FINANCIAL MARKETS AUTHORITY
TE MANA TĀTAI HOKOHOKO

JUNE 2025

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

About this consultation

The Financial Markets Authority – Te Mana Tātai Hokohoko (**FMA**) is considering a class exemption for listed issuers from certain unsolicited offer regulations for buy-backs of quoted debt securities.

If granted, the exemption would allow listed issuers to buy back their own quoted debt securities off-market, without requiring compliance with certain disclosure and timing requirements for unsolicited offers in the Financial Market Conduct Regulations 2014 (the **Regulations**). These require preparing certain information in a disclosure document and adhering to timing requirements for the offer period and offeree acceptance. The exemption would be subject to conditions that the issuer must make available information about the offer to buy back the debt securities.

Next steps

We welcome your feedback on the exemption proposal in response to the specific questions in this paper, as well as any other general comments. Please use the feedback form provided on the web page for this consultation at https://www.fma.govt.nz/business/focus-areas/consultation.

Note that all feedback received is subject to the Official Information Act 1982, and may be made available on our website or other external channels. See the feedback form for more information about your privacy and confidentiality options.

Submissions close at 5pm on Friday 25 July 2025. After this date, we will consider all submissions, finalise our policy proposal and, if the exemption is granted, work to get it in place.

This consultation is for issuers who may wish to buy back their own quoted debt securities, investors (debt security holders) and other interested parties, including licensed market operators, supervisors, brokers, investment banks and financial institutions.	It asks for feedback on proposed exemptions from certain unsolicited offer requirements for listed issuers that wish to buy back their own quoted debt securities off-market.

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Background

Debt securities

One way that government, local government and business entities can raise funds is through issuing debt securities to investors. A debt security is defined in section 8(1) of the Financial Markets Conduct Act 2013 (the **Act**). By buying a debt security, investors are essentially lending money to the entity issuing the debt security (the **issuer**). In return for the investment, the issuer generally promises to pay the investor:

- regular interest payments at the agreed interest rate over the term of the debt security; and
- the principal amount of the debt security on its maturity date.

Debt securities can be issued in different forms or using different terminology (for example, as debentures, bonds or notes), and with different features. For example, debt securities may be secured or unsecured, senior or subordinated (in point of ranking on liquidation), fixed term or perpetual (i.e. having no fixed maturity date), convertible into another type of security (such as an equity security), callable (where the issuer may redeem the debt security before its maturity date), and quoted or not quoted on a licensed market.

When an issuer issues new debt securities to investors, the issuer must comply with the disclosure requirements for regulated offers[1] unless, under the terms of the offer, the only investors who are able to acquire the securities are investors for whom disclosure is not required. Disclosure requirements include preparing a product disclosure statement (**PDS**)[2] that sets out the terms of the offer, the features of the debt security, the risks of investing, and other important information. A regulated offer of debt securities must not be made unless there is a trust deed for the debt securities[3], which is required to contain certain rights and protections to be held in trust by the supervisor for the benefit of the debt security holders, and other content[4].

When an issuer issues new debt securities to investors, the issue of those securities is on the 'primary' market and subject to the rules of the relevant licensed market operator. Subsequent sales of existing debt securities are on the 'secondary' market. Existing debt securities can be purchased (if quoted[5]) 'on-market' via trading and settlement on a licensed market, or 'off-market' which effectively covers any other purchase.

[1] Section 41 of the Act.
[2] Many issuers of quoted debt securities in New Zealand rely on the 'same class offers' exclusion in clause 19 of Schedule 1 of the Act. It allows certain financial products (including debt securities) that are of the same class as existing quoted financial products to be offered without the issuer having to comply with the full disclosure requirements for regulated offers under the Act (provided other relevant criteria are met, such as ensuring the financial product is quoted immediately after the issue). This often means a terms sheet with more limited disclosure is issued. The FMA has granted a class exemption to enable issuers listed on the Catalist Public Market, a licensed market, to also make same class offers.
[3] Section 103 of the Act.
[4] Section 104 of the Act.
[5] In the Act, 'quoted' in relation to financial products of a listed issuer means "financial products of the issuer that are approved for trading on a licensed market (and, to avoid doubt, financial products do not cease to be quoted merely because trading in those products is suspended)".

