



FINANCIAL SERVICES FEDERATION

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To whom it may concern:

Thank you for the opportunity to provide comment on the Consultation Document: Implementation of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 Regulations dated July 2012.

By way of background, the Financial Service Federation (“FSF”) is New Zealand’s largest member based industry organisation for financial institutions. The FSF has thirty seven members and associates providing financing, investment, banking and insurance services to over 750,000 New Zealanders and our four affiliate members are internationally recognised legal and consulting partners. A list of our members is attached at Appendix A.

FSF is largely supportive of the clarifications and amendments contained in the Consultation Document and would make the following submissions with respect to it:

1. Proposed amendment to Regulation 13 of the Anti-Money Laundering and Countering Financing of Terrorism (Exemptions) Regulations 2011: Under the regulation contained in paras 32-37 of the Consultation Document, retailers and dealers are exempted from the AML/CFT Act in respect of point of sale “consumer credit” in which they are involved. This is important to FSF members that are involved in point of sale finance, as it means the dealers or retailers through whom they source their business are not obliged to comply with the AML/CFT Act.

FSF members that are involved in point of sale finance will welcome the proposal in the Consultation Document to delete references to “consumer” from this regulation, as doing so will exempt retailers and dealers from the AML/CFT Act in respect of *all* point of sale credit in which they are involved, not just “consumer credit”. In so doing, this removes a grey area around the compliance obligations of the dealers or retailers through whom FSF members source their business. On this basis, FSF is supportive of this proposal.

2. Proposal to permit simplified CDD on Non-Bank Deposit Takers: This proposal contained in paras 43-47 of the Consultation Document is a helpful one for those FSF members who are Non-Bank Deposit Takers (NBDT’s) that are supervised by the Reserve Bank of New Zealand. Given the level of supervision of these entities, the requirement to only conduct “simplified

CDD” is helpful particularly to persons or entities such as institutional funders of NBDT’s as an example.

FSF is supportive of the provision in paragraph 44.2 of the Consultation Document for reporting entities that are licensed or regulated in accordance with the Insurance (Prudential Supervision) Act 2010, the Reserve Bank of New Zealand Act 1989 or the Non-Bank Deposit Takers Bill to the list of customers subject to simplified CDD.

FSF would however propose that, in addition to the above, state (Government owned and funded) schools should be added to the list of customers subject to simplified CDD.

3. Proposed clarification of meaning of “beneficial owner”: The proposal addressed at para 30.1 of the Consultation Document to align the New Zealand position with regard to the definition of a “beneficial owner” with that of Australia so that a beneficial owner in respect of whom CD is required is one that has a greater than 25% shareholding in an incorporated entity is also one of which FSF is supportive.

This last point leads to a question that has arisen from discussion of AML requirements with FSF members and that is that there is some uncertainty around what is required when undertaking CDD on partnerships.

Related to the above comments about “beneficial owner”, there is significant uncertainty about –

1. Whether a partnership is a “customer” in respect of which identification and verification of identity of “beneficial owners” is required; and
2. Even if not, what is required by way of CDD when a customer is a partnership.

With regard to the first of those points, the legislation does not make clear the range of entities in respect of which a reporting entity is required to identify “beneficial owners”. Past consultation documents have indicated that identification of “beneficial owners” is required where the customer is a “legal person” such as a company (refer to para 237 of the August 2010 Consultation Document for example). However, technically a partnership is not a “legal person”. Despite that, the differences between a company and a partnership are typically matters of form only. The FSF suggests that it would be useful if regulations clarified the range of entities in respect of which identification of “beneficial owners” is required, by declaring particular entities to be or not to be “customers” for this purpose.

With regard to the second of the above points, independently of the “beneficial owner” issue just addressed there is uncertainty as to what is required by way of CDD on a partnership. Since a partnership is not a “legal person”, one might conclude that identity is required to be verified in respect of all partners, but many partnerships (professional partnerships in particular) comprise large numbers of partners and CDD on each of them is clearly not feasible. The FSF notes that in Australia the Anti-Money Laundering and Counter-Terrorism Financial Rules made by AUSTRAC address this uncertainty by giving very clear guidance about how CDD may be conducted on entities such as a partnership, and the FSF suggests that similar clear guidance should be given in New Zealand on this aspect by way of regulations.

