Capital Markets Reforms

Phase Two discussion document

July 2026

MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

Te Kāwanatanga o Aotearoa
New Zealand Government

MINISTRY OF BUSINESS,
INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

Ministry of Business, Innovation and Employment (MBIE)
Hīkina Whakatutuki – Lifting to make successful

MBIE develops and delivers policy, services, advice and regulation to support economic growth and the prosperity and wellbeing of New Zealanders.

MORE INFORMATION

Information, examples and answers to your questions about the topics covered here can be found on our website: **www.mbie.govt.nz.**

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Foreword from the Minister

Hon Cameron Brewer

Minister of Commerce and Consumer Affairs

Economic growth is this Government's central priority. A stronger economy gives New Zealanders more choices, greater opportunities, and more security for the future. It supports better jobs, stronger businesses, improved living standards, and the investment needed to build a more prosperous country.

Deep, competitive, and trusted capital markets are central to that ambition. New Zealand needs businesses with the confidence and backing to invest, innovate, grow, and compete globally. We need markets that reward enterprise, allocate capital efficiently, and attract investment from here and abroad. The more capital we can attract and deploy into productive activity, the better off New Zealand will be.

New Zealand has many of the ingredients of an attractive investment destination: a stable political and legal system, strong institutions, high-quality governance, transparent regulation, and firms capable of competing on the world stage. But our capital markets are not as deep as they could be, and the cost of capital is too high. Too many businesses look offshore for capital, scale, and listing opportunities. Too often, regulatory settings add cost, complexity, and uncertainty.

That is why the Government is continuing its programme of capital markets reform. Our first phase of reforms focussed on two significant reductions in costs for businesses listed, or seeking to list, on the NZX. We removed the requirement for businesses undertaking an initial public offering to provide costly prospective financial information. We have also agreed to change the climate-related disclosures regime to reduce compliance costs, including by reducing the number of businesses required to report and easing liability settings to lower risk for directors.

Those changes were important, but they were only a start. This discussion document seeks feedback on the next set of changes, including disclosure rules, director liabilities, smaller and alternative market settings, capital-raising limits, and aspects of the wholesale investor framework.

We want to hear from issuers, investors, market operators, intermediaries, directors, professional advisers, entrepreneurs, fund managers, and others with practical insight into where the real barriers sit. We are seeking both specific feedback on the proposals in this document and broader views on the changes needed to lift the performance of our capital markets over time.

The Government's objective is straightforward: capital markets that are trusted, competitive, and focused on supporting economic growth. That means maintaining appropriate investor protections and market integrity, while being willing to challenge settings that are too costly, too uncertain, or no longer fit for purpose.

I encourage you to engage with this consultation and share your views on how we can build a capital markets framework that is modern, ambitious, and capable of supporting the growth New Zealand needs.

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How to have your say

Submissions process

The Ministry of Business, Innovation and Employment (**MBIE**) is seeking written submissions on the issues raised in this document by **Tuesday, 25 August 2026, 5pm**.

We welcome submissions from anyone with an interest in capital markets, including investors, issuers, businesses, fund managers, financial advisers, economists, legal analysts, or other interested parties.

You can respond to any or all of the issues raised in this document. Where possible, please include evidence to support your views (for example, references to independent research, facts and figures, or relevant examples from your experience).

We have provided a *submission template* that we encourage you to use. Please save the template in a file with your name on it, and 'Capital markets consultation' in the subject line, and email it back to us at *financialmarkets@mbie.govt.nz*. If you do not use this submission template, please relate any written feedback to specific questions by number as they appear in this document to ensure it is considered.

If you have questions about the submission process, please email: *financialmarkets@mbie.govt.nz*.

Use and release of information

The information provided in submissions will be used to inform MBIE's policy development process and will inform advice to Ministers. We may contact submitters if we need to clarify any points in a submission. We may share submissions with other Government agencies working on capital markets, including the Treasury and the Financial Markets Authority, to help coordinate policy advice.

MBIE intends to publish the submissions on our website at *www.mbie.govt.nz* after consultation closes. We may withhold or redact information where there is a proper reason to do so, including to protect personal information or where submitters have identified information they consider should not be publicly disclosed. Submissions may also be subject to release under the Official Information Act 1982 and requests under the Privacy Act 2020.

Official information

Submissions may be requested under the Official Information Act 1982. If you object to the release of any information in your submission, please clearly identify the information you want to be withheld and explain the reasons for withholding and the relevant grounds that may apply under the Official Information Act 1982. We will take objections into account and where possible will consult with submitters when responding to requests under the Official Information Act 1982.

Private information

The Privacy Act 2020 governs how we manage personal information (for example, its collection, use, holding and disclosure). Any personal information you provide in a submission will be used to help develop policy advice, to attribute submissions or to contact you about your submission. We may also use personal information for other reasons permitted under the Privacy Act 2020 (for example, with your consent, or where the law permits it or requires it).

Please clearly indicate in the cover letter or email accompanying your submission if you do not want your name or other personal information to be disclosed in any summary of submissions or other external releases.

If there is other information that you would like MBIE to consider but you do not want it publicly disclosed, please explain this clearly in your submission and identify the relevant information.

Abbreviations

ASIC	Australian Securities and Investments Commission
FMA	Financial Markets Authority
IPO	Initial Public Offering
MBIE	Ministry of Business, Innovation and Employment
NZX	New Zealand Stock Exchange
P2P	Peer-to-peer lending
PDS	Product disclosure statement
PE	Private equity
The Act	Financial Markets Conduct Act 2013 (other Acts named in full)
The Regulations	Financial Markets Conduct Regulations 2014 (other Regulations named in full)
USX	Unlisted Securities Exchange
VC	Venture capital
XRB	External Reporting Board

Introduction

Capital markets provide funds for innovation and growth

1. Strong capital markets are essential for economic growth. They enable businesses to develop and promote innovative products, enter new markets, upskill their workforce, hire specialist talent, or invest in technology and equipment to scale production. They can lift economic productivity, with flow-on impacts of lifting wages and living standards.
2. Strong capital markets also provide opportunities for investors, including large investors like the government, institutions and managed funds, as well as individuals, both sophisticated and less experienced. Investors can support businesses with an initial capital raise, or use markets for secondary trading that provides ongoing liquidity and keeps capital circulating. Benefits for investors include financial security, independence, achievement of personal goals, and financial risk management.
3. This Government wants to address challenges facing our economy, including ensuring our capital markets are doing their part to foster economic growth. We know New Zealand's economy has 'shallow capital' relative to larger economies—with fewer large institutional investors, a limited range of financial products, fewer market participants, higher costs, and less trading activity. This shallow capital base limits the resources New Zealand needs to address ongoing productivity challenges.
4. We are ambitious in our commitment to removing barriers to building stronger, more dynamic capital markets. This document commences our second phase of capital markets reforms aimed at practical changes to regulation to deliver a modern regulatory system that facilitates growth and innovation for New Zealand. The document also gives you a chance to share broader ideas on how our regulatory system could better support capital markets.

This Government initiated a two-phased reform programme in December 2024

5. In December 2024, Cabinet agreed to review capital markets regulatory settings to make it easier and cheaper for businesses to raise funds and for investors to invest and deploy capital.
6. The two-phased plan for reform drew on extensive industry input received through a series of roundtables with the then-Minister of Commerce and Consumer Affairs. These were attended by a range of financial markets and business sector leaders, who were invited to share their insights on problems with our capital markets and ways to improve them.
7. Phase One included:
   - removing the requirement for businesses to provide prospective financial information when doing an initial equity public offering (IPO). This is now optional, as of June 2025.
   - agreeing to adjust the climate-related disclosure rules to lower compliance costs, including reducing the number of businesses required to report, and easing liability settings to lower risk for directors. The bill making these changes is currently before Parliament.
8. Both of these changes ensure that businesses do not face unreasonable compliance costs, and support New Zealand's capital markets by removing barriers to listing.

Priority outcomes informing any future changes

9. Phase Two of the reforms has drawn on research, ongoing stakeholder input, and related government objectives to identify the following three priority outcomes to guide our consideration of any changes to current regulations.

A proportionate regulatory system

10. Regulatory proportionality is a principle of good regulation that says requirements should be no more burdensome than necessary to achieve their policy objective. In relation to our capital markets, this includes the rules around how capital markets and platforms are allowed to operate,

and the related actions and costs required of businesses seeking capital. The policy objective is clarified in the purposes of the regulatory regime—discussed in the next section—which includes confident market participation and fair, efficient and transparent markets.

11. In general terms, proportionate capital markets regulatory settings would:
    - enable efficient access to capital for businesses
    - ensure issuer obligations are commensurate with actual risk of harm to investors
    - be scaled or tiered in relation to entity size (for example, number of investors or amount of investment), complexity, previous presence in market, and/or business maturity, rather than based primarily on a private vs public distinction
    - not present unreasonable barriers, including costs to market participation for issuers and investors

A strong, dynamic equity ladder

12. The OECD has recommended steps to strengthen our equity ladder, particularly for growth businesses. As set out in more detail in the next section, the equity ladder is becoming more complex, with more markets and products, and increasing private equity available.
13. We want to ensure that our equity ladder as a whole remains effective for businesses and for the economy. We think a strong, dynamic equity ladder offers:
    - suitable options for all business development stages to suit businesses' strategic direction
    - balanced options between public and private investment
    - support for primary capital raising and for secondary trading and liquidity
    - investment opportunities that attract domestic institutional investors as well as overseas capital.

Globally competitive capital markets

14. We want our capital markets to be globally competitive. In practice, this means ensuring regulatory settings that support innovation and speed to market—for example, enabling our companies to introduce new financial products to overseas investors without being constrained by domestic requirements that create unnecessary delays. Competitive settings can also help attract overseas businesses into our capital markets.
15. In some areas, closer alignment with other jurisdictions could further ease market participation. For instance, alignment with Australia could improve efficiency for domestic issuers, including for dual listings, and support the Government's trans-Tasman Single Economic Market programme.[1]
16. There may be specific areas where Singapore, the UK, Ireland, the USA or other jurisdictions have regulatory settings that could provide a model for New Zealand market settings. We are keen to hear your feedback on where these opportunities for competing or aligning with overseas jurisdictions could benefit New Zealand.

We seek your views in two areas

17. We want to hear your 'big ideas' for maximising the impact of our capital markets, and what changes are needed to make that possible. The bulk of this discussion document is then focussed on Phase Two areas for regulatory change outlined below.

Broad views on the required change for modern, competitive capital markets

18. The next section outlines our current regulatory system for capital markets. Questions at the end of that section are designed to seek feedback on a more ambitious programme of change. The

[1] See Single Economic Market | New Zealand Ministry of Foreign Affairs and Trade, and Trans-Tasman Roadmap to 2035 | Australian Government Department of Foreign Affairs and Trade.

questions provide an opportunity for you to share broad thoughts on the current design of the financial markets regulatory regime, including its ability to respond to domestic and global trends and opportunities in capital markets, particularly around digital innovation and the growing impact of AI. It also seeks input on where and how we could better position ourselves globally to attract overseas investors and businesses to our markets. And finally, it seeks your ideas on non-regulatory ways both Government and the sector itself could support our capital markets.

Phase Two areas for regulatory change

19. This document offers discussion of eight regulatory areas where the Minister is keen to progress change, pending consultation feedback, as Phase Two of the Government's reforms.

20. The eight areas addressed in the document are:

    a. Product disclosure statements

    b. Director and issuer liabilities attached to disclosure

    c. Catalist market thresholds and audit standards

    d. USX audit standards

    e. Capital-raising limits for crowdfunding and peer-to-peer lending

    f. Wholesale investor settings, including the eligible investor category

    g. Auditor liability settings.

    h. Broker activity and visibility of offers

21. These are the areas where we have heard from a wide range of stakeholders that there are barriers or issues that are creating 'drag' in the economy, in some way blocking or compromising the efficient flow of capital and reducing the effectiveness of our markets. We seek your thoughts on options for change in these areas.

Research and evidence

22. In addition to drawing on ongoing engagement with the sector, the areas for change discussed in the document pick up on the outstanding recommendations for regulatory change made in the 2019 *Growing New Zealand's Capital Markets 2029,* as recently updated for the Minister of Commerce and Consumer Affairs by participants in that report.[2] We have also taken into consideration recent OECD research on improving New Zealand's capital markets[3], 2025 Australian research on shifts in the balance between public and private markets in Australia and globally[4], and the 2023 *UpStart Nation,* a report with recommendations from the New Zealand Startup Advisors Council[5]. The Australian research includes a very recent report *Innovation in Financial Markets and Financial Market Infrastructure,*[6] that explores the implications for markets and regulators of innovation in financial markets and infrastructure including technologies such as distributed ledger technology, asset tokenisation, and AI.

23. The work is informed by MBIE's *Te Ōhanga Māori 2023* report (published 2025) and the Reserve Bank's *Māori Access to Capital – Market Failures* (2025), and *Ethnic variations in firm financing* (2023).[7] Evidence indicates that regulatory burden and access to capital remain commonly identified barriers for Māori business development. While this discussion document does not propose Māori-specific regulatory changes, we welcome submissions from iwi/Māori businesses, and Māori investor networks on how the current settings enable or constrain participation.

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[2] Growing-New-Zealands-Capital-Markets-2029.pdf, 2019

[3] OECD Economic Surveys: New Zealand 2026 | OECD

[4] Discussion paper 1 Australia's evolving capital markets: a discussion paper on the dynamics between public and private markets, February 2025, and Report REP 823 Advancing Australia's evolving capital markets: Discussion paper response report, November 2025.

[5] UpStart Nation, August 2023.

[6] 26-138MR ASIC pushes for coordinated action to strengthen competitiveness of Australian markets | ASIC

[7] Māori Access to Capital – Market Failures, May 2025, Te Ōhanga Māori – The Māori Economy 2023 Reports, published 2025.

Your feedback will help inform any future changes

24. We welcome feedback from anyone who has an interest in capital markets, including businesses and companies, investors, fund managers, financial advisers, economists and legal analysts.
25. We want to understand your views on the issues discussed. Where possible, we would appreciate your use of data, evidence and examples to support your views. You may respond to as many or as few questions as you wish. All feedback will be considered.
26. After consultation closes, MBIE will use consultation feedback to advise the Minister on whether there is a case for regulatory change in relation to each issue.
27. We acknowledge that the changes proposed do not all require the same process, and that it may be possible to progress some of them more quickly than others, depending on Government decisions.
28. Any legislative or regulatory changes to the Act or Regulations would need to go through Cabinet for further agreement, in which case a regulatory analysis summary (RAS) will be prepared to support Cabinet consideration. This may involve further stakeholder engagement.

New Zealand's approach to capital markets regulation

The regulatory regime and its purpose

29. The rules about how New Zealand's capital markets must operate are set out primarily in the Financial Markets Conduct Act 2013 (the Act), with details about the rules provided in the Financial Markets Conduct Regulations 2014 (FMC Regulations). We refer to these settings as the FMC regime.

30. The Minister of Commerce and Consumer Affairs oversees the FMC regime. MBIE is the lead policy agency, responsible for developing and changing policy around capital markets regulation. The FMA is the regulator—they provide information and guidelines to the sector and monitor and enforce the rules.

31. The main purposes of the FMC regime, set out in section 3 of the Act, are to:
    - promote confident and informed market participation, and
    - promote and facilitate fair, efficient, and transparent markets.

