Submission by

BusinessNZ

THE VOICE OF BUSINESS

to the

Ministry of Business Innovation and Employment

on the

Capital Markets Reforms: Phase Two Discussion Document

August 2026

CAPITAL MARKETS REFORMS: PHASE TWO DISCUSSION DOCUMENT
SUBMISSION BY BUSINESSNZ[1]

1.0 SECTION 1: EXECUTIVE SUMMARY

1.1 BusinessNZ welcomes the opportunity to comment on the Ministry of Business, Innovation and Employment's (MBIE) *Capital Markets Reforms Phase Two Discussion Document*.

1.2 BusinessNZ strongly supports the Government's objective of developing deeper, more efficient and internationally competitive capital markets. New Zealand's long-standing productivity challenge is closely linked to limited access to risk capital, a relatively shallow domestic investment market, and regulatory settings that can discourage firms from seeking external equity. Reforms that reduce unnecessary compliance costs, improve access to capital and encourage greater participation by both issuers and investors are therefore important contributors to stronger economic growth, higher productivity and improved living standards over time.

1.3 BusinessNZ notes that the Discussion Document seeks feedback on 8 areas of potential regulatory change, including:

- Product disclosure statements
- Director and issuer liability
- Catalist market settings
- Unlisted Securities Exchange audit requirements
- Crowdfunding and peer-to-peer lending limits
- Wholesale investor settings
- Auditor liability
- Broker activity and visibility

1.4 Section 2, below, responds to these issues raised.

1.5 Overall, BusinessNZ supports the direction of travel outlined in the discussion document and agrees that New Zealand's capital markets framework should continue to evolve to ensure it remains proportionate, internationally competitive and capable of supporting innovation while maintaining investor confidence and market integrity.

1.6 At the same time, BusinessNZ considers that successful reform requires careful calibration. While investor protection is fundamental to well-functioning markets, regulation must also recognise the costs imposed on businesses, directors and market participants. Regulatory settings that impose disproportionate liability, uncertainty or compliance obligations can discourage firms from listing, reduce entrepreneurial activity and make it more difficult for businesses—particularly growing and innovative firms—to raise capital.

[1] Background information on BusinessNZ is attached as Appendix 1.

1.7 A central theme of this submission is therefore the need for greater proportionality in director and issuer liability. Directors should be held accountable for misconduct and deliberate or reckless behaviour. However, liability settings should not expose directors to unreasonable personal risk where they have acted honestly, exercised appropriate diligence and relied on reasonable professional advice. Excessive liability risks creating a chilling effect on governance, discouraging capable individuals from accepting directorships and increasing the costs of raising capital without delivering corresponding benefits for investors.

1.8 BusinessNZ similarly supports reforms that simplify disclosure requirements, improve the operation of smaller capital markets, modernise wholesale investor settings, review auditor liability and remove unnecessary regulatory barriers affecting crowdfunding, peer-to-peer lending and broker activity. Across all reform areas BusinessNZ encourages Government to adopt principles-based, proportionate regulation that reflects the size and characteristics of New Zealand's capital markets while remaining aligned with international best practice.

1.9 In summary, BusinessNZ recommends that the Phase Two reforms be guided by the following principles:

- promote economic growth through deeper and more liquid capital markets;
- maintain strong investor confidence while avoiding unnecessary compliance costs;
- ensure liability settings are fair, proportionate and based on culpability rather than strict technical breaches;
- reduce regulatory barriers that discourage businesses from raising capital or listing on public markets;
- support innovation and competition across all capital raising channels;
- improve regulatory certainty for issuers, directors, investors and market intermediaries; and
- ensure New Zealand's regulatory framework remains internationally competitive while reflecting the scale and characteristics of the domestic market.

1.10 Given the diversity of our membership, some members and sectors will have specific issues that they wish to comment on in some detail. Therefore, we have encouraged individual members and sector representatives to make their own submissions raising those issues specific to their areas of interest.

