



## FINANCIAL SERVICES FEDERATION

14 April 2023

AML/CFT Act consultation team  
Ministry of Justice  
DX Box SX10088  
Wellington, New Zealand

By email to: [aml@justice.govt.nz](mailto:aml@justice.govt.nz)

Dear Madam/Sir,

**Re: AML/CFT 'Early' Regulatory Package Exposure Draft**

The Financial Services Federation ("FSF") is grateful to the Ministry of Justice ("the Ministry") for the opportunity to respond on behalf of our members to the exposure draft of the AML/CFT 'Early' Regulatory Package ("the Regulations") recently published by the Ministry.

By way of background, the FSF is the industry body representing the responsible and ethical finance, leasing, and credit-related insurance providers of New Zealand. We have over 90 members and affiliates providing these products to more than 1.7 million New Zealand consumers and businesses. Our affiliate members include internationally recognised legal and consulting partners. A list of our members is attached as Appendix A. Data relating to the extent to which FSF members (excluding Affiliate members) contribute to New Zealand consumers, society, and business is attached as Appendix B.

The FSF would like to begin this submission by congratulating Ministry officials on the consultation process. The FSF and some of its members have been heavily involved in the co-design workshops and thanks the Ministry for the opportunity to consult on the impact of the regulatory package.

**Introductory Comments**

Overall, the FSF is supportive of the changes that are being made to the AML/CFT landscape however many of the new regulations would benefit from clarification around definitions of key terms and further explanation about what is required from AML reporting entities. This further clarification would increase the workability of the regime for reporting entities and ensure better compliance with the Regulations.

The FSF has elected to focus on regulations that are relevant to our members so unless otherwise indicated please assume that the FSF agrees with the drafting and content of the regulation.

**Address Verification**

The FSF's members are generally supportive of the removal of the address verification requirement however they believe that it does not go far enough in its current form. The

draft regulation states that reporting institutions still need to determine that an address is genuine, but it does not elaborate on the lengths that institutions need to go to in order to satisfy themselves of this. The FSF would also like to see some clarity around the definition of the word 'genuine' in this context. To that end it is likely that reporting institutions will continue to verify addresses to the same standards that they do now meaning that the removal of the verification requirement will have little to no effect. The FSF submits that a risk-based approach should be sufficient for this purpose.

This particular regulation also does not come into force until 1 June 2024. The FSF believes that the removal of the address verification requirement should be part of the group of regulations that come into force on 31 July 2023.

### **Pawnbrokers**

In the interpretation section of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 ("the Act") a financial institution is defined among other things as "a person who, in the ordinary course of business, carries on ... lending to or for a customer, including consumer credit, mortgage credit, factoring (with or without recourse), and financing of commercial transactions (including forfeiting)". Presently, pawnbrokers do not fall within the definition of financial institution.

However, the Commerce Commission has recently filed a case stated proceeding, with the National Pawnbrokers Association of New Zealand being a respondent in the proceedings, seeking the High Court's opinion on the application of the Credit Contracts and Consumer Finance Act 2003 ("the CCCFA") to pawnbroking contracts. In this proceeding the Commerce Commission asserts that it believes that pawnbroking contracts come under the existing definition of a credit contract and a consumer credit contract under the CCCFA.

We would like clarification about the application of the regulations exempting pawnbrokers if in the Court's opinion a pawnbroker's pledge meets the definition of a consumer credit contract under the Credit Contract and Consumer Finance Act. Explicitly stating that pawning is not captured under one Act as providing a loan if the Court finds otherwise will promote uncertainty and lead to a varied application of the regulations.

### **High Risk Customers**

While the FSF is supportive of regulation 35 (inserting new regulation 11A in the Compliance and Requirements regulations) it believes that the requirement to obtain settlor/ protector information for trusts should only apply if an entity is a high-risk structure. The FSF discusses the issue of high/ low risk trusts further in our answers to consultation questions a and e.

