New Zealand Banking Association
Te Rangapū Pēke

Submission

to the

The Reserve Bank of New Zealand - Te Pūtea Matua

on the

Deposit Takers Standards – Tranche 1 Consultation

30 January 2026

NEW ZEALAND BANKING ASSOCIATION – TE RANGAPŪ PĒKE
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About NZBA

1. The New Zealand Banking Association – Te Rangapū Pēke (**NZBA**) is the voice of the banking industry. We work with our member banks on non-competitive issues to tell the industry's story and develop and promote policy outcomes that deliver for New Zealanders.

2. The following seventeen registered banks in New Zealand are members of NZBA and support this submission:

   - ANZ Bank New Zealand Limited
   - ASB Bank Limited
   - Bank of China (NZ) Limited
   - Bank of New Zealand
   - China Construction Bank (New Zealand) Limited
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   - The Co-operative Bank Limited
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   - KB Kookmin Bank Auckland Branch
   - Kiwibank Limited
   - Rabobank New Zealand Limited
   - SBS Bank
   - TSB Bank Limited
   - Westpac New Zealand Limited

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3. If you would like to discuss any aspect of this submission, please contact:

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Introduction

4. NZBA welcomes the opportunity to provide feedback to the Reserve Bank of New Zealand - Te Pūtea Matua (**Reserve Bank**) on its consultation on tranche 1 of the Deposit Takers Act 2023 (**DTA**) Standards (**Consultation**). NZBA commends the work that has gone into developing this document and the technical analysis supporting it.

General comments across all Standards

5. **Timing for finalising standards:** As outlined on the Reserve Banks DTA timeline, the current intention is for all standards (other than the Crisis Preparedness Standard) to be finalised and issued on 31 May 2027. We encourage the Reserve Bank to consider providing final versions of standards as they are prepared prior to this date. Releasing all finalised standards (except for the crisis preparedness standard) at the same time will put significant pressure on resourcing for deposit takers, as they seek to make system level changes across a wide number of areas. Providing some standards earlier than mid-2027 would allow deposit takers to better manage this transition and would enable resources to be allocated more efficiently. If the Reserve Bank is unable to publish near final Standards, then we request the Reserve Bank to provide a summary of any policy decisions that vary from these exposure drafts and the corresponding guidance (including any material changes to these documents) as soon as they become available.

6. **The Reserve Bank should look to utilise conditions of licence to ensure flexibility for deposit takers:** As a general comment, we encourage the Reserve Bank to consider using its powers under section 92 of the DTA to allow the requirements of other matters in standards to be set in a manner that takes into account the circumstances of particular depositors (for instance by prescribing in standards that certain matters can be dealt with under a deposit taker's conditions of licence). We encourage the Reserve Bank to utilise this approach in areas where a uniform approach may not be appropriate or in areas where rapid changes in relation to a particular deposit taker may be needed, however the Reserve Bank should be cautious as to not impose further obligations across the industry through the conditions of licence.

7. **Use of defined terms from other legislation:** As a general point, we urge the Reserve Bank to be cautious in using a large number of defined terms from other legislation in the standards. In particular we note that the liquidity and lending standards carry over a large number of defined terms from the Credit Contracts and Consumer Finance Act 2003 (**CCCFA**) and the incorporation outside New Zealand standard adopts certain concepts from the Financial Markets Conduct Act 2013 (**FMC Act**). There is a risk that these pieces of legislation may be amended from time to time, without regard for any effect on prudential requirements, so it is important for the Reserve Bank to not only exercise caution in adopting large amounts of defined terminology from other legislation, but it also needs to avoid such definitions being used in a way that results in a material difference in approach which is likely to be unintended and have unintended consequences in application and compliance costs.

8. **Effect of the Guidance:** It is noted that, although the Guidance for each Standard is not legally binding, it is likely to be used as an authoritative reference for interpreting the corresponding Standard. In practice, this means there is an expectation that deposit takers will align their policies and procedures with the applicable Guidance,

even in areas where the corresponding Standard is silent or ambiguous. This "soft law" effect could result in the Guidance for each Standard being applied more prescriptively than intended, potentially leading to inconsistent or overly cautious compliance approaches across the industry. In light of this, we request the Reserve Bank clarify how it intends that the Guidance for each Standard will be used in supervision and enforcement, including the weight that will be given to it relative to the applicable Standard itself. Given the importance that will be attached to each Guidance we submit that the Reserve Bank should establish a clear process for updating and/or clarifying the guidance once it comes into effect at the end of 2028 in response to industry feedback or operational challenges. This is important in order to ensure that compliance expectations remain transparent, proportionate, and practical for all deposit takers.

9. **Interrelationship between the DCS Standard and OBR:** We request that the Reserve Bank confirm its policy decisions for OBR before the OBR exposure draft is released in June 2026. The Reserve Bank has previously signalled integration of OBR with DCS, so a clear picture of the interrelationship is required to develop systems and processes for DCS. We therefore encourage the Reserve Bank to release its OBR decisions as soon as possible.

Submissions on the Liquidity Standard

- *Q1 Does the exposure draft accurately set out the Reserve Bank's liquidity requirements (both qualitative and quantitative), including decisions taken as part of the LPR?*

  If not, what areas of the exposure draft may require revision?

- *Q2 Would the exposure draft and draft Guidance, as currently drafted, create any unintended outcomes? If so, please specify any issues and potential solutions*

- *Q3 Do you have comments on the formulation of caps in the Liquidity Standard, such as caps in relation to cash inflows, undrawn committed lines, and various components of liquid assets?*

- *Q4 Do you have any views on what deposits from government agencies (if any) should be subject to a 100% run-off rate or the size band approach under the MMR?*

- *Q5 Do you have any other comments on the attached exposure draft of the Liquidity Standard?*

- *Q6 Do you have any other comments on the attached draft of the Guidance to support the Liquidity Standard?*

The Reserve Bank should support deposit takers implementing new model changes

10. As currently drafted the Liquidity Standard exposure draft (**Liquidity Standard ED**) will require deposit takers to make substantial changes to their existing liquidity models. These changes will be complex and will require substantial time and resourcing to

implement as deposit takers will need to first understand the new model requirements and then build and implement these models. This will be a significant work programme for deposit takers, particularly in the context of the Standard being in force in 2028.

11. We request that the Reserve Bank engage with industry early to help provide clarity on the key requirements for new liquidity models.

The Reserve Bank should provide clarity and appropriate flexibility when providing for permitted assumptions

12. NZBA supports the provisions in the Liquidity Standard ED allowing deposit takers to rely on assumptions in liquidity calculations. Such calculations are complex and appropriate assumptions are necessary to ensuring that they can be run efficiently and reliably.

13. However, we consider that some amendments should be made to increase the practicality of these provisions. In particular:

    13.1. Clause 5(1) of the Liquidity Standard ED allows reliance on an assumption "if the deposit taker believes, on reasonable grounds, that the assumption is necessary to make the calculation in a timely and prudent manner". This may be read as setting an unnecessarily high bar, as it may be difficult to be comfortable that an assumption is absolutely "necessary" in all circumstances. We submit that a more appropriate approach would be to allow assumptions to be used where the deposit taker considers it is "appropriate" in the circumstances to use such an assumption.

    13.2. We consider that such an approach would more accurately reflect the intent of the approach that the Reserve Bank refers to at paragraph 19 and footnote 4 of the Liquidity Guidance, where the Reserve Bank states that "[it] expects deposit takers to ensure that the assumptions are prudent" and that "Deposit takers may apply judgment in determining what is 'prudent'." Moreover, given that deposit takers need to reasonably believe that such assumptions are appropriate in order to be able to rely on them, we do not consider that our proposed approach is inconsistent with the Reserve Bank's desire to avoid excessive reliance on assumptions, or them being used to undermine the robustness of the calculations (as noted in paragraph 20 of the Liquidity Guidance).

    13.3. In relation to the requirement to keep a register of such assumptions, it should be clear that only summary details of the potential impact on the accuracy of the calculation are required to be included under clause 5(4)(c) (and it should be clear that this refers to impacts on the accuracy of the of relevant ratios), to avoid an implication that deposit takers must describe the full universe of potential impacts (direct and indirect).

14. In addition to the above, we submit that deposit takers should have the ability to test materiality thresholds underpinning the making of assumptions with the Reserve Bank. Particular areas that might require testing include:

    14.1. whether the Reserve Bank expects deposit takers to apply qualitative or quantitative criteria, such as the impact on liquidity ratios, when assessing the materiality of an assumption; and

14.2. what expectations the Reserve Bank has for deposit takers to demonstrate that reliance on their assumptions does not undermine the robustness of calculated ratios.

The Liquidity Standard ED should be clearer on the expectations around timing of liquidity calculations/testing

15. We note the draft Liquidity Standard ED provides for quantitative liquidity requirements to apply on a continuous basis. The draft Liquidity Guidance confirms that such requirements apply on a continuous basis, but then states at paragraph 13 that deposit takers will not be expected to produce real time calculations and generally will not need to perform calculations multiple times throughout the day (and encourages deposit takers to hold a buffer to ensure continuous compliance). This is broadly consistent with previous Reserve Bank decisions.

16. However, we consider that including the reference to "generally" suggests that in some circumstances the Reserve Bank would consider it appropriate for ratios to be calculated at multiple times throughout the day. We note that it could be challenging and complex compliance issue for deposit takers, involving significant cost, if the Reserve Bank were to require deposit takers carry out any intra-day calculations (or calculations on non-business days). Accordingly, we submit that reference to 'generally' should be removed from paragraph 13 of the Liquidity Guidance so that it is not left open as a potential interpretation.

The scope of government agency deposits considered "market funding" needs refinement

17. We note the comments in paragraphs 34 to 36 of the Consultation, requesting feedback on whether to exclude some government agency deposits from being classified as "market funding" (and therefore being subject to a 100% run off rate under the MMR).

18. We consider that no "government agency" deposits should be classified as "market funding". The definition of government agency under the DTA includes among others all core Crown, Crown entities, state owned enterprises and local authorities (and note that the Reserve Bank has indicated which government agencies are caught by this definition in the context of the DCS in the publication "Government Agencies" dated 13 May 2025). On the assumption that this same list would be applicable to the Liquidity Standard (a point which we comment on further below), we note that this wide ranging list of government agencies consists solely of agencies that do not act in the manner that other "market funding" providers may typically act. Deposit takers would not classify these depositors as representing the type of non-sticky rate-sensitive funding which is likely to be a 'flight risk' during times of market stress. We consider that to reclassify government agencies as "market funding" would be a particularly conservative approach, and could result in unintended material additional costs to the government agency sector and the broader banking system.

19. With regard to the list of government agencies that the Reserve Bank has published in the publication "Government Agencies" dated 13 May 2025, similar to the point made at paragraph 60.8 below, we request that the Reserve Bank provide assurance that this list can be relied upon as a comprehensive list of government agencies for liquidity and DCS purposes. In this context, we note that currently:

19.1. deposit takers cannot rely on the list, as the publication provides that "This list is not represented as an exhaustive or authoritative list. "; and

19.2. the list does not include details of individual crown entity subsidiaries.

20. Requiring deposit takers to maintain an up-to-date list of government agencies (in accordance with the definition in the DTA) is operationally challenging because changes to government agencies occur relatively frequently. If the list of government agencies provided by the Reserve Bank is not exhaustive or authoritative, changes to the list could impact deposit takers' liquidity ratios (and, accordingly, their ability to continuously comply with the quantitative requirements).

Specific comments on the Consultation and Liquidity Standard ED

21. **Calculation of Liquid Assets:** Clause 14 sets out details of a deposit taker's liquid assets. These include debt securities eligible for a liquidity facility provided by the Reserve Bank (i.e. the CLF). However, the Liquidity Guidance then refers to CLF-eligible assets as meeting the "unencumbered" criteria because they are pre-positioned for the CLF. We are unclear what pre-positioning means in this context, and request the Reserve Bank clarify the position. Is the Reserve Bank only allowing debt securities to be included in clause 14(1)(c) - (e) if a deposit taker has "pre-positioned" (i.e. agreed) with the Reserve Bank that the particular debt securities are CLF-eligible assets, or would all debt securities that could be CLF-eligible assets be included in clause 14(1)(c) - (e)?

