

Submission

to the

Reserve Bank of New Zealand

on the

Financial Market Infrastructures Bill exposure draft

26 September 2019

About NZBA

1. NZBA works on behalf of the New Zealand banking industry in conjunction with its member banks. NZBA develops and promotes policy outcomes that contribute to a strong and stable banking system that benefits New Zealanders and the New Zealand economy.
2. The following seventeen registered banks in New Zealand are members of NZBA:
 - ANZ Bank New Zealand Limited
 - ASB Bank Limited
 - Bank of China (NZ) Limited
 - Bank of New Zealand
 - China Construction Bank
 - Citibank, N.A.
 - The Co-operative Bank Limited
 - Heartland Bank Limited
 - The Hongkong and Shanghai Banking Corporation Limited
 - Industrial and Commercial Bank of China (New Zealand) Limited
 - JPMorgan Chase Bank, N.A.
 - Kiwibank Limited
 - MUFG Bank, Ltd
 - Rabobank New Zealand Limited
 - SBS Bank
 - TSB Bank Limited
 - Westpac New Zealand Limited

Background

3. NZBA welcomes the opportunity to provide feedback to the Reserve Bank of New Zealand (**RBNZ**) on the Financial Market Infrastructures Bill exposure draft (**Bill**) and commends the work that has gone into developing the Bill.
4. If you would like to discuss any aspect of the submission further, please contact:

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NZBA supports Payments NZ submission on the Bill

5. NZBA supports Payments NZ's submission on the Bill, and also has some high-level comments as follows.

Definitions

6. The definitions of "FMI" and "operator" require clarification. The definition of "FMI" refers to a "multilateral system". Both the Payments NZ SBI and HVCS are bilateral clearing and settlement systems (although the rules are covered by a multilateral contract). It is therefore unclear the extent to which these systems would be captured by the definition of FMI from the current drafting of the Bill. NZBA understands that RBNZ considers SBI and HVCS to be multilateral systems on the basis that the two systems are subject to the rules of Payments NZ (a multilateral contract). It would be useful for the Bill to be amended to clarify this aspect of the definition.
7. If either SBI or HVCS are to be designated as systemically important FMIs, consideration will also need to be given as to who is to be regarded as the "operator" of these systems for the purposes of the Bill. The first limb of the proposed definition appears to assume that an FMI would have a central operator that performs processing functions on a multilateral basis. There is no onshore person who performs these functions for either SBI or HVCS as the key operator is SWIFT. Settlement services are provided by RBNZ itself through the ESAS Real Time Gross Settlement System (which is already designated). Payments NZ would meet the criteria of an operator under the second limb of the definition but has no operational authority over any payment systems. We do not believe that any banks or other financial institutions would be considered as operators of an FMI.

Crisis management

8. It is unclear in this context how the RBNZ would exercise any crisis management powers in relation to SBI and HVCS. Where an entity is regarded as an "operator" due to it maintaining or administering an FMI's rules (eg Payments NZ), directions in a crisis situation are likely to be of limited value in the absence of any practical ability to influence or resolve the technical processes involved in settlement of these systems. Due to Payments NZ's limited powers, it is unclear whether or to what extent participants and other parties who manage the infrastructure or file exchange process for payments based FMIs (for example, SBI and HVCS) would be required to have business continuity arrangements in place or be subject to other crisis management type oversight. It is unclear why crisis management powers should be extended to a registered bank, as registered banks are already subject to extensive prudential supervision powers, including crisis management powers.

Procedural

9. The timeframe for rule changes is unlikely to be sufficient in practice, and should be revised. Industry experience strongly suggests that the 40 day timeframe proposed for mandated rule changes (clause 40) is unlikely to be sufficient to allow complex matters to be adequately addressed and robust effective operational processes developed. Where rule changes are progressed without proper assessment of the issues (including operational business impacts), the primary impact is likely to be disruptions and additional cost for both participants and the wider market. Similarly, clause 42(2) requires an FMI to make mandated rule changes within 20 days,

regardless of the potential scope or complexity of the changes that may be required. A timeframe for rule approval should be included to ensure certainty and for planning purposes. It may be more appropriate not to enshrine timeframes in the Bill to provide parties flexibility to mutually agree more workable timeframes relevant to the type and complexity of each change. We would also propose that rule changes for technical or non-material matters should be allowed without approval but with notice to RBNZ.

10. As drafted, the Bill applies almost all the same requirements to designated FMIs as it does to systemically important FMIs (apart from crisis management powers). As simple designation is a voluntary regime, it does not seem to make sense that FMIs should be subject to the same stringent requirements as systemically important FMIs, when the main benefit of designation is simply to obtain settlement finality.
11. Where the regulator determines to designate an FMI on its own initiative (ie because it deems it to be systemically important) any submissions made by the operator in relation to such designation should also be provided to the relevant minister along with the recommendation by the regulator. Additionally, participants in the relevant FMI (as well as the operator) should also be entitled to make submissions as to whether an FMI should be subject to designation.

Phase 2 of the RBNZ Act review

12. From a timing perspective, it would seem to make sense for the introduction of the Bill to align with completion of Phase 2 of the RBNZ Act review. A number of policy decisions that will be made as part of that review will have a direct impact on the Bill.