### **Record Keeping**

The FSF believes that the wording of this requirement is unclear. In the regulation it states that a reporting entity must keep a specified record for a period of at least 5 years after the end of the reporting entity's business relationship with the customer. The FSF requests further clarification on the definition of what can be considered as comprising the end of a business relationship. Any definition of the end of a business relationship needs to take into consideration privacy law and varying customer rendition periods for different entities.

The FSF notes that most reporting entities are required to retain copies of the ID documents they take from their customers as part of their AML processes so they can be provided as evidence when they are audited. In light of recent cyber security breaches, including the latest theft of identity documents from Latitude Financial, the FSF submits clarification of s50 should be made as to the type and level of evidence that should be retained to subsequently demonstrate sufficient identification and verification was completed at the time. Retaining copies of the original ID documents raises the risk of further identity theft should another credit provider suffer a privacy breach. The FSF also submits that in the longer-term further consideration is required of the recordkeeping requirements relating to identity and verification records set out in section 50 of the Act.

### **Suspicious Activity**

The FSF anticipates that an unintended consequence of regulation 38 (inserting new regulation 32 in the Requirements and Compliance Regulations) is that one of the triggers is that an individual/ entity will not provide client due diligence ("CDD"). Under section 39A of the Act a reporting entity must make a suspicious activity report (once they have formed a suspicion) and if they have reasonable grounds to consider the transaction may be relevant to a crime or a potential crime under certain acts. Refusing to provide CDD information when requested is an example of what could be considered a reasonable ground for a suspicious activity report. As the regulation prescribes that a financial institution must acquire CDD in these situations it becomes a cyclical issue. Greater clarification would be appreciated on this point.

It is also submitted that by conducting more extensive CDD or CDD where it is usually not required could lead to a reporting entity effectively "tipping off" a person to the fact that it has grounds to make a suspicious activity report. Therefore, perhaps the approach should be that in these instances the reporting entity just files a suspicious activity report to the New Zealand Police Financial Intelligence Unit (FIU) for them to consider whether the activity or transaction requires further investigation.

### **Source of Wealth vs Source of Funds**

Creating a distinction between Source of Wealth ("SoW") and Source of Funds ("SoF") is a welcome change that is intended to clarify requirements around the information that AML reporting entities must obtain. The FSF and its members are very supportive of this change and believe that entities should be able to do a source of funds investigation with a suspicious transaction report rather than having to go through a full source of wealth investigation.

The FSF submits that further guidance is required on the distinction between SoW and SoF and in what circumstances a reporting entity must obtain and verify information regarding SoW or SoF, or both.

### **Additional Enhanced CDD**

The FSF believes it would be useful for the new regulation 12B(2) (refer to regulation 37 in the Amendment Regulations) to be more specific regarding what the Ministry requires reporting entities to collect as additional CDD. For example, the requirement to obtain further information about the transaction is vague. What kind of information does the

Ministry want to see? The regulation should also establish the circumstances in which the Ministry expects to see reporting institutions collect enhanced CDD, for example is it expected for all high-risk customers or a specific subset?

The FSF is also concerned about the amount of additional work that will need to be completed by reporting institutions in order to comply with the additional enhanced CDD requirements.

### **Improving the Transparency of Payments**

In regard to regulations 25 and 26 (as set out in regulation 38 of the Amendment Regulations) the FSF believes that more work needs to be done on defining the different classes of institution (ordering, intermediary and beneficiary) and establishing the role of each institution in regards to wire transfers. In conjunction with creating clear definitions the FSF would like to see a greater onus placed on intermediary institutions to ensure that they are receiving complete information from ordering institutions. Otherwise, this creates a lot of work for beneficiary institutions when it comes to gathering all the required information. It also impacts the time and effort needed to report STR's and PTS's to the FIU.