22. **Definition of "readily tradeable":** Clauses 16(1)(b) and 22(1)(d)(i) refers to debt securities which are "readily tradeable", however this term is not defined. It could be helpful for a definition of "readily tradeable" to be included in the Liquidity Standard, or the Reserve Bank could clarify the scope of this term in the Liquidity Guidance.

23. **Use of SDV for deposit outflows:** Clauses 16(1)(d) and 22(1)(e) of the Liquidity Standard ED uses the terminology "total principal sum of debt securities repayable to a person and any associated person", however paragraph 81 of the Liquidity Guidance encourages use of the single depositor view (which would not group associated person holdings) to determine this. We submit that the Reserve Bank should remove the term "associated person" from these clauses in order to prevent confusion and significant complexity, and instead make it clear that just the single depositor view approach applies.

24. **Debt securities under a relevant arrangement:** Clauses 16(2) and 22(2) of the Liquidity Standard ED permit deposit takers to apply look through treatment to any deposits held under a relevant arrangement. We understand this is intended to give deposit takers the option (but not require them) to apply a similar approach to that set out in paragraph 59 of current BS13.

25. However, the definition of "relevant arrangement" for DCS purposes is relatively prescriptive, and we question whether its limitations are appropriate in a liquidity context. As an example, "relevant arrangement" includes various bank-sponsored PIEs, but may not include PIEs that have an identical structure but are managed by an unrelated third party. However, in a liquidity context the outcome between the two structures is likely to be the same.

26. Therefore, we submit that, in addition to "relevant arrangements", clauses 16(2) and 22(2) should also include a more generalised 'catch-all' concept, that would also give

deposit taker's the option (but not requirement) to "look through" any arrangement which is either analogous to "relevant arrangements" or under the control of a third party who has the right to withdraw the deposit without reference to the owner of the deposit.

27. We also question why the Reserve Bank has included limb (b) to clauses 16(2) and 22(2). The current drafting of limb (b) appears confused, in particular in relation to clause 16(2), as it refers to arrangements where the deposit taker does not have an obligation to repay the named holder of the debt security within 30 days, but clause 16(1), which clause 16(2) relates to, deals with debt securities that are repayable within 30 days. We request that the Reserve Bank reconsider this drafting, and in particular whether limb (b) is needed at all.

28. As an aside, we also consider that clauses 16(2) and 22(2) should permit 'look through' for the purposes of clauses 16(1)(c) and 22(1)(c) as well as clauses 16(1)(d) and 22(1)(e) respectively.

29. **Calculation of cash inflows:** Clause 17(1)(c) excludes all revolving credit contracts from cash inflows, whereas BS13 (paragraph 48) excludes only outstanding credit card balances and amounts drawn under retail overdraft facilities. We do not recall it being raised in earlier consultation or policy decisions, nor is there is any explanation for this in the Liquidity Guidance.

30. **Cap on cash inflows:** Our understanding is that clause 17(1)(d) is intended to apply in relation to undrawn committed lines only. However we request that the Reserve Bank confirm that this is its intention here, to help industry gauge if the 75% cap is appropriate. For completeness we have assumed that it is not intended to capture deposits held by a deposit taker with another a deposit taker and so, in the context of ESAS accounts, does not affect arrangements with agency banks and agency banking providers.

31. **Overlapping tenors of debt securities:** Clause 22(1)(b) refers to the principal sum of debt securities repayable "no earlier than 1 year after the calculation", while clauses 22(1)(c)(ii) and 22(d)(ii) refer to debt securities payable "no later than 1 year after the calculation". In tandem these clauses will double count any debt securities due to be repaid in exactly one year. This seems unintended, so we request the Reserve Bank reconsider this drafting.

32. **Materiality threshold for non-compliance:** Currently the Reserve Bank requires a bank to report any non-compliance with BS13 and BS13A, notwithstanding the materiality of the non-compliance and the impact of the non-compliance on the liquidity ratios. This approach has led to deposit takers reporting very minor instances of non-compliance with the granular and technical detail of a requirement despite remaining well within the minimum regulatory ratios. Further, this approach does not seem to recognise that with such complex calculations it is very difficult to entirely eliminate the risk that technical breaches may occur from time to time. We submit that a more appropriate approach under the DTA would be to only require a deposit taker to report where a ratio has (or may) fall below a minimum requirement set by the Reserve Bank in a material respect. This is consistent with the current reporting requirements in relation to capital ratios. We note that the Liquidity Guidance (in paragraphs 60 and 92) appears to align with this approach.

33. While the above comments are directed at the liquidity standard, we submit that the request that a clearly articulated threshold for non-compliance should be applied more generally across all of the standards (both core and non-core).

Other comments on the Liquidity Standard

34. **Funding Strategy/Contingency Plan:** We are supportive of the approach in the Liquidity Standard ED to funding strategies and contingency plans, including:

    34.1. the requirements for New Zealand incorporated deposit takers to produce and maintain a funding strategy that is appropriate to the size and nature of the deposit taker's business; and

    34.2. the provisions and guidance to the effect that branches will be permitted to leverage the processes, documents and other arrangements of their group, provided there is sufficient consideration and adjustments made for liquidity risk in New Zealand. However, we request the Reserve Bank to clarify whether the requirement for "sufficient consideration" would be satisfied if the relevant group processes, documents and other arrangements explicitly cover the branch and the branch is accordingly included in relevant calculations and stress testing under those processes and arrangements.

35. **Valuation of RMBS without observed market pricing:** We request that the Reserve Bank include guidance in the Liquidity Guidance that Generally Accepted Accounting Principles (GAAP) are able to be utilised to determine Market Value of RMBS Single name securities and other securities with no observable market price. This was the case in BS13, but clause 14(3) of the Liquidity Standard ED and paragraphs 62 and 63 of the Liquidity Guidance are silent on the treatment of RMBS with no observable market price.

36. **Use of CCCFA definitions and scope of those definitions:** Similar to the points made in connection with the Lending Standard, we query the appropriateness of using CCCFA definitions as, if the definitions change for non-liquidity standard related reasons, that could have flow on impacts for the liquidity standard. We have suggested a change to the definition of credit contract , but further consideration should be given to the use of the definition of revolving credit contract.

37. **Total lending of money:** Clause 18 of the Liquidity Standard ED states "The core funding ratio is the ratio, expressed as a percentage, of a deposits taker's core funding to the deposit taker's *total lending of money*." We believe further guidance is required in the Liquidity Guidance on the meaning of this term. Does it include money lent via repo transactions for example?

Submissions on the Depositor Compensation Scheme Standard

- *Q7 Do you agree that a DCS depositor page should accept alternate account details from any authorised individual even if that person could not manage that account without approval from another person (n to sign)? If not, please provide suggestions on how this could be cost effectively managed by deposit takers.*
- *Q8 Do you agree with the proposal that the alternate model would only be available to deposit takers who do not offer transactional accounts, and the proposed approach to identify which deposit takers offer transactional accounts?*
- *Q9 DCS depositor page data will be provided to the RBNZ as it is received (for*

example, every 24 hours). Will you have any system constraints if subsequent transfers contain only depositor data that is new since any previous data transfers (delta data)?

- *Q10 Account authority SDV variables have been included as an account level variable to reflect submissions on the consultation document. We expect that some or many authorities may be provided at the depositor level and welcome submissions on the appropriate treatment.*
- *Q11 Do you foresee any difficulty in identifying temporary accounts as identified in row 36 of the table in the Guidance? Are there any further actions the DCS Standard could include that would assist, for example a delay in collating this information compared with the other SDV variables, and if so how long would be appropriate?*
- *Q12 As referred to in the data submission guidelines, are there any technical or non- technical constraints that would prevent your institution from implementing asymmetric encryption?*
- *Q13 Do you have any other comments on the attached exposure draft of the DCS Standard?*
- *Q14 Do you have any other comments on the attached draft of the Guidance to support the DCS Standard?*

Clarity is needed on the scope of restrictions relating to "advertisements"

38. We note clause 6 of the Depositor Compensation Scheme (**DCS**) Standard exposure draft Standard (**DCS Standard ED**) includes a number of restrictions relating to 'advertisements' of financial products eligible for protection under the DCS (**advertising restrictions**). However, the scope of the advertising restrictions is unclear (including fundamental matters such as the scope of the term "advertisement"), leading to some uncertainty as to what documentation may be considered to be an advertisement.

39. We consider that the following potential changes would provide clarity on the scope of the advertising restrictions:

    39.1. **Including a definition of "advertisement":** Defining the term "advertisement" would help clarify the scope of the advertising restrictions. The Reserve Bank could adopt a definition similar to the definition of "advertisement" used in section 6(1) of the FMC Act with adjustments as necessary for DCS purposes. This definition should also clarify that the advertising restrictions do not apply to documents produced for non-promotional purposes (such as disclosure statements, annual reports or similar regulated documents), treasury funding programme documents for debt securities that are not protected deposits (which typically include a general description of New Zealand financial sector regulation) and the product list that deposit takers are required to produce;

    39.2. **Excluding advertising on a deposit taker's website:** We note the DCS Standard ED refers to the definition of "distributed" in section 67(3) of the Act (presumably this is intended to be limited to section 67(3)(a)), but does not

reference section 67(4) of the Act (i.e. excluding advertising on a deposit taker's website). We therefore submit that the Reserve Bank should explicitly exclude advertising on a deposit taker's website from the scope of clause 6.

39.3. **Removing reference to revolving credit contracts**: Clause 6(3) of the DCS Standard ED further provides that an advertisement for a revolving credit contract must not refer to the product as a protected deposit under the DCS. We submit that this explicit restriction is not appropriate, and clause 6(3) may cause confusion given such products will be included in the deposit taker's list of protected deposits under section 193 of the DTA – see Regulation 5(2)(a)(x) of the Deposit Taker Regulations 2025. If the Reserve Bank wishes to retain clause 6(3) it should provide clarity on the policy rationale for this distinction.

Use of DCS logos

40. Clause 7(1) of the DCS Standard ED requires a deposit taker to display at least 1 DCS logo on each product page. Clause 8 provides that a visual communication may optionally display a DCS logo, if (and only if) the communication is about a protected deposit, other than a revolving credit contract.

41. We submit that the rules should be simplified, to apply the default rule for visual communications generally. In particular:

41.1. The clause 7(1) requirement to use of a DCS logo on each product page should be amended to follow the approach for visual communications in clause 8. That is, displaying a DCS logo on product pages should be optional so that deposit takers can choose to do so if they consider it appropriate. There does not seem to be any practical benefit in mandating that the DCS logo be displayed in such cases.

41.2. If use of the DCS logo for product pages remains compulsory (despite our submission above), the DCS Standard should clarify that this requirement applies to any existing protected deposit product page (i.e. there is no requirement to create a product page for each and every type of protected deposit). This is particularly important i in the context of non-strategic products or products that are off-sale and/or being retired/phased out, which are less likely to have an existing product page.

42. Similarly, the restrictions in clauses 7(3) and 8(3) on using a DCS logo on product pages for revolving credit contracts should be removed as they risk confusion, given that these products will be included in the deposit takers list of protected deposits under section 193 of the DTA.

43. For clarity, the DCS Standard should expressly state that the DCS logo may optionally be used on advertisements and in product pages for relevant arrangements such as captive cash PIEs (as defined in the Deposit Takers Regulations 2025).

