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From: [redacted]@fsf.org.nz>
Sent: Friday, 17 December 2021 11:00 am
To: aml
Cc: [redacted]
Subject: Submission on behalf of Financial Services Federation members re AML/CFT statutory review
Attachments: FINAL FSF Submisison on AMLCFT Statutory Review.pdf

Good morning

Please find attached a submission on the consultation on the AML/CFT statutory review on behalf of Financial Services Federation members. The FSF is very grateful to the Ministry for allowing us the extension to the original deadline for submissions due to the pressure of work our members have been experiencing in getting themselves ready for full compliance with the changes to the Credit Contracts and Consumer Finance Act which commenced from 1 December.

Please do not hesitate to contact me if you with to discuss anything further.

Kind regards, [redacted]

[redacted]
Executive Director
Financial Services Federation Inc.
PO Box 10053
Wellington 6143
New Zealand

[redacted]
Web site: www.fsf.org.nz
NZBN: 94 2904 2700 234

A National Federation of Financial Institutions

FINANCIAL SERVICES FEDERATION

17 December 2021

AML/CFT Act Consultation Team
Ministry of Justice
By email: aml@justice.govt.nz

FSF Draft Submission on the Review of the AML/CFT Act

Introduction:
The Financial Services Federation (FSF) is grateful to the Ministry of Justice (MoJ) for the opportunity to respond to the consultation document on the review of the AML/CFT Act.

By way of background, the FSF is the industry body representing the responsible and ethical finance, leasing, and credit-related insurance providers of New Zealand. We have over 85 members and affiliates providing these products to more than 1.7 million New Zealand consumers and businesses. Our affiliate members include internationally recognised legal and consulting partners. A list of our members is attached as Appendix A. Data relating to the extent to which FSF members (excluding Affiliate members) contribute to New Zealand consumers, society, and business is attached as Appendix B.

The FSF would like to start by congratulating the Ministry officials responsible for compiling the consultation document on its comprehensive nature. In the FSF's view it provides a very thorough examination of the current AML/CFT regime operating in New Zealand and leaves no stone unturned in considering the key questions of what about the regime is working and what may not be and how therefore it should be changed.

However, the FSF is concerned that, because of the sheer size of the consultation document, and the number of questions raised within it, not having broken the consultation down into separate consultations that would be more manageable for submitters to respond to may mean that some of the detail in responses is lost. Given that the devil can often be found in the detail, this could have unintended consequences for all stakeholders.

The FSF is also grateful to officials for allowing an extension to the deadline by which to make this submission. However, the FSF is also worried that, because of the stressful year we have all experienced, particularly for our Auckland colleagues, and for consumer credit providers, the very extensive and pressured project work that has had to be undertaken for them to ready to meet all the very prescriptive changes to the Credit Contracts and

Consumer Finance Act 2003 (CCCFA) by 1 December, these members have not had sufficient time to deeply consider the implications of many of the questions raised in the consultation document.

The FSF fully supports the principles by which the review will be guided, and which will be used to inform what recommendations the Ministry eventually makes to the Minister as set out in the Introduction to the consultation document.

The FSF also wishes to state from the outset that FSF members believe that, by and large – apart from the particular issues raised below, the current AML/CFT regime works well, and they have no serious concerns with respect to the Act achieving the purpose for which it is intended.

The FSF does not intend to answer each of the nearly 380 questions posed in the consultation document in this submission. There are some relating to Designated Non-Financial Businesses and Professions (DNFBPs), Virtual Asset Service Providers (VASPs), Money or Value Transfer Services (MVTSs) etc that are not relevant to the FSF membership. It may also be easier for the FSF to make comment on groups of questions on similar themes rather than each question individually. Before doing so, however, the FSF has some comment to make with respect to key issues or concerns with the current regime, as follows.

Key issues with respect to the current regime:

The FSF has some key issues with the current AML/CFT regime which will be expanded upon within this submission but for clarity, the FSF's key concerns are:

Consistency of supervisory approach and the supervisory model:
FSF members have experienced a lack of consistency among the supervisors. FSF's membership consists mostly of non-bank lenders which are supervised by the DIA, however the FSF also has several Non-Bank Deposit Taker (NBDT) members which, because they must be licensed by the Reserve Bank are also supervised for their AML/CFT compliance by the Reserve Bank.

From time to time the FSF hosts representatives of the supervisory agencies at meetings of groups of FSF members where the supervisor provides an update of their activities including their views on various aspects of the regime. Following these meetings, the FSF frequently hears from members that they have received differing advice from their supervisor to that presented to the meeting.

This frequent inconsistency leads the FSF to believe that consideration should be given to a single supervisor model rather than the current model of three supervisors with distinctly different approaches to their role. This would be provisional on the supervisory agency being adequately resourced to understand the vast spectrum and differing complexities of all the reporting entities that would come within its scope.

More prescription desirable:
One reason the FSF has identified as to why the inconsistency in supervisory approach exists is to do with the fact that the Act takes a principles-based stance where it would be helpful to provide more prescription in some areas to assist understanding on behalf of both supervisors and reporting entities and with compliance on the part of reporting entities. The FSF will outline in the following submission where FSF members believe such prescription would be helpful.

Need for quality assurance process for AML auditors:
FSF members are very concerned about the variable quality of AML audits and therefore their ability to rely on these as any guide as to whether or not they are appropriately meeting their obligations as reporting entities. The FSF believes that if entities are required to be audited by independent auditors this process should provide entities with certainty as to the fact that they are meeting their obligations or not as the case may be.

The current situation is that anyone who wishes to do so can set themselves up as an AML/CFT auditor and FSF members have reported great variability in the quality of the audits provided as a result. In some cases, reporting entities have found that following an audit determining that they are "fully compliant", the supervisor has had reason to find that this is not in fact the case. The FSF believes that an independent audit should provide reporting entities with a "safe harbour", particularly considering the significant costs incurred in obtaining the audit.

FSF members report that they have received greater value from desk-based reviews of their AML/CFT processes by the DIA than they do from the independent audit process.

The FSF notes that there has been discussion about the need for formal educational qualifications for everyone working in the AML sector including supervisors, AML officers and auditors and submits that such a qualification should be developed with urgency with input from all stakeholders. Such a qualification should, in the FSF's view, be compulsory as part of a licensing requirement for those people holding themselves out to be AML auditors.

The FSF therefore strongly submits that those people or businesses providing independent AML/CFT audit services should be licensed by the supervisor to do so as is the case in Australia.

Need for removal of layers of complexity in identifying source of funds:
FSF members report that there are often various layers relating to the identification of the source of funds required for customers of non-bank lenders. For example, if the funds are being transferred by the customer's bank to the non-bank lender, FSF members would like to know why it is that they cannot rely on the fact that the bank has identified the original

source of the funds. The FSF submits that it should be sufficient for non-bank reporting entities to rely on the fact that banks will have completed the requirements around identifying the source of wealth without requiring the non-bank reporting entity to have to do so again.

Need to remove address verification requirement from CDD process:
The FSF strongly believes that CDD requirements can be a strong inhibitor to financial inclusion for many people and these tend to be people in our communities who are in more vulnerable circumstances such as the very young, the elderly, people who are homeless or recently released from prison etc.

In particular FSF members who offer transactional account products such as the credit unions and building societies find the requirement for customers to provide evidence of their address actively prevents them from being able to open accounts for people who need an account in which to receive the benefits to which they are entitled. The requirement for customers to provide evidence of their residential address is in fact problematic for every FSF member.

The FSF believes that transaction monitoring is more important in preventing money laundering and terrorism financing than including address verification in CDD requirements. People's identity does not change (at least often) but addresses can change frequently and many customers, not only those who are most vulnerable, find this requirement hard to meet.

The FSF notes that many overseas jurisdictions have dispensed with the address verification requirement as part of their CDD process and for the reasons outlined later in this submission, the FSF strongly submits that the CDD requirements in the Act should be revised to no longer include the requirement for reporting entities to verify addresses as part of the identification process.

The treatment of Trusts under the AML/CFT regime:
The FSF understands the reasons why overseas trusts could be seen as being at high risk of being used for money laundering or financing of terrorism activities. However, the FSF does not believe that the same can be said of all Trusts operating in New Zealand.

The majority of Trust structures created in New Zealand are very simple where they are created to protect major personal assets such as a house or an investment portfolio in the event of a business failure or a marriage break-up or similar significant events in people's lives. The requirement for Enhanced CDD to be completed on all Trusts is, in the FSF's view, too heavy-handed an approach where the Trustees are easily identifiable. The FSF therefore believes that a scaled approach could be introduced where Standard CDD could be carried out for the Trustees of simple Trusts and Enhanced CDD for those that are overseas-based or more complex.

FSF members also report that they often experience great difficulty in carrying out Enhanced CDD appropriately when dealing with a Trust as a customer where the Trust structure is complex and reporting entities struggle to identify all the beneficial owners related to the Trust.

The FSF is therefore strongly in favour of the FATF suggestion that a register of trustees and beneficial owners be developed for New Zealand Trusts. The FSF believes that such a register should be linked to the Companies Office so that in situations where company shareholdings are linked to a Trust structure, the reporting entity is directed to the information on the Trustees, beneficial owners etc held in the Trusts Register.

The need to balance changes to the regime with the compliance cost they will incur:
Finally, the FSF strongly agrees with the point made in the introduction to the consultation document that it is important to ensure that compliance costs are proportionate to risks for individual businesses and across the economy in general. FSF members that are reporting entities have already heavily invested in their AML/CFT compliance processes and procedures since the inception of the regime. Many of FSF's members are SME businesses who can ill afford to have to make this investment all over again because so much has changed as a result of this review.

The FSF points out that reporting entities that are non-bank lenders have incurred significant costs in order to be compliant with the very prescriptive changes required of them as a result of the amended CCCFA which come into effect on 1 December this year. To have to comprehensively review their AML/CFT programmes and processes would add to an already enormous compliance burden and cost that is preventing innovation in financial services that could be of greater benefit to the New Zealand public than further compliance requirements. The FSF asks that this kept uppermost in mind throughout the review process to ensure that any changes recommended either have positive outcomes for compliance costs or at least minimise these at much as possible.

The FSF will now turn attention to answering the many questions raised in the consultation document. It may be that it is easier for the FSF to answer questions about a particular issue in batches rather than individually (so the relevant question numbers will be indicated where that is the case). There are also questions which are not relevant to FSF members. Where a question is ignored or not answered it may be taken as read that the issue raised in the question is not of relevance to FSF members.

Part 1: Institutional arrangements and stewardship

Purpose of the AML/CFT Act: Q1.1 – 1.6
The FSF believes that the current purposes of the Act have served New Zealand well since the Act's inception. However, the FSF does recognise that times have changed since then and there are probably issues such as the financing of weapons proliferation that may be

more prominent or of more concern globally that the narrower purpose of the current Act does not cover.

The FSF therefore supports the inclusion of a purpose of combatting proliferation financing with respect to weapons of mass destruction and one of Targeted Financial Sanctions to prevent access to funds and other property to designated terrorists and from providing such designated persons with anything further once they have been designated.