The FSF also submits that new Regulation 12B (as set out in regulation 37 of the Amendment Regulations) should be amended to ensure it is clear that a reporting entity is not required to carry out all of the additional enhanced customer due diligence measures specified in subclause (2). It should just be those measures that are necessary in the particular circumstance to manage and mitigate the risks. In addition, in relation to regulation 12B(2)(d), clarification is required as to whether the reference to senior management is the senior management of the reporting entity. Unless on a limited exception basis (dependant on clarification of circumstances when required) it is impractical for Executives (in existing definition of senior manager) to approve all applications/ transactions.

### **Beneficial Owner**

While the FSF is supportive of clarifying the definition of beneficial owner we believe that this regulation has not solved the problem that reporting entities face in identifying who is a beneficial owner. There needs to be more clarification around who is deemed to be the beneficial owner and how to determine that. The addition of "Person on behalf of who a transaction is conducted" is still too vague. The new definition adds confusion as to who is the actual customer and who is "ultimate owner" for the purposes of the Regulations.

### **Risk Based CDD**

As with the regulations concerning additional enhanced CDD the FSF believes that the Ministry of Justice needs to go into more depth regarding what specifically reporting entities are required to collect to satisfy regulations 12E and 12D (as set out in regulation 37 of the Amendment Regulations). Currently, captured institutions do a simple risk rating. Anything above and beyond this would add another level of compliance to institutions and could result in greater cost to them as they will need to change their AML systems to cater to this.

The FSF is also concerned about the requirement to keep a record of the customer's risk rating. This may require changes to systems to capture this risk rating that will take time.

Clarification is also required as to whether the reporting entity can adopt their own risk ratings, or if the risk ratings will need to align with prescribed risk ratings. Clarification is needed around whether this new risk rating is proposed to align with existing Due Diligence requirements i.e. Simple/Standard/Enhanced DD or industry risk classification, or a combination.

The FSF also notes there is a timing disconnect between when institutions need to start doing due diligence as per their risk rating of new customers (31 July 2023) and when institutions need to start risk rating all new customers (1 June 2024). Bringing these regulations in at different times will create uncertainty around what institutions need to be prepared for versus what they already need to be doing.

### **Reliable Verification of Data**

Regulation 31 (as set out in regulation 38 of the Amendment Regulations) is very ambiguous. It does not seem like there are any situations where a reporting institution would seek to use reliable but not independent verification in regard to anything that is not biographical, source of wealth or source of funds. Further clarification on the usefulness of this point and when it might be relevant would be appreciated.

### **Cheques**

Regulation 10A (as set out in regulation 12 of the Amendment Regulations) in the exposure draft references cheque deposits. It is our understanding that cheques are no longer accepted in New Zealand, so it seems that this regulation is redundant.

### **Debt Collection Services**

It is unclear who Regulation 22(2) (as set out in regulation 28 of the Amendment Regulations) relates to. Greater clarity would be appreciated on this point.

### **Regulations that the FSF would like to explicitly indicate support for**

The FSF would like to express its full support for the following regulations:

- Require people to submit border cash reports when moving stored value instruments and casino chips into or out of New Zealand – AML/CFT (Cross border cash) Regulation 7(2) (as set out in regulation 4 of the Amendment Regulations)
- Require border cash reports to be submitted 72 hours before the cash arrives in or leaves New Zealand for unaccompanied cash movements – AML/CFT (Cross border cash) Regulation 7(3) (as set out in regulation 4 of the Amendment Regulations)
- Exempt certain vessels, such as cruise ships, from border cash reporting requirements for cash being carried for vessel-related purposes that does not leave the vessel – AML/CFT (Cross border cash) Regulation 7A (as set out in regulation 5 of the Amendment Regulations)
- Exempt persons from being required to submit a border cash report if they have received an accompanied cash movement to ensure that BCRs are only required in respect of receiving unaccompanied cash – AML/CFT (Cross border cash) Regulation 7A (as set out in regulation 5 of the Amendment Regulations)
- Prohibit businesses from establishing or maintaining correspondent relationships with Democratic People's Republic of Korea banks, in line with the Call for Action issued by the Financial Action Task Force – AML/ CFT (Requirements and

Compliance) Regulation 15 (as set out in regulation 38 of the Amendment Regulations)