32. Additional purposes in section 4 are to:
    - provide for timely, accurate, and understandable information to assist people making decisions on investments and financial services
    - ensure appropriate governance arrangements apply to financial products and certain financial services
    - avoid unnecessary compliance costs
    - promote innovation and flexibility in financial markets.

33. The Act also sets out distinct additional purposes for Part 5 (*Dealing in financial products on markets*) of the Act (section 229) to:
    - promote fair, orderly, and transparent financial product markets
    - encourage a diversity of financial product markets to take account of the differing needs and objectives of issuers and investors.

34. These explicit purpose statements for the regime inform analyses in this document.

Key concepts in the regulatory regime

35. The box below sets out four of the concepts underpinning the FMC regime and central to the discussions of the issues in this document:
    - Disclosure obligations and the definition of a 'regulated offer'
    - Retail vs wholesale investors
    - Public vs private markets
    - Primary vs secondary markets.

Disclosure obligations and the definition of a 'regulated offer'

Part 3 of the Act—*Disclosure of offers of financial products*—governs when an offer is deemed a **regulated offer** that requires **specific disclosures** to investors. In general, all financial product offers are regulated offers unless a specific exclusion applies, as set out in Schedule 1 of the Act.

The main purpose of regulating disclosure is to balance information asymmetries, as the issuer has more information than the investor about its own business operations and stability, about the product itself, and about the terms and conditions on which it is sold.

Wholesale vs retail investors

An offer made exclusively to **wholesale investors** is one of several exclusions from disclosure requirements provided in Schedule 1. Wholesale investors include large institutions, investment companies, government agencies, and certain qualified individuals. Offers to wholesale investors do not require prescribed product disclosures because they are considered able to assess an offer's value and risks, and have financial resources to access advice and other information as needed due to their size, experience, or relationship to the issuer. However, wholesale offers are not entirely unregulated; the fair dealing rules prohibiting misleading or deceptive conduct and false representations in Part 2 of the Act still apply.

Investors who do not fit any of the categories of wholesale investor in relation to an offer are considered **retail investors** (basically the general public—non-expert individuals). An offer is 'regulated' if even just one of the investors to whom it is offered is a retail investor, and the offer is not captured by any other exclusions in Schedule 1. Due to the specific pathways for certain individuals to be certified as wholesale (discussed in section 6 of this document), some investors may be wholesale investors in relation to some offers, and retail investors for others.

Public vs private markets

Underlying these distinctions is a broader distinction between public and private capital markets. The Act is fundamentally designed to regulate the **public capital markets** where financial products are offered widely, generally to investors with whom the issuer has no pre-existing relationship, and where the imbalance of power and information between issuers and investors is most pronounced.

The Act also deliberately facilitates **private capital markets** by allowing capital to be raised outside the regulated offers regime where offers are limited, targeted, or made to wholesale investors. Private markets are characterised by negotiated transactions, more concentrated ownership, and often closer association between issuers and investors. In these settings, governance mechanisms and contractual protections play a greater role than statutory disclosure.

Primary vs secondary markets

The Act distinguishes between the regulation of capital raising and the regulation of market trading. **Primary capital markets** are where companies, governments or other organisations raise new capital from investors through initial and subsequent offerings of securities. **Secondary capital markets** are where existing securities are bought and sold between investors, providing liquidity to investors should they wish to sell the assets and invest elsewhere. Some markets (eg NZX) offer both a primary capital raising function and secondary trading. Part 3 of the FMC is principally directed at primary market transactions through its disclosure requirements for regulated offers, while Part 5 is principally directed at secondary market activity through its regulation of trading on financial product markets.

Regulatory levers shape market conduct

36. The regime provides the regulator with a range of tools or 'levers' to guide how businesses seeking capital and market operators conduct themselves, depending on the specific market used and the investors targeted. These tools include things like licensing, registration, fair dealing, disclosures, reporting, governance, liability settings, and others. The settings, or specific requirements, in relation to each of these tools are set in legislation and regulations and can be adjusted by Cabinet if changes in market behaviours, new types of products and markets, etc, mean that the settings are no longer optimally supporting the purposes of the Act. As shown in the diagram on the next page, the FMC regime establishes higher requirements for public markets and retail investors, and lower requirements for private markets and wholesale investors.

Diagram 1: Capital markets and the regulatory spectrum in New Zealand

Less regulation, transparency & liquidity ⟷ More regulation, transparency & liquidity

	PRIVATE 'MARKETS' (includes off-market activity) **Target investor:** Generally structured for **wholesale investors** though retail investors can access indirectly)			**PUBLIC MARKETS** **Target investor:** Traditional realm of **retail investors alongside wholesale investors**; offers can be designated as "wholesale-only" which removes disclosure obligations		
	'Over the counter' (OTC) trading	**Other Private 'markets'**	**Markets exempt from licensing**	**Crowdfunding and peer-to-peer lending platforms**	**Catalist**	**NZX**
Description	Issuers manage trading in their own securities	Third parties provide private market service for issuers on the issuer's website	Markets exempt from licensing due to their small size or because they are exempted by the Act or Regulations (for example, USX), or by the FMA.	Licensed platforms (licensed as intermediaries); issuers can raise up to $2 million per 12 month period (aggregate across platforms) from the public (retail investors).	Fully regulated market with adjusted (lighter) requirements intended to facilitate the participation of SMEs not yet ready for NZX (ie a "stepping stone" market).	Fully regulated market, with the provisions of Part 5 of the Act (*Dealing in financial products on markets)* applying in full.
How capital raising is regulated	• While these provide access to capital and may be referred to as capital markets, they are primarily registered financial service providers (not markets) • Private markets are primarily (though not exclusively) open to wholesale investors • Retail access through third parties • General realm of private equity (PE) and venture capital (VC)		• Exempt from the requirements under Part 5 of the Act ('dealing in financial products') • Operate (like all markets) under 'market rules' they are required to create and enforce	• Exempt from product disclosure requirements (though regulation of platforms through the licence does impose lighter obligations around the provision of information) • Licence can include secondary market trading • Not a listed market—assets often illiquid	• Tailored requirements set out in Catalist regulations, licence conditions and exemption notices (proportionate with SME market status) • Used for both new capital raise and secondary trading. • Periodic auctions with periodic disclosure rather than continuous trading with continuous disclosure • Exemptions from regulated offer requirements apply to same class offers and offers of $2 million or less	• IPOs and other public offers are typically regulated offers requiring a PDS, register entry, and full disclosure • Some tiered regulation such as same class offer exclusion and simplified disclosure PDS • Open to both wholesale and retail investors, though issuers can limit offers to wholesale only to reduce disclosure and compliance obligations

Key trends in domestic and global capital markets

37. In recent research on New Zealand's capital markets, the OECD[8] notes that New Zealand's financial regulation largely reflects international best practice. However, the current regulatory system was introduced 12 years ago, and there have been many changes in New Zealand and overseas markets that suggest some adjustments could improve how our capital markets support economic growth.

38. Key trends we are seeing domestically are not unique to New Zealand, but rather echo broad shifts in capital markets globally. These trends include:

- significant increases in private capital available and ways to access it
- relatively low listing activity on national public equity markets
- the increasing role of fintech in delivering low-cost capital-raising opportunities to an increasing range of businesses
- rapid growth and innovation in digital financial products, including asset tokenisation
- the role of AI in guiding the decisions of both businesses and investors.

39. For decades the capital raising pathway for a growth-oriented business (also called the "equity ladder") was relatively linear and looked something like this:

40. While this general pathway remains in place, in practice some businesses—even large ones—are choosing not to go public. And the growing pool of private capital has seen private investment, traditionally the domain of institutional investors like superannuation funds and insurance companies with long investment horizons, increasingly open to retail investors through managed funds.[9]

41. These changes in behaviours create new opportunities for building vibrant, versatile capital markets. But the changes also pose challenges for balancing investor protections and efficient capital raising. In the face of these trends, governments globally are considering how to adjust regulatory frameworks to leverage trends that feed market activity for the benefit of both businesses and investors, without compromising system integrity.

Questions

42. Please see box below.

[8] OECD, New Zealand Economic Survey, 2026, page 100.

[9] Private assets in managed funds, FMA 2026

QUESTIONS

The next phase of regulatory reform

0.1	What regulatory settings would you like to see considered for change in the next phase?
0.2	Do you support the three objectives for change framing this document? What objectives would you recommend to guide considerations of future changes?

Wider feedback on the FMC regime and strengthening New Zealand's capital markets

We have provided an overview of the current FMC regime, as well as trends in rapidly-shifting global and domestic markets. While the remainder of this document is focussed on specific regulatory areas for potential change, we would also like your feedback on what a next phase of change might address, and on broader questions around how the Government can support capital markets to drive economic growth.

The FMC regime

0.3	Are there aspects of the current FMC regime we have not mentioned in our overview that are limiting our capital markets?
0.4	Taking into account current trends and developments in capital markets, do you think the FMC Act needs a more fundamental review? Where would you focus such a review? Do you think the purposes outlined above remain appropriate? If not, how would you change them?
0.5	What are the greatest challenges New Zealand capital markets are facing in the context of rapid innovation in both products (asset types including tokenisation) and services (including new market operations and infrastructure driven by digital and AI)?
0.6	If you could address 3-4 strategic priorities with substantial impact in the FMC regime, what would they be?

Global positioning and competition

0.7	How do you perceive the position of New Zealand's capital markets in the global context? What strengths do our capital markets offer? What positioning do you think we should aspire to? What does ambition look like to you?
0.8	What competitive strengths do you think New Zealand could build toward with regulatory change, and what change is needed?

Non-regulatory action

0.9	What non-regulatory steps do you think the Government could take to support capital markets?
0.10	What non-regulatory steps do you think **the sector** could lead to support capital markets?

Any other feedback

0.11	Please provide any other thoughts you would like to share with the Government on capital markets generally, or on capital markets regulation.

Issue 1: Product disclosure statements

What we are seeking feedback on

This section seeks feedback on:

- the extent to which current product disclosure statement (PDS) requirements for companies including those listing on the NZX are proportionate and meeting their intended purpose
- the suitability of the current format requirements for the PDS.

Regulatory context—the current rules

43. The FMC regime requires companies making regulated offers of financial products to:
    - provide specified information about the financial product to prospective retail investors through a PDS
    - publish additional information about the product, such as full financial statements and 'other material information,' on the Disclose Register maintained by the Companies Office.

44. The purpose of the PDS, as defined in the Act, is 'to provide certain information that is likely to assist a *prudent but non-expert person* [a retail investor] to decide whether or not to acquire the financial products' (section 49). The Act provides that the information in the PDS must be "worded and presented in a clear, concise and effective manner" (section 61).

45. The current rules are designed to promote confident investment by addressing information asymmetries between the investor and the company issuing the shares (ie, the 'issuer') about the company itself, the financial product on offer, and the terms and conditions of the offer.[10] Both the issuer of the financial product and the directors of those companies face liabilities in relation to the disclosures. These liabilities are discussed in the next section of this document.

46. The Regulations set out in detail the content required in the PDS. It must be written using specified headings, and prescribed wording in some sections, such as the description of risks, to make it transparent and comparable across offerings. The first section must be a 'Key Information Summary'. Specific content requirements vary by financial product type (eg, equity, debt, managed funds and derivatives).

Requirements are reduced or removed for existing listed issuers for some offers

47. When companies with existing issued and quoted financial products want to issue further products, there are two sets of regulatory provisions that reduce or remove PDS obligations:
    - Identical products: The exclusion for offers of 'financial products of **same class** as **quoted financial products**' in the Act (Schedule 1, clause 19) enables NZX listed issuers to make further offers of financial products that are substantially the same as products already listed, without providing a PDS. For example, under the exclusion, an issuer of equity shares could issue further shares under the same terms without preparing a new PDS. The offers are not 'regulated offers' and do not carry deemed director liability (discussed in the next section). [Note that we refer to this as the **same class offers exclusion**, while some members of industry refer to this as the **QFP exclusion** (for 'quoted financial product').]
    - Similar products: The Regulations provide for a **'simplified disclosure PDS'** (regulation 49G) that can be used by listed issuers for offers of same or prior ranking debt or equity[11], when much of

[10] Alongside the PDS, issuers tend to issue promotional materials, such as offer 'fact sheets', that are governed by the fair dealing provisions in Part 2 of the Act, but are not required and do not have prescribed content.

[11] Ranking refers to the legal priority of claims investors have against the issuer, and usually goes in the order: secured debt, unsecured debt, subordinated debt, equity.

the required information is already available to the market. Any information about the product that is different from the listed products must be highlighted in a 'cleansing notice.' As these offers are 'regulated offers' they carry deemed director liability (discussed in the next section). Continuous disclosure rules still apply to an offer issued under a simplified PDS. Specific PDS and cleansing notice content requirements are set out in the Regulations.

48. The current PDS requirements made a significant number of changes to the previous regime under the Securities Act 1978 to improve the usability of product information for investors. For example, it introduced page and word limits to move away from the 200+ page prospectuses being issued and still common overseas.

49. As an example, and to provide context for options and discussions in this section, the diagram below shows the full PDS requirements for equity offers compared to the requirements for equity offers under the simplified disclosure PDS rules, and the Key Information Summary requirements for each.

Diagram 2: Full and simplified PDS for equity offers

Full PDS (Regulations Schedule 3, cl 3)		**Simplified Disclosure PDS** (Regulations Schedule 3, cl 51B)
Length limit: 60 pages or 30,000 words	**Key Information Summary** **(Regulations Schedule 3, cl 4)**	**Length limit**: 60 pages or 30,000 words
• Key information summary • [Name of issuing group] and what it does • Purpose of the offer • Key dates and offer process • Terms of the offer • Key features of [name of financial products] • [Name of issuing group]'s financial information • Risks to [name of issuing group]'s business and plans • Tax • Where you can find more information • How to apply • Contact information * Red items are omitted in Simplified PDS	• What is this? • About [name of issuing group] • Purpose of this offer • Key terms of the offer • How pricing of [name of financial products] is fixed • How you can get your money out • Key drivers of returns • Key risks affecting this investment • Where you can find [name of issuing group]'s financial information * Red items are omitted in Simplified PDS	• Key information summary [simplified--removes items 7-8] • Purpose of the offer • Key dates and offer process • Terms of the offer • Key features of [name of financial products] • Tax • Where you can find more information • How to apply • Contact information

50. In the limited context of debt offers to offshore investors, there is a beneficial tax setting that is relevant for one of the PDS options set out below. A regulated debt offer made to overseas investors, including offers issued using a simplified PDS and cleansing notice, may receive beneficial tax settings under the Approved Issuer Levy (**AIL**) provisions.[12] AIL was introduced to support access to offshore capital by reducing the cost of foreign debt financing. An issuer registered with Inland Revenue (**IR**) is not required to withhold non-resident withholding tax (NRWT) of 10-15% on the interest they pay to overseas lenders, and instead pays 2% AIL to IR on the debt securities they have registered with IR. The AIL rate may be reduced to 0% for a regulated offer that is denominated in New Zealand dollars, provided certain other requirements are met. To qualify for the 0% rating, it must be a regulated offer, and thus requires a PDS.

Australian requirements

51. As in New Zealand, the Australian regime requires retail-facing disclosure for public offers, referred to as a prospectus. The required content of the prospectus in legislation is principles-based rather than prescriptive: a prospectus must include the information investors and their professional advisers would reasonably require to make an informed assessment of the securities and the issuer. There is no page limit for prospectuses. While Australian regulations are not prescriptive, ASIC provides guidance for issuers which is prescriptive.