A further suggestion might be that CDD in the case of a partnership is limited to only those partners transacting (usually 2) with the onus on the provider to take instructions from only those partners on whom CDD has been conducted. This will reduce the impact on entities to collect and verify information of all partners.

Similar guidelines and limitations on trustees and beneficiaries of a trust will also be very helpful in making entities’ obligations clearer and reducing compliance costs.

Proposal for CDD to be conducted when there is a suspicion of ML/TF

The FSF does have some issues with the proposal contained in para 58 of the Consultation Document. The requirement on reporting entities to conduct CDD where there is a suspicion of ML/TF, regardless of exemptions or threshold is likely to alert the customer involved in most cases. FSF believes that the requirement could be waived for low value and low risk entities.

Verification of Information under the Code of Practice

The Code of Practice provides for two ways of conducting identity verification – documentary and electronic. Allowing for electronic verification will significantly reduce the impact on FSF members to collect certified copies of identity information from customers and therefore FSF is highly supportive of credit reporting agencies being allowed to verify information for AML purposes. It would in fact mean that entities would need to go through only one step to achieve both a credit report on a customer as well as identity verification, providing a streamlined process and a saving in time to both the customer and themselves.

Secondary form of ID

FSF also recommends allowing Diners and Amex (American Express) cards (in addition to credit cards issued by a “registered bank”) to be used as secondary ID under the Code of Practice. The definition of registered bank under the AML/CFT Act has the same meaning as in section 2(1) of the RBNZ Act 1989. The definition only includes registered banks in New Zealand. It is our members experience that the use of Diners and Amex cards in New Zealand is very common and it would be helpful to our members to include them as acceptable forms of secondary ID. In addition it would be sensible to extend the definition of registered banks to those also registered in Australia due to the related party interests between the banks in both countries and the fact that many people living in New Zealand also hold credit cards issued by registered Australian banks.

Thank you again for the opportunity to provide feedback on the Consultation Document. FSF always welcomes such opportunities and is happy to provide any further input or comment you may require. Please do not hesitate to contact me if you require anything further from FSF.

Yours sincerely



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EXECUTIVE DIRECTOR

A National Federation of Financial Institutions

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APPENDIX A

Membership List as at 1st August 2012

Full Members

Chattel Lender	Credit Reporting	Finance Company	Debt Collection Agency	Vehicle Lender	Non-Bank Deposit Taking (NBDT)	Insurance
<ul style="list-style-type: none"> • Equico Limited • GE Money • John Deere Credit • RentPlus • Thorn Rentals NZ Ltd 	<ul style="list-style-type: none"> • VEDA Advantage 	<ul style="list-style-type: none"> • Asset Finance Ltd • Avanti Finance Ltd • Centracorp Finance 2000 Ltd • Dorchester • Finance Now Ltd • Instant Finance Ltd • Mutual Credit Finance Ltd • ORIX NZ Ltd • Oxford Finance Corporation Ltd 	<ul style="list-style-type: none"> • Baycorp (NZ) Ltd • EC Credit Control • Receivables Management (NZ) Ltd 	<ul style="list-style-type: none"> • BMW Finance Ltd • European Financial Services Ltd • Future Finance Ltd • Mercedes-Benz Financial Services NZ Ltd • Motor Trade Finances • Toyota Finance Ltd • Yamaha Motor Finance NZ Ltd 	<ul style="list-style-type: none"> • Fisher & Paykel Holdings Ltd • Heartland • Medical Assurance Society Ltd • NZ Association of Credit Unions • Prometheus Finance Ltd 	<ul style="list-style-type: none"> • Protecta Insurance NZ Ltd • QBE Lenders Mortgage Insurance Ltd

Associate Members

- Southsure Assurance Ltd

Affiliate Members

- Buddle Findlay
- Deloitte
- Ernst & Young
- Price Waterhouse Coopers
- Russell McVeagh