With respect to including a purpose to actively prevent money laundering and terrorism financing, rather than simply deterring or detecting it, the FSF is not so sure. This is mainly because the FSF has no understanding as to what form this prevention may take and would need to see more detail about what would be expected of reporting entities in a prevention role before commenting further.

The FSF also has serious concerns with respect to the security and safety of the staff of reporting entities if their obligations were widened to include prevention of money laundering and terrorism financing when that is not what they have been employed to do and not part of their skill set. On balance, the FSF would prefer to see reporting entities' obligations remain as being to report suspicious activity and for law enforcement agencies to take the necessary preventive measures.

Understanding our risks: Q1.7 and 1.8
The FSF believes that way in which New Zealand's risks of money laundering and terrorism financing are currently assessed are appropriate. However, the FSF supports the suggestion that the flow of risk information to reporting entities that is relevant and easily understandable would improve the feedback loop.

Balancing prescription with risk-based obligations: Q1.9 – 1.11
The FSF is inherently in favour of allowing businesses to take a risk-based approach to meeting their compliance obligations wherever possible in order for them to be able to adapt requirements to their business models. However, as the consultation document notes some AML/CFT obligations such as obligations for suspicious activity reporting are tightly prescribed.

Prescription certainly provides certainty as to what is required of reporting entities and, given the occasional inconsistencies in approach from the supervisors already mentioned in the FSF's key points above, would help to prevent this.

On that basis, the FSF would support more prescription in some areas of the Act's requirements and will cover these areas off in this submission as relevant questions are raised within the consultation document.

The FSF does believe that more could be done to ensure that businesses' obligations are in proportion to the risks they are exposed to. For example, the FSF supports the concept of exemptions from the Act's requirements in certain areas such as for insurance premium funders.

The FSF notes that the concept of taking a risk-based approach is in contradiction with the fact that many entities that are inherently lower risk are subject to the full requirements of the Act including a risk assessment, audit requirements etc that are costly to fulfil, and which essentially achieve nothing other than to demonstrate that the entity is at low risk of being used for money laundering or financing terrorism. The FSF believes that, as part of this review of the regime, consideration could be given to how such low-risk entities might be able to be removed from the entire scope of the Act's requirements and allowed to take an approach that focuses more on the risk involved at the transactional level (in the same way as applies now to high value goods dealers).

Capacity of smaller and larger reporting entities: Q1.12 and 1.13
As already noted, the FSF membership is made up of some large entities and many SMEs. The risk-based approach taken in some areas of the Act's obligations does allow for businesses to manage their obligations in a way that is proportionate to the risks they are exposed to and the size of the business. However, there could be situations where small businesses with very low risks attached could be exempted from the Act altogether. Examples of such instances would be insurance premium funders.

Applying for exemptions from the Act: Q1.14 – 1.20
The FSF has a member that has been granted a very limited exemption to one very small part of the Act on the basis that the way in which the Act is worded does not allow the business structure of this particular member to obtain the status of a Designated Business Group (DBG) for all its component parts. The exemption from one specific requirement relating to the definition of a DBG has allowed them to form a DBG which means that the entity concerned can save the considerable costs of replicating their AML/CFT requirements for each of its component parts.

However, the member concerned reports that, because the exemption expires after 5 years, they have had to incur the cost of legal advice each time it expires in order to put their case to the Minister to have the exemption granted again. The member concerned would like to see more weight being applied to the supervisor's view of how the entity has managed their ongoing AML/CFT requirements when considering requests to extend the exemption.

Given this specific example of the way in which the sensible approach to exempt this business from this one particular requirement of the Act has been taken, the FSF would be concerned if the ability for the Minister of Justice to issue exemptions like this was taken away.

The FSF accepts the view of the FATF that New Zealand's regime should allow for exemptions to be granted by the Minister only on the basis of proven low risk of ML/TF and that, where regulations could be issued instead to provide relief to categories of businesses which are low risk, this process should be used instead of a Ministerial exemption but, for the reasons outlined above, the ability for the Ministerial exemption to be tailored to specific businesses is an important one to retain.

Mitigating unintended consequences: Q1.21 – 1.23

As the FSF has already noted in the key points to this submission, the requirement for verification of address as part of the identification process is particularly problematic for those customers whose circumstances make them more vulnerable such as the very young, the elderly, homeless people, people recently released from prison etc.

As also previously noted, this is particularly the case for FSF members who offer transactional account products such as the credit unions and building societies which find these requirements actively prevent them from being able to open accounts for people who need an account in which to receive the benefits to which they are entitled.

There are a variety of social factors that have resulted in the verification of addresses becoming increasingly problematic. These include more transient societies, the move for people to correspond by social media or email rather than via a postal address, large whanau style living arrangements that result in only or two members of the household being named on any form of acceptable utility bill so other family members are unable to verify their address, etc.

The FSF also notes that it is not difficult for those people who wish to act fraudulently or dishonestly to provide a "verification" of an address, so the requirement provides no benefit towards preventing money laundering or terrorism financing.

Further, FSF members report that the requirement to provide address verification can be problematic for people applying for a home loan, particularly as a first home buyer, where the address of the property being purchased cannot be used and they may have no other address to verify because of having lived with parents while saving for a deposit, for example.

On this basis the FSF strongly submits that the CDD requirements in the Act should be revised to no longer include the requirement for reporting entities to verify addresses as part of the identification process.

The role of the private sector: Q1.24 – 1.26

The FSF supports the principle of the Act taking a "not in my country" approach in New Zealand rather than a "not in my firm" approach as is currently the case in order to promote a more effective partnership between the public and private sectors to combat financial crime.

FSF members as non-bank lenders are increasingly subject to instances of fraud, particularly identity fraud, where an individual's identity is stolen, and credit is taken out in the stolen identity which the perpetrator has no intention to repay leaving the lender with an unpaid and uncollectible debt. The means of providing fake identities is becoming more and more sophisticated and therefore harder for lenders to spot. The FSF would therefore support any means by which the public and private sectors could work together to prevent this type of crime.

The greater sharing of information from agencies to the private sector is therefore something which the FSF would support in principle. However, as with anything, the devil is in the detail so the FSF would provide more wholehearted support to this proposal once more detail is able to be provided as to how it would work in practice.

Helping to ensure the system works effectively: Q1.27

The FSF supports the concept of there being inclusion in the Act of a mechanism that better enables feedback between the private sector and government in principle. The FSF is currently included in the membership of the DIA's Industry Advisory Group on behalf of its Non-Deposit Taking Lending (NDLI) members that are supervised by the DIA. However, the FSF is not included in the RBNZ's regular engagement with the New Zealand Banker's Association and submits that, on behalf of the NBDTs that are members of the FSF who are supervised by the RBNZ, it would be appropriate for inclusion of the FSF in that forum (assuming that no change is proposed as part of this review to the current 3-supervisor model).

The FSF also enjoys strong engagement with the FIU, representatives of whom have frequently made themselves available to speak to groups of FSF members. This is important for those entities that have SAR responsibilities to understand the benefits that can occur from the use by law enforcement agencies of the information they provide to the FIU and to have an opportunity to hear about the outcomes that have been achieved as a result of the SARs in preventing financial crime.

Beyond that, the FSF supports the concept of private sector involvement in the AML/CFT National Coordination Committee as a mechanism to ensure more consistency of approach among the supervisors.

Powers and functions of AML/CFT agencies:

Powers of the Financial Intelligence Unit: Q1.28 and 1.29

The FSF supports the concept of granting the FIU the power under the Act to request information from businesses such as travel agents or airlines that are not reporting entities if they have reason to believe that these entities hold relevant information that may help to prevent or identify financial crime.

Providing for ongoing monitoring of transactions and accounts: Q1.30 and 1.31

The FSF supports the concept of granting the FIU the power under the Act to conduct ongoing monitoring of accounts in respect to those individuals which the FIU has identified as being highly risky. The FSF agrees with the constraints proposed in the consultation document on this power – e.g, imposing strict time limits, limitations on when the power can be used and/or requiring judicial authorisation to protect privacy and human rights.

Freezing or stopping transactions to prevent harm: Q1.32 and 1.33
The FSF understands and supports the reasons why the FIU or the Commissioner of Police should have the power to freeze assets and stop transactions to prevent future harm from financial crime and to help stop a pattern of victimisation at a much earlier point and thereby reduce harm.

The FSF would be willing to work with officials on ways in which the scope and nature of the power could be developed to ensure the power is in proportion to the harm being avoided and to ensure that any freezing action does not inadvertently tip off any suspected criminals. Entities would need to be advised of the timing with respect to the freezing of assets or when transactions would be required to stop to make this more manageable for the reporting entity. The FSF would also be concerned to ensure that any such power did not leave the reporting entity or its staff at risk of harm from the criminals involved in such crimes were they to be "tipped off" as a result of the freeze.

Supervising implementation of targeted financial sanctions: Q1.34 and 1.35
The FSF agrees that the supervision of implementation of TFS should fall within the scope of the AML/CFT regime as clearly an agency must take responsibility for ensuring that businesses are complying with TFS obligations, and it makes sense to the FSF for that responsibility to rest within the agencies responsible for supervising and enforcing the AML/CFT regime.

Secondary legislation making powers: Q1.36 and 1.37
The FSF believes that the secondary legislation making powers currently provided for within the Act are appropriate. However, the FSF notes that it seems to be a long and involved process for the three supervisors to agree on the contents of Codes of Practice or guidance to reporting entities. In order to ensure the regime is more agile and responsive, it seems to the FSF that it would be helpful if the supervisors could work more closely and cooperatively together to produce these Codes or guidance in a timelier manner. Or the FSF's preference would be for there to be one supervisor for all reporting entities to avoid these delays and to ensure a consistent approach to their implementation.

Codes of Practice: Q1.38 – 1.42
The fact that there are three Ministers each responsible for one of the three supervisors would seem to the FSF to provide further reason why there should be only one supervisor for all reporting entities. The FSF notes that the fact that only one Code has been issued to date which probably shows that the process is overly burdensome, probably as a result of the three-supervisor model but the FSF notes that the legislative "safe harbour" such Codes can provide to businesses by setting out how they can comply with specific obligations is very important to reporting entities.

The FSF believes that the review should consider ways in which to more easily facilitate the process of issuing of Codes of Practice as they might be required.

Forms and annual report making powers: Q1.43 and 1.44
The FSF agrees that the ability for agencies to quickly change the format of any reports as necessary without the need for these to be prescribed in regulation would allow the regime to be more agile. As an example, the FSF would support the proposal that the Commissioner of Police could be empowered to make changes to the SAR format or for the CEs of supervising agencies to make or edit the format of the annual report but with the proviso that such changes should be made with engagement from affected reporting agencies. This feedback loop could be provided through forums such as the DIA's industry advisory group.

However, the FSF cautions against making changes without allowing for adequate consultation and lead-in time for affected reporting entities. Being able to meet changed requirements often comes at a cost to affected entities where they might have to capture data that they have not done previously as an example.