[12] Inland Revenue website: Approved issuer

52. Australia also provides limited lighter pathways for some listed-issuer offers where information is already available through market disclosure, including incorporation by reference and relief for some rights issues supported by market notices (not as extensive as the same class exclusion).

Problem definition—why we are looking at this now

53. Our consideration of the PDS draws on the FMA's 2018 survey research, *Product disclosure statements: understanding investors' information needs*, and a 2025 FMA unpublished survey that included follow-up sector discussions. This FMA research included input from fund managers, issuers, and investors. We also draw on ongoing engagement with NZX in relation to the recommendations in the *Capital Markets 2029* report which have not been actioned, as well as more recent proposals.

54. These resources raise the concern that the cost of producing a PDS, resulting delays in getting offers to market, and the associated director liabilities are deterring companies from publicly listing, or leading companies to make whole-sale-only offers that do not require prescribed PDS disclosure. This implies that the PDS requirements are reducing both capital raising options for companies and investment opportunities for retail investors.

55. There have been a number of issues with the PDS identified by stakeholders that are viewed as contributing to this high-level problem, including concerns related to both its content and format. These issues include:

- The PDS is not fulfilling its purpose as it tends to be too long and complex for retail investors to understand. Instead, its main readers are financial advisers and institutions. Retail investors appear to prefer the shorter (unregulated) 'fact sheets' that often accompany retail offers.
- The PDS is not always seen as the most useful source of information, and it repeats information that is publicly available elsewhere, including on company websites and in research reports, potentially creating significant costs and delays with limited benefit.
- In relation to some contexts and products (eg foreign debt instruments) the PDS requirements slow the process of getting innovative products to market quickly and reduce New Zealand's ability to raise capital effectively overseas.
- There is a desire among both investors and issuers for shorter, more concise, and better-structured disclosure documents. The 'simplified disclosure PDS' is not in practice much shorter than the full PDS.
- The historical regulatory default toward a printed PDS (as seen in the page number specifications) does not recognise how people engage with information in a digital world, and a 'digital-first' design for the PDS with layered content and links to other sources could cut cost and time-to-market without weakening protections.

56. However, we cannot know how many retail investors read the PDS, either fully or in part, and sector feedback on this issue has been conflicting.

57. For example, the recent targeted FMA conversations with stakeholders on the PDS requirements did not confirm the scale of the perceived issues reported elsewhere. Many industry participants who provided feedback to the FMA did not see the need for major change to current PDS requirements, and pointed toward the potential expense and disruption of transitioning to new requirements. These conversations revealed that the Key Information Summary and financial information were considered the most useful sections of the PDS. Many from the sector noted that the Disclose Register offers a very poor user experience and is not often accessed, particularly by retail investors.

58. We encourage you to share any evidence you may have on this issue with us through this consultation, particularly on how substantial you believe the problems are with the current PDS requirements, to inform our ongoing assessment of the proportionality of the requirements.

Options for change

59. The broad, preliminary options in the table below describe approaches to possible changes to the content and format of the PDS.

<table>
<tr><th colspan="2">Option</th><th>Description / Impact</th></tr>
<tr><td colspan="3">Changes to the content of the PDS</td></tr>
<tr><td colspan="2">A. Status quo</td><td>No change to current PDS requirements.</td></tr>
<tr><td rowspan="2">B. Reduce the required content of the full PDS for listed equity and debt IPOs, and move the rest of the information to the Disclose Register.</td><td>i. Reduce it by removing specific sections (or making them optional)</td><td>This could further reduce costs where they are not proportionate to risk. It could include potential investors looking at information (eg about the company) available elsewhere. The move to the Disclose Register ensures all information remains available (though it may not be accessed by retail investors).</td></tr>
<tr><td>ii. Reduce the whole PDS to the Key Information Summary only</td><td>This proposal was first made in the Capital Markets 2029 report, with the suggestion that it more closely resembles actual practice, where issuers and investors rely more on shorter ‘term sheets’. Careful consideration would be needed to determine if this could continue to meet the purpose of the PDS in the Act.</td></tr>
<tr><td rowspan="2">C. Reduce or remove the ‘simplified disclosure PDS’ requirements for certain debt and equity offers</td><td>i. Reduce it by removing specific sections (or making them optional)</td><td>The simplified disclosure PDS is not much shorter than a PDS. This option could remove some sections, particularly where information is available elsewhere, to reduce costs.</td></tr>
<tr><td>ii. Remove the PDS requirement and introduce a simple ‘term sheet’ offer for offers of same or prior ranking debt or equity (similar to a same-class offer)</td><td>This would make the simplified PDS similar to the same-class offer exclusion by removing the PDS requirement (and associated liability) from a greater range of offers.
However, this would mean that these offers are no longer ‘regulated offers’, so the simplified disclosure overseas debt offers would no longer qualify for the 0% AIL rate discussed above.</td></tr>
<tr><td colspan="3">Changes to the format of the PDS</td></tr>
<tr><td colspan="2">D. Status quo</td><td>No change to current PDS format</td></tr>
<tr><td colspan="2">E. Redesign the PDS requirements as a ‘digital-first’ communication—made available by website, app, online portal, etc</td><td>This would improve accessibility and usability, remove barriers to digital flexibility and innovation, and reduce costs and time to market.</td></tr>
</table>

Discussion of options

Content

60. One argument for reducing the content of the PDS is that retail investors are not reading it, and it is therefore not meeting its purpose in the Act to inform retail investors. However, if the investor

instead acts on advice from financial advisors and third parties[13] who *have* read the PDS (or parts of it), the retail investor continues to benefit from the information in making investment decisions. The PDS also contributes to the fairness and transparency of the market, and serves as a point of accountability that helps ensure retail investor confidence.

61. Options B and C for potential changes to the content of the PDS address different requirements and are not mutually exclusive. Each option offers two “tiered” sub-options for improved proportionality, the first a moderate reduction in requirements, and the second a significant reduction or removal of requirements. Your feedback will help us assess what degree of adjustment (if any) would ensure the requirements are proportionate to the risks.

62. In terms of potentially strengthening the equity ladder or general access to markets, we also seek further feedback on the degree to which PDS obligations are creating an absolute barrier to listing.

63. While any currently required content removed from the PDS could be shifted to the Disclose Register to ensure it remains publicly available, the register was not in fact designed for retail investors, and consistent feedback suggests that the Register is not user-friendly and is unlikely to engage most retail investors, though it may be accessed by analysts and advisers.

64. Other jurisdictions globally provide slightly different models for product disclosure requirements. For example, requirements in Australia are principles-based rather than prescriptive, and the lower director liabilities attached to the PDS (discussed in the next chapter). If we consider making more targeted changes to the PDS content or format for specific financial products, further comparison with overseas settings would be useful. We welcome feedback on overseas models you think the Government should consider.

Format

65. It is clear that the PDS needs to innovate and digitalise to reflect how today’s investors access and consume information, and how they may action decisions. It is essential for New Zealand to remain competitive in a global context. A more flexible ‘digital-first’ PDS—designed primarily be used digitally, with hyperlinks, layered information, and dynamic updates available on websites (and/or the Disclose Register)—would improve accessibility, usability and relevance, and increase global competitiveness.

66. However, there are risks related to the purpose of the PDS to address information asymmetries if information is updated continuously during a time-bound offer—with the imbalance in this case between different investors. There is also a risk in relation to access for less digitally capable investors and in the information being spread across multiple locations.

67. In relation to the format, some issuers have pointed out that the current market practice of a PDF format of the PDS makes it easier to ‘sign out’ by executive management and easier to control the content than would be the case with hyperlinks or frequently updated digital information. The current PDS format also contributes to version control and maintaining records for evidential purposes.

68. We note that there is currently nothing to stop the PDS information being presented digitally now, provided it is consistent with the Regulations. We often see PDS documents that hyperlink out to other information, and it is already possible to do an HTML version of the PDS that can be read on smart-phones.

69. We would particularly like to hear feedback on what specific Act provisions or regulations are currently limiting innovation in this area. We are also seeking feedback on what a more flexible presentation of PDS content could look like and still retain its function in ensuring transparency and confidence.

[13] Retail investors must access offers on NZX through registered third parties.

Questions on the PDS

Questions on problem definition	
1.1	Do you think current PDS requirements are proportionate (aligning requirements with risks)? Do you think current requirements are meeting the purpose of the PDS?
1.2	Please share any evidence, research or insights you may have on investor (or intermediary) use of the PDS.
1.3	Do you agree with the problem definition in relation to the PDS? Which, to you, are the most pressing issues to be addressed?
1.4	Do you know of companies which have considered listing financial products (including on NZX) that have chosen not to do so, where the PDS requirements were part of that decision? Or which have made wholesale-only offers to avoid the costs and delays of producing a PDS?
Questions on content	
1.5	Do you think the current PDS requirements could be reduced without compromising retail investor confidence and protections? Are there overseas models you think we should consider?
1.6	Which of the preliminary options do you support for further development, and why? • If you support B, which sub-option do you support? • If you support C, which sections would you remove or reduce and/or, which instruments do you think it should apply to (such as the debt to overseas investors scenario or other specific types of offers)?
1.7	If the full PDS were reduced, which parts do you think are most important to retain?
Questions on format	
1.8	Do you think the adaptation of the PDS requirements to a 'digital-first' format should be a government priority? Do you know of examples in other jurisdictions?
1.9	In your experience, what requirements in the Act and Regulations are preventing the PDS from being more digital friendly? How much regulatory change would be needed?
1.10	If you have experience making financial offers digital friendly, how have you done this (app, website, portal, etc.) and how have you managed this while still meeting PDS requirements?
Other comments	
1.11	Are there overseas models of PDS that you think the Government should consider?
1.12	Please share any other comments, evidence or data you have on PDS requirements.

Issue 2: Civil liabilities for directors and issuers

What we are seeking feedback on

We seek feedback on potential change in relation to two aspects of civil liabilities for directors and issuers:

- liability attached to directors and issuers for failure to comply with continuous disclosure requirements (applies to NZX issuers only)
- 'deemed' director liability for disclosure and financial reporting contraventions (for NZX issuers, and could apply to all issuers).

Regulatory context—the current rules

70. The Act imposes a range of obligations on issuers of financial products and, in some circumstances, on individuals such as directors. A failure to comply with an obligation is called a 'contravention' or 'breach,' and the legal responsibility of a company, other entity, or individual is called 'liability'.

71. Liability settings for listed issuers and directors are a core part of the FMC regime. They support accurate, timely disclosure, director engagement in key disclosure and financial reporting processes, board accountability, investor confidence, and fair, efficient and transparent financial markets. Liability settings determine who may be held responsible for a contravention, what must be proved, and what consequences may follow.

72. In this section, an 'issuer' means the company or other entity that has issued financial products. A 'director' is a member of the issuer's board. Issuers and directors can face liability in different ways.

73. The FMC regime gives the FMA a range of regulatory and enforcement tools, allowing responses to be proportionate to the nature and seriousness of a contravention. These tools include regulatory responses, civil liability, and for more serious misconduct, criminal liability.

74. This section focuses on civil liability only. It does not propose changes to criminal liability for serious misconduct. Civil liability applies to a wider range of contraventions, including defective disclosure, governance failures and failures to comply with market conduct obligations. Civil proceedings may result in a range of remedies (court action to address harm), including pecuniary penalties, compensation, declarations or other court orders.

75. Civil proceedings may be brought against an issuer, director or other person by:
    - the FMA, or
    - by persons affected by the contravention, such as investors—for certain remedies.

76. Civil liability can operate in different ways:
    - Strict liability means a person may be held liable for a contravention without the party bringing the proceedings (the FMA) needing to prove fault, knowledge, recklessness or negligence. The person facing liability may still have a statutory defence. Strict liability is often used in regulatory regimes to encourage regulated persons to take appropriate precautions and because relevant information may be primarily within their knowledge.[14]
    - Fault-based liability requires the party bringing proceedings (e.g. the FMA) to prove, to the applicable standard, that the person meets the relevant fault threshold, such as knowledge, recklessness, negligence or intentional conduct.

[14] See discussion of strict liability in: The Legislation Design and Advisory Committee (Part 3).

- Deemed liability is a statutory attribution mechanism that treats a person as liable for a contravention because another specified contravention has occurred. The person may still have a statutory defence.

77. Most directors hold Directors and Officers (D&O) insurance. This insurance typically provides cover for legal defence costs and some civil liabilities, but is subject to policy limits and exclusions and does not cover all types of conduct. The cost and availability of D&O insurance may reflect underlying liability settings, and may therefore be relevant when considering the impact of these settings on director behaviour and participation in public markets.

78. This section focuses on civil liability under the Act in **two contexts**:

    - continuous disclosure liability under Part 5 (*Dealing in financial products on markets*)
    - deemed director liability under Part 8 (*Enforcement, liability and appeals*).

Context 1: Director and issuer liability for contravention of continuous disclosure requirements

79. The Act's continuous disclosure provisions (Subpart 4 of Part 5 of the Act (sections 270-272)) require a listed issuer to release material information that is not generally available to the market, where that information may affect the price or value of quoted financial products. The continuous disclosure obligations apply only to issuers on NZX (they apply only to licensed markets, and Catalist's licence specifies periodic rather than continuous disclosure). More specific requirements about how disclosure must be made are set out in the NZX market rules.

80. Continuous disclosure supports fair, efficient and transparent trading by helping ensure that investors have timely and equal access to information that could affect the value of their investments.

81. In New Zealand, civil liability for issuer contraventions of continuous disclosure obligations is strict. This means an issuer may be liable for failing to disclose material information even if fault, negligence or intent is not proved.

82. Directors are not automatically deemed liable for an issuer's contravention of continuous disclosure obligations. However, a director or other person may face civil liability for an issuer's contravention if they are found to have been *involved* in the contravention under section 533 of the Act (for example, by being knowingly concerned in, or party to, the contravention).

83. Section 272 of the Act provides a defence where a listed issuer has contravened a continuous disclosure obligation. It provides that a person does not contravene, or become involved in the contravention of, the obligation if:

    - that person took all reasonable steps in the circumstances to ensure the listed issuer complied and,
    - after doing so, believed on reasonable grounds that the issuer was complying.

84. This defence is relevant to directors and other persons who may otherwise face civil liability on the basis that they were involved in an issuer's continuous disclosure contravention.

Context 2: Deemed director liability for disclosure and financial reporting contraventions

85. Currently, section 534 of the Act provides for deemed civil liability for directors in relation to certain disclosure and financial reporting contraventions.[15] These contraventions are not limited to continuous disclosure obligations or to listed markets such as NZX, but apply more broadly. Where an issuer has contravened a relevant obligation, every director of the issuer at the time of the contravention is treated as also having contravened, unless they can show that a defence applies.

[15] Changes to director liability settings for climate-related disclosures are being made separately in the Financial Markets Conduct Amendment Bill currently before the House. Section 534 is being amended so that it no longer applies to a climate-related disclosure contravention.

86. This means director liability can arise through attribution, rather than because a director's personal fault or involvement has been proven at the outset. The Act provides due diligence-style defences for directors (sections 499-501). For example, a director may avoid liability if they can show that they believed on reasonable grounds that the relevant disclosure was not false or misleading, or that they took reasonable steps in the circumstances.