A debt security bought on-market will be bought at its market price. This may be higher or lower than the face value of the debt security (i.e. the principal amount to be repaid at its maturity date).

This consultation focuses on offers made by a listed issuer to buy back the issuer's existing quoted debt securities off-market.

Unsolicited offer regulations

The Act (among other things) regulates both the offer and sale of financial products to investors and, in some circumstances, offers to purchase financial products. Subpart 10 of Part 5 of the Act regulates the making of unsolicited offers to purchase financial products off-market. It defines 'unsolicited offer' and provides for the making of regulations setting out the rules applying to unsolicited offers.

Generally speaking, an unsolicited offer is an offer to acquire a financial product made by a person to another person where the offer is unsolicited by that other person, is not made on a licensed market, and is within the class or classes of unsolicited offers to which the regulations apply[6].

Subpart 5 of Part 5 of the Regulations regulates the making of unsolicited offers to purchase financial products off-market.

The Regulations—

- apply to an unsolicited offer made by a person (**offeror**) to another person (**offeree**) if:
    - the financial products are quoted financial products or approved for trading on a quoted financial product market[7]; and
    - the offeror, or an associated person of the offeror, or both, have made, are making, or intend to make (in aggregate), unsolicited offers on the same, or substantially similar, terms to 20 or more other persons in the period (effectively, of 12 months) specified in the Regulations; and the offer is received by the offeree in New Zealand:
- do not apply to an offer made to a wholesale investor or to an associated person, a close business associate, a director or a relative of the offeror:
- require (among other things) the offeror to notify the issuer and, if the unsolicited offer relates to quoted financial products, the relevant licensed market operator of the offeror's intention to make an offer at least 5 working days before the offer is made. The notice must be accompanied by a copy of the disclosure document that must be given to offerees (see description below), a list of the names and addresses of every offeree to whom the disclosure document will be given, and a list of the names and addresses of every other person to whom the offeror is making an unsolicited offer on the same, or substantially the same, terms:
- require that the unsolicited offer is made only in a disclosure document that is given to the offeree. The disclosure document must be prominently identified if accompanied by other documents. It must

[6] As outlined in section 381(1)(e) of the Act, an 'unsolicited offer' is not a takeover offer for a financial product under the Takeovers Code nor an acquisition or redemption by a company of its own shares under the Companies Act 1993. Regulation 160(2) of the Financial Markets Conduct Regulations 2014 (the **Regulations**) specifies other unsolicited offers to which Subpart 5 of Part 5 of the Regulations do not apply.

[7] Subpart 5 of Part 5 of the Regulations applies also to financial products of a class that has previously been offered under a regulated offer or in reliance on clause 6 of Schedule 1 of the Act, and financial products of a class that has previously been offered to the public in New Zealand under the Securities Act 1978.

contain, at the front of the document, the information and statements specified in Schedule 19 of the Regulations in the form set out in that Schedule and, if payment of the consideration is to be made more than 90 days after the date of the offer, a statement in the form set out in Part 1 of Schedule 20 of the Regulations. The disclosure document ensures that offerees are fully informed (among other things) of—

  - for a quoted financial product, the current average market price of each financial product and the total current average market price of all of the financial products that are the subject of the offer;
  - the material terms of the offer, including the offer price, total offer price, terms of the payment, key dates and a statement to the effect that the offeree may check the current market price on the relevant licensed market operator’s Internet site and in newspapers;
  - any warnings required by the FMA; and
  - their right to cancel the agreement:

- provide for a minimum offer period of 30 days and a maximum offer period of 12 months:
- state that the unsolicited offer may be withdrawn only with the consent of the FMA, and that the terms of the unsolicited offer, as set out in the disclosure document, cannot be varied:
- provide for a 10-working-day period after acceptance of the offer within which an offeree can cancel an agreement, and require the offeror to provide details of how to cancel and the offeror’s cancellation duties: and
- prohibit persons from inviting others to make an offer to sell a financial product in circumstances in which, if the invitation were an offer to acquire the financial product, it would be an unsolicited offer to which the Regulations would apply.