AML/CFT Rules: Q1.45 and 1.46
The FSF is supportive of the regime being more prescriptive than is currently the case to provide more certainty to reporting entities as to what their obligations are and how they are to carry them out. The FSF believes that Rules could be developed by the supervisor(s) but with appropriate levels of engagement with affected entities again through such forums as the DIA's industry advisory group.

Information sharing:
Direct data access to FIU information for other agencies: Q1.47 – 1.49
The FSF supports the issuing of regulations for a tightly constrained direct data access arrangement to enable specific government agencies to query intelligence the FIU holds for the reasons provided in the review. The FSF's only caution is with respect to the need for strict controls to be put in place with respect to the privacy issues involved in doing so.

Data matching to combat other offending: Q1.50 and 1.51
Likewise, the FSF supports the development of data-matching arrangements with FIU and other agencies to combat other financial offending.

Licensing and Registration:
Registration for all reporting entities: Q1.52 – 1.54
The FSF understands the difficulties the supervisors, particularly the DIA, must have with easily identifying which businesses they supervise and therefore has some sympathy with the notion that a registration regime specific to AML/CFT reporting entities should be introduced including possible fit-and-proper checks as part of the registration process.

However, the FSF absolutely does not support the institution of a separate registration requirement for reporting entities that are financial institutions. Financial services businesses are already subject to a number of different registration and licensing regimes through being one of the most heavily regulated industry sectors in New Zealand.

All financial services companies operating in New Zealand must be registered on the Financial Services Providers Register (FSPR). Many also have to hold various licenses issued by the RBNZ or the Financial Markets Authority (FMA). These include:

- All banks operating in New Zealand are required to be registered banks.
- All insurance companies operating in New Zealand are required to be licensed insurers.
- All NBDTs are required to be licensed to operate as an NBDT.
- All firms offering financial advice to their customers are required to hold a financial advice providers license.
- All consumer credit providers operating in New Zealand are required to have all their directors and senior managers certified as being fit and proper persons by the Commerce Commission (if they are not already subject to fit and proper person certification by another regulator).
- The Bill to introduce a separate license for the conduct of financial institutions is up to the second reading stage in the House. This will be required for all banks, licensed insurers and NBDTs.

If a requirement for registration was imposed on already heavily supervised entities such as financial institutions, all the responsible players such as FSF members would willingly comply (albeit with concern as the to unnecessary compliance cost associated with having to do so). The DIA is already well aware of the existence of these reporting entities so this would not achieve the desired effect. Those entities that are willing compliers will comply while those entities that are not will not, so the nett effect is that the DIA would be no better informed if entities wittingly or unwittingly do not comply with a registration requirement.

The FSF therefore submits that, should the decision be made that reporting entities should be required to be registered, consideration should be given to an amendment to the FSPR for already-registered financial institutions to include their relevant AML/CFT supervisor as part of their existing registration.

For those entities that do not already have an existing registration or licensing requirement, consideration could be given to the development of a register for these specific entities.

AML/CFT licensing for some reporting entities: Q1.55 – 1.59
The FSF does not support the proposal to license all reporting entities, in particular those entities that are financial services providers, for all the reasons outlined in the preceding answer.

However, the FSF supports the proposal that a licensing regime that is risk based and only used for businesses which are at high risk of being misused for money laundering and terrorism financing that are not currently required to be licensed could be a good idea. On that basis, the FSF supports that this requirement should apply only to those high-risk entities identified in the consultation document – i.e., remitters, trust and company service providers and virtual asset service providers.

Registration or licensing fee: 1.60 – 1.64
As mentioned above, those businesses operating in the financial services sector in New Zealand are among the most heavily regulated sector operating in the New Zealand economy. As such they already incur hugely significant compliance costs that are ongoing such as the cost of registration or licensing. The FSF therefore does not support any registration or license fee applying to reporting entities that are financial services businesses.

Should it be decided that the high-risk entities mentioned in the previous questions should be required to be licensed then the FSF believes it is entirely appropriate that they should bear the cost to be so.

Part 2: Scope of the AML/CFT Act

Challenges with existing terminology: Q 2.1 – 2.11
These questions are not relevant to FSF members as they are not DNFBPs, they do not manage client funds and nor do they engage in or give instructions on behalf of a customer for certain activities.

Definition of financial institution activities: Q2.12 and 2.13
The FSF strongly supports the concept of uniform definitions for entities, products and services across all New Zealand legislation for the sake of clarity. On that basis, the FSF would therefore support the proposal to align terminology between the FSP Act and the AML/CFT Act.

This would ensure that supervisors could more accurately determine what products and services a financial services reporting entity is offering and therefore their potential level of risk of money laundering or terrorism financing. It also further supports the FSF's suggestion with respect to the including in the registration of financial services reporting entities the details of their AML/CFT supervisor in their registration on the FSPR. The FSF is also very keen to avoid any further double-ups of registration requirements.

Definition of "high-value" dealer: Q2.14 and 2.15
Although FSF members are not themselves "high-value dealers", many of them have relationships with high value dealers that are motor vehicle dealers either through their parent company relationships or because such dealers often act as intermediaries for non-

bank lenders who provide the finance to consumers to purchase the dealers' motor vehicles.

As such, when the AML/CFT requirements for high-value dealers came into force, FSF members who had relationships with motor vehicle dealers put a lot of effort into the training of their dealer networks to ensure they were aware of and able to comply with their obligations under the Act.

The FSF supports the proposal made in the consultation document to remove the word "ordinary" from the definition of a high-value dealer to ensure that all cash transactions for high value goods that equal or exceed NZD 10,000 (whether singular or multiple) are captured.

Exemption for pawnbrokers: Q2.16 and 2.17
The FSF does not represent any pawnbrokers amongst its membership but can see that they could represent a high risk of being used to launder money or to finance terrorism and therefore supports the proposal that they should be subject to the AML/CFT regime in the same way as high-value dealers.

Appropriate cash transaction threshold: Q2.18 and 2.19
The FSF believes that the current requirement that high-value dealers file SARs when they buy or sell high value articles by way of (singular or multiple) cash transactions which equal or exceed NZD 10,000 is sufficient to capture the vast majority of activity that could be construed as being money laundering or terrorism financing. Removing the word "ordinary" from the definition that this should take place "in the ordinary course of business" also ensures that this captures all businesses which engage in cash transactions for high value goods, irrespective of how 'ordinary' the transaction is.

Stored Value Instruments: Q2.20 – 2.22
The FSF's members do not offer such instruments therefore these questions are not relevant.

Potential new activities:
Acting as a secretary of a company or partner in a partnership: Q2.23 and 2.24
This is not relevant to FSF members.

Criminal defence lawyers: Q 2.25 – 2.27
This is not relevant to FSF members.

Non-life insurance businesses: Q2.28 – 2.30
The FSF represents a small number of credit-related insurance providers amongst the membership. These are generally very small insurance companies providing such products as payment protection insurances, asset protection insurance (primarily motor vehicle insurance) and repayment waiver products. The premium amounts involved with respect to

these products are also very small and therefore the FSF believes they are at very low risk (if any at all) of being used for the purposes of laundering money or financing terrorism. On this basis the FSF does not support credit-related insurance companies becoming reporting entities under the Act.

The FSF also represents insurance premium funders. These providers are at no risk at all of being used for the purposes of laundering money or financing terrorism (more information about this is provided in the answer to the question raised in Part 5 of the consultation document with respect to exempting such funders from the regime).

Including all types of Virtual Asset Service Providers: Q 2.31 and 2.32
This is not relevant to FSF members.

Combatting trade-based money laundering: Q2.33 and 2.34
This is not relevant to FSF members.

Preparing annual accounts and tax statements: Q2.35 and 2.36
This is not relevant to FSF members.

Non-profit organisations vulnerable to terrorism financing: Q2.37 and 2.38
This is not relevant to FSF members.
Currently exempt sectors or activities: Q2.39
This is not relevant to FSF members.

Internet auctioneers and online marketplaces: Q2.40 – 2.43

The FSF has among its membership companies that carry out activities as a registered auctioneer under section 4(1) of the Auctioneers Act 2013. This is mainly to allow them to sell motor vehicles as defined under section 6(1) of the Motor Vehicle Sales Act 2003. These members report that they also have obligations under the AML/CFT regime as high value dealers and that this would be the case for any internet auction situation. On that basis, the FSF submits that the exemption for internet auctions should still apply.

Special remittance card facilities: Q2.44 – 2.46
This is not relevant to FSF members.

Non-finance businesses which transfer money or value: Q2.47
This is not relevant to FSF members.

Potential new regulatory exemptions: Q2.48
As stated in the answer provided to questions 1.14 – 1.20 above, the FSF agrees with the FATF view that as few exemptions from the regime as possible should be being granted by the Minister to ensure clarity of the Act's coverage and to ensure fairness with respect to which entities are in scope of the regime and which are not.

On that basis, where an exemption would apply to categories of businesses rather than an individual business with special circumstances, the issuing of a regulatory exemption rather than a Ministerial one seems appropriate to the FSF. However, where the Minister has issued an exemption based on the unique circumstances of a particular business such as that provided as an example in the FSF's answer to questions 1.14 – 1.20, the FSF believes that, if those particular circumstances have not changed since the exemption was granted, the need for the 5-yearly review of the exemption could be dispensed with if the supervisor concerned agreed that the level of risk associated with the entity remains low.

The FSF notes that further in the consultation document, questions are asked with respect to the possible exemption of low value loan providers and insurance premium funders from the regime. The FSF supports such exemptions and will comment later in this submission upon the rationale for that view when the questions are raised about each of these. However, the FSF would prefer to see these exemptions clarified within the Act itself or via regulations rather than by way of a Ministerial exemption which, in the FSF's view, should be granted sparingly.

Acting as a trustee or nominee: Q2.49 – 2.51
This is not relevant to FSF members.

Crown entities, Crown agents etc: 2.52 and 2.53
The FSF believes that Crown entities that have a payments function can be at just as much risk of being used to launder money or finance terrorism as any other entity and that therefore they should be subject to the AML/CFT regime in the same way as other reporting entity. If they are not, there is a higher risk that people working within these entities will not be awake to the possible risks they face and could therefore become an easy target for money launderers and terrorism financiers.

Given the risk assessment process, the risk associated with such entities should be assessed and managed accordingly and proportionately.

Low value loan providers: Q2.54 and 2.55
As the industry body representing responsible non-bank lenders, the FSF numbers several lenders that might be considered to be low value loan providers amongst the membership.

Whilst an exemption for such providers would be an attractive option from the point of view of reducing compliance costs etc, the FSF does not support the exemption of low value loan providers from the regime. As entities that take their compliance obligations very seriously, FSF members would be concerned that such an exemption could provide an opportunity for those people wishing to engage in money laundering or terrorism financing to operate multiple accounts with one or more lenders in order to launder their money.

Whilst the FSF also has high regard to "social lenders" unfortunately they are also at risk of being used for the purposes of money laundering in the same way that the FSF recognises low loan providers to be.