Problem definition—why we are we looking at this now

87. Stakeholders have suggested that the liability settings in both of these contexts are affecting companies' decisions about whether to list, remain listed, or turn overseas or to private markets for raising capital. More specifically, issues identified include the following:

Civil liability settings for continuous disclosure contravention:

- Strict civil liability for issuers may encourage defensive disclosure practices and increase legal and compliance costs. We note that available evidence suggests that continuous disclosure breaches by listed issuers are relatively infrequent, and overall compliance is generally strong.
- Directors and other persons may face personal liability if they are found to have been involved in an issuer's contravention, which may also encourage defensive disclosure practices and increase legal and compliance costs. Stakeholders have suggested that the current reasonable-steps defence may be difficult and costly to rely on in practice.

Deemed civil liability for directors:

- The liability imposes significant personal risk and upfront compliance costs, including due diligence, assurance, governance and insurance costs, even in cases (for example, specific types of financial products) where risk is low. These costs arise even where no contravention ultimately occurs, or where a director has not been personally at fault.
- The liability may make it harder to recruit suitably qualified directors, and may encourage existing directors to focus on detailed compliance processes rather than strategic governance.

88. Broadly, stakeholders have suggested that these liability settings may affect the attractiveness of NZX relative to other national stock markets such as the ASX (Australia) and the SGX (Singapore), and to private capital-raising options.

International context for comparison

89. International settings on issuer and director liability vary. The OECD has recently noted that issuers tend to find New Zealand's director liability settings 'onerous'.[16] This international context supports considering whether New Zealand's settings remain appropriately calibrated, while recognising that overseas regimes operate within different legal, enforcement and market contexts.

Australia's approach to continuous disclosure

90. Australia has recently reconsidered the balance between strict and fault-based liability for continuous disclosure.

91. In 2021, Australia amended its continuous disclosure regime to introduce a fault element for civil liability, meaning an entity or its offers are generally liable only when they have acted with knowledge, recklessness or negligence in relation to the relevant non-disclosure.[17]

92. In 2024, an independent review found that these changes were associated with reduced regulatory enforcement, and had been introduced in response to concerns about shareholder class actions, liability risk and D&O insurance costs.[18] The Australian government has since announced an intention to remove the fault element for ASIC enforcement, while retaining it for private

[16] OECD Economic Surveys: New Zealand 2026 | OECD, page 12.

[17] See section 674A of the Corporations Act 2001 (Cth). 'Cth' is an abbreviation of 'Commonwealth'—the formal manner to indicate that legislation is federal rather than state-based.

[18] Report of the independent review of the changes to the continuous disclosure laws

compensation claims, including shareholder class actions. The legislation required to give effect to this intended change has not yet been enacted.

93. This indicates that liability settings can be calibrated in different ways, including distinguishing between regulator-led enforcement and private litigation.

Overseas approaches to deemed director liability

94. In the context of securities fundraising, directors can be exposed to compensation liability for defective disclosure in securities fundraising, even without direct involvement, subject to defences. For financial reporting, Australia relies on direct positive obligations. Directors must take all reasonable steps to comply with, or secure compliance with, financial reporting obligations. This is a civil penalty provision, with criminal liability available for dishonest contraventions.

95. In the United Kingdom, listed issuers are subject to continuing disclosure obligations under the UK Market Abuse Regulation, alongside the FCA's Disclosure Guidance and Transparency Rules and UK Listing Rules and general directors' duties under company law. The Market Abuse Regulation requires issuers to disclose inside information that directly concerns them as soon as possible, subject to limited circumstances where disclosure may be delayed. In the context of private compensation claims, issuer liability for published information generally requires investors to show reckless or dishonest conduct.

96. In Singapore, listed issuers are subject to SGX listing rules and other legislative obligations. SGX continuing obligations generally require listed issuers to announce information necessary to avoid a false market or information likely to materially affect the price or value of securities, subject to specified exceptions.

97. Overall, international comparisons suggest that director accountability can be supported through different combinations of liability settings, direct duties, and statutory defences.

Options for change

98. The options below are intended to identify the main direction of any potential reform and would need to be worked through in detail if any changes are progressed.[19]

99. The options draw on different ways to calibrate liability settings. These include consideration of changes to:
    - the type of liability (strict, deemed, etc)
    - the threshold for when liability it is triggered (for example by requiring proof of knowledge, recklessness, negligence or another form of fault)
    - the statutory defences available to issuers, directors or other persons
    - who brings the prosecution.

100. These approaches can seek to achieve similar policy outcomes, but they allocate evidential burden differently and may have different implications for enforcement, compliance behaviour and investor confidence.

101. Changing strict or deemed liability settings would not remove liability from the regime. Issuers, directors and other persons could still be subject to civil liability where the relevant statutory threshold is met. Criminal liability would remain for serious misconduct, as well as a range of other

[19] For additional context, we note that the Law Commission has announced a review of director duties and liabilities under the Companies Act 1993, and aims to develop principles that could apply to director liabilities in other legislation. The Law Commission's final report is not expected until the end of 2027. The Government may decide to make changes to FMC Act liability settings before that review is complete as part of its regulatory stewardship obligations.

safeguards in the FMC regime and other legislation. However, those other obligations may not provide equivalent remedies or enforcement pathways.

102. We seek feedback on the options below (noting that some options could be combined—they are not mutually exclusive):

<table>
<tr><th colspan="2">Option</th><th>Description / Impact</th></tr>
<tr><td colspan="3">Continuous disclosure contraventions</td></tr>
<tr><td rowspan="3">Directors</td><td>A. Status quo</td><td>Retain current civil liability settings for directors.</td></tr>
<tr><td rowspan="2">B. Amend director and other person liability settings for continuous disclosure by…</td><td>i. narrowing the requirements for being “involved” in a contravention (eg, setting a stricter test for what “involved” means)</td></tr>
<tr><td>ii. adjusting the statutory defences available to directors and others who may have been involved in an issuer’s contravention</td></tr>
<tr><td rowspan="3">Issuers</td><td>C. Status quo</td><td>Retain current civil liability settings for issuers.</td></tr>
<tr><td rowspan="2">D. Amend issuer liability settings for continuous disclosure by…</td><td>iii. moving from strict liability to a fault-based standard</td></tr>
<tr><td>iv. adjusting the statutory defences available to issuers</td></tr>
<tr><td colspan="3">Deemed director liability in relation to disclosure and financial reporting contraventions</td></tr>
<tr><td colspan="2">E. Status quo</td><td>Retain current liability settings and statutory defences.</td></tr>
<tr><td colspan="2" rowspan="4">F. Retain and amend deemed director liability by…</td><td>i. treating defective disclosure and financial reporting contraventions differently</td></tr>
<tr><td>ii. narrowing the contraventions it applies to</td></tr>
<tr><td>iii. modifying the statutory defences available to directors</td></tr>
<tr><td>iv. changing the consequences that follow from deemed liability.</td></tr>
<tr><td colspan="2" rowspan="3">G. Remove deemed director liability (and replace with fault-based liability) for…</td><td>i. disclosure contraventions</td></tr>
<tr><td>ii. financial reporting contraventions</td></tr>
<tr><td>iii. both.</td></tr>
</table>

Discussion of options

103. We set out below our initial assessment of these options. Any changes to the current liabilities would need to preserve appropriate incentives for timely disclosure and accountability for persons who contribute to, or are knowingly involved in, a contravention.

104. We appreciate that some submitters may prefer the status quo in relation to some or all issues. If so, we would like to know why, including any examples. We have not discussed the status quo options below, as there is discussion above on the purpose of current settings and issues identified, which would remain unchanged.

Continuous disclosure liability options

105. We note that the consideration of director liability and issuer liability for continuous disclosure contravention are separate issues and seek feedback on both. The Government could choose to amend liability settings for directors and other persons, for issuers, or both.

Director liability for continuous disclosure

106. Option B—to amend director and other person liability settings for continuous disclosure—could address concerns that current continuous disclosure director liability settings impose costs or risks that are disproportionate to their investor-protection benefits, particularly given other protections in place. This could be done either by (i) narrowing the requirements for being "involved" in a contravention, or (ii) by changing (strengthening) the defences available in the Act, for example to make them broader and/or clearer.

107. These changes might support the role of NZX within the equity ladder by reducing liability concerns, compliance costs, and defensive governance practices. This may make NZX a more attractive option for raising capital at different stages of business development, including influencing decisions to list or remain listed relative to private capital-raising options. It may also support director recruitment and enable directors to focus on the strategic direction of the company.

108. Whether this option improves alignment with Australia will depend on the specific liability settings adopted. The Australian approach involves both issuer and director liability and distinguishes between regulator-led enforcement and private litigation. Any New Zealand change would need to consider how liability settings apply across issuers and directors, and the balance of FMA enforcement and private investor remedies in the New Zealand context.

Issuer liability for continuous disclosure

109. Option D—to amend issuer liability settings for continuous disclosure—could likewise improve proportionality, with positive impact on issuer decisions about whether to list and remain listed, with flow-on benefit for the public equity market. This could increase equity investment opportunities for investors. However, if it reduces investor confidence in timely and reliable market disclosure, it could also reduce retail investment.

110. As discussed above, the experience in Australia illustrates that changes to liability thresholds can interact with both regulator enforcement and private litigation, and these considerations would also need to be taken into account in relation to issuer liability.

Deemed director liability options

111. Options E-G address deemed director liability for defective disclosure and financial reporting contraventions. In addition to status quo, the options are to amend deemed director liability or to remove it for some or all contraventions. These options could apply to all entities and contraventions currently covered, or be limited to particular categories such as NZX-listed issuers, defective disclosure contraventions, or financial reporting contraventions.

112. The key proportionality question is whether deemed director liability provides investor-protection and accountability benefits that justify the compliance, due diligence, assurance, insurance and personal liability costs identified by stakeholders. Option F (amending deemed liability) may improve proportionality while retaining a board-level accountability mechanism. Option G (removing deemed liability) would be a more significant change and would require consideration of whether other accountability mechanisms are sufficient.

113. There may be a case for distinguishing between defective disclosure contraventions and financial reporting contraventions. Deemed director liability may provide particularly important incentives for directors to oversee financial reporting systems, assurance processes, and the integrity of financial statements.

114. For strengthening the equity ladder, Options F and G may reduce personal liability concerns and compliance costs for directors and issuers, potentially supporting director recruitment and participation in New Zealand's public markets. However, if changes reduce investor confidence in disclosure quality or financial reporting, that could undermine public market confidence and market participation.

115. In relation to alignment with Australia, the comparison is mixed. Australia retains automatic director liability for some securities fundraising disclosure, relies more on direct duties on directors in relation to financial reporting. This suggests that if New Zealand narrows or removes deemed director liability, it will be important to consider whether other director accountability mechanisms provide sufficient incentives for directors to engage in disclosure and financial reporting processes.

Questions on civil liabilities

Questions on problem definition	
2.1	Do you agree with the problem definition around current settings for director liabilities? Please provide evidence or examples.
2.2	How significant are civil liability settings compared with other factors affecting public market participation, such as market depth, liquidity, access to private capital, listing costs, ongoing compliance costs, and broader economic conditions?
Questions on liability for continuous disclosure contravention	
2.3	Which option do you support (A or B) for potential change to liability in relation to continuous disclosure contravention for directors and other persons? Please indicate a preferred sub-option as well if relevant. Please give your main reasons.
2.4	Do you have a preference for change not reflected in the options in relation to continuous disclosure contravention for directors and other persons?
2.5	Are there any other issues or impacts the Government should consider in relation to liability for continuous disclosure contraventions for directors and other persons?
2.6	Which option do you support (C or D) for potential change to liability in relation to continuous disclosure contravention for issuers? Please indicate a preferred sub-option as well if relevant. Please give your main reasons.
2.7	Do you have a preference for change not reflected in the options in relation to continuous disclosure contravention for issuers?
2.8	Are there any other issues or impacts the Government should consider in relation to liability for continuous disclosure contraventions for issuers?
Questions on deemed director liability in relation to disclosure and financial reporting contraventions	
2.9	Do you think changes to deemed director liability should be considered in relation to all markets, or for NZX only?
2.10	Which option do you support (E, F, or G) for potential change to deemed director liability? Please indicate a preferred sub-option, and give your main reasons.
2.11	Do you have a preference not reflected in the options in relation to deemed director liability?
2.12	Do you have other comments on what the Government should consider in relation to deemed director liability?
Other comments	
2.13	Are there international models you would like the Government to consider?
2.14	Please share any other comments, evidence or data you have on civil liabilities.

Issue 3: Catalist market thresholds and audit standards

What we are seeking feedback on

We seek feedback on whether the Government should consider two adjustments to Catalist:

- Adjust or remove the market size thresholds (the size of businesses that can list on Catalist)
- Adjust the audit requirement standards for listing on Catalist

Regulatory context—the current rules

116. Catalist is a public market licensed under section 316 of the Act that began operating in 2021, designed specifically for early growth-stage businesses and small-to-medium enterprises (SMEs).[20] It was designed as a stepping-stone market for smaller growth businesses not yet ready to list on NZX, expected to address the funding gap for small growth companies seeking to raise between $2–$20 million.[21] It is intended to be a lower cost market, offering periodic trading (as opposed to continuous trading) by way of an online auction platform.

117. To operate on this basis, Catalist obtained a number of exemptions and modifications to the standard requirements of the Act.[22] For example, regulations permit it to follow a periodic disclosure regime for trading, as opposed to a continuous disclosure regime. The departure from the standard regulatory settings was considered justified to help address the difficulties faced by small growth companies. This approach aligns with the additional purpose of the Act set out in Part 5 to encourage a diversity of financial product markets to take account of the different needs and objectives of issuers and investors.

118. The terms of Catalist's exemption limit capital fundraising to $20 million annually from retail investors. This limit is reviewed by FMA at least 5-yearly when the exemption notice comes up for renewal. There is no current request or intention to change this limit.

119. The FMA has also granted an exemption to issuers on Catalist to make small offers of $2 million or less, without meeting regulated offer requirements, including a PDS. The exemption for offers of $2 million or less is subject to requirements that are broadly consistent with the Act exclusions for small offers and crowdfunding and peer-to-peer lending platforms.

120. The two issues under discussion in this section relate to regulatory settings that restrict or influence which businesses are able to list on Catalist.

Market thresholds

121. Catalist's current settings include market size thresholds (entry and exit points), set out in its market licence (condition 8). To list on Catalist, an issuer's market capitalisation *must not exceed* $60 million. If a listed issuer's market capitalisation *exceeds* $100 million, it must leave the market within two years unless a waiver is granted in exceptional circumstances.

122. These thresholds are meant to ensure Catalist operates as a stepping stone market for small growth companies, while preventing larger companies (including those already capitalised over $60 million)

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[20] There were previously two second-tier growth markets on NZX for smaller businesses: NZAX and NXT.

[21] The limits on retail fundraising on Catalist are set by FMA in its class exemption for Catalist issuers that permits same class offers of $20 million or less and small offers of $2 million or less. See Financial Markets Conduct (Catalist Public Market) Exemption Notice 2026 | New Zealand Legislation.

[22] See Financial Markets Conduct (Catalist Public Market) Regulations 2021 and Financial Markets Conduct (Catalist Public Market) Exemption Notice 2026. Financial Markets Conduct (Catalist Public Market) Exemption Notice 2026 | New Zealand Legislation, and New Zealand Financial Product Market Licence Catalist Public Market 2021.pdf. The Takeovers Code (Catalist Public Market Issuers) Exemption Notice 2021, Financial Markets Conduct (Approval of Catalist Electronic Transfer System) Order 2021, and reduced levy rates for the market operator and issuers also apply.

from using Catalist simply to avoid the higher compliance obligations of NZX. At the time the market was established, imposing 'hard' thresholds was considered necessary given the significant adjustments made to the standard legislative requirements for public markets. Clear thresholds assisted to maintain capital markets integrity and confidence in the fairness and coherence of the regulatory regime.