FMA’s power to grant class exemptions

We have powers to exempt persons from compliance with requirements in the Act and associated regulations.

Before we do so, we must be satisfied that the exemption is necessary or desirable to promote one or more of the following purposes of the Act[8]:

- to promote the confident and informed participation of businesses, investors, and consumers in financial markets
- to promote and facilitate the development of fair, efficient and transparent financial markets
- to provide for timely, accurate and understandable information to assist investment decisions
- to ensure appropriate governance arrangements apply to financial products and services, and allow for effective monitoring and reduce governance risks
- to avoid unnecessary compliance costs
- to promote innovation and flexibility in the financial markets.

We must also be satisfied that the exemption is not broader than is reasonably necessary to address the matters that gave rise to it.

We can only grant exemptions (including renewing existing exemptions) where we are satisfied that the statutory requirements are met. We need information from you to support our decision-making, so we encourage you to provide feedback.

[8] See sections 3 and 4 of the Act.

Why we are considering a class exemption

The purpose of the unsolicited offer regulations is to provide a comprehensive and robust framework to protect against 'low-ball' unsolicited offers, as well as to allow the FMA, as the regulator, to take both a proactive and reactive approach to monitoring and enforcement. To protect security holders from low-ball offers, the Regulations provide that appropriate information is disclosed about the offer (including what the market price of the security is at the time of the offer). The Regulations also look to remove any suggestion of urgency in respect of the offer by imposing minimum periods for security holders to consider, and reconsider, any decision to accept the offer.

We are considering if certain unsolicited offer regulations are fit for purpose in the event an issuer is seeking to buy back its own quoted debt securities. Issuers that make regulated offers of quoted debt securities are subject to ongoing disclosure and governance obligations under the Act, and must comply with the listing rules of the relevant licensed market, as set by the licensed market operator. Issuers already have a relationship with their debt security holders, who are likely to be familiar with the issuer or the transactions and implications involved in the trading of their debt securities. This means some of the disclosure and other obligations in the regulations may be unnecessary.

Current regulatory settings may restrict the efficient buy-back of an issuer's own quoted debt securities

Issuers may wish to buy back their own debt securities before the stated maturity date.

Issuers may seek to replace debt securities approaching maturity with a new issue of debt securities, instead of paying investors the principal amount on maturity (often referred to as a 'rollover'). An issuer could make a rollover offer that coincides with the maturity date of the existing debt securities, but may wish to complete a rollover offer in the weeks or months leading up to the maturity date, to target favourable market conditions and investor preferences. This may include targeting periods:

- of expected high investor demand (and avoiding periods with competing supply of similar products), to meet investor preferences;
- of expected low market volatility (potentially avoiding periods around important economic announcements), so that pricing is clearer and investors are confident to participate; or
- where the issuer has 'cleansed' the market of material information.

Alternatively, issuers may seek to buy back their own debt securities before the maturity date to change the issuer's debt profile or to respond to changing market conditions, where there is no appropriate call feature within the debt securities' terms of issue to do so (see below about call debt security features). The issuer could buy back its own debt securities for cash to reduce its overall debt (often referred to as a 'tender offer'). Or the issuer could buy back its existing debt securities and issue new debt securities at the current market rate to its existing debt security holders well in advance of the maturity date, for example during times of low interest rates (often referred to as an 'exchange offer').

We understand it may be difficult for an issuer to buy back its own debt securities on a licensed market. For large issuers looking to buy back a high portion of certain debt securities, there may not be the supply available on the market. Also, in some cases where debt securities are less liquid, even relatively small purchases of debt securities on-market could potentially impact on trading prices and the value of those debt securities.