Deposit takers should not be required to provide a DCS information sheet

44. Clause 10(1) of the DCS Standard ED requires deposit takers to provide a copy of a "DCS information sheet" to an authorised individual when placing a protected deposit. For the reasons below, the NZBA is concerned that this proposal would not create any benefit for depositors in the vast majority of circumstances. The Reserve Bank could

still produce a form of DCS information sheet that deposit takers can use where they consider it appropriate and in a customer's interest (for instance, with non-digitally banked and vulnerable customers). This would be optional, and not mandatory, for deposit takers to use.

45. Mandating provision of a DCS information sheet in all cases would be contrary to the principle in section 4(c) of the DTA, as this requirement would involve a disproportionate and material unnecessary cost to comply with, given the wide availability of such information elsewhere. In addition, requiring the information sheet be provided to customers multiple times risks fatiguing or irritating customers with an oversupply of information about the DCS. Accordingly, we submit that the clause 10(1) requirement should be removed from the DCS Standard.

46. If the general requirement to provide a DCS information sheet under clause 10(1) is retained (which, as discussed above, we strongly consider is not appropriate), then we propose below a more proportionate solution to delivering this. In particular the following would need to be clarified:

    46.1. that the DCS information sheet is not required to be provided to a customer each time they make a deposit or open a new account (and should be required to be provided at most once for each depositor (including for example where there are multiple authorised individuals who act for a depositor), with the most practical time being during on-boarding). While we expect this to be the policy intention, it is unclear from the drafting of the Standard itself (and not referred to in the DCS Guidance);

    46.2. that either the DCS information can be provided electronically by means of a link to the DCS information sheet, which would be published by the Reserve Bank and hosted on its website, or other in-channel notification to customers (i.e. a physical mail-out is not required), so as to reduce compliance costs and double handling by deposit takers;

    46.3. that there is no requirement to provide the DCS information sheet to a deposit taker's existing customers. We consider it would be confusing to existing customers if they receive an unprompted information package explaining the DCS in 2028, particularly as the DCS will have been in place for four years by that time;

    46.4. similarly, that if the DCS information sheet is updated, there is no requirement to provide the updated DCS information sheet to the deposit taker's existing customers; and

    46.5. how clause 10(1) would apply to protected deposits that have more than one authorised individual. For example, in the case of joint accounts, we submit that deposit takers only be required to provide the DCS information sheet to one of the authorised individuals.

47. On a related note, if deposit takers are required to retain specific records or evidence of the DCS information sheet being provided to each customer under clause 10(1) on every placement of a protected deposit (or some other information evidencing compliance), this could require significant further systems change and require material additional associated cost. We believe that placing this unnecessary material compliance burden on deposit takers would be contrary to the principle in section 4(c) of the DTA. We request that Reserve Bank engage with Industry to determine a cost

effective and efficient way in which deposit takers could demonstrate compliance with the requirement if it were to be retained.

48. With regard to clause 10(2) of the DCS Standard ED and the requirement that deposit takers provide DCS information sheets on request, reflecting our comments above that the Reserve Bank could produce a form of DCS information sheet and compliance with the requirement is likely to involve unnecessary cost (given the wide availability of DCS information elsewhere), we question whether including such an obligation would be of any additional benefit to depositors. We suggest that this be optional rather than a mandatory requirement. If the requirement is retained it should be simplified so that:

    48.1. it is made optional as to whether a deposit taker provides the DCS information sheet in hard copy form. This would potentially reduce compliance costs and to allow deposit takers to determine the appropriate format to provide the DCS information sheet in, taking account of a customer's interests and needs; and

    48.2. it is made clear that a deposit taker is not required to retain specific records or evidence of the DCS information sheet being provided to depositors for the reasons stated at paragraph 47 above.

    We also query whether the reference to "individual" in clause 10(2)(b) is appropriate, as this potentially covers anyone, irrespective of whether they are a depositor of the applicable deposit taker.

Comments on the DCS depositor page

49. **Definition of account software**: Clause 3 of the DCS Standard ED states that 'account software means online software provided by a deposit taker for persons to view or manage accounts in which deposits are placed (for example, an Internet site or a mobile application)'. We submit that the words "view or" be removed. If customers are not able to manage their accounts in a certain system then that system should not be in scope of the requirement to have collect information via a DCS depositor page linked to that system. Including a requirement to link view only systems to a DCS depositor page would result in unnecessary additional compliance costs for depositor takers.

50. **Visibility of accounts:** As noted in the DCS Guidance, unlike the Deposit Takers (Depositor Compensation Scheme Transitional Provisions) Standard 2025 (**Transitional Standard**) where it is optional, clause 18(2)(b)(i) of the DCS Standard ED proposes to prohibit deposit takers from deactivating view access for authorised individuals following the activation of a DCS depositor page. We submit that the position taken in the Transitional Standard should remain, and that deposit takers should continue to have the option to deactivate view access in the event that the DCS is invoked.

51. The key objective of the DCS depositor page is to provide a portal for depositors to provide alternative account information. Depositors will have access to their account balance and transaction records at a later date. How and when such information is provided should be considered as part of establishing the roles and responsibilities under the Crisis Preparedness Standard as it will also be relevant to other resolution mechanisms. Accordingly, for these reasons, and those above, we consider that deposit takers should continue to have the option to deactivate view access.

52. If the Reserve Bank would like depositors to be provided with their account balance and transaction history, this can be provided by other means (including via solutions outside of the DCS depositor page) rather than setting a requirement that can only be met by retaining the view access. This approach would achieve the policy intent but provide some flexibility for deposit takers, particularly in the context of our comments above. In addition, we request that the Reserve Bank provide some parameters for the transaction history that would need to be made available to fulfil the purpose of this requirement.

53. As a related point, we submit that the DCS Guidance should clarify that 'view' access as contemplated by the deactivation aspect of clause 18 of the DCS Standard ED is view access for of the accounts (if any) that the authorised individual already has view access for. By way of an example, a person may be an "authorised individual" because they can operate a company's petty cash account, but they may not be able to view all the company's accounts because they are not authorised to have access to all such accounts. Clause 18 of the DCS Standard ED and the DCS Guidance should clarify the requirement relates to those with existing view access (see also our comment at paragraph 57 below).

54. **"Authorised individual" definition versus "Authority on account" for SDV:** The definition of 'authorised individual' (used in the DCS Standard ED for both the purposes of the DCS Depositor Page and clause 4, Schedule 2 for the SDV) differs to the description of the 'authority on account' on page 19 of the DCS Guidance and field 39 of Appendix B of the DCS Data Submissions Guidelines. It is unclear as to whether the Reserve Bank intends for the field 39 data to capture a narrower group of persons (for example, only those with legal authority over the account, rather than anyone who has access to the account). Accordingly, we request that the Reserve Bank clarify its position and what it intends to capture for the SDV file, and any expectations it has on a linkage between an 'authorised individual', the SDV file and the DCS Depositor Page (i.e. that these should all refer to the same person, their held role and/or capacity on the account). This will help industry with designing and building the SDV file.

55. **Read only information on deactivation:** The Reserve Bank should also clarify what happens to the read-only account software when the DCS depositor page is deactivated under clause 20 of the DCS Standard ED. We assume that the intention is to simply decommission the DCS depositor page once the payout process is underway/complete, but we welcome the Reserve Bank's clarification of this.

56. **New security requirements:** The requirement to store depositor information collected through the DCS "separately" under clause 21(b)(iii) of the DCS Standard ED is difficult to understand and apply given the diversity of IT systems across industry. We request that the Reserve Bank to explain the intention behind this requirement.

57. **Breadth of clause 18:** We believe that the drafting of clause 18(2)(b)(i) of the DCS Standard ED is unnecessarily broad and refers to deactivating the means to manage accounts generally, not just protected deposits. A deposit taker's digital channels might include systems where a deposit taker is unable to prevent the operation of accounts that are not in scope for the DCS. We request that the Reserve Bank consider refining this clause so that it refers just to protected deposits.

Comments on the alternate model to the DCS depositor page

58. The DCS Standard ED restricts the use of an alternate models to deposit taker who do not have account software or do not offer transactional accounts. NZBA strongly

submits that the Reserve Bank should expand on its rationale for this change, and in particular consider allowing an alternate model to be used by any deposit taker in circumstances where:

58.1. Account software is being actively downgraded or decommissioned, requiring the use of an alternate model as a temporary solution; or

58.2. Only a limited number of customers would be using the alternate model and/or use of the alternate model is unlikely to result in a disorderly customer experience. For example, if a legacy product is being retired and specific account software is being decommissioned it could be appropriate to use an alternate model for customers of the legacy product throughout the retirement process.

59. In both these circumstances we note that requiring deposit takers to implement a DCS depositor page could require significant time, effort and resources in circumstances where software is being decommissioned or products are being retired. Deposit takers will be undertaking significant technical programmes over the next three years and beyond in order to implement changes relating to the DCS and the DTA and dedicating resources in this manner appears to create a material and unnecessary compliance burden.

Comments on Single Depositor View requirements

60. In relation to the Single Depositor View (**SDV**) requirements in the DCS Standard ED, we have the following comments:

60.1. **SDV Aggregate Reporting:** We strongly request the Reserve Bank to provide an exposure draft or early guidance on the reporting requirements for SDV, particularly regarding the SDV quarterly reporting proposal, as referred to in paragraph 70 of the "Supporting information on the exposure drafts". Without guidance, there will be significant uncertainty for deposit takers currently progressing with their construction of SDV platforms. Should the final Reporting Standards that are referred to at paragraph 70 diverge from current assumptions or introduce additional requirements, this could necessitate substantial additional rework from deposit takers, resulting in project delays and unnecessary expenditure. Furthermore, the lack of an exposure draft/or early guidance makes it challenging to finalise technical specifications, data models, and reporting frameworks. Once the Reporting Standard exposure draft is released, the compressed implementation timeline will leave deposit takers with limited opportunity to review, consult, and implement the necessary changes before compliance deadlines, increasing the risk of rushed or incomplete solutions;

60.2. **"At all times":** The DCS Standard ED includes a requirement for deposit takers to be able to produce an SDV "at all times" – see clause 30. We note that a short turnaround time, irrespective of weekends, public holidays etc., would limit deposit takers' ability to perform data validation. This increases the risk of deposit takers submitting incomplete or inaccurate information. In this regard members consider that reasonably accurate SDV files can only be produced using close of business day data. Even with significant assumptions and a number of manual interventions there would still be limited confidence in the accuracy of an "intraday" SDV files. Accordingly,

we submit that the requirement to produce an SDV "at all times" should be by reference to the position as at the close of business on any day;

60.3. **Sharing of keys:** We submit that the Reserve Bank would need to create a mechanism for the secure sharing of keys – see clause 30(2)(c) of the DCS Standard ED. An agreed method for the secure sharing encryption keys between the Reserve Bank and any deposit taker would need to be documented in an agreement between the Reserve Bank and that deposit taker;

60.4. **Change in data format:** The data submissions guidelines document released alongside the Consultation requires that SDV information is provided as a .CSV file rather than the previously signalled .JSON file format. From an operational perspective, we consider that such a move represents a significant shift in approach by the Reserve Bank, especially given the earlier general encouragement that the Reserve Bank gave deposit takers to start planning for SDV based on what the Reserve Bank had previously consulted on, and the indication in the May 2025 Core Standards Summary of submissions and policy decisions that .JSON would be the primary format accepted. Accordingly, we submit that deposit takers should have optionality to use either .CSV or .JSON files when providing SDV information. This would enable flexibility for deposit takers and easier integration with internal systems (which may already use .JSON or .CSV files). In this context we note that:

(a) converting ..CSV files to .JSON files is relatively straightforward, and so deposit takers who do use .CSV files could provide the information to the Reserve Bank as a .CSV file and the Reserve Bank could convert these with relative ease;

(b) .JSON files may be more appropriate for some deposit takers to use as they (i) better support hierarchical and relational data than .CSV files through a nested format; (ii) have better scalability and integration with existing systems and (iii) can better accommodate large data sets such as the SDV.