Audit standards

123. As a general principle, issuers on public markets ('FMC reporting entities'[23]) are subject to more rigorous financial reporting and assurance requirements because there is a higher degree of public interest in the quality and reliability of financial information available to retail investors.

124. Catalist's tailored regulatory settings include modified audit standard requirements intended to reduce compliance costs for smaller growth companies. Issuers must still comply with the financial reporting requirements in the regulations and Catalist market rules. The current rules are that Catalist issuers must follow International Financial Reporting Standards (IFRS) Tier 2 and be audited by a qualified auditor. These are lighter than the IFRS Tier 1 audit of accounts required by NZX-listed businesses, but remain substantial.

125. Any change to these market-specific requirements would need to be considered alongside any separate reporting or audit obligations that apply under other legislation (eg the Companies Act 1993, the Financial Reporting Act 2013, and the FMC Act). Reducing a market-specific requirement would not necessarily remove obligations under these other legislative frameworks.

Problem definition—why we are considering change

126. The problems we are hearing about relate to barriers to listing on Catalist and questions about whether its role in the equity ladder could be improved if these barriers were addressed. There continues to be a significant funding gap for small growth businesses, and an unmet demand for liquidity even where those businesses are not seeking additional capital, suggesting that Catalist could possibly play a wider role in meeting those needs.

Market thresholds

127. The sector has presented the following arguments about why the Government should consider adjusting or removing the thresholds:

- Inaccessible to some larger growth companies: There may be businesses over the $60 million threshold that would like to list on Catalist but cannot, and who do not list on NZX instead. This may suggest a need to reconsider the initial estimate that only businesses with market capitalisation up to $60 million would benefit from a market designed to raise up to $20 million annually.
- Low movement to NZX: No businesses to date have moved from Catalist to NZX, and none have achieved sufficient growth while on Catalist to trigger the required exit from Catalist.
- Limit function as 'step down' market: While Catalist is designed as a stepping stone market to the NZX, it could also serve as a beneficial 'step down' market for businesses wanting to exit from NZX. USX is currently filling this role to some extent. Removing the size threshold limiting the step-down function would serve businesses no longer in a growth stage but still seeking the liquidity benefits of being listed.
- 'Step up' to NZX remains too big: The costs and compliance obligations of NZX may outweigh the benefits of stepping up to NZX for some smaller issuers, given that smaller businesses do not always get a lot of investment through NZX and are often devalued because of this at IPO. A reduced broker market in New Zealand (see Issue 8) means there is limited research on, or promotion of, SME investment opportunities to investors at IPO stage or beyond. While these

[23] Defined in section 451 of the Act. See FMA guidance: Financial reporting - FAQs | Financial Markets Authority

issues may need to be addressed through other means, a change to the Catalist thresholds would make staying on Catalist longer an option.

Audit standards

128. Audit requirements to list on Catalist may act as a barrier to participation, particularly for smaller issuers. The concern is that the requirements apply regardless of issuer size or the amount of capital raised, and may be difficult to justify where the business is small, the capital raise is modest or there is no new capital raise at all, and alternative (private) capital-raising pathways are available at lower cost.

129. More specifically, feedback suggests that current audit requirements:

- Impose high costs: despite the regulatory concessions in place for the market, full audits can be expensive for smaller issuers and may deter listing (eg annual audits for Catalist issuers can cost $15,000–$100,000)
- Create an uneven playing field: the current audit standard settings create an uneven playing field by imposing audit requirements for listing on Catalist when businesses can raise the same amount through wholesale offers, small offers, or crowdfunding without audited accounts, under exclusions set out in Schedule 1 of the Act.
- Limit secondary listings: the audit requirements may discourage some smaller, angel-backed businesses from listing for secondary market trading to provide liquidity for existing investors so their capital can be recycled into other early-stage investments.

130. There are also issues related to the auditing profession, including a shortage of auditors, which may increase costs and contribute to delays. For smaller issuers, these costs may have a disproportionate impact on the cost of raising relatively modest amounts of capital. We encourage submitters on audit standards for Catalist and USX to also consider the issues set out in issue 7: Auditor liability.

Options for change

131. The table below sets out options for change around Catalist market capitalisation thresholds, noting that there is no change proposed to the current fundraising limit of $20 million.

Option	Description / Impact
Catalist market thresholds	
A. Keep the current thresholds (status quo)	Retain the current $60 million entry threshold and $100 million exit threshold (or adjust for inflation—roughly $75 million and $125 million)
B. Remove entry threshold and keep the exit threshold at $100 million	This would allow larger growth companies to initially list on Catalist, while keeping the requirement to exit after two years once they reach $100 million (or $125 million adjusted for inflation)
C. Remove entry threshold and raise the exit threshold	This would allow larger growth companies to initially list on Catalist and remain listed for longer before needing to leave the market. For example, the exit threshold could be raised to $200 million (or $250 million adjusted for inflation).
D. Remove both thresholds	This would allow growth companies to list on Catalist and then ‘step up’ to NZX when they decide they are ready (eg need capital raise over $20 million). It would also permit NZX-listed issuers to ‘step down’ to Catalist if desired.

Option	Description / Impact
Catalist audit requirements	
E. Status quo	Retain the current audit requirements
F. Allow a lower-standard audit for some issuers	The lower requirement could be an External Reporting Board (XRB) 'review engagement' instead of a full audit.[24] The issuer threshold could be based on voting shareholders or amount of capital raised.
G. Remove the audit requirement for issuers raising up to the amount of the exclusion categories in Schedule 1 (currently $2 million)	This would mean that the same audit requirements would apply to all companies, no matter how they raise money from the public (for example, through small offers, crowdfunding, or listing on Catalist) and not depend on listing status. This approach could apply to all issuers, or be limited to subset of issuers, for example, defined by a limited number of voting shareholders, and/or a capped amount of capital raise.

Discussion of options

132. Both sets of options require trade-offs between retaining the investor protections of this public market and opening up Catalist as a capital-raising opportunity to a potentially wider range of businesses through adjustments to both market thresholds and audit requirements. An effective balance of these trade-offs could improve proportionality (aligning level of regulation with risk) and improve access to capital for businesses.

Market thresholds

133. Increasing or removing Catalist's market thresholds (options B-D) would be a shift in the purpose and rationale used to establish it as a public market with reduced regulatory obligations. The purpose would shift from aiming to address a very specific funding gap for small growth companies seeking to raise between $2 to $20 million, to serving a wider range of businesses seeking up to $20 million not yet ready to list on NZX. We are interested in understanding the potential impact of this shift better through your feedback.

134. Raising or removing Catalist's exit threshold (options C-D) could introduce competition with NZX, potentially drawing listed issuers off NZX onto Catalist. However, the retention of Catalist's capital-raising limit of $20 million would remain as an incentive for companies to list and remain on NZX for larger-scale capital raising.

135. Raising or removing the exit thresholds could also increase listing on both markets, if it could better support smaller businesses until they are ready to move to NZX, making it a strong feeder. The option of retaining but raising the exit threshold would extend Catalist's market but maintain the purpose of the exit threshold when established, at a higher point.

136. Providing greater access to Catalist for larger businesses choosing to do a smaller raise (below $20 million) could also improve proportionality, as the risk is measured by the size of the raise rather than the size of the business.

Audit requirements

137. We do not have clear evidence on the numbers or types of businesses choosing *not* to list on Catalist due to audit requirements. However, it seems plausible that this is a barrier, given the costs involved, the low budgets of SMEs, and the capital-raising alternatives available at lower cost.

[24] See XRB's website: ISRE (NZ) 2400 » XRB.

138. The proposed changes aim at proportionality by aligning regulatory requirements with the size of the capital raise rather than strictly with the listing status—that is, whether an entity is public (listed) or not (private), and on which market.

139. In relation to the equity ladder and general market access, a change to audit standards could address the uneven playing field between the requirements imposed on Catalist issuers, and companies choosing to capital raise while remaining consistent with exclusion parameters set out in Schedule 1 of the Act (offers to wholesale investors, small offers of up to $2 million per year, and equity crowdfunding of up to $2 million per year etc), where audited accounts are not required.

140. Any change to these audit requirements would involve direct trade-offs between investor protections (a high-quality audit), and the balance of costs and benefits for issuers. If the retail investor protections are preventing businesses from issuing on these markets, then retail investors lose out on potential investment opportunities, and potential issuers are missing out on the advantages (such as liquidity) offered by these markets.

141. We have noted that the FMA has granted an exemption notice enabling companies on Catalist to make offers of $2 million or less, without meeting regulated offer requirements, including a PDS. If the proposals in section 5 of this document to lift the limit of $2 million for crowdfunding and peer-to-peer lending go ahead, then the FMA may need to consider lifting the $2 million limit for Catalist as well.

Questions on Catalist

Questions on Catalist's market thresholds	
3.1	Do you think Catalist's current entry threshold (below $60 million market capitalisation) and exit threshold (two years after reaching $100 million market capitalisation) are still appropriate, having regard to its intended role and purpose? Please explain.
3.2	Do you consider that the original policy rationale for Catalist—as a stepping-stone market addressing a funding gap for small growth companies raising $2-20 million—should be expanded? If so, should the rationale explicitly include providing liquidity to growth companies, and what types of issuers or needs should Catalist be designed to support, and why do you consider the associated regulatory concessions remain justified?
3.3	If you support change, which option do you prefer and why? How do you think your preferred option would affect businesses considering listing on Catalist, businesses currently listed on NZX, and investors?
3.4	How would changing the thresholds affect Catalist's role relative to NZX and the wider capital market pathways and options for growing businesses?
3.5	If thresholds are changed, should additional safeguards or conditions apply to manage risks (such as regulatory arbitrage or reduced investor confidence)? If so, what should they be?
3.6	Do you think the FMA should consider amending the exemption notice that enables businesses listed on Catalist to raise up to $2 million without a product disclosure statement, if the crowdfunding and peer-to-peer lending limits with which the exemption notice aligns are raised (see issue 5)?
Questions on Catalist's audit requirements	
3.7	Which option do you prefer in relation to required audit standards? If you agree with the removal of the International Financial Reporting Standards (IFRS) Tier 2 requirements, what standard should apply instead? Should this apply to all issuers or only issuers raising below a certain amount of capital or having fewer than a certain number of voting shareholders?

3.8	If you agree that the audit requirements should be removed from the listing rules so that some businesses would not be required to produce audited accounts, which firms should that apply to (eg, all, or only a specific size measured by number of investors, or shareholders, or voting shareholders)? Should audit rules be linked to the size of the capital raise rather than strictly to the listing status—that is, whether an entity is public (listed) or not (private), and on which market.
Other comments	
3.9	Please share any other comments, evidence or data you have on changes to Catalist settings.

Issue 4: Unlisted Securities Exchange audit requirements

What we are seeking feedback on

We seek feedback on whether the current audit requirements applying to businesses listing on USX remain proportionate, particularly for smaller issuers, and whether they may be discouraging market participation without providing commensurate benefits.

Regulatory context—the current rules

142. Unlisted Securities Exchange (USX) is an exempt (private) market that operates under a lighter regulatory framework than a licensed market[25], and their financial reporting and audit requirements reflect those differences.

143. As shown in the Diagram 1, USX operates between private or over-the-counter trading arrangements and fully licensed public markets. It provides a formal venue for secondary trading and issuer information, while operating with lower regulatory requirements than a licensed market such as NZX. This reflects the policy intent of allowing a lower-cost market to operate for issuers that may not be ready for, or may not require, the full licensed market framework.

144. USX issuers are currently required to make audited financial statements available when joining the market and on an ongoing annual basis. They must prepare annual financial statements in accordance with Generally Accepted Accounting Principles (GAAP) and be audited by a qualified FMC auditor. These requirements provide investors with independently assured financial information, while being less onerous than the International Financial Reporting Standards (IFRS) required for public markets.

145. These market-specific requirements operate alongside other financial reporting and audit obligations that may apply under legislation such as the Companies Act 1993, the Financial Reporting Act 2013, and the Financial Markets Conduct Act 2013. Changing the audit requirements that apply because an issuer participates on USX would not necessarily remove any separate statutory financial reporting or audit obligations that apply for other reasons.

Problem definition—why we are considering change

146. The feedback we have heard about the impact of audit requirements on businesses wishing to list on USX are very similar to the concerns about listing on Catalist discussed in the previous section. The current audit requirements for USX may be disproportionate to risk where the issuer is relatively small, is not undertaking a significant capital raise, or could otherwise raise capital through pathways that do not require audited financial statements. The audit requirements may therefore discourage some smaller issuers from participating in this market.

147. More specifically, feedback suggests that current audit requirements:

- Impose high costs: full audits can be expensive for smaller issuers, particularly where the purpose of joining USX is to provide liquidity for existing shareholders rather than to undertake a significant new capital raise. These costs may increase the cost of accessing capital or liquidity through the market.
- Create an uneven playing field: the current audit standard settings create an uneven playing field by imposing audit requirements for listing on USX when businesses can raise the same amount through wholesale offers, small offers, or crowdfunding without audited accounts, under exclusions set out in Schedule 1 of the Act.
- Limit secondary listings: the audit requirements may discourage some smaller businesses from doing a secondary listing for the benefit of their existing investors.

[25] Financial Markets Conduct (Unlisted Market) Regulations 2015

148. We have also heard the same issues related to the auditing profession discussed in relation to Catalist, including that there is a shortage of auditors, which may increase costs and contribute to delays. We encourage submitters on audit standards for USX to also consider the issues set out in section 7: Auditor liability.

149. We do not yet have comprehensive evidence on the scale of the problem. We are seeking evidence on whether the current requirements are materially affecting issuer participation, audit availability, investor confidence, market liquidity, or the role of smaller markets in New Zealand's equity ladder.

Options for change

150. We are interested in feedback on the following options for reducing current audit requirements for USX:

Option	Description / Impact
A. Status quo	Retain the current audit requirements
B. Lower the audit requirement prior to listing if issuers have assets below a certain threshold (eg, $30 million)	The lower requirement could be an XRB 'review engagement' instead of a full audit [26]
C. Remove all audit requirements prior to listing	Remove the current requirement for audited financial statements imposed specifically by USX, while leaving in place any separate audit obligations that apply under other legislation.

Discussion of options

151. The options involve a trade-off between maintaining investor confidence through independently assured financial information and reducing compliance costs that may discourage smaller issuers from participating in a more transparent market.

152. Keeping the status quo (Option A) would preserve the highest level of assurance but would not address concerns that the same audit requirement applies regardless of issuer size, shareholder base, trading activity, or capital-raising scale. If the current requirement is deterring smaller issuers from joining USX, the status quo may limit the usefulness of USX as a lower-cost pathway between private arrangements and fuller public market regulation.

153. Allowing a limited assurance review (Option B) for some smaller issuers would retain a form of independent assurance, while reducing compliance costs. Option B may be a more proportionate approach if eligibility is based on clear criteria, such as issuer size or shareholder numbers, amount of capital raised, trading activity, market value, or whether the issuer is otherwise subject to statutory audit requirements.

154. It may also support the development of a stronger equity ladder by making it easier for companies to move from private or informal trading arrangements into a more transparent secondary market. However, a limited assurance review provides less assurance than a full audit, so the design of any eligibility criteria and disclosure safeguards would be important.