- Prescribe that reporting entities must obtain, as part of customer due diligence, information about legal form and proof of existence, ownership and control structure, and powers that bind and regulate, and verify this information according to the level of risk – AML/CFT (Requirements and Compliance) Regulation 12E(B) (as set out in regulation 37 of the Amendment Regulations)
- Define “legal arrangement” to include unincorporated societies and any other types of legal arrangements to ensure that forming or operating those arrangements attracts AML/CFT obligations – AML/CFT (Definitions) Regulation 10AAA (as set out in regulation 10 of the Amendment Regulations)
- Extension of the timeframe for submitting PTRs from 10 to 20 days – AML/CFT (Requirements and Compliance) Regulation 35 (as set out in regulation 38 of the Amendment Regulations)
- Exempt non court appointed liquidators from appropriate and relevant AML/CFT obligations where they are incompatible with the nature of the liquidator’s work where there is a low risk of money laundering and terrorism financing – AML/CFT (Exemptions) Regulation 24AAB (as set out in regulation 30 of the Amendment Regulations)
- Prescribe the process that reporting entities must follow when conducting enhanced customer due diligence on trusts, including identifying types of trusts that are suitably low risk and other factors to consider when assessing the level of risk. Where trusts are suitably low-risk, exempt reporting entities from the requirement to verify relevant information about the source of wealth or source of funds – AML/CFT (Requirements and Compliance) Regulation 12C (as set out in regulation 37 of the Amendment Regulations)
- Issue regulations to enable members of a designated business groups to share a compliance officer – AML/CFT (Requirements and Compliance) Regulation 38 (as set out in regulation 38 of the Amendment Regulations)

### Consultation Questions

Relevant consultation questions have been answered below:

- a) *We acknowledge that in some circumstances it may be difficult to obtain or verify identity information relating to the settlor of a trust, for example, if the settlor is deceased. Should the drafting include regulatory relief in circumstances where it is not possible to conduct CDD on a settlor? If so, how should we approach this?*

Yes, the drafting should include regulatory relief if a reporting entity is unable to obtain identity information relating to a settlor of a Trust. One approach to regulatory relief is that the requirement to obtain or verify identity information relating to the settlor of a trust only applies if the settlor also holds the position of trustee or the settlor has powers under the trust deed such as appointing and removing trustees. However, if the Settlor is deceased it should be sufficient for entities to obtain the obituary of the settlor or a copy of the death certificate where possible. Where it is difficult to identify a settlor when they are deceased, an appropriate option would be the use of a reporting entity’s Exception Report.

e) *The regulation above related to enhanced CDD for low-risk trusts is intended to provide relief. To achieve this, we are considering whether the regulation needs to define what a low-risk trust is. This could be achieved through prescribing certain types of trusts that are low risk (e.g., family trusts) or prescribing characteristics of a low-risk trust. Do you agree that the regulation should define a low-risk trust? If so, what definition would provide the most amount of clarity? What other elements of enhanced CDD should be prescribed as mandatory for trusts that are not low risk?*

The FSF believes that in theory the regulation should define a low-risk trust for the purposes of the Act however in practice a better approach would be to define a high-risk trust and state that anything that falls outside of that definition is classed as a low-risk trust.

Criteria that could indicate a trust is high risk may include the following:

- Overseas trustees
- Overseas controlling persons
- Overseas assets
- High risk assets

However, a mitigating factor for this could be legal representation from a New Zealand based law firm. This is because presumably the firm would have had to go through their own AML process to satisfy themselves that they were comfortable to act for the trust.

Another approach would be to define a low-risk trust as a “family trust” (as defined by the CCCFA) and build on the definition from there while taking account of the above factors that could indicate high risk.

Once again, the FSF would like to take this opportunity to thank the Ministry for a very considered and well run consultation process with key industry stakeholders.

Please do not hesitate to reach out if you wish for us to speak further on any of the points made in this submission.

