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Ministry of Justice

By email: aml@justice.govt.nz

Improving New Zealand's ability to tackle money laundering and terrorist financing – Ministry of Justice consultation paper on Phase Two of the Anti-Money Laundering /Counter Financing of Terrorism Act

We refer to the consultation paper titled “Improving New Zealand’s ability to tackle money laundering and terrorist financing – Ministry of Justice consultation paper on Phase Two of the AML/CFT Act” (“**Consultation Paper**”) published by the Ministry of Justice (“**MoJ**”). NZX would like to thank the Ministry of Justice for the opportunity to make a submission.

NZX Limited (“**NZX**”) supports the New Zealand Governments aim of combating money laundering and terrorist financing through the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (the **Act** or **AML/CFT**). NZX also agrees with MoJ that a risk-based approach is appropriate in relation to AML/CFT (i.e. efforts made to counter money laundering and terrorism threats should be proportionate to the risks), and that the businesses subject to the Act are well placed to assess the level of risk they face and determine how to manage those risks.

In light of the fact that the main changes to AML/CFT affect legal professionals, accountants, real-estate agents and conveyancers, some high-value goods dealers and parts of the gambling sector, NZX reserves comments on these aspects of Phase Two AML/CFT. We consider these changes are best addressed by the affected businesses. We offer comment on the manner in which existing obligations are impacting capital markets participants to seek improvements which will ensure the aims of the current regime are being met.

Form of submission

NZX supports the proposed changes in the Consultation Paper where they will bring New Zealand into line with international best practice and help maintain public and international business confidence in New Zealand’s overall financial system.

NZX has a number of wholly owned subsidiaries who are reporting entities currently (New Zealand Clearing and Depository Corporation, Energy Clearing House Limited, Smart Shares Limited and Superlife Limited and soon also NZX Wealth Technologies) that will be affected by ‘Part 6: Enhancing the AML/CFT’. Our comments therefore focus on this area of the Consultation Paper. We also comment more generally on these aspects of the review based on our observations of how the current AML/CFT regime impacts capital markets participants.

Part 6: Enhancing the AML/CFT

(1) Proposal: Expand reporting to the Police Financial Intelligence Unit

NZX supports this proposal so far as it does not create extensive positive obligations for reporting entities. We understand that at the moment the Police Financial Intelligence Unit are required to use a technicality in the reporting framework to process instances where there has been suspicious behavior but not an actual transaction. This puts Police Financial Intelligence Units and reporting entities in a difficult position. NZX agrees that providing a mechanism whereby reporting entities can report suspicious activity should they find suspicious behavior, but no transaction has occurred, is sensible and appropriate.

However, as a matter of practice, it would be difficult for reporting entities to fulfil extensive positive obligations by detecting every suspicious activity because suspicious activity can be subjective by nature (we note the problematic use of 'suspicious' in the current regime because what one person finds suspicious may not be suspicious for a person at the fringes of a transaction). We question how far this takes the obligation. It also broadens the scope to general criminal activities, rather than money laundering activities. We also note there is a risk the Police Financial Intelligence Unit may be overwhelmed with reporting of activities if the threshold is set too low.

Therefore, we consider reporting entities should only be required to report suspicious activities to the Police Financial Intelligence Unit in certain defined circumstances such as when they become aware or should reasonably be aware. We suggest more detail is required on what this would look like in practice.

(2) Proposal: Reliance on third parties

NZX strongly suggests that the existing requirements should be simplified to allow reporting entities to rely on third parties to meet their AML/CFT obligations if due diligence has recently been carried out by a reporting entity on a customer involved in the same (or a similar) transaction.

Whilst the Act allows reporting entities to rely on other reporting entities, section 33(3) of the Act makes this unhelpful because the reporting entity acting in reliance still holds liability for any breaches. If the reporting entity acting in reliance is still held to account for the AML checks conducted by a previous reporting entity it has the effect of reducing the benefit (and likelihood of utilizing) the exemption. While these exemptions are well intended, it is important that they achieve the correct balance by ensuring a risk based approach which is a stated aim of the regime.