155. Removing the USX-specific audit requirements (Option C) would provide the greatest reduction in compliance burden. It could make it easier for some companies to join USX, particularly where they are not otherwise required to have audited financial statements. However, this option would also create the greatest risk for investors. Some investors may be relying on financial information that has not been independently audited or reviewed.

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[26] See XRB website: ISRE (NZ) 2400 » XRB. This standard is labelled a Review of historical financial statements performed by an Assurance Practitioner who is not the auditor of the entity.

156. If audit requirements were removed or reduced, possible safeguards could include:

- clear disclosure about whether financial statements have been audited, reviewed, or not externally assured
- investor warnings where financial information has not been audited
- limits on which issuers can rely on reduced requirements
- stronger disclosure requirements where an issuer is raising new capital
- shareholder approval before an issuer relies on reduced assurance requirements.

157. A further question is whether any reduced assurance requirement should apply only to USX, or whether similar criteria should also apply to other smaller-market pathways such as Catalist. Greater consistency may reduce distortions between markets, but any alignment would need to take account of differences in legal status, market rules, disclosure settings, and the role each market plays in the equity ladder and the wider capital markets.

Questions on USX's audit standards

Questions	
4.1	Do you think USX's current audit requirements are proportionate for the type of market USX operates and the issuers that use it? Please explain.
4.2	If you support change for USX, which option do you prefer? Why?
4.3	If an External Review Board review engagement[27] were allowed for some USX issuers, what criteria should determine eligibility? For example, should this depend on issuer size, shareholder numbers, annual fundraising, trading activity or something else?
4.4	If audit requirements are reduced for some USX issuers, should the same criteria also apply on Catalist? Why or why not?
4.5	What broader evidence or practical examples should the Government consider when assessing whether current audit requirements are affecting issuer participation, investor confidence, or the role of smaller markets more generally?
4.6	Please share any other comments, evidence or data you have on USX settings.

[27] See XRB's website: ISRE (NZ) 2400 » XRB.

Issue 5: Crowdfunding and peer-to-peer lending limits

What we are seeking feedback on

We seek feedback on whether the Government should consider:

- increasing the current limits per issuer on capital raising from retail investors though crowdfunding and peer-to-peer lending
- introducing a per investor limit as an additional investor protection, if the per issuer limit is raised.

Regulatory context—current rules

158. Crowdfunding is a way for a businesses to raise funds by getting small amounts of capital from a large number of people (retail investors) via a licensed online platform. While the model of crowdfunding can include both equity and debt offers, debt crowdfunding is usually referred to as crowdlending or peer-to-peer (P2P) lending.

159. Crowdfunding and P2P lending are designed to appeal to retail investors. They are relatively easy and fast, with the platform itself in the role of intermediary. This is how they work:

    - <u>Equity crowdfunding</u>: Investors invest in shares of a company via a licensed online platform, enabling businesses to raise money quickly. Returns can be variable, depending on business performance, and it is possible for an individual investor to lose their entire investment. New Zealand examples of licensed platforms include Snowball Effect, PledgeMe and Crowdsphere.
    - <u>Peer-to-peer lending (debt) (P2P)</u>: Investors loan money to companies or individuals via licensed online platforms. Investors receive back the principal plus interest, though it is also possible for investors to lose their entire investment if the business fails. P2P lending offers competitive interest rates compared to other types of credit investment. New Zealand examples of licensed P2P platforms include Squirrel Money, PledgeMe, Lending Crowd Limited, Go Lend Limited.

160. Because neither Crowdfunding nor P2P investments are in 'listed' products, there is generally no secondary market to on-sell the product, and thus very limited liquidity for investors (that is, if you invest through crowdfunding, it can be a long waiting period to see the outcome of the investment).

161. Both crowdfunding and P2P lending must operate through platforms licensed by the FMA as a 'provider of licensed intermediary services' (Sched 1, cl 6 of Act; regs 184-187). This licensing imposes obligations on the platform, as an intermediary, that serve as retail investor protections. These obligations include having systems in place to ensure fair-dealing and effective governance and conflict management.

162. Raising capital through these platforms exempts the issuer from the normal requirements for offers to retail investors to prepare a PDS under Part 3 of the Act, but the issuer must still offer sufficient information and disclosures, including information around risk, to enable retail investors to make an informed decision. They must also provide to investors a prescribed warning statement that investors may lose their entire investment, and they must secure investor confirmation that they have read and understood the risks.

163. However, while the regime requires some regulatory oversight of the platforms, and the platform itself plays a 'gatekeeping' role to market participation, this does not necessarily translate into safer offers. In the end, the platforms themselves are not liable or responsible for the quality of investments on their platform. The risk of total loss of investment remains.

164. This section focusses on two aspects of the crowdfunding and P2P lending regime:

    - <u>The fundraising cap **per issuer** is low</u>: Under the current FMC Regulations, an issuer cannot raise more than an aggregate (total) of $2 million in any 12-month period from retail investors across crowdfunding, P2P lending, and the 'small offer' category (see Sched 8, cl 7 of FMC Regs for an explanation and example of the aggregate limit). This limit or cap has applied since 2014. It is intended to strike a balance—it makes fundraising easier for smaller offers, but limits the amount that can be raised using the lighter-disclosure routes.

- There is no cap **per retail investor**: Equity crowdfunding and P2P lending are both open to retail investors, with no limits placed on the level of investment *per retail investor* as a means of containing retail investor risk. Other countries do place a limit here, including Australia (see numbers below). The absence of a retail investor cap increases the risk to investors of raising the fundraising cap *per issuer* (business or company). We would like to consider adding a per investor limit and are seeking your thoughts and feedback here.

165. While the focus of this discussion is on crowdfunding and P2P lending, the inclusion of 'small offers' in the aggregate cap also necessitates a decision on whether the three remain in a group and the aggregate cap increased, or whether a lower cap on small offers is retained while increasing crowdfunding and P2P.

Overseas comparison (particularly with Australia) for equity crowdfunding

166. While New Zealand crowdfunding has no per investor limits, other countries do. The limit in Canada is set by province, generally $2,500 CAD per issuer or up to $10,000 with advice, the limit in the EU is either €1,000 or 5% of net worth per project, and the limit in the US depends on income and net worth. (Australia shown in table below).

167. Overseas comparisons suggest that New Zealand's issuer cap of $2 million is lower than several comparable regimes—for example, £5 million in the UK, €5 million in the EU and US$5 million in the US. Overseas jurisdictions also differ in their investor protections, such as the per investor caps discussed above, market structure, and legal settings.

168. The table below compares New Zealand's rules with those in Australia under the Corporations Act 2001.

Dimension	New Zealand	Australia
Issuer fundraising cap	$2 million per 12 months	AU $5 million per 12 months
Retail investor cap	None (risk disclosure instead)	AU $10,000 per investor per company per 12 months
Minimum investment	Platform-set (often $50–500)	As low as AU $50
Disclosure document	Product disclosure + key investor information	CSF offer document (lighter than prospectus)

169. The rules around P2P lending (called 'market lending' in Australia) are less clearly defined.

Problem definition—why are we looking at this now?

170. The $2 million limit for retail offers has not changed since 2014, when New Zealand was one of the first jurisdictions to implement equity crowd funding. Over time, inflation and higher business costs have reduced how useful the cap is in practice—an inflation adjustment alone would raise it to $2.8 million.

171. Some stakeholders feel that the current cap may be too low for some businesses and specialist lenders using these channels. If the cap is too low, some businesses may decide that crowdfunding or P2P lending do not meet their fund-raising needs, and would then need to move earlier into wholesale markets or more expensive fundraising options, increasing their cost of raising capital.

172. Snowball has publicly called for a raise in the cap to $10 million on the grounds that it is restricting high-growth start-ups, which run up against the cap relatively quickly, and impacting New Zealand's global competitiveness.

173. As shown above, New Zealand's setting is also lower than some overseas regimes that also use platform-based fundraising with targeted investor protections. Not all countries take the same approach, so the right answer for New Zealand is not automatic. Your feedback on this issue will help determine the direction of any change.

174. Both crowdfunding and P2P lending carry higher risk than public market investment. There have been examples of investors losing large amounts in a single investment, given that there is no cap in place.

Options for change

175. We have identified a range of options for change, based around variables like level of investor protection and level of risk. We would like to hear your feedback on these options as well as any possible changes we may not have considered. The options will need further refinement following public feedback.

Option	Description / Impact
A. Keep the current cap (status quo) or adjust for inflation to $2.8 million	Maintains the current balance between easier fundraising and investor protection. Adjusting for inflation would not answer shifts in business and investor preferences.
B. Raise the cap for both platforms to the same amount	Possible levels might be between $5 million to $10 million.
C. Disaggregate crowdfunding and peer-to-peer lending caps and raise cap for each	This could better reflect the different nature of equity and debt fundraising and different levels of risk. Suggestions have included a $5 million cap for each.
D. Use a graduated cap for different levels of regulatory requirements	For example, issuers with audited financial statements or stronger governance could have higher limits. One stakeholder suggestion is $3 million for unaudited and unlisted companies, and up to $10 million or 15 percent of shares on issue for audited and listed companies. This could target relief to firms that can support larger raises, but adds regulatory complexity.
E. Introduce a cap per retail investor, per company	This could be similar to settings in Australia, with a cap per investor, per issuer (per single investment opportunity).

Discussion of options

176. Option A is supported by the fact that there is no hard evidence (beyond inflationary impacts) suggesting that New Zealand should raise the limit on crowd-funding and P2P lending. However, a range of capital markets dynamics, combined with industry feedback, suggest that a raise could improve the options available to businesses for raising capital, including decisions around which market to use.

177. Option B (a clean increase of the cap) would be simple to understand and administer. It could bring New Zealand closer to some overseas settings. A higher cap could increase the number and size of offers on licensed crowdfunding and P2P platforms, giving it a more substantial role in the equity ladder (and parallel debt). The increase would also lift the amount of capital raised under lighter disclosure settings and impose greater risk on retail investors. Any change would need to consider platform capability, supervision, and transition.

178. Option C provides the opportunity to distinguish between crowdfunding and P2P lending, given that equity crowdfunding tends to be riskier than P2P lending.

179. Option D is the most proportionate proposal as it aligns regulatory settings more clearly with level of risk to retail investors, though it introduces complexity which could compromise confidence and transparency.

180. Option E would put a cap in place per investor per issuer, to ensure that retail investors diversify their investments. Specific settings would be developed.

181. One reason for aligning with Australia is regulatory arbitrage—issuers choosing to issue in Australia over New Zealand because the settings there are more favourable. In general, an increase in the cap would avoid New Zealand becoming an outlier.

Questions on equity crowdfunding and peer-to-peer lending

Questions	
5.1	Do you think the current aggregate $2 million capital-raising limit should be increased for equity crowdfunding and P2P lending? If yes, please discuss why you think it should change (eg, any practical constraints you think the current cap creates and how a higher limit might change the way businesses use crowdfunding or peer-to-peer lending). If no, please say where you see risks.
5.2	If the “small offers” category is removed from the aggregate, what limit do you think should apply to it separately?
5.3	Which option (A-D) do you support and why? If there are variables within the option, please be as specific as possible. (For example, if you support option B to raise the limit, please say what you think the new aggregate limit should be and why; if you support option C, please say what you think the separate limits should be.)
5.4	If you support Option D, do you have suggestions for how requirements could be tiered?
5.5	If you support option E (an investor cap), how do you think that could be designed? Are there any other additional safeguards and retail investor protections your think should apply for larger raises?
5.6	If the cap is raised, what flow-on impacts do you foresee on other capital markets?
5.7	Please share any other comments, evidence or data you have on crowdfunding and P2P lending, including caps discussed.
5.8	Are there overseas models you think the Government should consider?

Issue 6: Wholesale investor issues

What we are seeking feedback on

We seek feedback on the 'eligible investor' category of the wholesale investor definition under the Act—particularly the certification process and the requirement to re-certify every two years—and on an FMA concern around promotion of wholesale offers to retail investors.

We are happy to hear other feedback you may have on the current suitability of the wholesale investor exclusion, particularly those categories of wholesale investor involving investment thresholds.

Regulatory context—the current rules

182. As explained in the introduction, Schedule 1 of the Act provides exclusions from its regulated offer requirements for specific types of financial product offers. One exclusion is for offers to wholesale investors.

183. The Act (Schedule 1, section 3) identifies several categories of wholesale investor[28]:

- an investment business (for example, an entity whose main business is investing in financial products, a registered bank, or a financial adviser)
- a person who meets a certain threshold of investment activity (Schedule 1, clause 38) – over $1 million in a portfolio or transactions or employment in investment business
- a 'large' investor (net assets or annual turnover exceeding $5 million)
- a government agency
- an eligible investor
- persons that have invested or will invest $750,000 in an offer[29]
- other technical circumstances including as part of underwriting agreements, or for derivative offers where the notional value of the derivative is at least $5 million.

184. Persons who are not wholesale investors are commonly referred to as retail investors. The bulk of the Act sets out how offers of financial products must be made to retail investors. Wholesale investors do not require the Act's investor protections on the basis that they have sufficient knowledge and experience dealing in financial products to acquire the information or financial resources they need to assess the merits and risks of an offer.

Eligible investor category

185. The 'eligible investor' category provides a pathway to wholesale investment opportunities for experienced retail investors who do not meet the wealth thresholds of the other individual wholesale investor categories.

186. To qualify as an eligible investor to invest through a wholesale offer, the investor must complete a self-certification process. They must confirm that they have previous experience in acquiring or disposing of financial products that allows them to assess:

- the merits of the transaction or class of transactions (including the value and risks of the financial products involved)
- their own information needs in relation to the transaction or transactions
- the adequacy of the information provided by any person involved in the transaction.

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[28] See FMA information: Wholesale investments | Investments for wholesale investors | Financial Markets Authority

[29] This exclusion requires the offeror to provide a prescribed warning statement in a document that contains the key terms of the offer and receive written acknowledgment from the investor in a prescribed form prior to accepting an application (Regulations, Schedule 8, clause 4-5).

187. They must also certify in writing that they understand the consequences of certifying themselves to be an eligible investor.

188. The certification process requires that a financial adviser, qualified statutory accountant, or lawyer, having considered the investor's grounds for certification, must not confirm the certification unless they are satisfied that the investor has been sufficiently advised of the consequences of self-certification, and that they have no reason to consider the self-certification is incorrect or that further information or investigation is required as to whether or not the certification is correct.[30] It is an offence for investors to knowingly provide false certification.

189. Investment undertaken through the eligible investor category requires an eligible investor certification for *each* investment (or class of investments), as the eligibility relates to the particular offer. An investor may be wholesale in relation to some offers, but retail in relation to others.

International comparisons on eligible investor-equivalent provisions

190. New Zealand's eligible investor regime, requiring both self-certification and professional confirmation, is unique. It represents a relatively permissive regulatory approach internationally, based on subjective assessment from the investor's point of view. Other countries' approaches range from allowing full self-certification to requiring third-party verification. The table below provides a comparison of other countries' equivalents to the eligible investor regime.

