

Submission

to the

Ministry of Business, Innovation and
Employment

on the

Discussion Document: *Capital
Markets Reforms (Phase Two)*

15 September 2026



About NZBA

1. The New Zealand Banking Association – Te Rangapū Pēke (**NZBA**) is the voice of the banking industry. We work with our member banks on non-competitive issues to tell the industry's story and develop and promote policy outcomes that deliver for New Zealanders.
2. The following sixteen registered banks in New Zealand are members of NZBA:
 - ANZ Bank New Zealand Limited
 - ASB Bank Limited
 - Bank of China (NZ) Limited
 - Bank of New Zealand
 - China Construction Bank (New Zealand) Limited
 - Citibank N.A.
 - The Co-operative Bank Limited
 - Heartland Bank Limited
 - The Hongkong and Shanghai Banking Corporation Limited
 - Industrial and Commercial Bank of China (New Zealand) Limited
 - JPMorgan Chase Bank N.A.
 - Kiwibank Limited
 - Rabobank New Zealand Limited
 - SBS Bank
 - TSB Bank Limited
 - Westpac New Zealand Limited

Contact details

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

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Introduction

4. NZBA welcomes the opportunity to provide feedback to the Ministry of Business, Innovation and Employment (**MBIE**) on the Capital Markets Reforms Phase Two Discussion Document (**Discussion Document**). NZBA commends the work that has gone into developing the Discussion Document.
5. Our submission addresses the following issues:
 - 5.1. Product disclosure statements (**PDS**): NZBA supports simplification of PDS so long as the regime retains its purpose of assisting investors to make informed decisions.
 - 5.2. Civil liabilities for directors and issuers: NZBA supports MBIE looking further into the removal of deemed director liability, along with potential adjustments to the statutory defences available.
 - 5.3. Wholesale investor issues: NZBA supports clarification of the criteria for wholesale investor eligibility, and removal of renewal requirements.
 - 5.4. Additional topics for submission: We have also provided comments on the same class / quoted financial product exclusion in clause 19, Schedule 1 of the Financial Markets Conduct Act 2013 (**QFP Exclusion**) and the application of the Approved Issuer Levy (**AIL**) to certain issuances.

Issue 1: Product disclosure statements

Options for change

6. NZBA supports changes to PDS that result in shorter, clearer and more concise information for retail debt offers – in line with s 61 of the Financial Markets Conduct Act 2013 (**FMCA**) – provided the regime continues to ensure PDS retain their purpose of supporting investors to make informed decisions.
7. We submit that any simplification should be targeted, rather than fundamental. While the Discussion Document does identify that some retail investors may not read a full PDS, we do not consider that comprehensive disclosure should be replaced with a term sheet or Key Information Summary in all cases.
8. A PDS – or in the case of bank debt offers, a Limited Disclosure Document (**LDD**) – still serves an important function by bringing key information relevant to an offer together in one place, in a regulated, consistent and comparable form. This function remains valuable for investors, advisers and intermediaries, even where some of the information contained in a PDS may also be available elsewhere.
9. Regarding the options for change put forward by MBIE, NZBA supports a mixture of Options B(i) and C(ii).



- 9.1. Overall, we would support targeted simplification of existing requirements over more significant reductions in disclosure requirements. For example, new bond issuances by existing listed issuers could benefit from the removal of existing disclosure requirements, and instead be governed by fair dealing obligations, continuous disclosure, and concise, offer-specific documentation. This would be similar in principle to the existing “same class” offer approach, and in our view would better reflect the information already available to the market.
- 9.2. We also consider that removing the requirement for a PDS for certain products currently captured by simplified disclosure such as equally ranked debt instruments, as proposed under Option C(ii), would make it easier to issue such products without materially reducing investor protections.
- 9.3. To the extent that the introduction of Option C(ii) would result in an inability to qualify for the 0% AIL rate (as discussed in paragraph 50 of the Discussion Document), we submit that the requirement for an offer to be a ‘regulated offer’, same class offer or bank debt offer to qualify for 0% AIL should be removed. As noted in paragraph 37 below, this would help to support access to offshore capital by reducing the costs of offshore participation in New Zealand issuances.
10. While we have set out our preferred options above, NZBA considers that any reforms to issuances should address the overall process, not just the length of the PDS. Due diligence processes, internal approvals, senior management involvement and deal timetable implications are all central to user behaviour. Reducing document length alone may be insufficient if the associated process – as addressed in the Discussion Document and the balance of our submission – remains largely unchanged.
11. For the avoidance of doubt, we also submit that any simplification of PDS requirements should also apply to LDDs prepared under the bank debt exclusion in clause 21, Schedule 1 of the FMCA, where relevant.