Yours sincerely,



Katie Rawlinson  
Legal and Policy Manager  
Financial Services Federation

## Appendix A



## FSF Membership List as at April 2023

Non-Bank Deposit Takers, Specialist Housing Lenders, Leasing Providers	Vehicle Lenders	Finance Companies/ Diversified Lenders	Finance Companies/ Diversified Lenders, Insurance Premium Funders	Affiliate Members	Affiliated members cont'd. and Credit-related Insurance Providers
<p>XCEDA (B)</p> <p>Finance Direct Limited ➤ Lending Crowd</p> <p>Gold Band Finance ➤ Loan Co</p> <p>Mutual Credit Finance</p> <p><u>Credit Unions/Building Societies</u></p> <p>First Credit Union</p> <p>Nelson Building Society</p> <p>Police and Families Credit Union</p> <p><u>Specialist Housing Lenders</u></p> <p><del>Basecorp Finance Limited</del></p> <p>Liberty Financial Limited</p> <p>Pepper NZ Limited</p> <p>Resimac NZ Limited</p> <p><u>Leasing Providers</u></p> <p>Custom Fleet</p> <p>Euro Rate Leasing Limited</p> <p>Fleet Partners NZ Ltd</p> <p>ORIX New Zealand</p> <p>SG Fleet</p>	<p>AA Finance Limited</p> <p>Auto Finance Direct Limited</p> <p>BMW Financial Services ➤ Mini ➤ <del>Alpha</del> Financial Services</p> <p>Community Financial Services</p> <p>Go Car Finance Ltd</p> <p>Honda Financial Services</p> <p>Kubota New Zealand Ltd</p> <p>Mercedes-Benz Financial</p> <p>Motor Trade Finance</p> <p>Nissan Financial Services NZ Ltd ➤ Mitsubishi Motors Financial Services ➤ Skyline Car Finance</p> <p>Onyx Finance Limited</p> <p>Scania Finance NZ Limited</p> <p>Toyota Finance NZ ➤ Mazda Finance</p> <p>Yamaha Motor Finance</p>	<p>Avanti Finance ➤ Branded Financial</p> <p>Basalt Group</p> <p>Blackbird Finance</p> <p>Caterpillar Financial Services NZ Ltd</p> <p>Centracorp Finance 2000</p> <p>Finance Now ➤ The Warehouse Financial Services ➤ SBS Insurance</p> <p>Future Finance</p> <p>Geneva Finance</p> <p>Harmony</p> <p>Humm Group</p> <p>Instant Finance ➤ Fair City ➤ My Finance</p> <p>John Deere Financial</p> <p>Latitude Financial</p> <p>Lifestyle Money NZ Ltd</p> <p>Limelight Group</p> <p>Mainland Finance Limited</p> <p>Metro Finance</p>	<p>Nectar NZ Limited</p> <p>NZ Finance Ltd</p> <p>Personal Loan Corporation</p> <p>Pioneer Finance</p> <p>Prosopa NZ Ltd</p> <p>Smith's City Finance Ltd</p> <p>Speirs Finance Group(L &amp;F) ➤ Speirs Finance ➤ Speirs Corporate &amp; Leasing ➤ Yoogo Fleet</p> <p>Turners Automotive Group ➤ Autosure ➤ East Coast Credit ➤ Oxford Finance</p> <p>UDC Finance Limited</p> <p><u>Insurance Premium Funders</u></p> <p><del>Elantis Premium Funding NZ Ltd</del></p> <p>Financial Synergy Limited</p> <p>Hunter Premium Funding</p> <p><del>IOumulate Premium Funding</del></p> <p>Rothbury Instalment Services</p>	<p><u>Affiliate Members</u></p> <p>Buddle Findlay</p> <p>Chapman Tripp</p> <p><del>Credisense Ltd</del></p> <p>Credit Sense Pty Ltd</p> <p>Experian</p> <p><del>Experieco Limited</del></p> <p>EY</p> <p>FinTech NZ</p> <p>Finzsoft</p> <p>Happy Prime Consultancy Limited</p> <p>KPMG</p> <p><del>Landscape Ltd</del></p> <p>Loansmart Ltd</p> <p>LexisNexis</p> <p>Motor Trade Association</p> <p>One Partner Limited</p> <p>PWC</p> <p>Simpson Western</p>	<p><u>Credit Reporting, Debt Collection Agencies,</u></p> <p>Baycorp (NZ)</p> <p>Centrix</p> <p>Credit Corp</p> <p>Debt Managers</p> <p>Debtworks (NZ) Limited</p> <p>Equifax (prev Veda)</p> <p>Gravity Credit Management Limited</p> <p>IDCARE Ltd</p> <p>Illion (prev Dun &amp; Bradstreet (NZ) Limited</p> <p>Quadrant Group (NZ) Limited</p> <p><u>Credit-related Insurance Providers</u></p> <p>Protecta Insurance</p> <p>Provident Insurance Corporation Ltd</p> <p>Total 91 members</p>