Country	'Eligible Investor' equivalent category	Key Features
New Zealand	Eligible investor	Self-certification with professional confirmation
Australia	Sophisticated investor	Financial thresholds or meets experience criteria verified by third-party
Canada	Accredited and Eligible investor	Financial thresholds assessed by offeror or after obtaining advice from professional
United Kingdom	High-net-worth and sophisticated investor	Self-certification with eligibility based on objective experience/financial criteria, or third-party certification with eligibility based on subjective knowledge criteria
United States	Accredited investor	Wealth or income criteria, and offeror must verify that investor is accredited
Singapore	Accredited investor	Income or wealth criteria
Hong Kong	Professional investor	Mainly wealth criteria that is supplemented by subjective knowledge criteria in some cases

Promotion of wholesale offers

191. In New Zealand, wholesale offers cannot be made to retail investors (if they are, the wholesale exclusion no longer applies and they become regulated offers with full PDS requirements). Wholesale offers must also comply with Part 2 of the Act (Fair Dealing), which prohibits misleading or deceptive conduct, or false, misleading or unsubstantiated representations.

[30] During 2025, the FMA took a case to the High Court (*Financial Markets Authority (2025) NZHC 2723*) to clarify the proper use of eligible investor certificates, including the level of detail that the eligible investor certificates must include and the role of issuers in relation to those certificates. The High Court found that the confirmer role is a light-touch mechanism focussed on ensuring the right process has been followed, not on review or verification of the substance of the claims. See judgement here: Court case provides clarity around wholesale investor rules | Financial Markets Authority.

Problem definition—why we are looking at this now

192. As private investment opportunities grow, we want adequate regulatory protections in place to ensure that all investors receive the level of product information they require to invest with confidence. There are four areas where we have identified concerns, drawing on stakeholder feedback and regulator observation[31]:

- Some investor outcomes raise questions about the appropriateness of the eligible investor self-certification (with third-party professional confirmation) approach. There is some evidence that inexperienced investors are accessing wholesale offers through this category. Some have queried whether there should be a higher or more objective standard of third-party validation that the eligibility criteria have been met.
- Wholesale offers are increasingly being promoted through mainstream and digital channels that can reach wide retail audiences using techniques that may advertise high fixed returns, downplay risk, and are not clearly marked as wholesale-only.
- The current 2-year validity of the eligible investor certificate introduces disproportionate, unnecessary regulatory cost and burden, presenting barriers to investment.
- The current self-certification process doesn't recognise the guidance provided by investment groups such as angel investors who are able to support investors in decision-making. The process thus presents a barrier to firms raising capital through groups of angel investors.

Options for change

193. The table below sets out some preliminary options for eligibility and certification that have been used overseas for experienced investor frameworks. It also sets out options for change in relation to promotion of wholesale offers and the duration of the eligible investor certificate.

Option	Description / Impact
Eligible investor criteria and certification	
A. Develop more objective 'experience' definitions for an eligible investor	This could remove the subjective elements of the eligible investor test and introduce objective criteria relating to the knowledge and experience of the investor. This could help to ensure that individuals understand their investment capabilities. It might also recognise membership in an investment club, such as an angel investment club, as a qualifying criterion in recognition of the guidance they provide.
B. Prescribe the content required on eligible investor certificates	Currently, regulations only prescribe a warning and information on the offence to provide a false certificate. Regulation could be used to prescribe more detailed content to support the individual's understanding of their capability and consequences of receiving a wholesale offer.
C. Role and consequences under the Act for professional confirmer	This could look to require independent financial advice, or put more responsibility on the professional confirmer to have reasonable grounds to confirm the eligible investor certificate, and/or adding an infringement offence for professional confirmers who provide inadequate certifications.
D. Introducing an investment cap for this category	This option would look to reduce the amount that could be invested under the eligible investor category, to reduce investment risks. The cap

[31] Including as reported in the October 2022 Thematic review of use of the whole investor exclusion. This focussed on property development.

	could apply per investor, or per offer (using diversification as a risk moderator).
Duration of eligible investor certificate	
E. Extend the duration to 5 years	This would reduce burden and expense on willing investors who have already achieved certification in relation to a particular investment offer.
F. Remove need for renewal	This acknowledges that someone deemed an eligible investor for a particular offer would not lose their qualifying experience and knowledge for that offer.
Promotion of wholesale offers	
G. Restrict public advertising of wholesale offers	This could reduce retail investor exposure to wholesale offers by limiting mass-market promotion that reaches people who are not genuinely wholesale. There are currently advertising restrictions in place for the exclusions for small offers and small schemes.
Wholesale investor thresholds	
H. Consider adjustment of individual wholesale investor thresholds	This would consider whether the thresholds currently used to define wholesale investors (outside of eligible investors) such as the $750,000 per offer threshold need to be adjusted for inflation or other reasons.

Discussion of options

Eligible investor criteria and certification

194. The challenge with the options in relation to the certification process of eligible investors is how to preserve (or even increase) investor protections without closing off investment activity (for example by angel investors). Some stakeholders feel that the investor protections are not sufficient, and others, that they are too strict.

195. Options A-D identify a range of ways to heighten investor protections in relation to the problems and issues arising around the eligible investor category. They are not mutually exclusive, and could be combined in a number of ways.

196. International evidence indicates issues with the eligible investor (or similar) category commonly arise where eligibility tests rely on wealth thresholds or broadly framed experience criteria that do not consistently correlate with investors' ability to understand complex, illiquid, or high-risk investments. Reviews and enforcement experience show that both self-certification and third-party confirmation processes can become administrative in nature, with limited substantive assessment of investor understanding, particularly where the role, accountability, or liability of professional confirmers is unclear.

Duration of certificate

197. We think it is reasonable to extend or remove the duration of this certificate simply on the logic that someone is unlikely to lose their knowledge of a particular investment context or opportunity within a two-year period. We would like stakeholder feedback on whether an extension to five years makes sense (Option E), or complete removal (Option F). This would not change the requirement to complete a separate self-certification for each investment opportunity.

Promotion of wholesale offers

198. Across jurisdictions, public promotion of wholesale offers has been identified as a key risk factor for investors. Common international responses include restricting public advertising of wholesale investments as proposed in Option G. We are interested in hearing examples of misleading wholesale investment promotion, including where harm to investors has occurred, and suggestions for how this might be controlled and avoided to reduce harm.

Wholesale investor thresholds

199. While our primary consideration is the eligible investor category, we also seek feedback on whether the thresholds currently used to determine wholesale investor eligibility need to be adjusted for inflation or other reasons. For example, one definition of wholesale investor is 'persons that have invested or will invest $750,000 in an offer'. The broadly comparable setting is Australia is $0.5 million AUD. The US has a net worth requirement of $1 million USD that is slightly different from asking how much a person has invested or will invest in an offer.

200. There have been examples where people inherit a lump sum of money, or sell a house or business, and suddenly qualify to be a wholesale investor, without any evidence they are able to understand the risks involved even though the investor must receive a warning, and must sign an investor acknowledgement explaining the consequences of being treated as a wholesale investor and recommending independent financial advice is obtained. And while there could be a strong argument to at least adjust this figure for inflation, the degree of loss increases with the threshold figure.

Questions on wholesale investor issues

Questions on eligible investor criteria and certification	
6.1	Do you have any evidence or experience of difficulties around the use of the eligible investor self-certification, or misuse of the self-certification approach? Please provide detail.
6.2	Do you consider that the wholesale investor regulatory framework provides adequate retail investor protections? Or do you consider that it presents a barrier to investment?
6.3	Which option for change in relation to the wholesale eligible investor certification would you support (noting that the options are not mutually exclusive).
Question on duration of eligible investor certification	
6.4	Which option do you prefer in relation to the period of validity for eligible investor certificates (currently 2 years)—extend to 5 years or fully remove?
Question on promotion of wholesale offers	
6.5	Do you have any evidence or experience of concerning behaviours with the advertising of wholesale offers? What recommendations do you have for restricting this promotion?
Question on wholesale investor thresholds	
6.6	Do you have concerns with other aspects of the wholesale regime (beyond eligible investor category and the promotion issues raised)? Do you think the $750,000 threshold for individual investment remains appropriate, or should it be adjusted?
Other comments	
6.7	Please share any other comments, evidence or data you may have on wholesale settings.

Issue 7: Auditor liability

What we are seeking feedback on

In this section, we seek your views on whether auditors who carry out FMC audits (ie, audits of all entities required to report under the Financial Markets Conduct Act 2013) should have their liability for unintentional wrongdoing (principally negligence) limited in some way.

If you support change in this area, we encourage you to provide data and evidence that supports the need for change.

Regulatory context—the current rules

201. Like all professional services, auditors are currently subject to joint and several liability[32]. There is no limitation on this liability, and so auditors could be required to compensate a plaintiff for the full amount of any loss. The Act also prohibits companies and auditors from limiting liability for FMC audits through contract (section 529).

Problem definition—why we are we looking at this now

202. The question of whether auditor liability should be limited has been around since the passage of the Auditor Regulation Act 2011. The issue was considered as part of the Law Commission's 2014 report 'Liability of multiple defendants'.[33] The report concluded that joint and several liability should remain the default setting for civil liability, but that the liability of auditors should be capped due to the significant risks they are exposed to and for better alignment with Australia.

203. The main argument for limiting liability is that the combination of joint and several liability and the perceived deep pockets of auditors, and their willingness to settle out of court to avoid reputational damage, create a significant risk for audit firms out of proportion to their part in any loss that may occur. Though rare, this can expose auditors to catastrophic loss such as the collapse of Arthur Andersen following the collapse of Enron.

204. It is contended that this exposure has flow-on consequences for the audit market in New Zealand, including:[34]

- The number of auditors licenced to carry out FMC audits is decreasing (but is increasing in Australia).
- Auditors are not taking on higher risk FMC audits.
- Small to medium firms are not competing for bigger contracts.
- Difficulty and cost obtaining professional indemnity insurance.

205. Chapters 3 and 4 both discuss issues relating to audit requirements for companies seeking to list on Catalist and USX. They seek submissions on whether the current requirements lead to costs that are a barrier to listing. However, audit requirements are not the only contributor to audit costs. Auditor liability settings can also contribute. Higher risks, decreased competition, and higher costs for professional indemnity insurance can all lead to higher costs for companies required to produce audited financial statements.

[32] Joint and several liability means that when two or more parties are liable for damage caused to a third party, all the parties who caused the loss are potentially liable for the full amount, regardless of their level of fault.

[33] R132 Liability of Multiple Defendants

[34] See for example the 2024 policy paper from CA ANZ submitted to the Finance and Expenditure Committee considering the Financial Markets Conduct Bill.

Options for change

206. We have identified three high-level options for reform, set out in the table below:

Option	Description / impact
A. Status quo	Auditors are subject to joint and several liability with no limitation of that liability. Under the status quo auditors are potentially liable for the full amount of any loss a plaintiff suffers.
B. Capped liability scheme	Under these kinds of schemes, the liability of auditors would be capped in some way (for example in proportion to the audit fee), with oversight of the scheme by an appropriate entity (likely the FMA).
C. Allow for contractual limitation of liability to limit liability by contract	Under this option, the company and the auditor can agree to limit the liability of the auditor in their contract. This is currently prohibited by section 529 of the Financial Markets Conduct Act 2013.

Discussion of options

207. New Zealand applies International Auditing Standards and already has in place a strong and internationally aligned regulatory framework for ensuring audit quality. This includes the Auditor Regulation Act 2011, specific roles under that Act for the FMA and accredited bodies in upholding quality standards, and professional body and statutory reviews and enforcement.

208. Limiting the liability of auditors is common in other jurisdictions, but there is no consensus on the best way to do this. Across Australia, the United Kingdom and the European Union we see examples of both Options B and C above.

209. The status quo (Option A) remains a viable option. Both the Law Commission and the audit profession have raised concerns that the status quo exposes auditors to disproportionate risk, with flow-on effects to the audit market in New Zealand. However, it will be important to understand the extent and impact of these before making any recommendation for reform. We encourage submitters to provide evidence supporting these concerns, along with evidence that limiting liability would address them, at least to some extent.

210. Advocates for reform in New Zealand have generally called for a capped liability regime similar to that in Australia (Option B). In Australia, the liability of auditors is capped in proportion to the audit fee. The advantage of such a scheme is that it just limits the liability of the one entity we are looking to protect, namely the auditors. All other entities and individuals that may be involved would still be subject to full liability under the joint and several liability framework. However, it increases the risk that a plaintiff does not recover the full amount of their loss and could protect auditors when they are responsible for any loss over and above the cap. There are also other factors which make our landscape different to Australia, notably:

- the regime in Australia applies to a wide range of professional services, not just auditors, and
- Australia has proportionate, rather than joint and several, liability.

211. We understand (mainly from the experience of the UK) that there are a number of issues with allowing for contractual limitation of liability (Option C), and that this is generally not the preferred option for the audit profession. Such an approach does not limit liability from third party claims and is unlikely to be favoured by shareholders. However, we are interested in hearing your views on this option (noting that, outside the FMC Act framework this is quite standard).

212. Options B and C could lead to lower costs for audits, in turn lowering the barrier to listing in order to raise capital. This could particularly benefit SMEs to whom these costs can be significant. Option

B would also more closely align our auditor liability settings with Australia though, as noted above, the wider landscape is quite different there in other ways.

213. However, these considerations need to be weighed against other factors too. If auditor liability is limited in some way, this could impact audit quality, which in turn could affect investor confidence. And what would the impact on plaintiffs be?

Questions on auditor liability

Questions	
7.1	Do you agree with the scope of this issue as outlined above (ie, limiting consideration to FMC audits and civil liability for unintentional wrongdoing)? If not, what else do you think should be considered?
7.2	Do you agree with how the problem definition is summarised above? Please provide additional information and detail if you think this needs to be refined.
7.3	The problem definition discussion above lists a number of issues that it is contended are faced by the audit market in New Zealand. Do you agree with these? Are there other issues we should consider? To what extent are these issues caused by the liability exposure of auditors? Are there other factors that are causing these? Please provide concrete evidence and data to support your response where possible.
7.4	Do you agree with how the options are summarised above? Are there other options we haven't considered? Please provide additional information and detail if you think these need to be refined.
7.5	Do you have a preferred option? If so, please give your reasons for preferring it (with reference, if possible, to how it would assist addressing the issues with the audit market in New Zealand) and provide as much information as you can in support of your preference, along with any other matters we would need to take into account when designing the detail of that option.
7.6	What are the risks associated with limiting liability for auditors in any of the ways indicated in Options B and C? For example, what would the impact on plaintiffs be? And where else might plaintiffs look to recover losses? Would audit quality suffer?
7.7	Do you see any issues with introducing a capping scheme just for auditors where other professions – eg, lawyers and accountants – would still be joint and severally liable for a loss where more than one party has a role?
7.8	Are there any other issues relating to auditor regulation and the state of the audit market in New Zealand that you would like to bring to our attention?
7.9	Please share any other comments, evidence or data you have on auditor liabilities or related topics.

Issue 8: Broker activity and visibility of offers

What we are seeking feedback on

In this section, we seek your views on the role of brokers and related intermediaries in supporting research, analysis, promotion and discovery of investment opportunities, particularly for smaller issuers, whether there are barriers or gaps that may warrant further policy work, and what the role (if any) for Government might be.

Regulatory context—the current rules

214. Brokers and related intermediaries play a key role in New Zealand's capital markets. They facilitate transactions, provide investment analysis and advice, support capital raising (including IPOs), and produce or disseminate research and market information.

215. Under the Financial Markets Conduct Act 2013 (the Act), brokers must register as financial service providers and are subject to fair dealing requirements. They may also need to comply with other requirements ranging from conduct duties to licensing, depending on their activities (i.e. if they are buying or selling financial products on behalf of clients, holding client money or property in custody or providing financial advice to retail clients). These settings are designed to ensure client assets are safeguarded and properly handled when entrusted to intermediaries and that consumers have access to quality advice to make investment decisions.

