CONTENT OF EMAIL TO FMA FURTHER CLARIFYING THE NZSA POSITION FOR "**Feedback: Investor acknowledgement and warning for the $750,000 minimum investment wholesale investor exclusion."**

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Hi Alice and Lucy,

Thank you for the call this morning and the clarifications you were able to offer on some matters of concern.

As requested, the following are key issues we think the FMA board should consider in regard to the need for an exemption, the process that was followed and the revised proposals briefly outlined in your email to us dated 7 may.

- Regardless of the ability of FMA to grant an exemption based on a single "purpose" under the FMC Act (which was poorly expressed in the 2 April consultation paper), NZSA believes that FMA must consider the full purposes of the FMC Act and the potential impact on market transparency, confidence and integrity if an exemption from any part is approved.

- The groups seeking an exemption have had plenty of time to make their case, but appear to have left a formal request until the last minute. Regulations were available in mid 2014 and the date of introduction was known at that time. As we understand it, the first notification for comment on these proposed exemptions was in March 2015, and the full consultation paper in April 2015. We understand the new regulations commence in June 2015.

- This last minute pressure appears to us to have been a tactical move to pressure FMA into making a decision, particularly as statistical information that would assist a determination is STILL not available.

- Further, we reiterate our concern that the matters raised in the April Consultation Paper have largely been replaced by other proposals that were mostly not canvassed and have not been subject to any formal consultation process.

- NZSA understands the importance of the Kauri Bond market to New Zealand. However, believe the concern of the banks that "knowledge" of an investors non wholesale status might be resident in a different part of the bank organisation to that handling an exemption certificate is overstated. If a prospective investor supplies a false certificate, then the major responsibility lies with them. We see nothing in the legislation that puts any onus on anyone other than those actually handling an exemption application, or those that supply documentation claiming or supporting wholesale status.

- We note the proposal that a warning will go on the principal term sheet for unsubordinated debt securities. While not ideal in that the FMC Act envisaged a warning on all documents,

we could probably live with this for overseas offers where change to standardised documentation is more problematic.

- We are less certain about how much of an impost the current "every document" requirement is for New Zealand issuers of unsubordinated debt securities. We note also that these local offers are available to retail investors through a variety of channels.

- Until such time as information to the contrary is provided, it is unwise to assume that Kauri bond offers are not taken up by retail investors, either directly or via nominees.

- From our discussion, we understand that regardless of the methodology utilised in arranging kauri Bonds, a Principal Term Sheet is still required to be provided in all cases.

- Therefore we oppose treating Kauri bonds any differently to unsubordinated debt securities. i.e. they should as a minimum have a requirement for the principal term sheet to contain a warning.

- Given the uncertainty about the number of retail investors involved, either directly or via nominees or DIMS arrangements, we think it unwise to provide a long term blanket exemption. **We would suggest that if the FMA Board considers an exemption necessary in the present, time pressured circumstances, <u>that it should limit the exemption to say a 12 month period</u>. During that time further work should be undertaken to determine the extent to which retail investors are involved in this market. This would then allow a sensible cost/convenience/risk analysis to occur and mitigate potential unintended consequences.**

- Least the FMA Board considers we are overstating the "market confidence" case, we would point to the recent relatively minor incident involving NZ Super and Portuguese debt instruments. Despite sophisticated systems and considerable attempts at mitigation, a loss situation arose. The impact this had in the press and politically was dramatic, and even led to calls to disband NZ Super - not something we support I might add. It takes little imagination to foresee the impact on market confidence if only 2 or 3 retail investors lost $1m each (perhaps a big chunk of their savings) and claimed that they did not know the risks - because the regulator had taken away the warnings that legislation had intended for their benefit.

Kind regards,