In addition, we recommend that if the Reserve Bank confirms that the SDV and depositor data file can be submitted in a .JSON file, that the Reserve Bank also provides a schema for this format;

60.5. **Temporary accounts** (page 19 of the DCS Guidance and field 36 of Appendix B of the DCS Data Submissions Guidelines)**:** A variable has been included to identify temporary accounts, however only some deposit takers will have accounts that should be flagged as temporary. We request that the Reserve Bank explain the reasons for requiring temporary accounts to be flagged and engage with industry to consider whether this variable is required. If it is to be retained, we submit that it should be dealt with separately between the Reserve Bank and individual deposit takers as required from time to time;

60.6. **Temporary high balance** (page 18 of the DCS Guidance and field 27 of Appendix B of the DCS Data Submission Guidelines): A variable has been included to flag accounts with a temporary high balance however no guidance has been provided on the basis that this requirement is a placeholder for future regulations the Reserve Bank may implement.

Industry would require further information on how the Reserve Bank intends this to operate before we would be in a position to properly comment on this proposal. We are concerned that creating such a flag could potentially be difficult to achieve operationally given the number of factors that might impact on it – the example given in section 455(1)(g) of the DTA in connection with a house sale provides just one illustration of the number of variables that could affect whether such a flag would be triggered. As an aside, if the Reserve Bank is to prescribe temporary high balance regulations before the DCS Standard is effective in 2028 then this could materially complicate efforts from deposit takers to build their SDV systems. The comments that we make at paragraph 60.1 above in relation to needing early consultation on SDV aggregate reporting would apply equally to any temporary high balance regulations and temporary accounts if they were to be contemplated by the Reserve Bank;

60.7. **Mandatory fields** : NZBA considers that the following fields should not be mandatory fields, as this information may not be held in respect of every customer. We understood that the Reserve Bank had already acknowledged that this should be the case (for some of these fields) in its previous summary of submissions and policy on this issue from May 2025:

(a) field 11 - IRD number;

(b) field 21 - Post code;

(c) field 22 - Country;

(d) field 23 - Email address;

(e) field 24 - Phone number 1;

(f) field 38 – Accrued interest amount;

(g) field 49 - Authority: Post code;

(h) field 50 - Authority: Country;

(i) field 51 - Authority: email address;

(j) field 52 - Authority: Phone number; and

(k) field 53 - Payout hold status.

60.8. **Government agencies** (field 3 of Appendix B of the DCS Data Submissions Guidelines; page 15 of the DCS Guidance):: Reflecting the comments made above in connection with the Liquidity Standard (see paragraph 19 above), we request confirmation from the Reserve Bank that, in relation to the Reserve Bank's list of Government agencies that are ineligible under the DCS (published in May 2025), deposit takers:

(a) are only required to identify Government agencies on a "best efforts" basis; and

(b) are not required to confirm the eligibility status of Government agency customers directly with each agency.

Deposit takers have raised significant operational challenges in maintaining an up-to-date list of Government agencies with the Reserve Bank. We submit that requiring such ongoing maintenance and liaising with Government agency customers is unduly onerous and disproportionate compared to the expected immaterial impact on levy calculations and the Reserve Bank's position that depositor eligibility will only be determined in the event of a deposit taker failure when assessing compensation for a specific depositor, which is contrary to the principle in section 4(c) of the DTA. Furthermore, as the levy calculation framework is based on reasonable accuracy, a 'best endeavours' approach is both appropriate and aligned with the intent of the regime.

In addition, a requirement to confirm eligibility status directly with each Government agency appears to be inconsistent with clause 32 of the DCS Standard ED, which provides that deposit takers are not required to obtain information from customers for the purpose of including SDV information in the SDV file;

60.9. **Deposits held jointly or other than jointly** (field 30 of Appendix B of the DCS Data Submissions Guidelines; page 18 of the DCS Guidance): We request the Reserve Bank clarify how a deposit held jointly or other than jointly is to be recorded in the SDV file (as required by clause 2(d) of Schedule 2 of the DCS Standard ED), as field 30 only records the number of account holders. We note in this context that under section 204 of the DTA deposits are considered to be held in equal shares unless specified otherwise in the deposit taker's records;

60.10. **Nil or negative balances**: We request the Reserve Bank clarify whether deposit takers must include full depositor, account, and authorised individual information for nil or negative balance protected deposit accounts. These accounts contain no amount eligible for DCS compensation, yet the DCS Standard ED and DCS Guidance do not specify whether they must be included in the SDV. Clear direction would ensure consistency across industry and avoid unnecessary SDV file size and complexity;

60.11. **Relevant arrangements** (field 34 of Appendix B of the DCS Data Submissions Guidelines; page 19 of the DCS Guidance): In light of our comments at paragraph 60.12 below as to whether the intention is to use this field to only capture such information where it is actually known that the account is a relevant arrangement, we query whether the current "Y/N" should be framed instead as being in respect of "suspected" relevant arrangement accounts, i.e. mark "Y" if there is a suspected relevant arrangement account; "N" if no or not known. Additionally, we request that the Reserve Bank clarify how it would use this information, particularly whether it would seek to contact depositors directly following a specified event if the deposit taker had tagged an account as "Y";

60.12. **Relevant arrangements – capture information only when known**: There seems to be a conflict between the DCS Standard ED and DCS Guidance as to whether it is mandatory to capture information in relation to relevant arrangements. We submit that the Reserve Bank should clarify its intention in relation to this.

60.13. We note that clause 2(e) Schedule 2 of the DCS Standard ED provides that a SDV must, for each deposit placed with a deposit taker, include… "whether the depositor holds the deposit for or on behalf of 1 or more other persons under a relevant arrangement". This is reflected in the statement in field 34 of Appendix B of the DCS Data Submissions Guidelines/page 19 of the DCS Guidance which says 'Accounts that are relevant arrangements need to be identified'.

60.14. However, paragraph 51 of DCS Guidance emphasizes the fact that clause 32(1) of the DCS Standard ED provides that deposit takers are not required to obtain information from an authorised individual or other person to complete the SDV. Although paragraph 51 goes on to say that there may be circumstances where it is in such person's interests to volunteer such information (and gives a specific example of a relevant arrangement), the disclosure of that information is not mandatory. See also our comments at paragraphs 61 to 63 below.

60.15. **Accrued interest amount** (field 38 of Appendix B of the DCS Data Submissions Guidelines; page 19 of the DCS Guidance): We submit that including the accrued interest amount in the SDV file should not be a mandatory field (i.e. it should only be provided when details are available). Making the accrued interest amount field mandatory could add significant time and complexity to preparing SDV files and could slow down a payout or resolution process, and also seems to be contradictory to the obligations under section 218 of the DTA, which allows for estimates if accurate values are not available;

60.16. **Alignment of the scope of products:** The Reserve Bank should ensure that the scope of products in the SDV file is aligned with the definition of deposit used for the Bank Balance Sheet Survey. This will make reconciliation of SDV files during testing much simpler;

60.17. **Multiple SDV files:** The Reserve Bank should clarify if the SDV can be delivered in multiple files (such that these files in aggregate would include all data in scope). This would deliver improved flexibility for deposit takers who may wish to split these files between deposit data, account level data and relevant arrangements for example. However we note that the Reserve Bank would need to provide guidance in these circumstances on what an acceptable separation would be. Additionally, we note that CSV files may not provide an efficient way to present relational data (noting our comments at paragraph 60.4 above);

60.18. Furthermore, we also consider that the Reserve Bank's .CSV specification could not be provided as a single file where there are multiple authorities. If the Reserve Bank is to proceed with using a .CSV format, it should provide a clearer .CSV specification, supported by scenarios (e.g. a person with multiple accounts and multiple authorities) and it should explain how it will handle multiple authorities, for example, in a separate row in the SDV and ensure that the DCS Guidelines enable this. Currently, the DCS Data Submission Guidelines contemplate only one 'authority' object per account (see fields 39 – 52 of Appendix B of the DCS Data Submissions Guidelines). Moreover, the concept of multiple authorities does not seem to have been taken into the DCS Guidance where there is a requirement for a unique identifier (see field 1 of Appendix B of the DCS Data Submissions

Guidelines, and page 15 of the DCS Guidelines). Where there is more than one authority they may all relate to the same unique identifier and/or different account number;

60.19. **Alignment with the loan-level data project:** The Reserve Bank should ensure that the design principles and procedures used for the SDV file align with those for the loan-level data project where feasible and beneficial, but we encourage the Reserve Bank to engage with deposit takers to explore this before making any decisions;

60.20. **Testing requirements:** The DCS Guidance notes that "testing of the SDV must be undertaken against a range of circumstances including closure at any time of the day and any day of the week" (see clause 55 of the DCS Guidance). Does this refer to whether deposit takers are able to deliver the SDV data at any point in time or the ability for deposit takers to provide data accurate to any time of day (that will be delivered at a later point in time). The comments that we make at paragraph 60.2 above in relation to the requirement for deposit takers be able to produce an SDV "at all times" apply equally to the testing requirements. Accordingly, we submit that testing should only be undertaken as at the close of business on any day and that any "live' requirement (i.e. not testing) will need to be based on a deposit taker's end of day position;

60.21. **De-identification:** Clause 60 of the DCS Guidance notes that in certain circumstances the Reserve Bank may require SDV data is provided on a de-identified basis, and refers to irreversibility, reasonable means and the possibility of re-identification as principles for ensure data is de-identified (as described in the May 2024 consultation paper). We request the Reserve Bank to provide further guidance to industry on how to apply these principles and what other parts of the final DCS Standard and DCS Guidance will apply to SDV files which have been de-identified (for example, whether there is a longer response time, different file format and what fields should be de-identified). The Reserve Bank should also provide further guidance on when de-identified files may be requested;

Other comments on the DCS Standard

61. **Clarification of which SDV variables are mandatory:** The definition of 'identifying information' in clause 3 of the DCS Standard ED includes, "*for a person other than an individual, the person's New Zealand Business Number [NZBN]*". Clause 1(a) of Schedule 2 of the DCS Standard ED provides that 'a single depositor view must, for each depositor in respect of a protected deposit, include "*(a) identifying information…..*", which could be interpreted as requiring all elements of the 'identifying information' definition to be provided. The DCS Guidance however provides that NZBN is non-mandatory, and the Reserve Bank is aware and is comfortable that deposit takers do not capture NZBN information for all customers. This appears to conflict with the DCS Standard. A similar issue arises in the definition of 'contact details' where 'preferred contact method' is listed but is a non-mandatory field in the DCS Guidance. We also refer to paragraph 60.7 of our submission above where we highlight certain other SDV fields which we think should not be mandatory.

62. We submit that it would be helpful if the DCS Standard clearly stated which SDV variables are mandatory, rather than setting this out in the DCS Guidance. We are

happy to engage with the Reserve Bank further to ensure a workable outcome on this issue. We suggest that either:

62.1. Non-mandatory variables are removed altogether from the relevant definitions and Schedule 2 of the DCS Standard; or

62.2. Where non-mandatory variables are included or referenced, '(if held)' is added so that it is clear in the DCS Standard where variables are only to be provided where held.

63. Related to this, paragraph 49 of the DCS Guidance states "*Where fields are mandatory information must be provided*". However, clause 32(1) of the DCS Standard provides that a deposit taker is not required to obtain information for the purpose of including SDV information in a single depositor view. We request that paragraph 49 of the DCS Guidance is clarified so that it is consistent with clause 32(1) of the DCS Standard, and indicates that for non-mandatory fields, information can be provided where it is held by the deposit taker (but is not required to be).

64. **Identification and collection of information for each depositor:** In the context of paragraph 63 of the "Deposit Takers Standards – Tranche 1 Supporting information on the exposure drafts" document, we submit that the DCS Standard ED and/or DCS Guidance should be amended to retain flexibility to allow authorised individuals to identify and enter depositor information for other entities under their control using freeform text boxes under certain circumstances, noting that deposit takers should still be able to opt not to use freeform text if they do not see this as appropriate. These circumstances would be limited to DCS depositor pages for business-specific account software, where the primary entity for the login has already been identified and provided. This approach ensures deposit takers can implement efficient and effective solutions to collect depositor information without introducing unnecessary effort or complexity.