Where an issuer is seeking to issue new debt securities to its existing holders, the issuer needs to know the identity and details of its debt security holders, which is not possible when debt securities are bought on-market. Therefore, offers of buy backs by issuers of debt securities are typically made off-market to avoid these issues.

In New Zealand, these types of offers would be subject to the unsolicited offer regulations. The following issues arise:

- **The Regulations relating to timing requirements may make it impractical for listed issuers to undertake these debt management techniques.** General market practice for the buying and issuing of debt securities indicates that the pricing of debt securities is generally conducted over a short period (often days) to minimise the effects of market volatility. This may be the case when the pricing of a debt security is determined through some form of bookbuild, where the issuer accepts individual bids from investors of price and quantity during an offer period, before a final price is set. The bookbuild process could not effectively be conducted in compliance with the unsolicited offer requirements that the offer must open for at least 30 days and must allow an offeree to withdraw their acceptance of the offer within 10 working days.
- **Some procedural and disclosure requirements of the Regulations may not be relevant for issuers seeking to buy back their own quoted debt securities.** For example, the ability to provide an offer price or total offer price may not be possible under the Regulations where there is no fixed offer price and quantity under the bookbuild process.

The unsolicited offer regulations limit the flexibility of issuers to choose whether to buy back their own quoted debt securities on- or off-market, and to manage their debt efficiently.

Call features in debt securities may not provide the flexibility for issuers to undertake efficient buy-back of their debt securities

An issuer can redeem a debt security before its stated maturity date without being subject to the unsolicited offer regulations where it can exercise an early redemption right or ‘call’ contained in the debt security’s terms of issue.

In those circumstances, the issuer does not need to make an offer to debt security holders in order to exercise the call, and all debt security holders whose securities are subject to the call are bound by the issuer’s decision to call the debt securities.

We understand that debt securities with a right to call for early redemption may be less attractive to investors because holders miss out on future interest payments if the call option is exercised by the issuer at a time of falling interest rates; this can be reflected in the debt security’s price and/or interest rate.

There are usually conditions that must be satisfied before a call can be exercised, as outlined in the terms of issue. Issuers may not be able to design call options to undertake a buy-back when they wish (to target favourable market conditions and investor preferences), as these terms would be less attractive to investors.

Status quo	
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.
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
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.

Proposed exemption

Proposed scope of exemption

The scope of the proposed exemption is still to be determined and depends on feedback received in response to this consultation.

We are considering exemptions from the following unsolicited offer requirements under the Regulations:

- requiring the offeror to notify the issuer and relevant licensed market operator that an offer will be made (regulation 163, and consequently regulation 164);
- the offer is made in a disclosure document that complies with the content requirements in regulation 168 (regulation 168, regulation 165 insofar that the disclosure document must comply with regulation 168, and Schedule 19);
- adhering to a minimum offer period of 30 days (regulations 170(2)(b) and 170(3) insofar that the regulation requires that the offer period must be not shorter than 30 days);
- the requirement that the offer can be withdrawn only with the consent of the FMA (regulation 171);
- the requirement that the terms of the unsolicited offer cannot be varied (regulation 172);
- the offeror's cancellation duties (regulation 176)[9].

To clarify, we are proposing that unsolicited offers would still be required to be made in a disclosure document that is clear, concise and effective as required by regulation 169 and is given to the offeree. The disclosure document would also have to contain certain alternative information and statements outlined in the exemption conditions below. We envisage that the disclosure document can be a standalone document or, for example, a terms sheet for any associated offer or issuance of debt securities. We welcome views on whether any exemption is needed from regulation 167, which requires the disclosure document be prominently identified if accompanied by other documents.