RECOMMENDATIONS

BusinessNZ **recommends** that:

The Government:

- **simplify Product Disclosure Statement requirements;**
- **adopt a stronger materiality threshold for mandatory disclosure;**
- **remove unnecessary duplication across disclosure documents;**
- **expand the use of digital disclosure mechanisms; and**
- **periodically review disclosure requirements to ensure they remain fit for purpose.**

BusinessNZ **recommends** that:

The Government:

- **retain strong sanctions for fraudulent and reckless misconduct;**
- **avoid expanding personal liability for directors acting honestly and reasonably;**
- **strengthen due diligence defences;**
- **consider additional statutory safe harbour protections;**
- **ensure liability settings remain proportionate to culpability; and**
- **regularly review liability settings against comparable jurisdictions.**

2.0 SECTION 2: Response to Each Consultation Chapter

Chapter 1 – Product Disclosure Statements

2.1 BusinessNZ supports reforms to simplify Product Disclosure Statements (PDSs) where they improve investor understanding while reducing unnecessary compliance costs.

2.2 The disclosure regime established under the Financial Markets Conduct Act 2013 (FMC Act) has significantly improved the consistency and quality of information available to investors. However, more than a decade after its introduction, there is an opportunity to reassess whether current disclosure requirements remain proportionate to the risks they are intended to address.

2.3 Disclosure is a means to an end—not an end in itself. The objective should be to ensure that investors receive information that is relevant, material and capable of informing investment decisions. Excessively detailed disclosure can obscure rather than illuminate the key risks and opportunities associated with an investment.

2.4 BusinessNZ therefore supports a greater emphasis on concise, principles-based disclosure rather than highly prescriptive requirements that encourage defensive drafting.

Materiality Should Drive Disclosure

2.5 Disclosure obligations should focus on information that a reasonable investor would consider material to an investment decision.

2.6 Issuers frequently adopt an overly cautious approach to disclosure because of concerns regarding potential liability. This often results in lengthy documents containing immaterial information designed primarily to manage legal risk rather than assist investors.

2.7 Simplifying disclosure requirements would:
- improve investor comprehension;
- reduce compliance costs;
- shorten capital raising timeframes;
- improve accessibility for smaller issuers; and
- encourage more businesses to access public capital markets.

Digital Disclosure

2.8 BusinessNZ strongly supports greater flexibility to utilise digital disclosure.

2.9 Modern investors increasingly expect information to be provided electronically and updated dynamically rather than through static documents prepared at a single point in time.

2.10 Digital disclosure offers opportunities to:
- provide more timely information;
- reduce duplication;
- improve accessibility;
- reduce printing and compliance costs; and
- better tailor information to investor needs.

2.11 The regulatory framework should facilitate innovation while preserving appropriate investor protections.

2.12 BusinessNZ **recommends** that Government:
- simplify Product Disclosure Statement requirements;
- adopt a stronger materiality threshold for mandatory disclosure;
- remove unnecessary duplication across disclosure documents;
- expand the use of digital disclosure mechanisms; and
- periodically review disclosure requirements to ensure they remain fit for purpose.

Chapter 2 – Director and Issuer Liability

2.13 BusinessNZ considers director and issuer liability to be the most significant issue addressed in the Phase Two reforms.

2.14 Well-designed liability settings underpin investor confidence and market integrity. Investors must have confidence that directors who engage in fraud, dishonesty or reckless misconduct will be held accountable.

2.15 Equally, New Zealand requires liability settings that encourage capable individuals to accept governance roles and make commercial decisions involving reasonable business risk.

2.16 The challenge is achieving the appropriate balance between accountability and entrepreneurship.

2.17 BusinessNZ has increasingly become concerned about the extension of directors' duties and increasing obligations (including increased fines/penalties) on directors across a range of sectors which potentially can have a chilling effect on investment and reduce the director pool willing to take on directorships. In addition, the ability to obtain insurance cover, and costs associated with same, may also become an increasingly important pressure point, irrespective of any compensation directors receive from directorships. A number of recent submissions from BusinessNZ emphasise this point.[2]

2.18 BusinessNZ have also expressed similar concerns in relation to climate reporting, employment law, changes to the Fair Trading Act, and other proposals which impose greater personal obligations or liabilities on company directors.