65. **Clarification on executors and persons exercising power of attorney:** We request that the Reserve Bank clarify how clause 34 of the DCS Guidance applies to individuals exercising and enduring power of attorney or acting as the executor of an estate. We support excluding these persons from onboarding requirements as contemplated by this clause.

66. **Lack of date or time fields:** The DCS depositor page file does not contain a date or time field to indicate when a record was created. This means that where data is submitted and then updated on the same day, the Reserve Bank may not be able to determine which was submitted later. There is also no field that would allow the Reserve Bank to identify who submitted the information. We request that the Reserve Bank consider adding a 'Record creation date' and a 'Username' column with the first and last name of the person that submitted the information within the file so these can be validated.

67. **Depositors updating information:** The DCS Guidance refers to depositors contacting the Reserve Bank if, for example, they need to update their depositor information or wish to provide a foreign account number However it is unclear how or where depositors are expected to find contact information for the Reserve Bank. It will be helpful to deposit takers to know where this information will be available, so that they can direct customers to this information.

68. **Identification of Debt Securities:** Clause 3 of Schedule 2 of the DCS Standard ED (see also field 31 of Appendix B of the DCS Data Submissions Guidelines) requires

deposit takers to identify the type of debt security that comprises the deposit, according to the list in Regulation 5(2)(a) of the Deposit Takers Regulations 2025. The Reserve Bank should clarify if this field must use the exact product type listed in Regulation 5(2)(a), or if deposit takers' product types can be used? Deposit takers will have a range of product types and names, which have been mapped to the products in Regulation 5(2)(a) and extracting this mapping onto the SDV file could be complex and unnecessary.

69. **Comments on particular questions:**

Q12 - Constraints that might prevent the implementing asymmetric encryption: Any inconsistencies between the Reserve Bank requirements might impede the implementation of asymmetric encryption. We note that there are other Reserve Bank requirements relating to encryption (for example, in relation to Loan Level Data). As a broader comment, we have assumed that the Reserve Bank's DCS team is working in conjunction with other Reserve Bank teams to ensure that requirements covering the same matters are consistent.

Submissions on the Lending Standard

- *Q15 Do you have comments on the structure of the attached exposure draft of the Lending Standard?*
- *Q16 Does the attached exposure draft of the Lending Standard and the draft Guidance set out LVR and DTI exemptions clearly enough (noting that these are now framed as 'nature of lending' categories)?*
- *Q17 Do you have comments on the changes to LVR and DTI exemptions (noting that these are now framed as 'nature of lending' categories)?*
- *Q18 Do you have comments on including a range of high-LVR and high-DTI thresholds and speed limits, without increments?*
- *Q19 Do you have comments on the approach to anti-avoidance?*
- *Q20 Do you have comments on the proposed transitional arrangements?*
- *Q21 Do you have any other comments on the attached exposure draft of the Lending Standard?*
- *Q22 Do you have any comments on the attached draft of the Guidance to support the Lending Standard?*

The existing definition of "residential mortgage loan" should be retained. If the new definition of residential housing loan is used clarification is required

70. We note the Lending Standard exposure draft (**Lending Standard ED**) relies on a new definition of "residential housing loan", which materially differs from the existing "residential mortgage loan" definition under BPR131. It is not clear to us that these differences are intentional and they will have a material impact on deposit takers existing compliance practices.

71. We submit that, as a general comment, the existing definition of residential mortgage loan should be retained. But if the new definition is to be adopted, the Reserve Bank will need to clarify, and take into account:

71.1. **That the definition of "residential housing loan" should not focus solely on the existence, or intended existence, of a dwellinghouse:** Under BPR131 the existing definition of "residential mortgage loan" focuses on intended use of the land being for residential purposes. However, the definition of "residential housing loan" in the Lending Standard ED focuses on whether there is a dwellinghouse, or intent to erect a dwellinghouse. In our view, this approach:

(a) is likely problematic for lending to purchase bare land, where there is no immediate intent to erect a dwellinghouse, or where lending to erect a dwellinghouse will be done subsequently and on a separate loan, as is common practice; and

(b) will also mean land that was previously excluded may be within scope, like land that is predominantly used for farming but includes a dwellinghouse on the property for the owner;

71.2. **That land used for farming or commercial activity is excluded from the definition of "residential housing loan":** Currently under BPR131, loans cannot be classified as "residential mortgage loan" if the mortgaged property is being used predominately for farming or commercial activity. The new definition of "residential housing loan" in the Lending Standard ED should replicate these express exclusions for clarity and consistency. We have suggested some language in the definition of "residential housing loan" in the Lending Standard ED to clarify this. Additionally, the Reserve Bank should clarify in the Lending Guidance that Kāinga Whenua loans are excluded from this definition (and should be treated as "Other Assets" for capital purposes);

71.3. **What constitutes "residential land":** The term "residential land" used in the "residential housing loan" definition is undefined in the Lending Standard ED. The Reserve Bank should seek to clarify that the "residential land" definition refers to a specific interest in land on the land registry (whether that is freehold, leasehold, cross lease or unit title). This is particularly relevant in the context of 'new build finance' and the requirement to demolish any existing dwellinghouse on the residential land; in the case of a cross lease, for instance, it should be clear that this does not require all dwellinghouses on the underlying cross leased title to be demolished. We have suggested a new definition of "residential land" and a change to clauses 11 and 12 in the Lending Standard ED to address these points;

71.4. **Whether, iwi, community housing providers and governmental entities are included in the definition of "residential housing loan":** We submit that the Reserve Bank should clarify if housing developments developed by iwi, community housing providers, or governmental entities are included in the definition of "residential housing loan";

71.5. **A review will be needed of the definition once the Capital Standard is developed:** Once the Capital Standard is developed the Reserve Bank will need to review the definition of "residential housing loan" to check that the

parameters used to delineate the sub-classes of "residential housing loan" are consistent with those that are developed for in the Capital Standard.

72. **Changes to "owner-occupied property" definition:** We submit that changes to the definition of "owner-occupied property" may have unintended impacts and should be reviewed. Currently, an owner-occupied residential property means a property where a legal or beneficial interest is held in the property by a natural person or a related party of a natural person, and that natural person or their spouse, civil union partner, or de facto partner, intends to occupy the property as their principal or secondary residence. The definition of "owner-occupied property" in the Lending Standard ED requires that the land is intended to be used by an individual who is the debtor or their relative, or where the debtor is an entity, the beneficial owner of that debtor or a relative of the beneficial owner. This appears to be a material change in approach, and we are unsure if the Reserve Bank was intending to make a material change in this area. Particularly, the focus on use only, rather than ownership *and* use presents a material change in the assessment that deposit takers must make. Our preference is that the definition should include ownership *and* use in line with current requirements. Additionally, there is a material difference between "related party" and "relative" (a term which is undefined in the Lending Standard ED). We consider that the term relative is not needed. But if it is retained, the Reserve Bank should provide a definition. For example, it is unclear whether a spouse, civil union partner, or de facto partner would be considered a "relative" under the Lending Standard ED. Similarly, the term "tenant" is undefined in relation to the definition "investment property" in the Lending Standard ED.

73. Additionally, to the extent that the Lending Guidance includes material matters that a deposit taker must comply with, these should be included in the Lending Standard. The Lending Guidance is intended to provide more detail on the Reserve Bank's preferred interpretation and guidance on how a deposit taker could seek to comply with the Lending Standards. However, the current Lending Guidance appears to go beyond this in covering anti-avoidance rules, explaining when lending is to be treated as captured, etc.

General comments on drafting

74. We note the following in relation to the Lending Standard ED:

    74.1. **Determinations etc:** There are a range of references in the Lending Standard ED to the deposit taker making determinations regarding the relevant lending; the lending being used for certain purposes; or future conditions being fulfilled (such as the lending having to be used for a particular purpose, rather than the intent being that the lending will be used for that purpose and requiring that a code compliance certificate be issued within two years in the case of new build finance). The Reserve Bank should clarify its expectations here as the drafting in the Lending Standard ED is problematic and too subjective in its current form. We assume deposit takers may make determinations based on the information they reasonably have available when making the determination (rather than, for instance, a hindsight test being applied if the lending is not actually used for a particular purpose or if a code compliance certificate is not in fact issued within two years). We also submit that the definition of "market value" needs to make it clear that deposit takers have discretion when selecting among purchase price, formal valuation, or estimated value. In addition, we note that the Lending Standard ED refers to whether a loan *qualifies* as a residential

housing loan, but it is almost silent on what this means, why it is required, and what the outcomes of this are. We also consider the interplay between those concepts and the Lending Guidance is blurred. We have included suggested wording in the Lending Standard ED to address these points;

74.2. In this context, we are concerned that the requirement in relation to new build finance for a Code Compliance Certificate to be issued within 2 years of the first advance, which is not part of current policy, creates an unnecessary process for deposit takers and may not be workable. Deposit takers will not have sufficient certainty to confirm that this will be the case and as a result deposit takers are likely to take a conservative approach to this assessment;

74.3. **Cross references to other legislation:** As mentioned in our general comments on the Standards above, we note that the Lending Standard ED contains a significant number of cross references to the CCCFA. The Reserve Bank should be conscious that the CCCFA has historically been amended a number of times (and with relative frequency), for reasons that may be unrelated to the purposes of the Lending Standard. We consider that definitions from the CCCFA should only be used where necessary (and where it is considered that future amendments to the CCCFA will be unlikely). We also note that where concepts from the CCCFA have been applied, they do not necessarily replicate the approach appropriately. For example, provisions relating to personal loans focus on *use* of credit for business purposes, rather than *intended use*. We consider this to be a material difference and the way it is applied in the Lending Standard ED is likely problematic;

74.4. **Use of "Kāinga Ora first home purchase":** The Reserve Bank should consider amending the references to Kāinga Ora in the Lending Standard ED in order to include any successor agency to Kāinga Ora or the first home scheme. We note this would help future proof the Lending Standard from any changes, whilst the Lending Guidance could still refer to Kāinga Ora (noting that the Lending Guidance can be updated in future). We have included suggested language to the definition in the Lending Standard ED to address this point;

74.5. **Whether the "credit contract" must be secured directly or indirectly by a first mortgage:** As drafted, the definition of "residential housing loan" includes a "credit contract secured by a first mortgage". We submit that the preferred interpretation is to capture a credit contract secured directly or indirectly by a first mortgage and we request that the Reserve Bank make it clear that this is the case, either by amending the Lending Standard and/or making this clear in the Lending Guidance;

74.6. **Treatment of business debt:** The Lending Standard ED appears to only exclude personal loans used for business or investment purposes; however does not address how business or home loans secured by residential property for business purposes should be treated (these are currently excluded from the calculation of debt in BS20 - if it is not for residential investment purposes). We request that the Reserve Bank clarify the intended treatment of business debt;

74.7. **Undefined terms:** There are several undefined terms in the Lending Standard ED:

(c) **"loan"** - the word "loan" is often used interchangeably with the defined term "credit contract". We are concerned this could cause confusion and uncertainty for deposit takers, so we submit that the Reserve Bank should either clarify the intention behind taking an interchangeable approach, or use a consistent definition. In this context we note the following:

(i) a timing issue may arise with using the CCCFA definition of "credit contract".

Under the current BS19/BS20 requirements a loan/credit contract is measured from the point in time that the final offer is made (e.g. when the documents are sent to the borrower's solicitor). This will be earlier than the point in time at which funds are actually advanced. If the definition of credit contract in the CCCFA is used it could unintentionally change this established position, with the loan/credit contract being created later in the lifecycle of the arrangement than when there is a commitment. While we do not believe that the Reserve Bank's intention is to change the established position, we submit that the Reserve Bank should confirm this and take this into account when considering its approach on the issue.