The proposed exemption would apply where:

- An unsolicited offer is made by an issuer to buy back its own quoted debt securities before the stated maturity date, off-market.
  - The 'issuer' can include a wholly owned subsidiary of the listed issuer or a parent company that owns, directly or indirectly, 100% of the listed issuer.
  - The quoted debt security is quoted on a licensed market and remains quoted during the offer period (for the avoidance of doubt, a debt security does not cease to be quoted merely because trading of that debt security is suspended or halted); and
- The unsolicited offer is made for all debt securities in a class of debt securities, unless it would be unduly impractical or illegal to do so. This is to promote fairness and transparency.

[9] Regulation 173(1) about the offeree's right to cancel an agreement would no longer apply due to this exemption from regulation 176 (see regulation 174).

There may be additional considerations regarding the scope of the exemption.

Proposed exemption conditions

We propose the exemption includes the following conditions to ensure debt security holders and the market remain adequately informed (particularly about the market price and other pricing information, and about alternatives to accepting the offer).

- **Cleansing notice from the issuer to the licensed market operator**: The issuer must give the licensed market operator a cleansing notice in the 24-hour period before the unsolicited offer is made (unless the market operator requires it earlier). The notice must state the issuer's intention to make the offer to buy back all debt securities in a class of debt securities, including the particular date[10] and the class of quoted debt securities concerned, and that the unsolicited offer is being made to debt security holders in reliance on the exemption. It must state that, as at the date of the notice, the issuer is in compliance with the disclosure obligations that apply to it in relation to the quoted debt securities and with its financial reporting obligations. It must also set out the material information (if any) that has not previously been disclosed to the market. It is intended that the notice aligns with notice requirements in the same class offers exclusion for quoted financial products in clause 20 of Schedule 8 of the Regulations.
- **Following the unsolicited offer, if the issuer becomes aware of a defect in the cleansing notice, the issuer provides information to the licensed market operator to correct the defect**. It is intended that the notice aligns with requirements in clause 21 of Schedule 8 of the Regulations.
- **The unsolicited offer is announced by the issuer on the relevant licensed market operator's announcement platform no later than the day the offer opens, with key information about the offer. The issuer must also make announcements about any withdrawal or material variations to the offer at the same time as notice and communications are given to the debt security holders about the withdrawal or material variations.** This is to promote transparency and timeliness of key information (including changes) about the offer to the market.
- **Disclosures to offerees:** The issuer is required to disclose to the debt security holders in the disclosure document the following information and statements to support well-informed decision-making by the holders:
  - the nature and terms of the offer, including:
    - a statement of the offer price or prices or consideration (if the price or prices or consideration are fixed at the date of the offer), or of the basis on which or the method by which the offer price or prices or consideration will be ascertained;
    - information relating to how debt securities bought back as part of the offer will be treated by the issuer after the buy-back, for example if the debt securities will be cancelled or held by the issuer;
    - information about the alternatives the debt security holder has instead of accepting the offer, including that the holder can continue to hold the existing debt security;

[10] Offer is intended to be made to all of the persons who, as at a particular date, are registered on a financial products register as holding financial products of a particular class.

- the current average market price of each quoted debt security[11], and a statement to the effect that the offeree may check the current market price of the financial products on the relevant licensed market operator's Internet site and in newspapers;
- a prescribed statement to the effect that the offer price or consideration offered for the existing debt security may be materially different to the debt security's market price and face value; and
- information about the unique identification code of the issuer as issued by the relevant licensed market operator, the name of that licensed market operator and its Internet address.

We welcome views on whether these conditions are needed to support debt security holders and market transparency, as well as views on any additional conditions.

Proposed scope and conditions of the exemption	
Q4	Do you agree with the proposed scope and conditions of the exemption? If you disagree, please let us know why.
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.
Q6	Is an exemption needed from regulation 167, which requires the disclosure document to be prominently identified if accompanied by other documents?
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)?
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?
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?
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?

[11] Being the average market price calculated over a 20-working-day period ending at a point in time specified in the document (being a time that is not earlier than 10 working days before the date of the offer.

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)?

Other	
Q12	Do you have any other comments?