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IMPROVING NEW ZEALAND'S ABILITY TO TACKLE MONEY LAUNDERING AND TERRORIST FINANCING

SUBMISSION OF MERCER (N.Z.) LIMITED

15 September 2016

MARSH & McLENNAN COMPANIES

Submission of Mercer (N.Z.) Limited

Overview of Mercer

Mercer (N.Z.) Limited (Mercer) has operated in New Zealand since 1957, providing investment and funds management services, primarily in respect of KiwiSaver and workplace savings schemes. In addition to nearly 100,000 Mercer KiwiSaver members, we provide superannuation administration and related services to approximately 100 corporate client schemes.

Mercer's ultimate owner is Marsh & McLennan Companies (NYSE: MMC), a global professional services firm offering clients advice and solutions in the areas of risk, strategy, and people. With annual revenue exceeding $13 billion, MMC's 57,000 colleagues worldwide provide analysis, advice, and transactional capabilities to clients in more than 130 countries through: **Marsh**, a leader in insurance broking and risk management; **Guy Carpenter**, a leader in risk and reinsurance intermediary services; **Mercer**, a leader in talent, health, retirement, and investment consulting; and **Oliver Wyman**, a leader in management consulting.

For more information, visit www.mercer.com

Responses to questions

Mercer is providing responses only to those questions which are relevant to our business operations.

Part 4: Supervision

Q1: Do you think any of our existing sector supervisors (the Reserve Bank, Financial Markets Authority and the Department of Internal Affairs) are appropriate agencies for the supervision of Phase Two business? If not, what other agencies do you think should be considered?

We anticipate that there may be little appetite for the creation of a new agency with sole responsibility for AML/CFT supervision.

In any case, there is already a sizeable reservoir of AML/CFT knowledge and experience in the current supervisors which could be leveraged to provide cover for the Phase Two entities.

Accordingly, we support the continuation and extension of the current multi-agency supervision model.

In our view, Financial Markets Authority would be the appropriate agency for supervision of those Phase Two entities comprising the following:

- legal profession;
- accountants; and
- real estate and conveyancing

FMA already has substantial AML/CFT expertise and monitoring experience in the financial services sector (excluding banks, life insurers and non-bank deposit-takers). The services provided by Lawyers and Accountants which will be subject to AML/CFT

requirements include those already supervised by FMA in the financial services sector e.g. managing clients' funds, accounts, securities and other assets.

This commonality provides a useful basis for extending FMA's mandate across the legal profession and accountants.

With respect to the real estate and conveyancing group, there is frequently a link between this group and the legal profession, including shared customers, which makes it a more appropriate fit with FMA rather than either of the other two supervisors – Reserve Bank and Internal Affairs.

Having regard to the remaining Phase Two sectors:

- some high value goods dealers; and
- some additional parts of the gambling sector

we suggest they could be supervised by Internal Affairs, which already regulates casinos and a diverse range of other entities.

Q2: Are there other advantages or disadvantages to the options in addition to those outlined (in the consultation paper)?

Notwithstanding our support for the existing multi-agency supervision model, we would recommend that the responsibility for trust and company service providers, currently held by Internal Affairs, be transferred to FMA as the activities of trust and company service providers are better aligned with the Legal and Accounting sectors.

We are also of the view that it may not be an effective or appropriate use of the resources of Legal and Accounting professional bodies to supervise their own relevant sectors as such an arrangement has the potential to dilute and/or fragment the application of robust and consistent standards of AML/CFT compliance across the totality of the supervised sectors.

Part 6: Enhancing the AML/CFT Act

Proposal – expanded reporting to the Police Intelligence unit

Q1: Should the current requirement to report suspicious transactions be expanded to reporting suspicious activities? Please tell us why or why not.

In our view, the current requirement to report suspicious transactions is the appropriate standard from a practical perspective; a privacy standpoint; and having regard to compliance costs.