As an aside if a definition of "credit contract" is used, it should be based on the definition used for the purposes of section 82(5) of the DTA, which provides the statutory basis on which the Reserve Bank may issue the Lending Standard and not just section 7 of the CCCFA.

(ii) the Lending Standard ED does not include a definition of "loan".

If the Reserve Bank decides to refer to the arrangements as "loans" in the Lending Standard, because, for example, it wishes the concept to be consistent with the Capital Standard, then a definition will be needed in the Lending Standard.

(d) **"person"** - the Lending Standard ED refers to lending to a "person" which is not defined. We have included a suggested definition in the Lending Standard ED to make it clear that this should be interpreted broadly (i.e. cover natural persons and entities). However there is a broader question as to how the concept is intended to apply in the context of guarantors, trusts or companies receiving business lending secured by residential property. In the case of the latter, there are flow on consequences in the context of the concept of a "personal loan" used in clauses 21(1)(c) and 21(2)(b). We note there is no definition of "personal loan". This describes a certain product in the context of the banking industry, but the Lending Standard ED appears to use this term in a wider sense, which has the potential to cause confusion. Deposit takers would not generally be offering "personal loan" products to corporate entities. Accordingly, further

consideration needs to be given to how those two provisions are intended to operate where the relevant "person" is a company.

(e) **"income"** - the term "income" is undefined in the Lending Standard ED. We submit that the Reserve Bank should carry over the definition of income" from BS20 to clearly delineate how other forms of income (i.e. trust income, government benefits) are to be treated. We also note that section 12 of BS20 which sets out further detail as to how deposit takers measure the various sources of income has not been included in the Lending Standard ED. We submit that the Reserve Bank should consider including analogous provisions in the Lending Standard.

(f) **"first advance"** - the Lending Standard ED uses the term "first advance" rather than the previous "loan commitment date". Using this terminology risks confusion as "advance" (which we note is not defined in the Lending Standard ED) connotates the point at which the loan is drawn down, rather than the earlier date where it is committed (where DTI, LVR and Capital are calculated). We suggest that a definition of "loan commitment date" is included to clarify the position.

74.8. **"market value" definition:** the definition of "market value" in the Lending Standard ED refers to "the value as estimated by a person in the business of providing a valuation service". We submit that it should be made clear that it includes online valuation services. More generally, we query whether there should be a new definition of "market value", rather the definition of "property value" from BPR131/133 used in BS19 and 20 should be retained. We are concerned that if the proposed definition of "market value" is intended to be used for the Capital Standard as well, that it will not be sufficiently appropriate. For example, unlike the definition of "property value", the definition of "market value" does not take account of deposit takers' internal valuation processes, which gives deposit takers the ability to take a more conservative approach to property valuations. The Lending Standard ED implies that this is not available;

74.9. **Categorisation of "ordinary finance":** We would appreciate if the Reserve Bank could clarify whether deposit takers are expected to have their own categorisation for "ordinary finance" in their internal systems or whether this will continue to be calculated as the balance of residential housing lending that does not fall within another lending category (as is the case currently);

74.10. **New build finance and new build purchase:** As set out in the Lending Standard ED the requirements that existing dwellinghouses be demolished (which is not required under current settings) in order for a loan to be categorised as new build finance or a new build purchase could lead to unintended consequences. For example, a property may have an existing dwelling that will be kept on the property while a new dwellinghouse is built, with the property then subdivided and the existing dwelling sold. Alternately, the existing dwelling may be kept on the property as a secondary dwelling. It is unclear why the requirement for the dwellinghouse to be demolished has been included. We submit that the wording in the Lending Standard ED needs to be adjusted to reflect the intent in the existing BS20. Paragraph 14(3)(e)(i)(b) of BS20 refers "to finance the ownership of land, or to prepare

land, including the demolition or removal of existing structures on the land or provision of services necessary for using the land as residential property";

74.11. **Bridging finance:** The provisions relating to bridging finance in clause 8 of the Lending Standard ED are materially different to the current settings, namely:

(a) The new provisions assume any amount advanced is secured only against the existing mortgage. In most cases, the finance will be secured against both the existing mortgage and the new property being purchased (as the level of lending otherwise exceeds the available security value of the existing mortgage); and

(b) The new provisions require that the amount advanced to purchase another owner-occupied property will be repaid within 12 months of the first advance. The current provisions provide that the *exemption* lasts for 12 months and on that date the value of the increase in lending arising from the bridging finance must be included in the LVR calculation. This reflects that a deposit taker is unable to determine if the lending *will* be repaid within 12 months. As a result, some open bridging loans will likely fall outside of the scope of this category and only closed bridging loans where the expected settlement date is within 12 months will be included. We are unsure if this was the Reserve Bank's intended outcome, and we request that the Reserve Bank clarify this.

74.12. **Security substitution:** We note the Lending Standard ED introduces a new time bar of six months on the need for replacement security to be provided. We do not believe this will always be known at the time the lending is entered or always be practicable. The current settings under BS19 and BS20 that reference a six month period are in connection only with whether the borrower occupied a previous property in advance of the new security being purchased;

74.13. **Refinancing:** We submit that clause 14(b) of the Lending Standard ED should make it clear that it only applies to credit provided under the "new" loan, and not any existing loans;

74.14. **Remediation finance:** We are concerned that the provisions in clause 15 of the Lending Standard ED relating to remediation finance are too narrow. The provisions cover where buildings are destroyed or damaged, but do not cover the scenario where lending is provided for repairs or remediation arising because of significant weather-tightness issues or to improve a building to meet currently accepted standards (e.g. Seismic strength standards or rental property standards around matters like heating and insulation) as per clauses 12(1)(h)(iii)(b) and (c) of BS19. We assume this is likely an unintended drafting difference, but we submit that should be addressed so that the provision more closely reflects the current BS19;

74.15. **Calculation of qualifying credit:** The Lending Guidance suggests that clause 24 of the Lending Standard ED includes both new residential housing loans and any top ups during the lending period in the calculation under clauses 25 and 26. However the drafting of clause 24 in the Lending Standard ED is somewhat unclear. We submit that the Reserve Bank clarify that clause 24(1) applies to a calculation of qualifying credit under clauses 25

and 26. In that regard, we query if clauses 24(1)(c) and 24(1)(d) are required, and consider that clause 24 would be clearer with those sub-clauses removed. Additionally the Reserve Bank may wish to consider duplicating clause 24(2) in clauses 25 and 26 for clarity;

74.16. **Treatment of guarantors:** The Lending Standard ED does not contain a definition of guarantors and does not directly address how the debt, income and security of guarantor should be treated (such as excluding guarantors not relied upon for servicing a loan from the DTI calculation, which should be clarified in the context of clause 21(1)(d) of the Lending Standard ED). We assume the Reserve Bank has not altered its policy position on the treatment of guarantors, such that the Reserve Bank should consider incorporating the existing provisions relating to the treatment of guarantors from BS20 into either the Lending Standard or the Lending Guidance in order to ensure a consistent approach and provide certainty to deposit takers;

74.17. **Requirements to calculate DTI for equity release loans:** In the Lending Standard ED, the requirement to calculate a DTI in order to determine if a person qualified for a "residential housing loan" is framed generally and on its face appears to apply to equity release loans, despite equity release loans explicitly being excluded from the calculation of qualifying credit under clause 24 of the Lending Standard ED. Equity release loans do not rely on underlying income for repayment, so we are unsure why this requirement has been included and we consider that the Reserve Bank should explicitly exclude equity release loans from the requirement to calculate a DTI in the Lending Standard.

74.18. **The term "unpaid balance":** If a loan has a balance, it is, by definition, unpaid. Given this, "unpaid" could potentially be interpreted as "overdue" in an industry context. While we acknowledge this term exists for the purpose of the CCCFA, we do not believe it is suitable for the purpose of macroprudential (and capital) frameworks. We recommend that the Lending Standard retain the term 'balance' from the current framework.

74.19. **The term "Lending Period":** We note this is the proposed term to replace "measurement period" from the current BS19 and BS20. We suggest that "measurement period" is a more accurate description. As an industry concept, the term "lending period" is frequently understood to mean the duration of the loan.

74.20. **The term "Debtor":** The term "Debtor" is proposed to replace the terms "borrower" and "borrowing party" that are currently used in BS19 and BS20. We suggest retaining the existing terms of "borrower" and "borrowing party" as these clearly distinguish those that owe amounts under the loan to the deposit takers, and other debtors that may be involved in calculations (e.g. debtors of the borrower).

General comments on the Lending Standard ED

75. **Loan-granted-in-error exemption:** We note that the loan-granted-in-error exemption category in BS20 has not been carried over into the Lending Standard ED. We consider that the removal of the loan-granted-in-error exemption may increase compliance risk in rare cases of genuine administrative error. While the Reserve Bank's rationale is understood, we submit that a limited error tolerance or alternative

remediation mechanism to address genuine mistakes without undermining the policy intent of the Lending Standard is recommended. We understand that this was the basis on which the provision was originally included by the Reserve Bank in the current requirements, and the reason for this remains relevant now. Accordingly, we submit that the Reserve Bank should consider including the loan-granted-in-error as one of the nature of lending categories, and so outside the "ordinary finance" category.

76. **Exclusion of branches:** We note that clause 10 of the Lending Guidance does not expressly exempt branches from the Lending Standard, only Group 3 deposit takers, on the basis that they do not pose a systemic risk to financial stability. However, the Reserve Bank has previously stated that the Lending Standard would not apply to branches (see Table A (page 6) and the comments at paragraph 21 (page 8) of the Deposit Takers Non-Core Standards Policy proposals published on 21 August 2024) on the basis that branches do not pose a systemic risk to financial stability. We submit that this remains the case, and, accordingly, clause 4 of the Lending Standard ED and the Lending Guidance should be updated to reflect this. We note that language similar to that used in clause 4 of the DCS Standard ED could be used, but suggest it may be more appropriate to cross refer to clause 5 of the Branch Standard ED instead.

General comments on the Lending Guidance

77. We note the following in relation to the Lending Guidance:

77.1. **Changes to the calculation of "business income":** The calculation of "business income" set out at paragraph 87 varies materially from the calculation of "business income" under BS20. We support carrying over the existing calculation from BS20 and request that the Reserve Bank clarify its policy intent here and whether its intention is to alter this calculation, as any change could have significant system impacts;

77.2. **Treatment of variable or foreign income:** The Lending Guidance does not directly address the treatment of variable of foreign income as is the case under the Lending Guidance for BS20. We submit that the Reserve Bank should incorporate this relevant guidance to ensure a consistent approach across industry;

77.3. **Use of "debt":** The Lending Guidance refers to "debt(s)" at paragraphs 81 and 82, however this seems to be inconsistent with the Lending Standard ED which uses the term "credit contracts";

77.4. **Changes to DTI and/or LVR:** Paragraph 102 notes that changes to DTI and/or LVR settings will be set out in revised licence conditions, which will also state when the initial lending period ends for these new settings. It would be helpful if the Reserve Bank could provide some expected timeframes in the finalised Lending Guidance for the period between a change being notified and the end of the initial lending period. This would provide greater certainty for deposit takers around the lead-in times necessary to implement any changes;

77.5. **Avoidance activities:** Paragraph 108.8 identifies "acting as a broker or arranging a residential housing loan, which is ultimately provided by an associated person or holding entity" as a potential avoidance activity. Can the Reserve Bank clarify who the associated person or holding company limb of this example related to, is this in relation to the debtor or the deposit taker?