2.19 Some recent court cases have raised additional concerns that directors can be held personally liable well beyond their active involvement with a company.

2.20 BusinessNZ is concerned that the sum total of these extra obligations (particularly ones that are criminal level) are having a chilling effect on governance and people wanting to become directors.

2.21 BusinessNZ believes it is timely to consider whether directors' duties and liabilities across New Zealand's statute book have developed in a consistent and principled way, and whether the cumulative burden on directors is proportionate and appropriate.

2.22 In this respect, BusinessNZ notes that the Law Commission is undertaking a broader review of directors' duties and labilities with the review focusing on two areas:

- Directors' core duties and liabilities under the Companies Act 1993; and
- Whether directors' duties and liabilities under other legislation can be approached in a more consistent and principled manner in future legislative reform.

2.23 In respect to the Discussion Document, BusinessNZ is concerned that liability settings which extend beyond intentional misconduct or serious negligence risk producing unintended economic consequences that ultimately undermine the Government's objective of strengthening New Zealand's capital markets.

Directors Must Be Able to Exercise Commercial Judgement

2.24 Directors make decisions in circumstances characterised by uncertainty. Investment decisions, acquisitions, strategic initiatives and capital raising all involve commercial judgement.

2.25 Not every unsuccessful business decision represents poor governance. A regulatory framework that effectively penalises directors for reasonable commercial judgement made in good faith risks encouraging excessively conservative decision-making.

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[2] See, for example: BusinessNZ Submission to the Department of Prime Minister and Cabinet on Enhancing the Cyber Security of New Zealand's Critical Infrastructure System Discussion Document (April 2026). BusinessNZ Submission to the Finance and Expenditure Committee on the Fair Trading Amendment Bill (July 2026).

2.26 Innovation, investment and economic growth all require businesses—and therefore directors—to take measured commercial risks.

2.27 The law should distinguish clearly between:
- fraud;
- deliberate misconduct;
- reckless behaviour;
- serious failures of governance; and
- legitimate commercial judgement that subsequently proves unsuccessful.

The Chilling Effect of Excessive Liability

2.28 BusinessNZ is concerned that disproportionate liability settings may discourage experienced directors from serving on boards, particularly for:
- listed companies;
- high-growth businesses;
- emerging technology firms; and
- smaller issuers.

2.29 New Zealand already faces a relatively limited pool of experienced directors. Increasing personal exposure without corresponding public benefit may reduce the willingness of highly capable individuals to accept governance positions.

Economic Consequences

2.30 Liability settings influence the cost of capital while higher perceived governance risk contributes to:
- increased Directors' and Officers' insurance premiums;
- greater legal costs;
- more conservative disclosure practices;
- longer transaction timeframes;
- increased due diligence expenditure;
- higher compliance costs; and
- reduced attractiveness of New Zealand capital markets.

2.31 These costs are ultimately borne by businesses, investors and consumers. Regulation should therefore seek to minimise unnecessary compliance costs while preserving robust investor protections.

Importance of Due Diligence Defences

2.32 BusinessNZ supports maintaining robust due diligence defences.

2.33 Directors who have: acted honestly; exercised reasonable care; relied appropriately on expert advice; and implemented effective governance processes should not face personal liability solely because subsequent events differ from expectations.

2.34 The law should continue to recognise that directors cannot guarantee commercial outcomes.

Safe Harbour Provisions

2.35 BusinessNZ encourages consideration of broader safe harbour protections where directors have demonstrably complied with recognised governance processes.

2.36 Appropriately designed safe harbour provisions would:
- encourage good governance;
- improve decision-making;
- reduce defensive behaviour;
- support innovation; and
- maintain investor confidence.

Criminal Liability

2.37 BusinessNZ strongly supports maintaining criminal sanctions for:
- fraud;
- deliberate deception;
- intentional market manipulation;
- dishonest conduct; and
- serious misconduct affecting investors.

2.38 However, criminal liability should remain reserved for genuinely culpable conduct rather than technical compliance failures.

