



FINANCIAL SERVICES FEDERATION

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CONSULTATION ON PROPOSED MINISTERIAL EXEMPTION FOR MANAGING INTERMEDIARIES

We are writing to comment on the above consultation document dated 1 August, which proposes a Ministerial Exemption under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (“AML/CFT Act”) for the benefit of reporting entities whose customers include financial intermediaries.

By way of background, the Financial Services Federation (“FSF”) is New Zealand’s largest member based industry organisation for financial institutions. The FSF’s 46 members provide financing, investment, and insurance services to over 750,000 New Zealanders, and its affiliate members are internationally recognised legal and consulting firms. A list of its members is attached at Appendix A.

Many FSF members are lenders, some of whom source loan business from “intermediaries” such as finance brokers. However in such cases the intermediaries are typically not themselves the member’s customer, and as a result most FSF members have few customers that are also “financial institutions” for the purposes of the AML/CFT Act. That is particularly so for FSF members that are not retail funded, and whose customers consequently mostly comprise borrowers. The proposed exemption will generally not affect such members as a result.

Those FSF members that are retail funded comprise non-bank deposit takers who are subject to the Non-bank Deposit Takers Act (“NBDTs”), and the proposed exemption may affect them to a greater degree, as in some cases they may on occasion provide investment facilities to financial intermediaries who are acting on behalf of their clients. For example, a facility provided to an authorised financial adviser that provides discretionary investment management services to its clients.

However, the first part of the proposed exemption is unlikely materially to affect those retail funded FSF members, as that part of the proposed exemption relates to customers who are “licensed financial institutions”, meaning futures dealers, securities trustees or supervisors, holders on market licences under the FMC Act or other NBDTs, and retail funded FSF members will seldom have customers in those categories.

Despite that, the FSF supports the first part of the exemption, as FSF members who are NBDTs may themselves be customers of other financial institutions, and this part of the exemption will accordingly make it easier for such financial institutions to conduct customer due diligence (“CDD”) on the FSF’s NBDT members.

The FSF believes that is appropriate, as in order to become a licenced NBDT a member will have had to satisfy regulators of its identity and that of its beneficial owners, to an extent that warrants only simplified CDD being required in respect of them, as is already the case for banks.

The second part of the proposed exemption will exempt retail funded FSF members from the requirement to conduct CDD on any “beneficial owners” of customers that comprise most other types of “financial institutions” for the purposes of the AML/CFT Act, so long as the beneficial owners do not own more than 25% of the financial institution.

This part of the proposed exemption will in practice mean that where an NBDT FSF member’s customer is an authorised financial adviser opening a facility that is effectively for the benefit of its clients, then the FSF member will not need to do CDD on all of the authorised financial adviser’s clients as if they were “beneficial owners”.

The FSF again supports the policy behind that part of the proposed exemption, although it does note that in some cases FSF members in this category will already be exempt from conducting CDD on the adviser’s clients, due to the exemption for client accounts and trust accounts in regulation 24 of the Anti-Money Laundering and Countering Financing of Terrorism (Exemptions) Regulations.

Accordingly, the FSF supports the proposed exemption in full.

While the FSF has no other comments on the policy or drafting of the proposed exemption, it does note that much of the reason for the proposed exemption flows from the AML/CFT supervisors’ interpretation of “beneficial owner” in the AML/CFT Act as including persons on whose behalf an intermediary is acting, even if they do not control or own more than 25% of the intermediary. The FSF is aware of the concern that interpretation has caused throughout the financial sector, and would also support steps being taken to clarify or improve the definition of “beneficial owner” in future.

Please do not hesitate to contact me if you require any clarification or further input of the above.



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APPENDIX A

Membership List as at 1 August 2014

Debenture Issuers - (NBDT) Non-Bank Deposit Takers	Vehicle Lenders	Finance Company Diversified Lenders	Credit Reporting	Insurance	Affiliate Members
<p><u>Rated</u></p> <ul style="list-style-type: none"> • Asset Finance (B) • Avanti Finance (BB) • Fisher & Paykel Finance (BB+) • Medical Securities (A-) <p><u>Non-Rated</u></p> <ul style="list-style-type: none"> • Mutual Credit Finance • Prometheus Finance 	<ul style="list-style-type: none"> • BMW Financial Services • Branded Financial Services • Community Financial Services Limited • European Financial Services • Fleet Partners NZ Ltd • Mercedes-Benz Financial Services • Motor Trade Finances • Nissan Financial Services NZ Pty Ltd • ORIX NZ • SG Fleet • Toyota Finance NZ • Yamaha Motor Finance 	<ul style="list-style-type: none"> • Advaro Ltd • Centracorp Finance 2000 • Dorchester Finance • Finance Now • Future Finance • GE Capital • Home Direct • Instant Finance • John Deere Financial • Oxford Finance Ltd • DTR Thorn Rentals • South Pacific Loans • TW Financial Services 	<ul style="list-style-type: none"> • VEDA Advantage <p><u>Debt Collection Agency</u></p> <ul style="list-style-type: none"> • Baycorp (NZ) 	<ul style="list-style-type: none"> • Autosure • Protecta Insurance • Provident Insurance Corporation Ltd <p><u>Associate Members</u></p> <ul style="list-style-type: none"> • Southsure Assurance 	<ul style="list-style-type: none"> • American Express International (NZ) Ltd • Buddle Findlay • Chapman Tripp • Deloitte • Ernst & Young • Finzsoft • KPMG • PriceWaterhouseCoopers • SimpsonWestern