Approach to disclosure requirements

12. The Discussion Document notes, at paragraph 64, the principles-based approach for disclosure requirements in Australia, and requests feedback on overseas models.
13. NZBA favours substantively retaining the current prescriptive disclosure framework, which is well established and understood in the New Zealand market. A move to a principles-based framework risks creating uncertainty for issuers and inconsistency between offer documents. This, in turn, could lead to:
 - 13.1. additional compliance costs, where issuers need to procure external advice on how to apply any broad principles to their products in practice (particularly if deemed director liability is retained for defective disclosures); and



- 13.2. difficulties for prospective investors in comparing similar products, therefore negatively impacting their ability to make an informed decision.
14. The current prescriptive regime is well established, and retaining it would provide issuers with greater certainty, and supports consistency and comparability for investors. However, there may be use in incorporating flexibility within certain targeted aspects of the regime, where those aspects are not useful or proportionate within the particular context of an offer. This approach would build upon the extensive and thorough legislative process that occurred when the FMCA, and the PDS in particular, were developed.

Format

15. NZBA does not have a strong view on the proposal for a more flexible 'digital-first' PDS. We agree with the position put forward by MBIE in paragraph 68 of the Discussion Document, i.e. in our view, there is nothing currently preventing PDS information from being presented digitally.
16. As such, it is not immediately clear to us that any substantive regulatory change is needed to enable digital presentation. However, if issues are identified as part of the consultation process, we would support the removal of any specific technical impediments.

Issue 2: Civil liabilities for directors and issuers

17. NZBA generally agrees with the concerns identified in the Discussion Document regarding compliance costs, insurance costs, director recruitment, and the potential for an excessive focus on compliance processes.
18. Broadly, we observe that liability and continuous disclosure settings form part of the broader compliance burden for issuers, and may influence whether they pursue listed retail bond issuance or wholesale formats.
19. We would be supportive of MBIE looking further into:
- 19.1. The proposed removal of deemed director liability for both disclosure and financial reporting contraventions, under Option G(iii), in principle.
 - 19.2. If this approach is not taken, we consider that, at minimum, deemed director liability should be removed in respect of the issuance of debt securities, which would be proportionate to the risk such securities pose to investors.
 - 19.3. Potential adjustments to the statutory defences available for personal liability (i.e., Option B(ii)). As part of this, we submit MBIE should consider amending the s 503 defence to allow reasonable reliance on other directors, employees or agents of the issuer.



20. In both cases, we note that our support of these options will be subject to further details put forward by MBIE following the close of this consultation. We would be happy to continue to engage with MBIE as these proposals are developed further.

Issue 6: Wholesale investor issues

Wholesale eligible investor criteria and certification

21. NZBA is supportive of both Options A (developing more objective 'experience' definitions for an eligible investor) and B (prescribe the content required on eligible investor certificates), which could work in combination.
22. We consider more objective criteria – particularly as to the grounds that may be given by an investor for certification – and an objective format for the certificate would be useful for both issuers and investors. However, added prescription would need to be balanced against some level of flexibility, to enable certificates to be adjusted appropriately to reflect the specific product, or the investor's relevant specific experience.
23. This could be addressed, for example, with:
- 23.1. a free text space for an investor to state the relevant grounds below a list of potential options; or
- 23.2. a broad, principles-based test accompanied by guidance.