Territorial scope: Q2.56 and 2.57
The FSF supports a definition in the Act of its territorial scope and believes that it would be appropriate to define this along similar lines to the way in which this is described in the Financial Services Providers (Registration and Dispute Resolution) Act 2008 – i.e. that providers of financial services must be registered (or in this case subject to AML/CFT obligations under the Act) only if they are in the business of providing financial services to persons in New Zealand above a minimum threshold, regardless of where the financial services are provided from.

Part 3: Supervision, regulation and enforcement

Agency supervision model: Q3.1 and 3.2
The FSF understands the rationale behind the decision to opt for having the three different agencies as AML/CFT supervisors for the entities within their existing regulatory relationship in the case of the RBNZ and FMA and then everyone else subject to the regime in the case of the DIA. However, the FSF questions whether the existing regulatory relationship between the FMA and RBNZ supervisors necessarily made them the best option for supervising entities for their AML/CFT obligations. The activities for which these supervisors regulate the entities under their supervision are quite different from those activities that come under the AML/CFT regime.

The FSF also acknowledges that the DIA is responsible for the supervision of a very large and diverse range of reporting entities which must make it difficult for them to fully understand sector risk in some cases.

FSF members are either supervised by the RBNZ (in the case of NBDTs) or the DIA (for NDLIs), the only difference between the two types of member being that the NBDTs take deposits from the public to help fund their activities and the NDLIs do not. Other than that, their activities are largely similar to each other. FSF members frequently note inconsistencies between the way in which the RBNZ supervises the reporting entities for which they are responsible and the way in which the DIA supervises theirs.

The FSF also notes that the Australian model of a single supervisor appears to work, although is not entirely convinced that having the FIU embedded within it is absolutely necessary. The FSF believes that, in order to avoid the natural inconsistencies that can occur when three separate agencies are supervising disparate groups of entities for essentially the same activities, consideration should be given to a single agency model and what that might look like.

As stated in the introduction to this submission, however, this would be provisional on the supervisory agency being adequately resourced to understand the vast spectrum and differing complexities of all the reporting entities that would come within its scope.

Mechanisms for ensuring consistency: Q3.3 and 3.4
The FSF notes that the supervisors do try to work closely together to ensure that, where possible, AML/CFT supervision is consistent, including through issuing joint supervisory positions through triple branded guidance. However, as noted previously in the consultation document, getting all three agencies to agree on the guidance they will provide, has not been easy and has resulted in only one guidance note being issued to date and that took quite some time to develop.

The FSF therefore refers to the answer provided to the previous question with respect to the belief that one supervisory agency is preferable to ensure consistency than the current three agency model.

Powers and functions: Q 3.5
The FSF believes that the statutory functions and powers of the supervisors remain appropriate and need no amending.

Inspection powers:
Onsite inspections at dwelling houses or remote inspections: Q3.6 – 3.8
The FSF has no members operating from dwelling houses or marae, however, if it has been identified that a number of reporting entities, including high-risk entities operate out of the business owner's home or marae, then the FSF believes that the supervisor(s) should have the power to conduct onsite inspections at their place of business, whether that be a dwelling house or a marae.

With respect to remote inspections, it would seem to the FSF to be sensible to provide for these given the significant shift to remote working arrangements that are becoming more and more prevalent particularly since the onset of the COVID-19 pandemic.

Approving the formation of a Designated Business Group: Q 3.9 and 3.10
The FSF supports the proposal for supervisors to have an explicit role in approving or rejecting the formation of a DBG.

Regulating auditors, consultants and agents:
Independent auditors: Q3.11 – 3.14
The FSF refers to the comments made under the key points outlined at the beginning of this submission with respect to the variable quality of independent "audits" and the reliance that can be placed on the findings of these "audits" by the reporting entities concerned.

The consultation document raises the question that it is not even entirely clear what an "audit" actually is. Using the word "audit" to describe what is carried out during the audit process is, in the FSF's view, a misnomer. From the FSF's perspective, an audit carries with it some form of assurance that the entity has been thoroughly investigated to ensure compliance. It is therefore very disappointing for entities to have undergone the AML audit process incurring use of valuable resources including time and money and relying on the process to be sure of their compliance, only to find that the supervisor does not see it in the same way.

The FSF also notes a lack of consistency amongst auditors in respect to the interpretation of reporting entities' obligations, for example with respect to the entities' obligations to submit PTR's for international wire transfers and what information is required to be included in the PTR. This is not at all helpful to reporting entities that are trying their best to meet their obligations.

As stated in the introduction to this submission, the FSF believes that those people providing AML audit services should be adequately qualified to do so through having completed an appropriate qualification and should also be required to be registered or licensed.

The FSF would very much like to see a licensing regime instituted for those people who call themselves "AML auditors" to assure reporting entities that they are indeed receiving a quality audit and that auditors are taking a consistent approach to advising entities as to their obligations. The FSF would be keen to work with officials to determine what that licensing regime may look like and what the appropriate criteria and qualifications should be in order for an auditor to be licensed.

Consultants: Q3.15 – 3.17

As with auditors, there is great variability in the quality of advice provided by consultants in the AML/CFT space. The FSF would like to see greater accountability for the quality of this advice placed on the consultants themselves (in the same way as the FSF does with respect to auditors). The FSF would therefore support a registration regime for those people holding themselves out to be a specialist AML/CFT consultant to provide further assurance to reporting entities using the services of these consultants that the advice they are receiving can be relied upon.

Agents: Q 3.18 – 3.20

This is an area where the FSF believes officials and entities need to work together more to ensure appropriate regulation of "agents". It is not entirely clear to the FSF how the review is defining the word "agents" in the context of the issues raised in this section. It is not uncommon for entities to outsource some or all of their AML/CFT obligations to a third party with whom the entity has no other relationship, for example for the provision of biometric matching for identification purposes. There is obviously a contractual arrangement in place between the entity and the "agent" in this situation and the FSF would welcome clarity in the Act as to what the requirements are for reporting entities when working with such “agents”. On that basis, the FSF supports the proposal to set out who can be an agent and in what circumstances they can be relied upon.

In considering this, however, the FSF believes the review needs to consider to what other standards such providers or agents are held, for example ISO standards are required to be met by biometrics providers.

However, the FSF points out that members frequently have “agency” relationships with third parties such as motor vehicle dealers (who themselves have AML/CFT obligations as high value dealers) and would caution against broadening the definition of “agents” too widely to also encompass agency relationships between reporting entities and their agents which are also subject to their own AML/CFT obligations.

Offences and penalties: Q3.21 – 3.23

The FSF supports the first option posited in the consultation document – i.e. that the supervisors should be allowed to issue infringement notices and fines for straightforward misconduct (e.g. failing to file an annual report on time).

The second option to allow supervisors to impose administrative penalties, such as restricting, suspending or withdrawing a business’s license or registration for non-compliance with AML/CFT obligations is not supported by the FSF as it presupposes that a registration or licensing regime will be implemented for AML/CFT. This is not yet a given and is a proposal which the FSF does not support.

Allowing for higher penalties at the top end of seriousness: Q3.24

The FSF believes that the current civil pecuniary penalties and criminal penalties for serious non-compliance are sufficient to provide the deterrent for which they are designed so therefore does not support allowing for any higher penalties at the top end of seriousness.

Sanctions for employees, directors and senior management: Q3.25 – 3.27

The FSF does not support the proposal to broaden the scope of civil sanctions to include directors and senior management. Nor does the FSF support compliance officers being held personally responsible for enforcement and penalties.

The FSF notes that it has become a disturbing trend in recent times for legislation to allow for directors and senior management to take personal liability for breaches of their company’s compliance obligations and for the prohibition from these directors and senior managers being able to insure or indemnify themselves against this liability. This is particularly the case in the financial services sector.

The FSF clearly does not support directors or senior managers or reporting entities taking a cavalier attitude towards their AML/CFT obligations because they do not have personal liability for any penalties or enforcement action. However, the FSF believes that the significant penalties that can attach to the business as already allowed for under the Act and the resultant reputational damage that accrues to both the business and its senior managers and directors is sufficient incentive for these directors and senior managers to ensure that their business remains compliant with all its obligations.

Further, the FSF submits that the compliance burden on the financial services sector is enormous – it is one of the most heavily regulated sectors operating in the New Zealand economy. As such, the compliance responsibilities resting on directors and senior managers are many and varied. The potential for heavy personal liability for an inadvertent breach of one part of this complex compliance programme is very high.

Whilst all directors and senior managers of FSF member businesses acknowledge that they have a significant role to play in ensuring that their businesses remain fully compliant with every obligation attached to the business, the possibility is always there for a breach to occur that was either inadvertent or out of their individual control. Certainly, there would be no instances of wilful non-compliance (and the FSF believes that this is the case for the directors and senior managers of most businesses).

However, if personal liability continues to be heaped upon directors and senior managers, it will become more and more difficult for businesses to attract good people into these positions. This will have a flow on effect not just on the running of the businesses themselves but also for the markets and the customers they serve.

Liquidation following non-payment of AML/CFT penalties: Q3.28
The FSF supports the DIA being allowed the same powers to apply to a court for liquidation to recover pecuniary penalties on behalf of the Crown that currently apply to the RBNZ and the FMA.

Time limit for prosecuting AML/CFT offences: Q3.29
The FSF would support increasing the time limit for prosecuting AML/CFT offences to five years from the current three years. This would be in line with the record-keeping requirements of reporting entities.

Part 4: Preventive measures

Customer due diligence: Q4.1
FSF members report the following key challenges with complying with their CDD obligations:

- Fulfilling the obligation to verify the customer’s address. This is either difficult for the customer to provide due to their personal circumstances (e.g., because they are young, elderly, homeless or in other vulnerable circumstances) or it is easy for those people perpetrating identity fraud to falsify or manipulate to help to support their fraud. For these reasons, the FSF submits that the requirement for reporting entities to verify

addresses should be removed from CDD obligations. The FSF also refers to the answer provided to questions 1.21 – 1.23.
- Identifying the beneficial owners of some Trusts in order to meet EDD obligations. For this reason, the FSF supports the establishment of a Trusts register in New Zealand, preferably linked to the Companies Office data held on directors and shareholders. The FSF also reinforces previous points made about the need for there to be some scalability applied where Standard CDD should be allowed for simple Trust structures and the requirement for Enhanced CDD to be carried out only when dealing with complex or overseas Trust structures.

Definition of a customer: Q 4.2 – 4.5
The FSF submits that it can be challenging for reporting entities to fully complete CDD requirements to identify the customer in the circumstances outlined in the answer to Q4.1 above. On that basis a more prescriptive approach through the issuing of regulations would be helpful.

Definition of a customer in real estate transactions: Q4.6 – 4.8
This is not relevant to FSF members.

When CDD must be conducted: Q4.9 and 4.10
The FSF believes that the prescribed points where CDD must be conducted are clear and appropriate including the trigger for Enhanced CDD for unusual or complex transactions.

Conducting CDD in all suspicious circumstances: Q4.11 – 4.13
The FSF believes that at the very least, Simplified CDD should be required in situations where suspicious transactions occur outside of a business relationship and the amounts involved do not meet the threshold for an occasional transaction. This would bring New Zealand into line with FATF standards. The FSF believes that, if this became a requirement in all these situations, it would be presented to customers on the basis of being a requirement under the regime, rather than because the particular transaction appears suspicious which would certainly run the risk of tipping off the customer.