Identifying a 'suspicious matter' is highly subjective and relies on the reporter's own interpretation of behavioural cues. This is likely to lead to considerable inconsistency in reporting across the current and expanded sectors as well as impacting FIU's resources and effectiveness by creating the potential for large numbers of unsubstantiated reports.

From a privacy standpoint and having regard to the proposal further into the consultation paper to share AML/CFT related information with a much larger group, it seems inappropriate to report subjective interpretations of a customer's behaviour, unless or until it crystallises into a suspicious transaction.

Lastly, the compliance activity and costs associated with identifying and obtaining internal confirmation that the 'matter' meets a reportable threshold is disproportionate to its likely benefit.

In any case, the net for capturing suspicious transactions will already have been widened significantly with the increased reporting expected to occur as a consequence of introducing the Phase Two entities.

Proposal – information sharing

Q1: Should industry regulators be able to share AML/CFT - related information with government agencies?

Providers of KiwiSaver schemes and Workplace Savings schemes operate in a highly regulated environment and collect, handle and use very large quantities of sensitive and personal information in their administration of investors' retirement savings.

As at June 2016, there were 2,642,068 KiwiSaver scheme members and many New Zealanders invest in Workplace Savings schemes, together representing a significant proportion of the population.

KiwiSaver scheme providers and Workplace Savings Scheme providers must comply with the Privacy Act 1993 and the privacy protections contained in the AML/CFT Act.

Whilst expanding the sharing arrangements between industry regulators, supervisors and government agencies is, on the face of it, a sensible move, we have two concerns:

- the sheer number of investors is so great that it may be almost impossible to preserve their legitimate privacy concerns if the information is to be shared across numerous other agencies; and
- the breadth of investor-related information may result in some agencies utilising it for purposes unrelated to the objectives of the AML/CFT Act e.g. to assess individuals for social policy entitlements.

Whilst social policy objectives have undoubted merit, we are of the view that the AML/CFT Act is not the correct mechanism for this purpose.

Further, in the event the proposed requirement to report suspicious 'matters' in addition to suspicious transactions is enacted, then a very large amount of sensitive and/or personal information in respect of most of the adult population of New Zealand could be accessed by agencies, where such information was not necessarily supported by anything more than a subjective assessment of an encounter with an individual investor.

On the bases above, we do not support expanding the ability to share information any further than currently occurs.

Q2: Should AML/CFT supervisors be able to share customers' AML/CFT-related information with government agencies?

The same comments as above apply.

Q3: What are the appropriate circumstances under which the FIU can share financial intelligence with government agencies (such as the sector supervisors, industry regulators,

intelligence agencies, IRD and Customs) and reporting entities? What protections should apply?

The FIU should be able to share financial intelligence only after suspicious transaction reports have been lodged and then only to those agencies which are concerned with achieving a successful prosecution of the particular ML/TF offence.

Otherwise, the FIU's financial intelligence should only be shared with any or all of the parties above where it has been 'cleansed' to remove identifying personal information and is presented as a case study or is contained in typology reports relevant to the particular audience to whom it is being provided.

*Q4: What restrictions should be placed on information sharing**?***

See comments above.

Proposal – reliance on third parties

Q1: Are the existing provisions that allow reporting entities to rely on third parties to meet their AML/CFT obligations sufficient and appropriate?

The existing provisions are adequate but the managing intermediaries' exemption still causes confusion and we would recommend reviewing it.

Proposal – simplified customer due diligence

Q1: Should the simplified customer due diligence provisions be extended to the types of low risk institutions we've proposed above? If not, why?

We support the proposal to extend simplified CDD to:

- SOEs as defined in Schedule 1 of the State Owned Enterprises Act 1986; and
- majority-owned subsidiaries of publicly traded entities in New Zealand and in low risk overseas jurisdictions.

Q2: Should we consider extending the provisions to any other institutions?

We suggest that Workplace Savings Schemes, registered under the Financial Markets Conduct Act, be included as entities where simplified CDD is permitted.

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