216. More broadly, the capital markets system relies on a range of intermediaries, including brokers, analysts, advisers, researchers, and platforms, to connect issuers with investors and to support price discovery, liquidity, and informed investment decisions.

Problem definition—why we are we looking at this now

217. Both research and stakeholder engagement suggest that aspects of the current market structure, particularly the role and incentives of brokers, analysts and research providers, may be constraining capital formation and flow, especially for smaller issuers.[35]

218. The OECD's 2026 Economic Survey of New Zealand notes that limited equity research coverage for smaller companies reduces the information available to investors, increasing perceived risk and contributing to lower liquidity and weaker incentives to list. The *Growing New Zealand's Capital Markets 2029* report also identifies declining broker research coverage and changes in brokerage economics as factors contributing to a more efficient market for larger companies but reduced support for smaller issuers.

219. Feedback from the sector supporting these observations includes the following:

- **Broker activity has shifted away from small growth company markets**: Some stakeholders suggest that broker business models have increasingly focused on wealth management and high-net-worth clients, with reduced emphasis on equity research, IPO support, and ongoing market-making for smaller issuers.
- **Increasing trend toward passive investment** (such as index funds): This reduces the demand for research, particularly on investment opportunities in smaller firms. Some financial advisors may have limited incentive to recommend investment outside these model portfolios.
- **Limited analyst coverage affects investibility:** A number of submitters have noted that many smaller listed companies receive little or no independent research coverage. This can limit visibility to investors and may reduce institutional participation, particularly where mandates or practices rely on externally produced research.

[35] Portions of this context relate to issues addressed FMA guidance on financial advice obligations: Reasonable grounds for financial advice about financial products that was reviewed in early 2026.

- **Information gaps may contribute to lower liquidity and valuation:** Where information about smaller issuers is limited or costly to obtain, investors may perceive higher risk. Stakeholders suggest this may contribute to lower trading volumes, wider spreads, and reduced incentives for companies to list or remain listed.
- **Issuer discovery may be a system-level challenge:** Some stakeholders consider that listing alone is not sufficient to connect issuers with capital. They point to frictions such as index exclusion, low free float, and limited intermediation as barriers to investor engagement, particularly for smaller firms.

220. At a high level, these concerns suggest that parts of the system that support information production, promotion, and intermediation may not be functioning as effectively as intended for all segments of the market.

221. However, we do not have conclusive evidence on the scale or materiality of these issues in New Zealand, or the extent to which they reflect structural market dynamics versus regulatory settings.

Discussion

222. We are not at this stage confident that any regulatory change is merited here or that it would improve these market practices. We would like your feedback on this.

223. The issues outlined above raise questions about whether current regulatory settings, market incentives, or system design features are contributing to:

- gaps in coverage, promotion, or investor awareness for certain issuers
- reduced participation by brokers or intermediaries in specific market segments
- constraints on capital formation, particularly for smaller or growth-stage firms.

224. At the same time, there are important considerations around:

- regulatory perimeter (for example, distinguishing between conduct regulation and broader market design)
- market-led outcomes versus government intervention, including risks of distortion or unintended consequences
- interactions with other parts of the regime, including disclosure requirements, market structure, and investor behaviour.

225. We are seeking evidence to understand whether there is a case for further policy work in this area.

Questions on broker activity and visibility of offers

Questions	
8.1	Do you agree with the problem definition? In your view, how significant are any issues relating to broker activity, research coverage, or issuer visibility in New Zealand capital markets, particularly for smaller listed companies? Please provide evidence or examples where possible.
8.2	To what extent do broker incentives or business models affect capital raising outcomes, particularly for smaller or growth-stage issuers?
8.3	Are there specific barriers that prevent brokers or other intermediaries from supporting IPOs, secondary market activity, or ongoing investor engagement for smaller issuers?
8.4	What could various industry players do (collectively or individually) to address the issues?
8.5	To what extent—if any—are the issues identified in this section driven by regulatory settings, as opposed to other structural factors? Do you see a role for government in addressing any of these issues? If so, what types of intervention (if any) should be considered, and what risks should be taken into account?

Questions	
8.6	Are there international examples or models (for example, in relation to research coverage or broker incentives) that you consider relevant to New Zealand?
8.7	Please share any other comments, evidence or data you may have on broker activity and the promotion of small business investment opportunities.

Annex One: Questions

New Zealand's approach to capital markets regulation	
0.1	What regulatory settings would you like to see considered for change in the next phase?
0.2	Do you support the three objectives for change framing this document? What objectives would you recommend to guide considerations of future changes?
0.3	Are there aspects of the current FMC regime we have not mentioned in our overview that are limiting our capital markets?
0.4	Taking into account current trends and developments in capital markets, do you think the FMC Act needs a more fundamental review? Where would you focus such a review? Do you think the purposes outlined above remain appropriate? If not, how would you change them?
0.5	What are the greatest challenges New Zealand capital markets are facing in the context of rapid innovation in both products (asset types including tokenisation) and services (including new market operations and infrastructure driven by digital technology and AI)?
0.6	If you could address 2-3 strategic priorities with substantial impact in the FMC regime, what would they be?
0.7	How do you perceive the position of New Zealand's capital markets in the global context? What strengths do our capital markets offer? What positioning do you think we should aspire to? What does ambition look like to you?
0.8	What competitive strengths do you think New Zealand could build toward with regulatory change, and what change is needed?
0.9	This document and discussion are focussed primarily on regulatory change. Are there non-regulatory steps you think the Government could take to support capital markets?
0.10	What non-regulatory steps do you think the sector could lead to support capital markets?
0.11	Please provide any other thoughts you would like to share with the Government on capital markets regulation.
Product Disclosure Statements	
1.1	Do you think current PDS requirements are proportionate (aligning requirements with risks)? Do you think current requirements are meeting the purpose of the PDS?
1.2	Please share any evidence, research or insights you may have on investor (or intermediary) use of the PDS.
1.3	Do you agree with the problem definition in relation to the PDS? Which, to you, are the most pressing issues to be addressed?
1.4	Do you know of companies which have considered listing financial products (including on NZX) that have chosen not to do so, where the PDS requirements were part of that decision? Or which have made wholesale-only offers to avoid the costs and delays of PDS?
1.5	Do you think the current PDS requirements could be reduced without compromising retail investor confidence and protections? Are there overseas models you think we should consider?
1.6	Which of the preliminary options do you support for further development, and why? • If you support B, which sub-option do you support? • If you support C, which sections would you remove or reduce and/or, which instruments do you think it should apply to (such as the debt to overseas investors scenario or other specific types of offers)?
1.7	If the full PDS were reduced, which parts do you think are most important to retain?
1.8	Do you think the adaptation of the PDS requirements to a 'digital-first' format should be a government priority? Do you know of examples in other jurisdictions?
1.9	In your experience, what requirements in the Act and Regulations are preventing the PDS from being more digital friendly? How much regulatory change would be needed?
1.10	If you have experience making financial offers digital friendly, how have you done this (app, website, portal, etc.) and how have you managed this while still meeting PDS requirements?
1.11	Are there overseas models of PDS that you think the Government should consider?
1.12	Please share any other comments, evidence or data you have on PDS requirements.

Civil liabilities for directors and issuers	
2.1	Do you agree with the problem definition around current settings for director liabilities? Please provide evidence or examples.
2.2	How significant are civil liability settings compared with other factors affecting public market participation, such as market depth, liquidity, access to private capital, listing costs, ongoing compliance costs, and broader economic conditions?
2.3	Which option do you support (A or B) for potential change to liability in relation to continuous disclosure contravention for directors and other persons? Please indicate a preferred sub-option as well if relevant. Please give your main reasons.
2.4	Do you have a preference not reflected in the options in relation to continuous disclosure contravention for directors and other persons?
2.5	Are there any other issues or impacts the Government should consider in relation to liability for continuous disclosure contraventions for directors and other persons?
2.6	Which option do you support (C or D) for potential change to liability in relation to continuous disclosure contravention for issuers? Please indicate a preferred sub-option as well if relevant. Please give your main reasons.
2.7	Do you have a preference not reflected in the options in relation to continuous disclosure contravention for issuers?
2.8	Are there any other issues or impacts the Government should consider in relation to liability for continuous disclosure contraventions for issuers?
2.9	Do you think changes to deemed director liability should be considered in relation to all markets, or for NZX only?
2.10	Which option do you support (E, F, or G) for potential change to deemed director liability? Please indicate a preferred sub-option as well if relevant. Please give your main reasons.
2.11	Do you have a preference not reflected in the options in relation to deemed director liability?
2.12	Do you have other comments on what the Government should consider in relation to deemed director liability?
2.13	Are there international models you would like the Government to consider?
2.14	Please share any other comments, evidence or data you have on civil liabilities.
Catalist market threshold and audit requirements	
3.1	Do you think Catalist's current entry threshold (below $60 million market capitalisation) and exit threshold (two years after reaching $100 million market capitalisation) are still appropriate, having regard to its intended role and purpose? Please explain.
3.2	Do you consider that the original policy rationale for Catalist—as a stepping-stone market addressing a funding gap for small growth companies raising $2-20 million—should be expanded? If so, what types of issuers or needs should Catalist be designed to support, and why do you consider the associated regulatory concessions remain justified?
3.3	If you support change, which option do you prefer and why? How do you think your preferred option would affect businesses considering listing on Catalist, businesses currently listed on NZX, and investors?
3.4	How would changing the thresholds affect Catalist's role relative to NZX and the wider capital market pathways and options for growing businesses?
3.5	If thresholds are changed, should any additional safeguards or conditions apply to manage risks (such as regulatory arbitrage or reduced investor confidence)? If so, what should they be?
3.6	Do you think the FMA should consider amending the exemption notice that enables businesses listed on Catalist to raise up to $2 million without a product disclosure statement, if the crowdfunding and peer-to-peer lending limits with which the exemption notice aligns are raised (see issue 5)?
3.7	Which option do you prefer in relation to audit requirement standards? If you agree with the removal of the IFRS Tier 2 requirements, what standard should apply instead?
3.8	If you agree that some businesses should not be required to produce audited accounts prior to initial listing on Catalist, which firms should that apply to (eg, all, or only a specific size measured by number of investors, or shareholders, or voting shareholders)?
3.9	Please share any other comments, evidence or data you have on changes to Catalist settings.

USX audit requirements	
4.1	Do you think USX's current audit requirements are proportionate for the type of market USX operates and the issuers that use it? Please explain.
4.2	If you support change for USX, which option do you prefer? Why?
4.3	If an External Review Board review engagement were allowed for some USX issuers, what criteria should determine eligibility? For example, should this depend on issuer size, shareholder numbers, annual fundraising, trading activity or something else?
4.4	If audit requirements are reduced for some USX issuers, should the same criteria also apply on Catalist? Why or why not?
4.5	What broader evidence or practical examples should the Government consider when assessing whether current audit requirements are affecting issuer participation, investor confidence, or the role of smaller markets more generally?
4.6	Please share any other comments, evidence or data you have on USX settings.
Crowdfunding and peer-to-peer lending limits	
5.1	Do you think the current aggregate $2 million capital-raising limit should be increased for equity crowdfunding and P2P lending? If yes, please discuss why you think it should change (eg, any practical constraints you think the current cap creates and how a higher limit might change the way businesses use crowdfunding or peer-to-peer lending).
5.2	If the "small offers" category is removed from the aggregate, what limit do you think should apply to it separately?
5.3	Which option (A-D) do you support and why? If there are variables within the option, please be as specific as possible. (For example, if you support option B to raise the limit, please say what you think the new aggregate limit should be and why; if you support option C, please say what you think the separate limits should be.)
5.4	If you support Option D, do you have suggestions for how requirements could be tiered?
5.5	If you support option E (an investor cap), how do you think that could be designed? Are there any other additional safeguards and retail investor protections your think should apply for larger raises?
5.6	If the cap is raised, what flow-on impacts do you foresee on other capital markets?
5.7	Please share any other comments, evidence or data you have on equity crowdfunding, P2P lending and 'small offers'.
5.8	Are there overseas models you think the government should consider?
Wholesale investor issues	
6.1	Do you have any evidence or experience of difficulties around the use of the eligible investor self-certification, or misuse of the self-certification approach? Please provide detail.
6.2	Do you consider that the wholesale investor regulatory framework provides adequate retail investor protections? Or do you consider that it presents a barrier to investment?
6.3	Which option for change in relation to the wholesale eligible investor certification would you support (noting that the options are not mutually exclusive).
6.4	Which option do you prefer in relation to the period of validity for eligible investor certificates (currently 2 years)?
6.5	Do you have any evidence or experience of concerning behaviours with the advertising of wholesale offers? What recommendations do you have for restricting this promotion?
6.6	Do you have concerns with other aspects of the wholesale regime (beyond eligible investor category and the promotion issues raised)? Do you think the $750,000 threshold for individual investment remains appropriate, or should it be adjusted?
6.7	Please share any other comments, evidence or data you may have on wholesale settings.
Auditor liability	
7.1	Do you agree with the scope of this issue as outlined above (ie, limiting consideration to FMC audits and civil liability for unintentional wrongdoing)? If not, what else do you think should be considered?
7.2	Do you agree with how the problem definition is summarised above? Please provide additional information and detail if you think this needs to be refined.

7.3	The problem definition discussion above lists a number of issues that it is contended are faced by the audit market in New Zealand. Do you agree with these? Are there other issues we should consider? To what extent are these issues caused by the liability exposure of auditors? Are there other factors that are causing these? Please provide concrete evidence and data to support your response where possible.
7.4	Do you agree with how the options are summarised above? Are there other options we haven't considered? Please provide additional information and detail if you think these need to be refined.
7.5	Do you have a preferred option? If so, please give your reasons for preferring it (with reference, if possible, to how it would assist addressing the issues with the audit market in New Zealand) and provide as much information as you can in support of your preference, along with any other matters we would need to take into account when designing the detail of that option.
7.6	What are the risks associated with limiting liability for auditors in any of the ways indicated in Options B and C? For example, what would the impact on plaintiffs be? And where else might plaintiffs look to recover losses? Would audit quality suffer?
7.7	Do you see any issues with introducing a capping scheme just for auditors where other professions – eg, lawyers and accountants – would still be joint and severally liable for a loss where more than one party has a role?
7.8	Are there any other issues relating to auditor regulation and the state of the audit market in New Zealand that you would like to bring to our attention?
7.9	Please share any other comments, evidence or data you have on auditor liabilities or related topics.
Broker activity and visibility of offers	
8.1	Do you agree with the problem definition? In your view, how significant are any issues relating to broker activity, research coverage, or issuer visibility in New Zealand capital markets, particularly for smaller listed companies? Please provide evidence or examples where possible.
8.2	To what extent do broker incentives or business models affect capital raising outcomes, particularly for smaller or growth-stage issuers?
8.3	Are there specific barriers that prevent brokers or other intermediaries from supporting IPOs, secondary market activity, or ongoing investor engagement for smaller issuers?
8.4	What could various industry players do (collectively or individually) to address the issues?
8.5	To what extent are the issues identified in this section driven by regulatory settings, as opposed to other structural factors? Do you see a role for government in addressing any of these issues? If so, what types of intervention (if any) should be considered, and what risks should be taken into account?
8.6	Are there international examples or models (for example, in relation to research coverage or broker incentives) that you consider relevant to New Zealand?
8.7	Please share any other comments, evidence or data you may have on broker activity and the promotion of small business investment opportunities.