Managing funds in trust accounts: Q4.14 – 4.17
FSF members do not operate trust accounts, so this is not relevant to FSF members.

What information needs to be obtained and verified: Q4.18 – 4.21
The FSF believes that the information that the Act requires to be obtained and verified is still appropriate with the exception of the requirement to verify the person's address for the reasons already stated. The FSF also believes the obligations are sufficiently clear however FSF members support the implementation of a Trusts register in order to assist reporting entities to meet their Enhanced CDD obligations to identify the beneficiaries of a trust.

Obligations for legal persons and legal arrangements: Q4.22 – 4.24
The FSF supports the proposal to issue regulations to require businesses to obtain and verify information about a legal person or legal arrangement's form and proof of existence, ownership and control structure and powers that bind and regulate them. This would bring New Zealand into line with FATF standards and is also in line with what FSF members currently do in these situations.

Source of wealth versus source of funds: Q4.25 – 4.27
The FSF believes that it could be helpful to reporting entities for regulations to be issued prescribing when information about a customer's source of wealth should be obtained and verified versus source of funds. However, the FSF cautions that care should be taken with the wording of such regulation to avoid causing unnecessary overcompliance. The FSF repeats the point already made in this submission regarding the need for there to be some scalability applied to the CDD requirements for Trusts for example where the Trust structure is non-complex.

FSF members also report that they receive a lot of push-back from customers when trying to undertake enhanced CDD and identify source of wealth for a local farmer as an example who they know has worked their farm (or their family has) for many years so it is obvious what the source of wealth or funds is.

A further point to take into consideration in this context is the fact that Trusts could have been set up years earlier and the original settlor(s) are long dead which makes CDD on these people problematic. The FSF would therefore like to see that any such regulation takes a risk-based approach.

Beneficiaries of life and other investment-related insurance: Q4.28 and 4.29
This is not relevant to FSF members.

Identifying the beneficial owner:
Definition of beneficial owner: Q4.30 and 4.31
The FSF has already made the point that members face significant challenges when trying to identify beneficial owners and reiterates the FSF's view that a sensible, risk-based, scalable approach needs to be taken with respect to when and how beneficial owners should be identified. For this reason, the FSF strongly supports the implementation of a Trusts register in New Zealand that would provide this information more readily.

'Ultimate' ownership and control: Q4.32 – 4.34
The FSF believes that the definition in the Act should include the concepts of 'ultimate' ownership or control. This would bring New Zealand into line with FATF standards but would also, in the FSF's view, clarify the requirements for reporting entities for identification of the beneficial owner allowing them to stop at the first ownership or control layer and look no further. The FSF believes that this would eliminate unnecessary time wasting and compliance costs on the part of reporting entities by having to identify layers of beneficial

ownership where the ultimate control does not lie within these layers. The FSF therefore supports the issuance of an “avoidance of doubt” regulation stating that the focus should be on identifying the ‘ultimate’ beneficial owner.

The ‘person on whose behalf a transaction is conducted’: Q4.35 – 4.37
The FSF supports the proposal to issue a regulation which states that for the purposes of the definition of beneficial owner, a person on whose behalf a transaction is conducted is restricted to a person with indirect ownership or control of the customer. This would bring New Zealand into line with FATF standards.

The FSF believes that the introduction of such a regulation would make Regulation 24 unnecessary so this could then be revoked.

The FSF believes that the introduction of such a regulation would likely reduce compliance costs rather than increase them.

Process for identifying who ultimately owns or controls legal persons: Q4.38 – 4.41
The FSF supports the issue of regulations which are consistent with the FATF standards for identifying the beneficial owner of a legal person rather than a Code of Practice because of the greater certainty provided by regulation.

Process for identifying who ultimately owns or controls legal arrangements: Q4.42 and 4.43
The FSF supports the issuance of regulations rather than a Code of Practice to allow businesses to satisfy their beneficial ownership obligations by identifying the settlor, the trustee(s), the protector and any other person exercising ultimate effective control over the trust or legal arrangement. This could be achieved by obtaining a copy of the Trust Deed or by making a quick enquiry of the Trusts register (the implementation of which the FSF strongly advocates).

Reasonable steps to verify information obtained through CDD: Q4.44
The FSF believes the standards of verification in the Act and the basis by which verification of identity must be done are sufficiently clear and still appropriate.

Identity Verification Code of Practice: Q4.45 – 4.49
The FSF agrees that the challenges with using the IVCOP and the gaps that currently exist within it are adequately described in the consultation document and therefore the IVCOP could benefit from being updated.

In particular, the FSF submits that, given the increasing number of transactions that are conducted electronically rather than in person (which has been greatly exacerbated since the COVID-19 pandemic began), there is now more than ever a greater need for the regime to allow for identification verification to be conducted electronically including providing standards for acceptable biometric verification.

The FSF does not agree that RealMe is the only or indeed the best solution for identity verification purposes as the IVCOP promotes, given that only 35% of the adult population are identified through it.

Indeed, a key challenge reported by FSF members with respect to electronic identity verification could be mitigated or avoided were reporting entities able to verify the photograph on the drivers' licence of the person they are identifying with the photograph held on the NZ Transport Authority's drivers' licence registry or the passport photo held by the DIA.

Currently there is no way for a business to verify whether the person providing the drivers' license or passport is the same as the person with whom they are transacting or whether they are dealing with a situation of identity fraud and the drivers' license or passport presented has been fraudulently altered. Access to the photograph held on the NZTA's drivers' license registry and the DIA's passport database would be one way for businesses to verify that the person presenting the license is actually the holder of the license they are presenting.

Not only would this provide a further layer of certainty with respect to the fact that the business has correctly identified the person with whom they are transacting but it would save businesses such as FSF's members thousands of dollars annually in fraudulent loans caused by identity theft. It would also save much of the stress experienced by those individuals unfortunate enough to have had their identities stolen.

This is a proposal that has been put to NZTA on behalf of FSF members and other reporting entities many times to no avail. The NZTA's view is that, whilst they now accept that the drivers' license is a means to identify a person as opposed to solely being a means to verify that the person is licensed to drive on New Zealand roads, they do not believe that they should be providing a guarantee to a reporting entity that the person presenting to the entity is the person whose photograph appears on the drivers' license.

This is not what the FSF and other reporting entities require from the NZTA (or the DIA). They merely require access to the photograph held in the database so that they can make their own assessment as to whether the person presenting the driver's license and with whom they are transacting looks like the person in the NZTA's drivers' license or the DIA's passport database.

If, as part of this review process, reporting entities were able to access the photos held in these databases, this would be a hugely helpful outcome for reporting entities and would save them literally thousands if not millions of dollars annually.

Verifying the address of customers who are natural persons: Q4.50 – 4.52

The FSF agrees with the issues identified in the consultation document with respect to the requirement in the Act for businesses to obtain and verify address information for all customers, beneficial owners and persons acting on behalf of customers and has already raised other issues reporting entities and customers face with the requirement to verify addresses earlier in this submission These issues are very real and are faced frequently by reporting entities and their customers.

The FSF notes that many countries do not require address information to be verified and therefore submits that, as stated previously in this submission, the deletion of this requirement would be a hugely helpful outcome of this review were it to be implemented for both reporting entities and customers alike.

Obligations in situations of higher and lower risk

Expanding the range of measures available to mitigate high-risk customers: Q4.53 – 4.55

The FSF supports the proposal to require additional measures to be taken when faced with situations of higher risk to align with FATF standards in principle. The FSF's preference if this requirement was to be implemented is that this should be done by way of a Code of Practice to allow entities to take a risk-based approach and to provide necessary clarity to reporting entities as to what is required of them and when these requirements come into play. To this end, a clear definition of what is considered to be a high-risk customer needs to be provided.

The FSF notes that consumer credit providers such as many of the FSF's members are now required to obtain more information than ever from their customers and therefore recommends that, as much as possible, the expanded measures required in high-risk situations could align with the CCCFA information requirements.

Conducting simplified CDD on persons acting on behalf of large organisations: Q4.56 and 4.57

The FSF supports the proposal to issue regulations to allow employees to be delegated by a senior manager to act on behalf of a large organisation without triggering CDD in each circumstance for the reasons stated in the consultation document, i.e. that this can be challenging where there may be many authorised persons at any one time and to reduce the compliance burden of engaging with persons who act on behalf of a large organisation to ensure it is in proportion to the risks identified. This is beneficial to both the customer and the reporting entity with respect to the compliance burden.

Mandatory enhanced CDD for all trusts: Q4.58 – 4.60

The FSF is very supportive of the proposal that the requirement that enhanced CDD should be conducted for all trusts be removed where there are no indicators of high risk and only require this to be carried out when a trust is considered to be high risk. The FSF agrees that this would reduce compliance costs for businesses when dealing with trusts and is also consistent with a risk-based approach.

Ongoing CDD and account monitoring: Q4.61
The FSF believes that the account monitoring obligations for ongoing CDD in the Act are clear and appropriate.

Considering whether and when CDD was last conducted: Q4.62 – 4.65
The FSF does not believe that ongoing CDD should be required where nothing has changed with respect to the relationship between the reporting entity and the customer and account monitoring has revealed nothing to indicate that the customer has become more high-risk than they were when the relationship began. Therefore, explicitly requiring businesses to consider whether and when CDD was last conducted as part of ongoing CDD, and account monitoring is not something that the FSF would support due to the overly burdensome compliance cost this would incur for no apparent reason.

Ongoing CDD requirements where there are no financial transactions: Q4.66 – 4.68
This is not relevant to FSF members.

Information that needs to be reviewed for account monitoring: Q4.69 and 4.70
FSF members do not currently review other information beyond what is required in the Act as part of account monitoring and can see no reason for regulations to be issued requiring businesses to review any other information as part of account monitoring.

Conducting CDD on existing (pre-Act) customers: Q4.71
The FSF agrees that there will likely be some businesses that may still have large portions of their existing customer base which have not been subject to CDD because there has been no material change in the nature of the purpose of the business relationship and the level of risk involved is deemed by the business to be low. The FSF believes that, if that is still the case, to impose a requirement that the business conduct CDD on these existing customers is not only overly burdensome on the reporting entity but also on the customer who would find it highly inconvenient to have to undergo CDD for no apparent reason given the long-standing nature of their relationship with the business.

The FSF therefore supports the proposal in the consultation document to require standard CDD when the business considers that it has both insufficient information ***or*** there has been a material change in the nature or purpose of the business relationship (rather than "and").

The FSF does not support a change to the Act to require CDD where a business becomes aware that the circumstances of an existing customer have changed by removing 'material' from the trigger, particularly that the requirement to do so where there is 'material change' to the relationship is in line with FATF standards.

As stated above, the FSF does not see the need for CDD to be conducted on pre-Act customers at all unless the business relationship has materially changed or there is reason to believe the level of risk associated with the customer has increased since the relationship began so would not support a timeframe or 'sinking lid' being introduced.