Duration of eligible investor certificate

24. NZBA supports Option F, to fully remove the need for renewal, largely for the reasons set out in the Discussion Document.
25. Investors are highly unlikely to lose qualifying experience in relation to a particular offer. The existing two-year period therefore creates disproportionate and unnecessary compliance costs and burdens for issuers.
26. In addition, for issuers who use the eligible investor certificate for newly incorporated customers (for example, special purpose vehicles for structured or project financing) which will likely qualify as 'large' in the future but do not yet have two years of financial statements to evidence this qualification, the current two-year renewal period may not align with the release of their second annual financial statements.
27. For completeness, we note that we would support the extension of the duration to five years under Option E if Option F is not adopted – i.e., an extension to five years would be preferable to the current two-year position.



Other comments on wholesale settings

28. We note that wholesale settings can, at times, be difficult to apply in the context of large global enterprises with complex legal structures (which can include newly incorporated local subsidiaries).
29. We submit that MBIE should consider extending the existing settings to situations where an “associated person” of the client meets the requirements, and note that this is the approach being taken in the draft Deposit Takers (Incorporation outside New Zealand) Standard.¹ This would better reflect common entity structures, creating more flexibility without materially weakening investor protections.
30. NZBA also submits that MBIE considers implementing Trans-Tasman mutual recognition or ‘passporting’ of wholesale client and wholesale investor classifications. In our view, this could reduce duplicate classification frameworks, improve consistency, lower compliance costs, and support Trans-Tasman financial integration without compromising retail investor protections.

Additional comments

Amendments to the Quoted Financial Product Exclusion

31. Further to our responses to specific questions posed in the Discussion Document, we note that the QFP Exclusion suffers from technical issues which we consider can negatively impact New Zealand’s financial markets, and submit that this issue should be remedied.
32. There is currently uncertainty as to whether fixed and floating rate debt securities can be treated as being in the “same class” for the purposes of the QFP Exclusion. As a result, where an issuer proposes to offer a new debt security which only differs from an existing quoted debt security by having a fixed rather than floating interest rate (or vice versa), the issuer may be required to prepare a PDS or LDD rather than being able to rely on the QFP exclusion.
33. Preparing a new PDS or LDD can impact time to market, compliance costs, additional resource and liability implications. This can, in turn, discourage issuers from making a retail offer, and instead encourage them to choose alternative funding options such as wholesale private placements or offshore issuances.
34. NZBA submits that fixed and floating rate debt securities should be treated as being in the same class for the purposes of the QFP exclusion. We note that this would be consistent with the recent approach by the FMA in relation to green, social, sustainability and sustainability-linked (**GSSS**) bonds under the Financial Markets

¹ See the draft [Deposit Takers \(Incorporation outside New Zealand\) Standard 2027](#) at clause 6.



Conduct (Green, Social, Sustainability and Sustainability-linked Bonds) Exemption Notice 2026.

35. This exemption allows an issuer with existing quoted, fixed rate vanilla bonds to issue floating rate GSSS bonds (or vice versa), on similar conditions to the QFP exclusion. This is achieved through the exemption allowing new bonds to have different “interest rate provisions” (including the basis on which, or the method by which, the interest rate is ascertained). The QFP Exclusion, at present, only allows new bonds to have a different “interest rate”.
36. To achieve this, we submit that the FMCA be amended to clarify that fixed and floating rate debt securities may be treated in the same class for the purposes of the QFP Exclusion.

Approved Issuer Levy for wholesale domestic issuances

37. The Discussion Document notes, at paragraph 50, that the application of the AIL to regulated debt offers made to overseas investors was introduced to support access to offshore capital by reducing the cost of foreign debt financing.
38. At present, tension exists between the regulated offer process and the current 0% AIL pathway. The regulated offer process, including PDS preparation, due diligence, liability, and execution-timing considerations, can make retail participation less attractive for debt issuers. However, where issuers proceed on a wholesale-only basis, the current 0% AIL pathway may not be available because the regulated offer or same class offer requirement cannot be satisfied. This risks discouraging retail-inclusive issuance while also limiting offshore investor participation in domestic, NZD wholesale debt. The current 0% AIL pathway is also unavailable in relation to NZD debt issuances made by way of private placement.
39. We therefore submit that MBIE consider zero-rating AIL for wholesale domestic issuances (including private placements), which could further support access to offshore capital by reducing the costs of offshore participation in New Zealand issuances.