77.6. **Income verification – No materiality threshold:** The Lending Guidance is largely silent on the practicalities of income verification and the exercise of discretion in determining which income sources to include in the DTI calculation. Under the previous BS20 framework, deposit takers were permitted to apply a materiality threshold, allowing minor or immaterial income sources to be excluded from verification and DTI assessment. This approach provided operational flexibility and ensured that compliance efforts were proportionate to risk. Accordingly, we submit that the materiality threshold be re-introduced in the Lending Guidance;

77.7. With the removal of the materiality threshold in the Lending Standard, there is now some ambiguity as to whether all potential income must be verified and included, regardless of its relevance or materiality to the loan decision. This could be interpreted as requiring comprehensive verification of all income, which would represent a significant departure from current practice and could create operational challenges, customer inconvenience, and a barrier to competition. We request that the Reserve Bank confirm whether this is an intended change from BS20, and if so clarify its expectations as to how deposit takers take into account immaterial or de minimus sources of income;

LVR and DTI exemptions

78. We are generally supportive of the specific LVR and DTI exemptions outlined in the Consultation, including the changes to remove the original developer requirement for new build finance.

Future changes to LVR and DTI thresholds

79. At paragraph 100 of the Lending Guidance, the Consultation notes that the Reserve Bank would still have the option to increase LVR and DTI thresholds and speed limits that are outside of the ranges in the Lending Standard, if market conditions require such changes. Further, the Consultation notes that this could require amendments to the Lending Standard which could take time to implement. Additionally, clause 23(2)(3) of the Lending Standard ED restricts speed limits to a maximum of 30%. Noting that speed limits are set as a condition of licence, we are unsure if codifying this limit in the Standard would be appropriate (as amendments may be necessary if market conditions warrant higher speed limits).

80. We encourage the Reserve Bank to provide guidance to industry on the likely timeframes and process that would be required to amend the Lending Standard in these circumstances. Additionally, we encourage the Reserve Bank to commit to engaging early with industry on any changes to LVR and DTI thresholds, as such early engagement would be very valuable from a business planning and system configuration perspective.

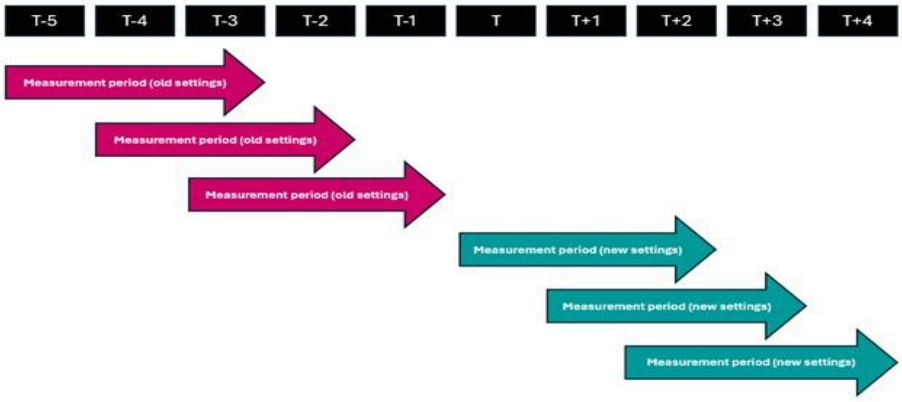
General Comments

81. **General comment:** As a general comment we submit that the structural changes, including determining the nature of the lending before applying the LVR and DTI ratios, are generally logical. However, the more prescriptive approach to loan classification and qualifying credit calculations may result in some additional operational complexity,

as well as the need for updates to systems, processes, and staff training and may potentially impact reporting.

82. Given these changes, we seek confirmation from the Reserve Bank that the intent of the new Lending Standard is to fundamentally mirror the regulatory requirements and compliance expectations of BS19 and BS20, rather than to introduce new obligations or a greater compliance burden. If this is not the case, and there are areas where the Reserve Bank intends that the new Lending Standard materially goes beyond the existing frameworks, we would appreciate a clear identification and rationale for those changes to support effective planning and resource allocation by deposit takers.

83. **Transitional arrangements:** We are generally comfortable with the proposed transitional arrangements for the Lending Standard. However, we note that further DTA consultation is set to occur (e.g. Tranche 3 (including Capital)), which may introduce additional requirements or interpretations that could affect our current understanding of the proposed Lending Standard, and has informed our submission on the Lending Standard ED. This could impact on the implementation process by deposit takers if further clarity is necessary. We submit that the Reserve Bank should provide clear guidance on the treatment of loans originated during the transition period (including how any change to the "speed limits" during the transition period will apply) and confirm that no retrospective compliance will be required. We would like to emphasize that ongoing flexibility and communication will be important as the full regulatory framework is finalized. As an aside, Figure 3 on page 25 of the Lending Guidance is incorrect. At 'T' there is a hiatus in reporting to reflect the changeover from old to new settings; i.e. there is no overlap. The same applies to Figure 4 on page 26 of the Lending Guidance.



84. **Lending Standards not applicable to Group 3:** We note that the Lending Standard is not proposed to apply to Group 3 deposit takers. While we do not have any issues with this approach we would like the Reserve Bank to clarify any intended indirect application or impact of the Lending Standard on securitisation funding provided by Group 1 or 2 deposit takers to such Group 3 deposit takers. This would be helpful to ensure all parties understand their obligations and potential impacts.

Submissions on the Incorporation outside New Zealand Standard

- *Q23 Do you agree that the drafting of the large corporate or institutional client definition reflects the previously announced policy intent?*

- *Q24 Do you agree that the drafting of the wholesale client definition reflects the previously announced policy intent?*
- *Q25 Do you have any other comments on the attached exposure draft of the IoNZ Standard?*
- *Q26: Do you have any comments on the attached draft of the Guidance to support the IoNZ Standard?*

We are supportive of the wholesale client definition

85. We are supportive of the definition of "wholesale client" included in the Incorporation outside New Zealand Exposure Draft (**Branch Standard ED**). In particular we support the inclusion of the associated persons of a wholesale client in this definition. However, there are several areas where we consider the definition could be clarified and refined:

    85.1. we note that the definition of "wholesale client" includes a "person who is in the business of providing a financial service" under section 6 of the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (**FSP Act**). The FSP Act is focused on New Zealand offers and roles (such as investment managers of Managed Investment Schemes), which will generally not apply to overseas clients. The Reserve Bank may wish to consider expanding the scope of this qualifier to include the overseas equivalents of these roles. The Reserve Bank could look to leverage equivalent legislation in other trusted jurisdictions to achieve this; and

    85.2. we also note that the "rapid growth" allowance (which we comment on further below) applies to the large corporate or institutional client definition only. We submit that a corresponding allowance be included in the "wholesale client" test for branch-only banks.

The definition of large corporate or institutional client needs refinement

86. As with the above, we are supportive of the definition of "large corporate or institutional client" in the Branch ED including the associated persons of a large corporate of institutional client.

87. However there are a number of areas where we think this definition should be clarified and potentially refined, as this definition is a new way of classifying customers outside of the existing framework of the FMC Act. In particular:

    87.1. Clause 7(1)(c) and (d) of the Branch Standard ED will in practice only permit the inclusion of clients where the client or associated persons are either the "custodian" or "manager" (as defined in the FMC Act), which will be applicable in the case of fund managers of proprietary schemes. However, some fund managers or investment managers enter into transactions with a deposit taker on behalf of third parties, which could include the manager of a scheme or other third parties like insurance firms, under a contractual mandate or investment management agreement. These customers would not fall within the definitions of "custodian" or "manager" in relation to the fund/scheme, but should still be included if they are transacting on behalf of funds or other entities with assets exceeding $250 million and their inclusion

is warranted by the underlying policy intent the Reserve Bank has outlined. To avoid any unintended narrowing of the policy intent in the case of entities that are not the custodian or manager, a more general clause should be included covering a fund manager or investment manager with total funds under management exceeding $250 million;

87.2. Clause 7(1)(e) of the Branch Standard ED provides that a client may be considered a large corporate and institutional client if they or an associated person are "likely to experience an event causing rapid growth to its business (for example, a merger), which would reasonably be expected to cause the client and associated persons of the client" to meet either of the size tests. These elements will be difficult to apply in practice. They also restrict this definition beyond the scope outlined in the summary of policy decisions that the Reserve Bank published on the Branch Standard, which indicated that forward-looking certification would allow the inclusion of clients that are reasonably expected to meet the thresholds within a certain period of time (rather than being tied to a specific event causing rapid growth). In addition, the current wording does not permit the inclusion of clients that are newly formed custodians or fund managers that expect to meet the assets under management thresholds within a period of two years. Given this, and for consistency, we submit that the requirement for an "event causing rapid growth" is removed, and that a client will meet the definition if it is reasonably expected to meet any of the tests under clauses 7(1)(a), (b), (c), or (d) on the later of (i) on or before the maturity date of any proposed transaction with the deposit taker, or (ii) two years from the date of the assessment as was set out in the summary of policy decisions that the Reserve Bank published on the Branch Standard;

87.3. If the current requirement for an event causing rapid growth is to be retained in clause 7(1)(e)/(f) of the Branch Standard ED, then in order to enable branches to apply this test, it will be important for the Reserve Bank to clarify and provide guidance on:

(a) *How early an assessment can be made*. As set out in the Branch Standard ED, this assessment is to be made before an event causing rapid growth has occurred. We request the Reserve Bank to provide guidance on how early branches are entitled to make this assessment, including any timeframes for this. Additionally, the Reserve Bank should clarify when an event has deemed to have occurred, particularly in the case of staged mergers;

(b) *How to determine if an event is likely*: Guidance is required as to how branches should determine if an event is likely, and what level of certainty branches will require to make such assessment. The Reserve Bank should be clear whether they expect this assessment to be made on the basis of a simple balancing exercise (i.e. a branch forms the view that the event is more likely to occur than not) or if it expects a higher standard to be applied. Additionally, we think the Reserve Bank should provide guidance on what assumptions branches will be entitled to rely on when making this assessment;

(c) *What happens if an event occurs but the client does not meet the size tests*: Guidance is required as to what happens if a branch

determines that a client is "likely to experience an event causing rapid growth to its business (for example, a merger), which would reasonably be expected to cause the client" to meet the size test, but following the event the client fails to meet the size tests. How long does the client have to either (i) meet the relevant size tests or (ii) be offboarded? For example would there be phased offboarding process depending on whether the client still has not met the criteria after, say, three years from the date of the assessment?

(d) *What would be considered rapid growth to [a client's] business*: Similarly, guidance should be provided on any criteria in relation to determining if an event would constitute rapid growth to a clients business. In particular whether this is a subjective assessment or if there will be certain size tests to make this determination;

(e) *What information branches are entitled to rely on*: While clause 11 of the Branch Standard ED requires branches to rely on financial statements provided by clients (an issue we comment further upon below), guidance is required as to what other information branches will be entitled to rely on in the context of an event causing rapid growth. Financial statements are retrospective so often will not be helpful in making an assessment of a future event and in the merger context often financial projections will be provided. We would like the Reserve Bank to clarify if branches can rely on these financial projections and also to what extent branches are entitled to rely on representation from prospective clients about the event, its likelihood of occurring and its eventual outcome;

87.4. Clause 7(1)(f) of the Branch Standard ED allows clients to be considered large institutional and corporate clients if they or an associated person are a special purpose vehicle in relation to a project and will be reasonably expected to have total assets exceeding $75 million by the completion of the project. As with the above, we request the Reserve Bank to provide clarification on how to make this assessment and what information branches are entitled to rely on in making such an assessment. Additionally, we note:

(a) Securitisation/structured finance or property finance is not specifically mentioned in the Branch Standard ED or the Branch Guidance, but is a common type of financing structure where special purpose vehicles are used, but it was referred to in the summary of policy decisions that the Reserve Bank published on the Branch Standard. We submit that it would be helpful to include specific reference to these financing structures in the Branch Standard or clarify in the Branch Guidance that they would fall within the meaning of a "project";

(b) Similar to the comment in relation to clause 7(1)(e) above, the timeline for meeting the test should be the later of (i) completion of the project or (ii) on or before the maturity date of any proposed transaction with the deposit taker; and

(c) Clause 7(1)(f) should not be limited to where total assets will exceed $75 million, but also where any of the tests under clauses 7(1)(a) to (d) is reasonably expected to be met within the required periods. While the total assets test may be more readily met by

special purpose vehicles, the other tests (particularly the $50 million turnover threshold) could still be relevant in some cases, and this would be consistent with underlying policy intent.