Avoiding tipping off: Q4.27 – 4.75

The FSF supports the proposal in the consultation document to amend the Act to allow reporting entities the discretion to apply lesser CDD measures to avoid tipping off, including not conducting CDD and filing a SAR instead. Not only is this in line with FATF standards which is always desirable, but it also avoids putting the safety of staff of reporting entities at risk by requiring them to have interaction with a high-risk individual.

Record keeping: Q4.76 and 4.77

FSF's members do not report any challenges with respect to complying with their record keeping obligations and can think of no other records that businesses should be required to keep.

Transactions outside a business relationship: Q4.78

FSF members do not believe that exempting businesses from keeping records of the parties to a transaction outside a business relationship or below the occasional transaction threshold hinders the reconstruction of transactions as far as their businesses are concerned so would not support the modification or removal of this exemption.

Politically exposed persons: Q4.79 and 4.80

FSF members have very little exposure to foreign PEPs. The FSF understands that just because New Zealand is lucky enough to be a country operating with high levels of integrity, it cannot be assumed that people with influence or control domestically would not be vulnerable to being targeted and corrupted by criminals or foreign influence. However, FSF members do not report having any challenges with complying with the obligations regarding PEPs and they do not support a requirement for reporting entities to take any additional steps to mitigate the risks of PEPs other than those already required by the Act.

Definition of a PEP: Q4.81 – 4.84

As stated above, the FSF does not support a change to the Act to require reporting entities to take any additional steps to mitigate the risks of PEPs other than those already required. The FSF believes that the definition in the Act does not preclude reporting entities from being able to identify other persons of interest which could include a domestic PEP who appeared to be under undue influence or who may be behaving suspiciously.

Given the size and nature of New Zealand, domestic PEPs are easily identifiable to a reporting entity and any behaviour by them of a suspicious nature would trigger the lodging of an SAR which the FSF deems sufficient to allow for any investigation into whether or not the person is acting in a way that suggests they might be under undue influence or have been corrupted. The FSF also believes that this should be sufficient to allow for investigation of any misappropriation of party donations under the electoral financing regime. Requiring anything further than this would impose further unnecessary compliance costs on the reporting entity.

Time limitation of PEP definition: Q4.85 – 4.87
The FSF accepts that a person could always remain a PEP by maintaining informal influence even if they no longer occupy a public function and therefore supports a risk-based approach being required to determine whether a person should still be treated as a PEP in line with FATF standards.

Identifying whether a customer is a PEP:
Foreign PEPs: Q4.88 – 4.91
FSF members currently rely heavily on external screening services or transaction monitoring systems that scan against recognised watchlist provided by third parties. They also report that they conduct annual reviews of their customer bases against these screening services or watchlists to determine whether any existing customers may have become a PEP since establishing their relationship with the reporting entity. The FSF absolutely believes that these measures are sufficient to ensure that the entities have "taken reasonable steps" to have risk management systems in place to enable proactive steps to be taken to identify whether a customer or beneficial owner is a foreign PEP.

The FSF can see no other way for reporting entities to meet their obligations with respect to the identification of foreign PEPs so, if the FATF does not consider relying on commercial databases to be sufficient to identify whether a customer is a foreign PEP, then the FSF believes that clarity should be provided to reporting entities as to what is deemed to be sufficient. The FSF certainly supports businesses being able to consider the extent to which they are vulnerable to foreign PEPs when determining the level of proactive steps that should be taken.

FSF members report some variability with respect to the timing of the check being made to determine whether a customer is a foreign PEP. Some report that they do the check as part of their onboarding process, others that it is done shortly thereafter. The FSF believes that, provided that the checks are being carried out, there is no need to identify whether a customer is a PEP before establishing a business relationship or conducting an occasional transaction or activity.

Domestic or international organisation PEPs: Q4.92 – 4.94

For the reasons stated above (answer to Q4.81 – 4.84), the FSF does not support bringing domestic PEPs within scope of the Act and requires more clarity as to how reporting entities might determine that they are dealing with an international organisation PEP.

Beneficiaries of life insurance policies: Q4.95 and 4.96
This is not relevant to FSF members.

Mitigating the risks of PEPs: Q4.97 – 4.99
The FSF supports a change to the Act to explicitly require businesses to take measures consistent with the FATF's expectations when dealing with foreign PEPs as described in the

consultation document. However, the FSF does not support any further requirements, other than where the relationship with the PEP is considered high risk, for domestic or international organisation PEPs for the reasons already stated.

Implementation of targeted financial sanctions:
The FSF supports the proposal made in the consultation document to give the supervising agency or agencies the authority to supervise businesses for implementing their targeted financial sanctions obligations with the proviso that this then places an obligation on the supervisors to ensure that the entities they supervise are provided with information as to whom are the designated persons and entities that are the subject of a targeted financial sanction in a timely manner.

Assessing exposure to designated individuals or entities and sanctions evasion and including TFS implementation in an AML/CFT programme: Q4.100 – 4.104
The FSF supports a requirement for businesses to assess their potential exposure to designated individuals or entities, but these businesses would clearly need information provided to them from the Government as to who these designated individuals or entities actually are. The same applies to implementing any requirement in the Act for businesses to include policies, procedures and controls relating to their TFS obligations in their AML/CFT programme.

Prompt notification about designated persons and entities: Q4.105 – 4.107
The FSF does not support any requirement being implemented to oblige businesses to proactively keep themselves up to date with terrorism and proliferation-related designations. This is information provided from the UN to the Government and therefore the Government should be responsible for ensuring it is being appropriately disseminated. However, the FSF is comfortable with any changes to terrorism-related designations being notified to businesses by the FIU through goAML.

Screening for designated persons and entities: Q4.108 – 4.110
As outlined in the answer provided to questions 4.88 – 4.91 above, FSF members are already using various methods to screen for foreign PEPs which would also identify designated persons and entities. On that basis, the FSF does not see the need for either of the options posited in the consultation document to be implemented.

Notification of actions taken: Q4.111 and 4.112
The FSF does not support the creation of a new reporting obligation in the Act above and beyond what is already required of reporting entities which is to file a SAR if they have reasonable grounds for suspicion that the transaction, activity or inquiry is relevant to the enforcement of any offence including the offences in the Terrorism Suppression Act 2002 and the United Nations Act 1946.

Providing assurance for ongoing freezing action: Q4.113 and 4.114
The FSF believes that the Government should provide assurance to businesses that have frozen assets that the actions taken are appropriate.

Correspondent banking: Q4.115 and 4.116
This is not relevant to FSF members.

Money or value transfer service providers: Q4.117 – 4.126
This is not relevant to FSF members.

New technologies: Q4.127 – 4.132
The FSF does not support the issue of regulations to explicitly require businesses to understand the risk of new products or technologies. Reporting entities do this anyway as part of their overall risk assessment process and will mitigate their risk accordingly through their AML/CFT processes and procedures. Where problems could lie would be with entities developing new products, new delivery mechanisms or technologies that could be at risk of being used to launder money or finance terrorism and that are not reporting entities already and are possibly not aware of their risk and are not taking appropriate steps to mitigate the risk.

Virtual asset service provider obligations: Q4.133 – 4.138
This is not relevant to FSF members.

Wire transfers: Q4.139 – 4.141
FSF members report a number of challenges with respect to the AML/CFT requirements concerning international wire transfers.

The first of these relates to the inconsistency of advice provided to reporting entities from AML/CFT auditors with respect to their interpretation of the entities' obligations to submit PTRs for international wire transfers (which also supports earlier comments made by the FSF in this submission about the need for these auditors to have some form of licensing or registration requirements to ensure the quality and consistency of their advice).

FSF members report that some auditors have advised reporting entities that they are not required to submit IFT-PTRs on the basis that only an Ordering Institution (or originator's bank), and Beneficiary Institution (or beneficiary's bank) are required to submit an IFT-PTR. On this basis, non-bank lenders such as FSF members receiving the transaction from a bank would not be required to submit an IFT-PTR with respect to the international wire transfer.

However, there are other auditors whose interpretation is that the receiving non-bank lender is the beneficiary and, on that basis, they must also submit an IFT-PTR in addition to the beneficiary bank. Some clarity with respect to this matter would clearly be very helpful to non-bank lenders.

There are further challenges with respect to the New Zealand clearing system which mean that it is not straightforward to identify incoming IFT's from codes on the reporting entity's transactional bank statement. Consequently, entities have to review the account statement details report, search for non-New Zealand SWIFT/BIC or the ordering bank address column for countries other than New Zealand. This is extremely time-consuming and a waste of resource in the FSF's view.

When there are hundreds or thousands of individual payments being received per day by a reporting entity, entities must develop an automated solution to identify the few that are IFTs efficiently in order to meet the requirement to report those over the $1,000 threshold within the required 10-day period. It could be that there are very few or even none of these payments in a month, but the exercise has to be undertaken in order to fulfil the reporting obligations.

The FSF therefore submits that the lack of transparency in identifying international wire transfers in the banking system should be considered when considering any threshold or reporting requirement changes.

Wire transfers below the applicable threshold: Q4.142 – 4.144
The FSF supports the proposal in the consultation document that regulations be issued to require that international wire transfers below NZD 1000 are accompanied with specific information about the originator and beneficiary. Rather than having cost implications for the reporting entities, it would make it a lot easier for the entity to reconcile where the payment came from and for what purpose it has been made.

Stopping wire transfers that lack the required information: Q4.145 – 4.147

The FSF refers to the answer provided to questions 4.139 – 4.141 above with respect to the extreme difficulties non-bank reporting entities face in identifying IFTs.

FSF members also report that they are unable to prevent wire transfers that lack the required information from being received in their bank accounts, so they have to remit the funds back by initiating a payment which is particularly challenging.

Intermediary institutions: Q4.148 – 4.152
FSF members are not intermediary institutions in relation to wire transfers, so this is not relevant to FSF members.

Beneficiary institutions: Q4.153 – 4.155
FSF members are beneficiary institutions at the end of the wire transfer who makes the money available to the payee or beneficiary. As such they report that their ability to take reasonable measures to identify international wire transfers that lack the required information is very limited as the receiver of the money. They are the end of the transaction chain with no control over the information provided or ability to check the accuracy of

information. FSF members believe that the requirement to provide adequate information should be on the intermediary institution.

FSF members report that some intermediary institutions do provide the information required whilst others do not. In their experience some larger banking organisations provide the required information as a matter of course because they have obligations to do so in overseas jurisdictions, but this is not always the case with all intermediary banks.

Prescribed transaction reports: Q4.156 and 4.157
The key challenge reported by FSF members is in obtaining further information from their Bank (the intermediary institution) in order to submit the PTR with respect to international wire transfers.

There are also inconsistencies between the intermediary institution (the bank) and the beneficiary institution (the FSF member) with respect to what is required of each entity with respect to PTRs on international wire transfers. It is entirely possible for the FIU to receive three separate PTRs for the one transaction, one from the intermediary institution, one from the beneficiary institution and one from the institution where the payment ultimately ends up which must make it difficult for them to match up all the information they receive.

