered to ensure that entities would have no issues with complying with such power.

Question 1.32: Should the AML/CFT Act provide the FIU with a power to freeze, on a time limited basis, funds or transactions in order to prevent harm or victimisation? If so, how could the power work and operate? In what circumstances could the power be used, and how could we ensure a proportionate and reasonable power?

Comment

From a practical point of view, NZXWT notes that a power to freeze could be problematic and difficult to implement when done through a fully or partial automated trading platform like NZXWT’s platform. A freeze could also be difficult to implement when it relates to trading in a moving market, as an investor may be disadvantaged if a freeze action has been imposed. This could have a commercial reputational impact on businesses such as NZXWT, and the legislation would need to prevent reporting entities from being liable for any loss that arose as a result of the imposition of the freezing action.

NZXWT notes that its platform allows investors to continually access their investments via an online portal, which means that utilisation of a freeze could immediately tip off the relevant investor(s) if their transactions had been frozen within the trading platform. This may be difficult to avoid in situations like NZXWT’s platform.

Question 1.40: Are Codes of Practice a useful tool for businesses? If so, are there any additional topics that Codes of Practice should focus on? What enhancements could be made to Codes of Practice?

Comment

NZXWT believes Codes of Practice are helpful to all reporting financial institutions. NZXWT would like Codes of Practice to be more regularly provided and to also cover emerging trends, for example the difficulties in getting documents and certifications due to COVID-19 and lockdowns, and the increase in electronic communications with underlying customers.

Question 1.43: Should operational decision makers within agencies be responsible for making or amending the format of reports and forms required by the Act? Why or why not?

Comment

NZXWT believes that the format of reports and forms required by the Act should be kept consistent across all supervisors.

Question 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?

Comment

NZXWT is regularly encountering more investors who wish to transact in international managed funds, and because of this NZXWT often needs to determine how the AML/CFT Act and its regime fits within international AML/CFT standards. For example, NZXWT has previously been asked to complete a Wolfsberg Questionnaire which is an international AML/CFT focused document and requires a comparison of New Zealand's regulatory environment against international standards.

It would be helpful to have some guidance from the AML/CFT Act supervisors as to how the AML/CFT Act meets certain international and FATF requirements (and where appropriate substitutions or alternate compliance is permissible), to assist reporting entities in completing these types of surveys, as these are likely to become more and more common as New Zealanders trade globally.

Question 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? Why or why not?

Comment

NZXWT does not support the introduction of a levy, as it believes this would be an unnecessary burden and cost which would ultimately be passed through to the end investor or consumer

(making the utilisation of financial services more expensive). In addition, all New Zealanders benefit from compliance with the AML/CFT Act and regime, and therefore the cost of compliance shouldn't be solely put on reporting entities (which already have significant internal compliance costs in this area) and their customers.

Question 2.12: Should the terminology in the definition of financial institution be better aligned with the meaning of financial service provider in section 5 of the *Financial Service Providers (Registration and Dispute Resolution) Act 2008*? If so, how could we achieve this?

Comment

NZXWT supports any changes to make the definitions and terms under the AML/CFT Act consistent with other financial legislation including the FSP Regime. This will greatly increase efficiencies and consistency across a reporting entity's business and reduce confusion.

Part 7: Additional comments

Comment

NZXWT notes the following general comments in relation to the Consultation Paper and the AML/CFT Act:

1. There is some confusion within the market as to the wording within the prescribed transactions obligations. It would be helpful if this wording was clarified to remove the confusion.
2. NZXWT contracts with a third party provider to assist with its due diligence obligations under the AML/CFT Act. NZXWT believes greater consideration needs to be given to the online facilities for electronic CDD going forth within New Zealand. There is great value in entities using these services, as they create greater efficiency and value in carrying out associated due diligence checks.
3. NZXWT's current electronic searches for international PEPs are done through the Dow Jones list. However, changing the requirement to for PEPs to include national PEPs would likely result in more false positives and additional work for businesses to check each result.
4. NZXWT supports the creation of a centralised training body for all financial institution or the creation of an "approved" training provider list so that NZXWT (and other businesses) can rely on advice and guidance provided by training providers.