87.5. There is no reference to government agencies in either clause 7(1) of the Branch Standard ED or the Branch Guidance. The summary of policy decisions that the Reserve Bank published on the Branch Standard indicated that there would be guidance on this, and the intent is that government agencies would be eligible as large corporate and institutional clients. We request that the Reserve Bank provide clarity on this.

Comments on assessment and reassessment criteria

88. **Financial statements and safe harbours**: The Branch Standard ED is drafted to require deposit takers to utilise customer financial statements when assessing and reassessing wholesale client criteria if they are "relevant to the assessment" (see clause 11 of the Branch Standard ED). It is unclear to us how the Reserve Bank intends this requirement to apply, when, in the case of overseas licenced deposit takers that are not holding entities of a New Zealand licenced deposit taker, they are permitted to have "wholesale clients" that are not defined by reference to a financial threshold (e.g. persons registered on the Financial Service Providers Register (**FSPR**) under the FSP Act who are in the business of providing financial services, investment businesses, those meeting the investment activity criteria, government agencies and eligible investors).

89. Clause 11 should be drafted as a "safe harbour" approach (as we believe is the policy intent) rather than as a requirement that deposit takers must follow in all "relevant" cases. We note in this regard the current provision is out of step with the position for locally incorporated deposit takers, who are able to rely on safe harbour certificates generally. We submit that :

89.1. for wholesale clients that are defined by reference to a financial threshold, if a deposit taker reviews the financial statements of a customer (or associated person) and those financial statements reflect that the customer (or associated person) is "large" (or another relevant category that is defined by reference to a financial threshold – e.g. certain limbs of the investment activity criteria) is met, then the deposit taker should be expressly entitled to assume the relevant wholesale client criteria are met for the next two or three years as the case may be (see our comment at paragraph 94 below); and

89.2. for wholesale clients that are not defined by reference to a financial threshold, deposit takers should be permitted to take other approaches to satisfy themselves that relevant wholesale client criteria are met (without requiring a review of financial statements), such as "safe harbour" certificates that are entitled to be relied upon under the FMC Act, or a review of the FSPR in relation to persons who are in the business of providing financial services. Again, in such event, the deposit taker should be expressly entitled to assume the relevant wholesale client criteria are met for the next two or three years as the case may be (see our comment at paragraph 94 below).

90. On the basis that clause 11 is recast as a "safe harbour" provision, we consider that it should be, separately, made clear that deposit takers can take other approaches to satisfy themselves that the relevant wholesale client criteria are met such as reliance on other forms of certificate or assessments of the customer. However, in such cases

the “safe harbour” protections would not be available. So, for example, a deposit taker could take the approach of:

90.1. not reviewing financial statements in the case of wholesale clients that are defined by reference to a financial threshold; or

90.2. not relying on FMCA “safe harbour” certificates in the case of wholesale clients that are not defined by reference to a financial threshold.

91. **Timing of assessments for wholesale clients and large corporate and institutional clients:** The draft Branch Guidance requires that branches “reassess that the client still meets the definition no more than two years after onboarding, and no more than two years after each assessment”. However clause 9(2) of the Branch Standard ED requires this assessment be carried out after every second financial year after the prior assessment. Given our comments at paragraphs 88 to 90 above in the context of wholesale clients, and paragraph 96 below in the context of large corporate and institutional clients, we query if it is appropriate to refer solely to financial years as this is only relevant to wholesale clients and large corporate and institutional clients that are defined and verified as such by reference to a financial threshold. We request the Reserve Bank to reconsider and clarify its intent here and to ensure the Branch Guidance and Branch Standard are aligned.

92. In particular, in relation to the timing of assessments for wholesale clients and large corporate and institutional clients that are defined and verified as such by reference to a financial threshold:

92.1. For the purposes of the first reassessment, when does the first financial year commence following the initial assessment? Would the current financial year at the time the assessment is being made be considered the first financial year or should the first financial year be the first full financial year following the initial assessment (i.e. the two financial year period begins on the date the financial year proceeding the initial assessment takes place in). We note that in the former scenario, if a branch were to make an initial assessment of a client late in their financial year then retesting would be required much earlier than two years;

92.2. How do the assessment criteria apply if a client changes their financial year? Will branches be required to treat the shortened financial year preceding the change as a whole financial year for the purpose of making a reassessment. As with the above this could result in a reassessment being due before two years have passed;

92.3. Having the assessment requirement tied to customers’ balance dates and the publishing of its financial statements may be practically difficult for deposit takers to monitor for the reasons above. If the requirement remains, we submit that the Reserve Bank include guidance that clarifies that “as soon as reasonably practicable” means in accordance with the deposit taker’s usual annual credit review cycle, as opposed to within a specified period of financial statements being released.

93. The Branch Guidance notes that the reassessment criteria are consistent with those used in clause 33 of Schedule 1 of the FMC Act. However, that clause in the FMC Act states that safe harbour certificates expire after two calendar years, not two financial years, which is particularly relevant for wholesale clients that are not defined by reference to a financial threshold.

94. **The reassessment period should be extended to three years for wholesale clients of standalone branches who also meet the definition of large corporate or institutional clients:** For standalone branches, although there is no requirement to further classify customers as large corporate or institutional clients once they have been determined to meet the wholesale client definition, the Reserve Bank should consider extending the testing timeframe in clause 9(2) of the Branch Standard ED to three years for customers who would otherwise meet the large corporate or institutional client tests. It is highly unlikely that a customer who meets the large corporate or institutional client test (particularly having assets in excess of $75 million) will fall below the $5 million threshold for being considered "large" for the purposes of the wholesale client definition in the next three years. Requiring reassessments for these customers every two years will incur significant compliance costs, whilst providing limited benefit for the purpose of ensuring all branch customers meet the wholesale client definition.

95. **Offboarding:** We would appreciate if the Reserve Bank could clarify:

95.1. That clause 10(2)(a) of the Branch Standard ED does not apply to the most recent assessment at which the client failed to meet the criteria;

95.2. What would occur if a branch is unable to discontinue business with a wholesale client or large corporate and institutional client (as appropriate)? This may occur, for example if a business's loans are non-performing or for some other reason they are unable to establish a replacement banking relationship; and

95.3. Where a customer is offboarded for new business, any outstanding transactions are still permitted to run until their maturity, including for existing clients that do not meet the large corporate and institutional client definition as at 1 December 2028. This would be in the best interests of customers, and also consistent with the position under the FMC Act, where a customer that no longer meets the "wholesale investor" definition is only precluded from entering into *new* transactions with the issuer. This is also consistent with the diagram included in paragraph 38 of the Branch Guidance, but it is not explicit in the Branch Standard. Additionally, we request the Reserve Bank to provide clarity that amending or restructuring an outstanding transaction is permitted, provided it doesn't extend the maturity date beyond the original maturity date.

96. **Assessment criteria/requirements for large corporate and institutional clients:** Separate from our comments at paragraphs 88 to 90 above regarding wholesale clients, we note that the Branch Standard ED does not include any assessment criteria for branches to use to determine if a client meets the large corporate and institutional client definition. We urge the Reserve Bank to provide clarity on this and detail any assessment criteria it will require. In particular, we submit that:

96.1. the Reserve Bank should expressly clarify that branches are entitled to rely on any safe harbour certificates or self-certification in order to determine if a client is a large corporate and institutional client (as would be acceptable in an FMC Act context). This approach would reduce compliance costs and support alignment with New Zealand's wider financial markets regulatory framework. We are also unsure how willing certain clients will be to provide financial statements. In particular, non-listed entities may view this information as commercially sensitive and could be apprehensive to provide

this. As a consequence, we submit that the current proposal of restricting branches to just relying on financial statements to determine if a client is a large corporate and institutional client is overly burdensome, commercially impractical, and more stringent than the requirements that are imposed in other jurisdictions; Financial statements are retrospective so often will not be helpful in making an assessment of a future event and in the merger context often financial projections will be provided. We would like the Reserve Bank to clarify if branches can rely on these financial projections and also to what extent branches are entitled to rely on representation from prospective clients about the event, its likelihood of occurring and its eventual outcome; and

96.2. more broadly, the Reserve Bank should include a provision in the Branch Standard noting that other information or documentation (such as certificates, management reporting or projections) may be taken into account in addition to financial statements alone.

97. **Assessment as if the person were a client:** We note that clause 8(2) of the Branch Standard ED requires a branch to make "the assessment at the relevant time, as if the persons were a client or an associated person of a client at that time". We are unsure if this is necessary and would appreciate if the Reserve Bank could clarify its policy intent here.

98. **Initial assessment of existing clients:** Clause 1(2) of Schedule 1 of the Branch Standard ED requires that branches assess existing customers as at the beginning of the day on which the Branch Standard comes into force. There may be circumstances where branches have assessed whether clients would meet the definition before the Branch Standard is in force (i.e. by being delivered a safe harbour certificate or an eligible investor certificate) and we submit that these clients should be exempt from initial testing, rather than requiring a new assessment be carried out on the day the Branch Standard takes effect.

Other comments on the Incorporation outside New Zealand Standard

99. **Treatment of bond/securities issuances:** Previously in its policy decisions paper the Reserve Bank signalled an intention to include guidance that the definition of "wholesale client" in the Branch Standard ED does not require clients to ensure that any bond/securities issuances are made to wholesale clients only (or that such bonds/securities must prevent subsequent transfers to non-wholesale clients). We note that this has not been included in the Branch Standard ED or the Branch Guidance and request that the Reserve Bank to include this in the finalised Branch Guidance.

100. **Flexibility in Conditions of Licence:** We consider that the Branch Standard should allow for more limited (that is, less onerous) customer restrictions for a bank incorporated outside New Zealand to be imposed via Conditions of Licence. In this regard, we note that under section 428 of DTA, the Reserve Bank has a range of powers to allow an overseas bank that is not licensed in New Zealand to carry on activities in New Zealand. Licensed deposit takers should not be effectively disadvantaged by the Reserve Bank having more limited powers to authorise such activities because of such licence and Reserve Bank oversight.

101. **Application of the Branch Standard to deposit taker's overseas activities:** The application of the Branch Standard to an overseas licensed deposit taker's offshore

activities (i.e. those not conducted through the New Zealand branch) should be clarified. In particular:

101.1. it should be clarified whether defining "client" within the meaning of the FSP Act is intended to capture all of an overseas licensed deposit taker's activities that are within scope of the FSP Act. This interpretation could overly restrict activities undertaken by the deposit taker overseas, with no involvement of the New Zealand branch, for example:

(a) retail customers who became a customer of the overseas licensed deposit taker when residing outside of New Zealand but subsequently move to New Zealand, and maintain a bank account; or

(b) reverse solicited financial services provided by the overseas licensed deposit taker to a New Zealand customer;

101.2. the Reserve Bank should provide further clarity on the meaning of "New Zealand business" and the application of the Branch Standard to activities that are delivered by, and booked to, the head office or other overseas branch of an overseas licensed deposit taker. Again, we wish to avoid any unintended restriction of financial services to New Zealand customers beyond the policy intent. We note that current FSP Act exemptions and the Reserve Bank's guidance note for overseas banks state that such activity is not intended to be limited (or within the scope of) New Zealand regulations.

102. **Timing for assessment of $15 billion asset cap**: We request that the Reserve Bank confirm that the $15 billion asset cap under clause 5(2) of the Branch Standard ED must only assessed as at the relevant 6 monthly balance dates on which financial statements are provided, not at all times.