FSF members report that it would be helpful for them to have greater visibility over the information provided by the intermediary institution in their PTR so that as beneficiary institutions they can see what information about the transaction has already been provided.

Finally, with respect to cash transactions requiring a PTR to be made, the FSF believes that these should be made by the bank into which the funds are deposited. Cash transactions are identified on the FSF member's bank statement as being cleared funds so that does not identify the fact that the funds deposited were in cash or transferred electronically.

Types of transactions requiring reporting: Q4.158 and 4.159
FSF members believe that it would be extremely helpful to them if banks were required to identify that a transaction is an international wire transfer or a domestic physical cash transaction for all the reasons provided to the preceding questions. The FSF does not have a preference for the way in which this requirement should be enabled – whether that be by way of regulation or a Code of Practice.

Non-bank financial institutions and DNFBPs: Q4.160 – 4.162
As non-bank lenders, FSF members would be described as non-bank financial institutions. FSF members are not DNFBPs.

FSF members report that they do file PTRs when they transfer or receive funds internationally via the banking system on behalf of an underlying customer, because of the lack of clarity as to whether or not they are required to do so as is identified in the consultation document. However, the FSF agrees that it is the bank not the non-bank financial institution that is engaging in the transaction and therefore has most but not all of the PTR obligations.

On this basis, the FSF prefers the second option posited in the consultation document that would require each party to the international wire transfer to submit a PTR that contains the details they each hold of the underlying customer.

The FSF suggests that to avoid duplication of information being provided by the bank and the non-bank financial institution, a hybrid option could be considered whereby the bank could be required to submit the PTR after having received further information to fill in the gaps in the information they hold about the underlying customer provided by the non-bank financial institution. The FSF does understand that there could be privacy considerations with respect to such an option but puts it out there as worthy of consideration.

Intermediary institutions: Q4.163 – 4.165
This is not relevant to FSF members.

When reports must be made: Q4.166

FSF members report that one issue they face is that they are reliant on obtaining the required further details from their Bank (the beneficiary institution), so submission within the 10 days is reliant on the Bank providing the required information in a timely manner.

Applicable threshold for reporting prescribed transactions: Q4.167 – 4.170
The FSF does not agree with lowering the threshold for PTRs as there is no supporting evidence provided to support the theory that the current thresholds place New Zealand at more risk than our international partners.

To do so, would require PTRs to be made on considerably more transactions – and in the case of international wire transfers, likely every such transaction. This would seriously adversely impact FSF member businesses. The FSF refers again to the challenges already faced in identifying international wire transfers by receiving non-bank lenders pointed out in the answer provided to questions 4.139 – 4.141 above.

The FSF points out that businesses also have SAR obligations which do not necessarily relate to whether or not a transaction is under or over the threshold – they are purely based on whether or not a transaction or series of transactions appear to the business to be suspicious and, if so, then they must report these.

The same applies to high value dealers. Many of FSF's members work closely with high value dealers such as motor vehicle dealers through the finance arrangements they have in place with these dealers.

Reliance on third parties:
Effectiveness of reliance provisions: Q4.171 – 4.173
FSF members report that they rely heavily on third parties in all three circumstances described in the consultation document. FSF members do not report any barriers to doing so, other than some problems that can arise if another reporting entity in New Zealand is supervised by a different supervisory agency and the potential for inconsistencies that can arise from the three-supervisor model as already discussed in this submission.
With respect to entities relying on an agent, the FSF refers to comments already made in this submission with respect to the need for clarity of definition as to what constitutes an agent in the answer to Q3.18 – 3.20.

"Approved entities" and liability for reliance: Q4.174 – 4.177
Given the fact that no entities have been approved as an "approved entity" as stated in the consultation document which means that no reporting entities are currently reliant on such a third party entity, and the fact that the use of such an "approved entity" means that the reporting entity is not responsible for ensuring CDD is carried out in accordance with the Act which is not consistent with FATF standards, the FSF is comfortable with discontinuing the "approved entities" approach.

However, the FSF points out that it is not uncommon for individuals to have to undergo CDD with separate reporting entities a multitude of times for the one transaction which is extremely inconvenient for New Zealanders trying to go about their business. A good example of this would be in the purchase of a property where the real estate agent, the lawyer and the finance provider involved in the transaction each have to undergo the same process for CDD on the same customer.

The FSF contends that, as part of this review, consideration should be given as to how this process could be streamlined for the convenience of all New Zealanders as well as reporting entities. It is clear that no-one wants to take the responsibility of being an "approved entity" but a solution such as an approved national identity source that is available to every reporting entity is both desirable and sensible.

Designated business group reliance: Q4.178 – 4.181
The FSF supports the proposal made in the consultation document that regulations be issued to prescribe other types of businesses that are eligible to form a DBG and to close the gap in New Zealand's DBG reliance settings to provide an obligation on overseas DBG members to conduct CDD to the level required by the Act. FSF members report that those who operate under a DBG and who have overseas members of the DBG are already ensuring that the overseas members conduct CDD to the level required by the Act.

Third party reliance: Q4.182 – 4.184
The FSF supports the proposal made in the consultation document that regulations be issued to close the gaps in New Zealand's provisions for reliance on third parties for CDD

purposes including the explicit requirements for businesses outlined in the consultation document.

Potential other forms of reliance: Q4.185 and 4.186
The FSF cannot think of any other forms of reliance that should be enabled as part of this review.

Internal policies, procedures and controls:
Compliance programme requirements: Q4.187
The FSF believes the minimum requirements for a business' compliance programme as set out in the Act are still appropriate.

Compliance officers: Q4.188 and 4.189
The FSF supports the proposal made in the consultation document that compliance officers should be a natural person at the senior management level of the business in line with FATF standards.

Group-wide programme requirements: Q4.190 and 4.191
The FSF supports the proposal made in the consultation document that the Act should include specific requirements for financial and non-financial groups to implement group-wide programmes in line with FATF expectations.

Review and audit requirements: Q4.192 – 4.194
As the FSF has previously stated in this submission, it is the view of FSF members that providers of independent AML/CFT audits should be licensed to be able to perform this function. As part of this the FSF believes that it would be helpful to all stakeholders in the AML/CFT regime for a recognised national qualification in AML/CFT should be developed as soon as possible.

With respect to the audit process, as the consultation document states, these are expensive, and it is the experience of FSF members that they are of variable quality. It is the FSF's strong view that, having gone to the expense of completing the audit process, the reporting entity should be able to rely on the findings of the audit to provide them with appropriate assurance that their AML/CFT programme is sufficiently robust and appropriate to their level of risk of money laundering or terrorism financing – or it should clearly identify areas for improvement which could then be monitored by the supervisor.

The FSF supports the proposal made in the consultation document that the Act should clearly state the purpose of the audit including the scope and desired outcomes of the process and agrees with the FATF's view that this is to "test the system" to ensure it is effective at detecting money laundering or terrorism financing.

The FSF also believes it would be helpful for reporting entities if the Act was more explicit with respect to the Government's expectations as to what "up to date" means and the frequency with which it is expected internal reviews are undertaken.

Higher-risk countries:
Understanding country risk and identifying countries with insufficient AML/CFT measures in place: Q4.195
The FSF agrees that it can be challenging for reporting entities to determine country risk and they have experienced inconsistency in advice as to what is deemed to be a high-risk country. The FSF believes that it would be helpful to reporting entities if the New Zealand supervisors were to publicly identify the countries that FATF has assessed as having strategic deficiencies in the AML/CFT regime (whilst recognising that FATF only lists countries that have large enough economies to be so identified). The FSF believes that the guidance already provided by the supervisors to help businesses to understand how a country can impact their risk profile allows businesses to identify those countries with economies that are not sufficiently large for them to appear on the FATF list.

Imposing countermeasures where called for by the FATF: Q4.196 – 4.198
The FSF notes that the only two countries currently subject to a 'Call to Action' by the FATF (or which appear on their "blacklist") are the Democratic People's Republic of Korea and Iran. Given that FSF members have no current business relationships or transactions with people in either of these countries, the FSF has no objection to regulations being issued to prohibit or regulate these business relationships or transactions.

Imposing sanctions on specific individuals or entities: Q4.199 – 4.202
The FSF supports the proposal in the consultation document that regulations should be issued to prohibit business relationships or transactions with individuals involved in significant criminality, including corruption. The FSF sees identification of such individuals as being key for reporting entities identify who these individuals actually are so they can avoid doing business with them. The FSF agrees that parameters need to be set with respect to the way in which the power is used to ensure it is only ever used appropriately and to protect the rights of bona fide third parties.

Suspicious activity reporting:
Improving the quality of reports received: Q4.203 – 4.205
FSF members do not have any suggestions as to how the quality of the information provided through a SAR could be improved. They would support an obligation or ability to update a SAR on request from Police once an investigation is under way.

Sharing SARs or SAR information: Q4.206 and 4.207
The FSF understands the need for the circumstances in which people can share information about SARs or SARs themselves to be strictly limited. However, the FSF supports amending the Act to provide for other circumstances in which SARs or SAR information could be shared to include allowing Police employees to share SAR information for specified non-law

enforcement purposes or to allow businesses to disclose to offshore parent companies where there is no DBG formed, to enable the parent company to be aware of the risks the subsidiary is exposed to.

SAR obligations for MVTS providers: Q4.208 and 4.209
This is not relevant to FSF members.

High value dealer obligations: Q4.210 – 4.212
The FSF does not support placing the full range of AML/CFT obligations as outlined in the consultation document on dealers in high value goods. The FSF did not support this when high value dealers were brought within the scope of the Act when this was extended to the Phase 2 entities. The FSF believes that where the obligations on high value dealers were placed as a result of that process is appropriate with the exception that the FSF does support the proposal to make the obligation to submit SARs mandatory for these entities.

The FSF believes that, rather than the DIA being charged with reviewing the AML/CFT risk assessments and programmes of high value dealers, they should be ensuring that, where suspicious activity is taking place in their businesses, the dealers are making the appropriate reports to the FIU.

Part 5: Other issues or topics

Cross-border transportation of Cash: Q5.1 – 5.7
This is not relevant to FSF members.

Privacy and protection of information: Q5.8
The FSF believes that the Act properly balances its purposes with the need to protect people's information and other privacy concerns. FSF members are very aware of their obligations under the Privacy Act 2020 and take these obligations very seriously, so the FSF believes that the requirements of the AML/CFT Act and those of the Privacy Act are sufficient to protect information.

Requiring mandatory deletion of financial intelligence: Q5.9 and 5.10
The FSF believes that it would be appropriate for the Act to specify how long agencies should retain information but will leave it to officials and the agencies concerned to determine what that time period should be.

Legally privileged information: Q5.11 and 5.12
This is not relevant to FSF members.

Harnessing technology to improve regulatory effectiveness: Q5.13
The greatest challenge FSF members report with being able to harness technology to improve efficiencies and effectiveness is in the area of digital verification which is something

which they have been keen to implement for a number of years with varying responses from the supervisory agencies as to how they expect this to be achieved and what they would see as being acceptable with respect to this.

