New Zealand Banking Association
Te Rangapū Pēke

Submission

to the

Financial Markets Authority – Te Mana Tātai Hokohoko

on the

Discussion Paper: *Review of law and practices relating to custody of assets*

27 July 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 sixteen registered banks in New Zealand are members of NZBA:

- ANZ Bank New Zealand Limited
- ASB Bank Limited
- Bank of China (NZ) Limited
- Bank of New Zealand
- China Construction Bank (New Zealand) Limited
- Citibank N.A.
- The Co-operative Bank Limited
- Heartland Bank Limited
- The Hongkong and Shanghai Banking Corporation Limited
- Industrial and Commercial Bank of China (New Zealand) Limited
- JPMorgan Chase Bank N.A.
- Kiwibank Limited
- Rabobank New Zealand Limited
- SBS Bank
- TSB Bank Limited
- Westpac New Zealand Limited

Contact details

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Introduction

4. NZBA welcomes the opportunity to provide feedback to the Financial Markets Authority – Te Mana Tātai Hokohoko (**FMA**) on the Discussion Paper: *Review of law and practices relating to custody of assets* (**Discussion Paper**). NZBA commends the work that has gone into developing the Discussion Paper.

5. We support the FMA's objective of ensuring that client assets are appropriately safeguarded and that New Zealand's custody framework remains fit for purpose as the market evolves.

6. In our view, any proposed reforms to custody requirements should be:

   6.1. considered alongside wider reforms to financial services, to ensure a consistent direction of travel and avoid regulatory duplication and overlap; and

   6.2. clear, proportionate and capable of addressing genuine risks to investors and market confidence.

A coherent regime for customer protection

7. There have been a number of policy documents published in recent months that look to reform the services that financial institutions provide to their customers. In addition to this Discussion Paper, the Ministry of Business, Innovation and Employment (**MBIE**) recently consulted on opportunities to improve and coordinate payment services regulation (**PSR Review**).[1]

8. While these two consultations address different activities – custody of assets and payment services, respectively – both reviews are ultimately seeking to address the same core outcomes: customer protection, safeguarding, market confidence, competition, innovation and financial system integrity.

9. NZBA submits that the Discussion Paper and the PSR Review should be viewed as complementary parts of a single regulatory reform agenda, rather than as separate policy initiatives. Progressing these initiatives in tandem would help to ensure a coherent, activity-based regulatory approach that focuses on the underlying risks and functions being performed, rather than legal structure or technology. Combining the two reviews will avoid the creation of multiple regulatory frameworks that seek to address substantially similar risks through different mechanisms.

10. In our view, taking this approach would help to support competitive neutrality, improve international consistency and provide a more durable and coherent framework as

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[1] NZBA's submission on the PSR Review is available here.

payments, custody, digital wallets, tokenised assets and other emerging business models increasingly converge.

11. To achieve these outcomes, we encourage FMA, MBIE and other policymakers, where relevant, to develop a common safeguarding framework that applies consistent principles across payments, custody and future digital asset services while recognising existing prudential and conduct regulation, where equivalent protections already exist.

12. Consistent with our comments on the PSR Review, NZBA also considers that any future reforms in the custody space should seek to reduce duplication, avoid fragmented licensing and supervisory regimes, and ensure that safeguarding requirements follow customer funds or assets.

13. A coordinated, technology-neutral and proportionate framework would help to strengthen consumer confidence, support innovation and competition, and deliver greater regulatory clarity and efficiency across New Zealand's financial services ecosystem.

A risk-based approach to regulation of the custody of assets

14. NZBA also submits that any reforms should take care in distinguishing different custody models and risk profiles. The level of regulation, and any proposed changes, should be proportionate to the risk posed and the recipient of the custody service (e.g. whether the relevant custody arrangements are provided to retail or wholesale customers).

    14.1. This also extends to the distinction between the holding of cash and of assets, particularly for global custodians.

    14.2. Typically, global custodians are licensed banks. The market practice for cash held with these custodians is for that cash to be held in their capacity as banks, not as a custodian or trustee.

