

25 July 2025

Financial Markets Authority
Level 2, 1 Grey Street
Wellington, New Zealand

By email only: consultation@fma.govt.nz

NZX Submission: Proposed class exemption for listed issuers for buy-backs of quoted debt securities

Background

1. NZX Limited (**NZX**) submits this response to the Financial Markets Authority (**FMA**) consultation on the proposed exemption for listed issuers for buy-backs of quoted debt securities (**Consultation**). We would like to thank the FMA for the opportunity to provide this submission.
2. NZX is a licensed market operator and New Zealand's exchange. NZX operates the NZX Debt Market (**NZDX**), New Zealand's flagship market for listed debt securities, which has a total market outstanding of \$54b and 48 unique debt issuers.¹ NZX also has quoted debt listed on the NZDX, although this submission is made by NZX in relation to its role as licensed market operator.
3. On 25 October 2024, Chapman Tripp acting for NZX, submitted an application to the FMA seeking a class exemption to allow an issuer to undertake an off-market buy-back offer for the issuer's quoted debt securities (**Buy-Back Offer**) without applying the unsolicited offer provisions of the Financial Markets Conduct Act 2013 (**FMC Act**) and Financial Markets Conduct Regulations 2014 (**FMC Regulations**).
4. NZX is pleased that the FMA is now considering a class exemption for listed issuers who undertake Buy-Back Offers from certain unsolicited offer regulations and we strongly support a class exemption in this area.
5. Nothing in this submission is confidential.

Response to consultation

Q1. Do you agree with the above description of the status quo, and why the status quo does not work effectively for issuers seeking to buy back their own quoted debt securities? If you disagree, please let us know why.

6. The consultation paper accurately describes the status quo. Issuers who wish to undertake a Buy-Back Offer are currently restricted in their ability to efficiently manage their treasury activities in relation to outstanding debt, due to the restrictive timing

¹ [NZX Shareholder Metrics – June 2025](#)

requirements and the requirement to prepare certain regulated disclosure for unsolicited offers under Subpart 5 of Part 5 of the FMC Regulations.

Q2. Please explain the impact of the status quo on the following stakeholders. Where appropriate, provide details of the costs (including compliance costs) and any benefits.

- Debt security holders
 - Listed issuers
 - Others, such as licensed market operators and supervisors
7. As mentioned in paragraph 2 of this submission there are 48 unique debt issuers with quoted debt on the NZDX who are subject to the unsolicited offer regulations under Subpart 5 of Part 5 of the FMC Regulations when undertaking a Buy-Back Offer².
 8. Listed issuers are limited in the way they can effectively undertake Buy-Back Offers, particularly for rollover offers and managing their debt profiles. Accounting for the mandatory 30 day offer period³, and the 20 working day period for any offeree to cancel an acceptance of an unsolicited offer⁴, it may take an issuer up to 2 months to be in a position to issue new debt securities following the commencement of a Buy-Back Offer.
 9. The impact of these timing restrictions is that issuers are unable to effectively structure their debt profile in response to rapidly changing market conditions, limiting the efficiency of New Zealand's debt market.

Q3. Is a class exemption from certain unsolicited offer regulations required or are there other interventions we could consider, such as individual exemptions? Please give reasons for your view.

10. NZX supports a class exemption for issuers from certain unsolicited offer regulations under the FMC Regulations. We consider it is appropriate for the exemption to be readily available to all issuers of quoted debt securities instead of the FMA requiring issuers to apply for an exemption on an individual basis.
11. A class exemption would ensure that all issuers are aware they can flexibly utilise the exemption notice to respond to changing market conditions. We consider that an individual exemption approach would not adequately solve the inefficiency the exemption is trying to rectify, as issuers would need to devote time and resources to individually applying for an exemption.

² Excluding the persons to whom the unsolicited offer regulations do not apply to under r162(1) of the FMC Regulations

³ r170, FMC Regulations

⁴ r173 -r177, FMC Regulations

Q4. Do you agree with the proposed scope and conditions of the exemption? If you disagree, please let us know why.

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Q8. Are there any circumstances where it would be unduly impractical or illegal for an issuer to offer to buy back all its quoted debt securities in a class of debt securities? What are the implications of this, in particular for the debt security holders and for the issuer?

12. We generally agree with the scope of the exemption and consider that the exemption addresses the unsolicited offer regulations that are currently restricting the use of Buy-Back Offers by issuers.
13. The consultation paper proposes the exemption would apply to an unsolicited offer made for all debt securities in a class of debt securities, unless it would be 'unduly impractical or illegal' to do so. We consider the FMA should provide guidance as to when it would be 'unduly impractical or illegal' for an issuer to conduct an unsolicited offer, reflecting NZX Listing Rule 4.4.1(e) which entitles issuers not to offer pro-rata issues outside of New Zealand if, in the issuer's reasonable opinion, it would be unduly onerous for that issuer to make the offer in that jurisdiction.
14. We also broadly agree with the proposed conditions of the exemption, including the requirement for an issuer to provide a cleansing notice and for a market announcement to be released regarding the unsolicited offer.
15. We are broadly comfortable with the proposed condition relating to the content for the disclosure document, and understand that disclosure made in reliance on the exemption would be in the form of a terms sheet.