Enabling the adoption of digital identity: Q5.14
FSF can see great benefit to reporting entities and their customers in enabling the adoption of a digital identity framework and ecosystem and looks forward to working with officials to establish this once the digital identity framework is operational.

Harmonisation with Australian regulation: Q5.15
The FSF supports the concept of achieving greater harmonisation with Australia's regulation to the greatest possible extent on the basis that many FSF members have trans-Tasman relationships with parent companies, head offices etc. However, the FSF cautions against harmonisation for the sake of it particularly if that was to require considerable change to New Zealand's current regime which would have severe consequences for all reporting entities if they were required to make significant change to their AML/CFT programmes and procedures to achieve this. Also, given how much further ahead New Zealand is with respect to its AML/CFT regime compared to that of Australia, particularly with the inclusion of the Phase 2 entities into the scope of the regime, the FSF wonders whether it might be more appropriate for Australia to consider harmonising their regime with New Zealand's rather than the other way around.

Ensuring system resilience: Q5.16
The FSF suggests that this review is in itself a means to ensure the system's ongoing resilience and suggests that the review mechanism that is included in the Act currently should be retained.

Part 6: Minor changes: Q6.1 and 6.2

Definitions and terminology:
The FSF supports the proposal to define life insurer in the Act by reference to the Insurance (Prudential Supervision) Act 2010. The FSF is a strong supporter of uniform definitions of terms across all legislation in New Zealand to the greatest possible extent.

The FSF supports the limitation of the exclusion of cheque deposits only to deposits made at a bank, NBDT or similar institution in line with the policy intent although notes that this exclusion will soon no longer be required as cheques are increasingly being phased out

The other definition or terminology changes proposed in the consultation document are not relevant to FSF members.

Information sharing:
The FSF supports the proposal to issue regulations to include the additional Acts within the scope of the Act as set out in the consultation document. The FSF also supports the proposal to add the Financial Markets Conduct Act 2013, Non-bank Deposit Takers Act 2013 and Insurance (Prudential Supervision) Act 2010 to the section of the Act that enables appropriate information sharing. The FSF notes however that the Act may have to retain an ability to remain flexible with respect to which Acts should be added to enable this information sharing. As an example, an exposure draft was recently issued by the Reserve Bank of New Zealand of a new Deposit Takers Act which, when it comes into force, will repeal the Non-bank Deposit Takers Act 2013.

The FSF also supports adding the Passport Act 1992, Births, Deaths, Marriages and Relationship Registration Act 1995 and the Citizenship Act 1977 to the section of the act that allows the ability for the DIA to use information obtained as an AML/CFT supervisor in other capacities and vice versa.

The FSF also supports the proposal that a provision be made in the Act to empower supervisors to conduct enquiries on behalf of overseas counterparts.

SARs and PTRs:
The FSF supports the proposal to provide clarity as to which agencies are responsible for supervising compliance with SAR obligations and it would seem to be logical that the responsible agency(ies) should be the current supervisors.

The FSF also supports the proposal to amend the regulation with respect to PTRs for international wire transfers to require the obtaining of both the location of the account and the address of the sender to capture all relevant country information.

Exemptions:
The FSF supports the proposal to expand the exemption in the AML/CFT (Exemptions) Regulations 2011 to also exempt reporting entities subject to an order issued under the Customs and Excise Act 2018 as well as in respect of any suspicious associates who are identified in the process of complying with the relevant order.

The FSF has a number of insurance premium funding provider members. The way in which these funders operate is that they provide funding specifically for an annual insurance premium. The loan is a single purpose product, and the loan is paid directly to the insurer, or distribution partner who then pays the insurer, to provide insurance cover for the coming year. These are short-term loans for annual policies. If the policy is held for a full year, there is no refund or rebate that would flow back or be returned to a customer. If for some reason a policy is cancelled mid-term, (for example the sale of a house) the unexpired premium is directed to the insurance premium funder to repay the loan.

The FSF's insurance premium funder members also report that the vast majority of loans provided to cover annual insurance premiums are on the smaller end of the spectrum and there is very little, if anything, in the way of cross border transactions. The majority of premium funding comes to the premium funder via insurance broking firms that are licensed by the Financial Markets Authority and who have their own AML/CFT obligations as such.

Given that the funding is not paid directly to the customer, nor any refund, , the FSF submits that the risk that an insurance premium funder could be used to launder money or finance terrorism is extremely low to none, and therefore the FSF supports insurance premium funders being exempted from the AML/CFT regime

The FSF has a number of debt collection agencies within the membership as well as lenders who conduct their own debt collection activity in-house. Regulation 22 of the AML/CFT (Exemptions) Regulation 2011 applies to the former group rather than the latter and on behalf of these members, the FSF supports the proposed clarification that the definition of debt collection services only relates to the collection of unpaid debt rather than the collection of any funds owed by one person to another.

The FSF supports the proposal that the Minister of Justice must also consult with the FIU and New Zealand Police in the list of agencies/roles that the Minister must consult with when considering a Ministerial exemption.

Offences and penalties:
The FSF supports the proposal to replace "Formal Warnings" with "Censure" to indicate the weight of the action. The FSF also supports including the compliance breaches of failing to submit a suspicious activity report; failures in respect of a risk assessment; and failing to submit an annual report to an AML/CFT supervisor as civil liability acts.

Preventive measures:
The FSF supports the proposal to amend the Act to ensure that a business' risk assessment reflects government advice about national and sectoral risks. The FSF also supports the proposal to replace the term 'customer' in the Act with the term 'person' to align with the definition of customer in other parts of the Act.

The FSF supports the proposal to issue a regulation which explicitly requires businesses to verify any new information obtained through ongoing CDD.

The FSF supports the proposal to amend the definition of nominee director in the AML/CFT (Requirements and compliance) Regulations 2011 to exclude instances where the director is required to or is accustomed to follow the directions of a holding company or appointing shareholder.

The FSF supports the proposal to amend the Act by replacing “is unable” with “does not” to ensure the prohibitions if a reporting entity does not conduct CDD in accordance with the Act apply in all appropriate instances where CDD is not conducted.

The FSF supports the proposal to issue a regulation which states that simplified CDD is not appropriate where money laundering or terrorism financing risks are high or if there is suspicion of ML/TF.

The FSF supports the proposal to issue a regulation which requires businesses to keep records of PTRs for five years.

The FSF supports the proposal to amend the Act to clarify that records must be made available immediately (e.g., upon request from a supervisor).

The FSF supports the proposal to issue a regulation which requires businesses to retain account files, business correspondence and written findings for five years.

The FSF supports the proposal to issue a regulation which requires businesses to retain copies of records in New Zealand to ensure they can be easily accessible when required.

The FSF supports the proposal to require ordering institutions to keep records on beneficiary account numbers or unique transaction numbers.

The FSF supports the proposal to amend the Act to allow members of a DBG to share a compliance officer.

The FSF has no further comments to make with respect to the review of the AML/CFT Act and the consultation document. Once again, the FSF is grateful to the Ministry for the opportunity to respond to this consultation on behalf of members. Please do not hesitate to contact me if you wish to discuss anything further.

[redacted]

[redacted]
EXECUTIVE DIRECTOR

Appendix A

FINANCIAL SERVICES FEDERATION

FSF Membership List as at 1 December 2021

Non-Bank Deposit Takers, Insurance Premium Funders,	Vehicle Lenders	Finance Companies/ Diversified Lenders	Finance Companies/ Diversified Lenders, Leasing Providers	Credit Reporting, Debt Collection Agencies, Insurance Providers	Affiliate Members
XCEDA (B)	AA Finance Limited	Avanti Finance ➢ Branded Financial	Pepper NZ Limited	Baycorp (NZ) ➢ Credit Corp	Buddle Findlay
Finance Direct Limited ➢ Lending Crowd	Auto Finance Direct Limited	Basalt Group	Personal Loan Corporation	Centrix	Chapman Tripp
Gold Band Finance ➢ Loan Co	BMW Financial Services ➢ Mini ➢ Alphera Financial Services	Basecorp Finance Ltd	Pioneer Finance	Collection House	Credisense Ltd
Mutual Credit Finance	Community Financial Services	Blackbird Finance	Prospa NZ Ltd	Debtworks (NZ) Limited	Credit Sense Pty ltd
Credit Unions/Building Societies	European Financial Services	Caterpillar Financial Services NZ Ltd	Smith's City Finance Ltd	Equifax (prev Veda)	Experian
First Credit Union	Go Car Finance Ltd	Centracorp Finance 2000	Speirs Finance Group ➢ Speirs Finance ➢ Speirs Corporate & Leasing ➢ Yoogo Fleet	Illion (prev Dun & Bradstreet (NZ) Limited	EY
Nelson Building Society	Honda Financial Services	Finance Now ➢ The Warehouse Financial Services ➢ Southsure Assurance	Thorn Group Financial Services Ltd	Intercoll	FinTech NZ
Police and Families Credit Union	Kubota New Zealand Ltd	Humm Group	Turners Automotive Group ➢ Autosure ➢ East Coast Credit ➢ Oxford Finance	Quadrant Group (NZ) Limited	Finzsoft
Steelsands Credit Union Inc	Mercedes-Benz Financial	Future Finance	UDC Finance Limited	**Credit-related Insurance Providers**	Green Mount Advisory
Westforce Credit Union	Motor Trade Finance	Geneva Finance	**Leasing Providers**	Protecta Insurance	Happy Prime Consultancy Limited
Insurance Premium Funders	Nissan Financial Services NZ Ltd ➢ Mitsubishi Motors Financial Services ➢ Skyline Car Finance	Harmoney	Custom Fleet	Provident Insurance Corporation Ltd	HPD Software Ltd
Elantis Premium Funding NZ Ltd	Onyx Finance Limited	Instant Finance ➢ Fair City ➢ My Finance	Fleet Partners NZ Ltd		KPMG
Financial Synergy Limited	Toyota Finance NZ	John Deere Financial	ORIX New Zealand		LexisNexis
Hunter Premium Funding	Yamaha Motor Finance	Latitude Financial	SG Fleet		PWC
IQumulate Premium Funding		Lifestyle Loans NZ Ltd			Simpson Western
Rothbury Instalment Services		Metro Finance			Verifier Australia
		NZ Finance Ltd			Total 84 members

Appendix B

FINANCIAL SERVICES FEDERATION

The Financial Services Federation (FSF) is the non-profit industry association for responsible and ethical finance, leasing and credit-related insurance providers operating in Aotearoa New Zealand.

47%

Of personal consumer lending in Aotearoa is financed by the non-bank sector represented by FSF members

55% Of loans by FSF members are approved, demonstrating careful consideration of responsible lending

2016 → 5.8%

Loan book in arrears

2021 → 4.4%

8.2B Member's total assets consumer lending

1.7M # of consumer loans of FSF members

7.2B Member's total assets business lending

219k Business loans helping Kiwi businesses to achieve their goals

4,114 Jobs provided by FSF lending members

Data collected and aggregated by KPMG in FSF's annual member data survey as at February 2021. Values in NZ$.