    14.3. Any regulations introduced should, therefore, take care to avoid conflating cash and securities with other assets.

15. Wholesale sub-custodians are typically appointed by sophisticated institutional counterparties and are subject to contractual oversight, due diligence, control and assurance reporting, operational standards, and (for international custodians) regulation in their home jurisdiction. Consistent with our submission on the PSR Review, we consider that any new regulations should take into account existing legal and regulatory obligations.

16. The Discussion Paper recognises that institutional wholesale custody – i.e., custody services for institutional investors – is generally provided by large overseas global custodians that are typically well resourced, licensed and supervised in their home

jurisdictions. A one-size-fits-all regime risks duplicating existing protections, increasing complexity, reducing access to global markets, and making New Zealand less practical to service.

17. In this respect, a licensing model for global custodians or custodial banks operating in New Zealand should be approached with caution, as these entities are already sufficiently licensed and supervised as banks. We suggest that any approach to licensing of global custodians should recognise equivalent foreign regulatory regimes, whereby New Zealand regulators exempt (or lessen the requirements for) entities from obtaining a separate New Zealand licence if they are already licensed in a comparable foreign jurisdiction.

18. We note, for example, that the approach in Singapore exempts banks from being required to obtain a license to provide custodial services, and a similar approach is taken in Australia. Given the number of large global custodians operating in New Zealand that are also operating in well-regulated, comparable jurisdictions, we consider this would be a sensible approach.

19. When considering whether licensing is necessary, NZBA submits that two key questions should be asked:

    19.1. What would licensing achieve in respect of the entity / class of entity?; and

    19.2. What protections would licensing provide investors?

20. We see merit in providing a minimum level of assurance that a provider has the necessary financial strength, operational capability, governance, controls and expertise to perform custody services – whether through existing regulatory obligations or a new licensing regime. However, we do not see the need for a licensing regime to impose a comprehensive or duplicative set of obligations on top of those already applied through existing contractual, supervisory, and regulatory arrangements, particularly for established global custodians.

21. It is also worth noting that supervisors and trustees already have a responsibility to assess whether a proposed custodian is fit for purpose and can demonstrate the necessary capability and financial standing, before appointing them.

22. We further submit that certain types of arrangements, whether retail or wholesale, should remain out of scope of the custody of client assets regime, and that the regulatory perimeter should be considered and clearly articulated. For example, we consider portfolio investment entity unit trusts should remain outside of the scope of the regime.

Sub-custodians

23. Additionally, any reform that applies New Zealand custody requirements extra-territorially to offshore sub-custodians should be approached with caution.

24. As correctly described in the Discussion Paper, a New Zealand supervisor, trustee, or manager would, in relation to the custody of offshore assets, generally appoint a large and reputable global custodial bank as its global custodian. Below the global custodian would typically be an international network of sub-custodians that could be part of the same financial group or third party custodian banks (or a mixture of both).

25. Any reforms that pass New Zealand requirements down to sub-custodians will likely present significant difficulties for the global custodian. NZBA submits that such requirements need not flow through to sub-custodians, so long as it is a requirement for a global custodian to be liable for all acts and omissions for its sub-custodians.

26. For example, issues may arise where New Zealand law or regulatory expectations assume that overseas assets can be held "on trust" by each custodian or sub-custodian in the custody chain. Trust concepts are not recognised in the same way in all overseas jurisdictions; Australian custody regulations, including ASIC Regulatory Guide 133, recognise that trust arrangements may not exist in all overseas markets and that custody arrangements must take account of local market features and legal frameworks.

27. Introducing mandatory trust requirements may therefore trigger unintended difficulties for global custodians. Ultimately, the key policy objective is to ensure custody assets do not become the bankruptcy estate of an insolvent custodian; we submit that the FMA should consider whether existing protections already sufficiently safeguard against such an outcome.

28. We submit that New Zealand should adopt a similarly pragmatic approach to that of Australia, for example, in the event any change is deemed necessary.

Additional submission points

29. While not a primary focus of the Discussion Paper, we note that the current wording for DIMS custodians, in s 431Z of the Financial Markets Conduct Act 2013, refers to "custodial and other regulated client money or property services provided to every investor under a retail service of a DIMS licensee".

30. We note that a global custodian would not typically have visibility over whether some assets are held in relation to a DIMS, and if so, whether the DIMS is a retail service. The meaning of this provision is unclear, in that it refers to the custodial service being provided to every investor in the DIMS.