Q5. Please explain the impact of the proposed exemptions and conditions on the following stakeholders. Where appropriate, please provide details of the costs and any benefits.

- Debt security holders
 - Listed issuers
 - Others, such as licensed market operators and supervisors.
16. The proposed exemption will benefit issuers as it will allow them to better manage their debt profile by enabling the undertaking of Buy-Back Offers without the need to comply with the regulations exempted under the proposed exemption notice. This will allow for a more efficient NZDX which will bring broader benefit to New Zealand's capital markets.
 17. As a licensed market operator, NZX does not anticipate there will be any practical difficulties associated with the conditions of the proposed exemption.

Q6. Is an exemption needed from regulation 167, which requires the disclosure document to be prominently identified if accompanied by other documents?

18. We have no particular concerns in relation to regulation 167 that would materially affect the ability for issuers to utilise an exemption for Buy-Back Offers.

Q7. Are there features or characteristics of certain debt securities that would make it appropriate to exclude those debt securities from the scope of this exemption (for example, convertible debt securities that have characteristics of both a debt security and equity)?

19. We support convertible debt securities being included within the scope of the exemption, given that the policy considerations for the exemption identified by the FMA in pages 7-8 of the consultation paper apply equally to convertible debt securities.

20. We note that any redemption undertaken by a company of its shares under the Companies Act 1993 is deemed not to be an unsolicited offer.⁵ Given that converted equity securities are excluded from the scope of the unsolicited offer regulations, we consider the exemption should include Buy-Back Offers of convertible debt securities to the extent they remain debt securities.

Q9. Should buy-backs by an issuer of only some of its quoted debt securities in a class of debt securities be permitted under the exemption and, if so, on what terms?

21. Yes, Buy-Back Offers by an issuer for some of its quoted debt securities within a class should be permitted under the exemption. The proposed conditions of the exemption relating to the transparency of the offer (e.g., requiring the release of a cleansing notice and including the nature of terms of the offer via a disclosure document) will ensure that all holders are aware of the offer's terms.

22. This approach also ensures that issuers have the flexibility to manage the size of the Buy-Back Offer relative to their corporate needs, without having to ensure that the offer is made to all holders of the class of quoted debt securities.

Q10. In relation to an issuer relying on the proposed exemption to buy back quoted debt securities issued prior to any exemption coming into force:

- Would an issuer need to make changes (or undertake any process) in order to rely on the exemption (for example, make a change to the terms and conditions of existing offer documents)? What are the costs and implications for issuers and debt security holders?
- Are there any issues or impacts to consider in how the exemption may be applied for issuers buying back existing debt securities, compared to buying back new debt securities issued after any new exemption is in force?

23. We expect that the terms and conditions of most debt securities would allow an issuer to exercise its ability to conduct a Buy-Back Offer in accordance with applicable laws, and that no change would be required to the terms and conditions of the instruments, or the offer document, in order to rely on the exemption. There are no requirements in the NZX Listing Rules that would require an issuer to amend its terms and conditions in order to rely on the exemption.

⁵ s381(1)(e), FMC Act

Q11. What is your view on putting in place:

- a minimum length for the offer period, to give debt security holders sufficient time to consider any offer (for example, five working days)?
 - a minimum period in which the investor can cancel after acceptance of the offer (i.e. a 'cooling-off' period)?
 - a window of time where the exemption cannot be relied on over the term of the debt security (for example, within a certain amount of time prior to the maturity date of the debt security)?
24. We disagree with including a minimum offer period and a cooling off period in the exemption. These would restrict the ability for issuers to flexibly undertake a bookbuild process for Buy-Back Offers and conflict with the policy considerations outlined in the consultation paper for introducing the exemption. We consider the proposed condition requiring the issuer to include in its MAP announcement any withdrawal or material variations to the offer will ensure that debt holders are well informed regarding the timeframe of a Buy-Back Offer.
25. We do not consider a condition excluding the availability of the exemption for a certain period of time prior to the maturity date of the debt security is strictly necessary.
26. The standard process prior to the maturity date of a debt security involves NZX Market Operations halting and suspending the debt security at close of business the day before the Ex Date⁶. This is designed to ensure that any outstanding trades are settled prior to the Record Date in advance of the final principal and coupon payment which is usually made 10 days after the Record Date. While the securities are halted and suspended no trades can occur on NZX's markets as the securities are unable to be moved in the central securities depository operated by New Zealand Depository Limited. We do not anticipate that the proposed exemption would materially affect NZX's existing processes relating to the suspension of debt securities prior to maturity.
27. The suspension for 10 days after the Record Date allows time for the issuer and its registry to complete processes to enable the registry to validate final ownership and ensure timely and accurate payments at maturity. Some issuers seek longer suspension periods for various reasons, and these applications are made to NZ RegCo on a case-by-case basis.
28. While issuers may not wish to rely on the exemption during the suspension period, we do not support a condition that restricts the use of the exemption. We wish to preserve flexibility for issuers who may be comfortable that they can work with their registry to manage a Buy-Back Offer during that period.

⁶ The Ex Date is the first business day before the Record Date.

29. Thank you for the opportunity to provide this submission. We would be happy to discuss any aspect of this submission further with you.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Kristin Brandon', written in a cursive style.

Kristin Brandon
Head of Policy