NZX is also concerned that the current AML requirements may be anti-competitive because if a customer is involved in a transaction which involves a number of different reporting entities, but the reporting entities must repeat customer due diligence, this can put customers off the transaction and it can also lead to an unnecessary compliance burden.

Assuming that one of the reporting entities in the chain had conducted adequate customer due diligence, this should adequately manage the risk of money laundering and terrorism financing in respect of the transaction.

Similarly, if a customer has recently been subject to due diligence as a result of a transaction or in relation to the provision of financial services, subject to appropriate controls, it would seem unnecessary for a new reporting entity to have to carry out the same due diligence checks if this customer chooses to switch providers or to enter into an identical or similar arrangement with an alternative provider. This reduces healthy competition between different providers because consumers are less likely to switch providers if they perceive AML/CFT requirements to be too much of an administrative burden. If this consumer has already been receiving the same or similar financial services from another provider it would

seem that there is little additional risk simply because of a different provider. This is particularly the case given there are other controls within the regime in relation to reporting of suspicious transactions and the current proposals in relation to suspicious activity.

The key question for the regime should be whether it is appropriate for a reporting entity to rely on due diligence already performed (e.g. if it relates to provision of services by a reporting entity as part of a transaction which another reporting entity has already conducted AML/CFT checks).

We proposed that a central register should be established for AML/CFT to record recent AML/CFT checks. Another reporting entity service provider could rely on the register to see when the last checks were carried out and by who. This would simplify the process and ensure that checks were being carried out in an efficient manner and result in less doubling up.

The existing AML/CFT requirements may deter diversification of investment and switching funds or providers, and will require compliance obligations which are out of proportion to the risk of money laundering and terrorism financing posed by customers. This has the effect of reducing competition and potentially market development.

(3) Proposal: Simplified customer due diligence

NZX supports simplified customer due diligence. We agree that where the risks of money laundering or terrorist financing are lower, financial institutions should be allowed to conduct simplified client due diligence (**CDD**) measures. As stated above, we consider that the nature of lower risks should be taken into account and measures for surveillance should be proportionate.

As a result, we support SOE's as defined by Schedule 1 of the State Owned Enterprises Act 1986 being included in the simplified CDD provisions, given that the beneficial owner is the government.

NZX also strongly supports the simplified CDD requirements being extended to the majority owned subsidiaries of companies listed on the NZX. We agree that given these subsidiaries face similar ownership and will have governance and disclosure requirements as a result of their parent companies it is appropriate to extend simplified CDD to them. These entities should be able to benefit from the fact that the corporate group is subject to a rigorous regulatory framework and the appropriate systems and controls in place for majority owned subsidiaries.

Supervision

NZX prefers a minimal approach to supervision and would prefer a single supervisor, subject to that supervisor having business expertise (in light of the new entities covered under Phase Two). Naturally any changes in supervision should be resourced appropriately.

NZX considers this will lead to more consistent administration of the regime and will reduce the potential for overlap between regulators. It will be easier to introduce this change to the existing model now rather than later. We also note our suggestion of a central register would fit well with having a single supervisor.

Implementation Time

Again, NZX does not consider itself an expert to comment on the implementation time regarding new businesses to be included in Phase Two. However, regarding the enhancements to existing AML/CFT requirements we consider that any changes should come into effect promptly to ensure that any benefits from improvements to the current AML/CFT regime are introduced as soon as practicable.

Other Matters

NZX would also like to take this opportunity to note it has submitted an exemption regarding granting our clearing and depository an exemption under the Act. This application was made approximately a year ago. We suggest that it would be appropriate to consider granting of that exemption at the same time as considering the current amendments to legislation or for relief to be provided under legislation at the same time.

NZX again thank MoJ for the opportunity to submit comments on the Consultation Paper and is happy to discuss any of these comments further.

Yours sincerely

A handwritten signature in grey ink, appearing to read 'H Macdonald', with a small flourish at the end.

Hamish Macdonald
NZX Head of Policy and Legal