FINANCIAL SERVICES FEDERATION (FSF)

## THE NON-BANK FINANCE INDUSTRY SECTOR - 2022



48%

NON-BANK

BANK

of personal consumer loans are financed by the **non-bank sector** represented by FSF members.

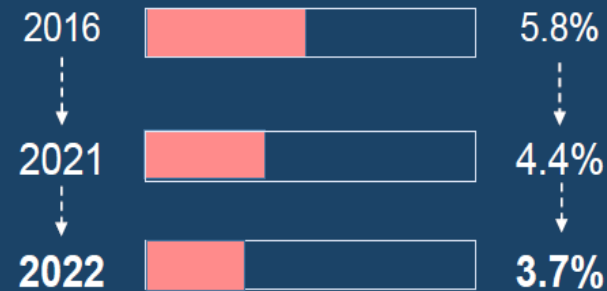
*Setting industry standards for responsible lending,  
promoting compliance and consumer awareness.*

## Percent of Loan Requests Approved

46%



## Percent of Loan Book in Arrears



# KEY FACTS: THE NON-BANK FINANCE INDUSTRY SECTOR

## FSF Members (as at 28 Feb 2022)

Number of Members	57
Number of Employees	3,561
Applications Processed	1,085,739
Loan Requests Approved	495,434
Percent of Loan Book in Arrears	3.7%

## Bank Sector (as at 28 Feb 2022)

Value of Mortgage Loans	\$329B
Value of Consumer Loans	\$7.6B
Value of Business Loans	\$118B

## Non-Bank Sector Share (as at 28 Feb 2022)

% of Total Mortgage Loans	0.4%
% of Total Consumer Loans	47.7%
% of Total Business Loans	5.9%

## Insurance Credit Related (as at 28 Feb 2022)

Number of Employees	237
Number of Policies	311,409
Gross Claims (annual)	\$27.2M
Days to Approved Claim	20 days

## Consumer Loans (as at 28 Feb 2022)

Total Value of Loans	\$8.1B
Number of Customers	1,699,683
Number of Loans	1,584,984
Monthly Instalments:	\$330M

### Average Value of Loan:

Mortgage	\$171,932
Vehicle Loan	\$12,393
Unsecured	\$2,467
Other Security	\$5,754
Lease Finance	\$2,804

### Average Monthly Instalment:

Mortgage	\$257
Vehicle Loan	\$463
Unsecured	\$144
Other Security	\$302
Lease Finance	\$241

## Business Loans (as at 28 Feb 2022)

Total Value of Loans	\$7.3B
Number of Customers	136,830
Number of Loans	264,827
Monthly Instalments:	\$590M

### Average Value of Loan:

Mortgage	\$443,784
Vehicle Loan	\$28,869
Unsecured	\$7,443
Other Security	\$32,374
Lease Finance	\$24,921

### Average Monthly Instalment:

Mortgage	\$2,281
Vehicle Loan	\$1,064
Unsecured	\$799
Other Security	\$11,044
Lease Finance	\$939