2.39 BusinessNZ **recommends** Government:
- retain strong sanctions for fraudulent and reckless misconduct;
- avoid expanding personal liability for directors acting honestly and reasonably;
- strengthen due diligence defences;
- consider additional statutory safe harbour protections;
- ensure liability settings remain proportionate to culpability; and
- regularly review liability settings against comparable jurisdictions.

Chapter 3 – Catalist Market

2.40 BusinessNZ supports reforms that improve the effectiveness of the Catalist Market.

2.41 Growth companies frequently face significant challenges accessing expansion capital.

2.42 Alternative markets can play an important role in supporting businesses that are not yet suited to a Main Board listing.

2.43 Government should seek to ensure regulatory settings:
- remain proportionate;
- minimise listing costs;
- encourage participation by smaller issuers; and
- maintain investor confidence.

2.44 The success of growth markets depends on balancing flexibility with market integrity.

Chapter 4 – Audit Requirements for Unlisted Securities Exchanges

2.45 BusinessNZ supports adopting a genuinely risk-based approach to audit obligations.

2.46 Audit requirements should reflect:
- market size;
- transaction volumes;
- public exposure;
- systemic importance; and
- investor risk.

2.47 Uniform requirements across all exchanges may impose unnecessary costs on smaller market operators without delivering commensurate public benefit. BusinessNZ therefore supports proportionate regulation based upon demonstrated risk rather than organisational form.

Chapter 5 – Crowdfunding and Peer-to-Peer Lending

2.48 BusinessNZ welcomes the continued development of alternative financing mechanisms.

2.49 Crowdfunding and peer-to-peer lending provide valuable additional sources of finance for:
- start-ups;

- innovative businesses;
- regional enterprises;
- early-stage technology firms; and
- businesses without access to traditional lending.

2.50 These financing channels increase competition within capital markets and broaden investment opportunities.

2.51 BusinessNZ supports reviewing existing investment limits where evidence demonstrates they unnecessarily restrict capital formation. However, investor protection remains important.

2.52 Investment decisions should continue to be supported by:
- appropriate disclosure;
- transparent risk warnings;
- effective governance; and
- market integrity.

Chapter 6 – Wholesale Investor Settings

2.53 BusinessNZ supports reviewing the wholesale investor framework.

2.54 The distinction between retail and wholesale investors remains an important element of the FMC Act. However, investment markets have evolved considerably.

2.55 Many experienced investors possess the financial capability to assess investment opportunities without requiring the full suite of retail protections. Conversely, wealth alone may not always indicate investment sophistication.

2.56 BusinessNZ supports reviewing existing thresholds and qualification pathways to ensure they better reflect:
- investor capability;
- financial experience;
- professional expertise; and
- modern investment practices.

2.57 A more flexible framework could improve access to capital while maintaining appropriate investor protections.

Chapter 7 – Auditor Liability

2.58 Independent audit plays an essential role in maintaining confidence in financial markets.

2.59 BusinessNZ supports maintaining high professional standards while ensuring liability settings remain proportionate.

2.60 Excessive auditor liability may:
- increase audit costs;
- reduce market competition;
- discourage firms from accepting complex audit engagements; and
- ultimately reduce audit quality.

2.61 Liability settings should encourage professional diligence while recognising the inherent limitations of audit assurance.

2.62 BusinessNZ supports continued alignment with international best practice.

Chapter 8 – Broker Activity and Visibility of Offers

2.63 BusinessNZ supports initiatives that improve market efficiency through greater visibility of legitimate investment opportunities.

2.64 Technology has fundamentally altered the manner in which investment opportunities are communicated.

2.65 The regulatory framework should accommodate these developments while maintaining strong protections against misleading or deceptive conduct.

2.66 Improving transparency can:
- increase market liquidity;
- broaden investor participation;
- reduce search costs;
- improve competition; and
- support more efficient capital allocation.

2.67 BusinessNZ supports reforms that facilitate responsible innovation while preserving market confidence.

Appendix One - Background information on BusinessNZ

BusinessNZ
THE VOICE OF BUSINESS

The BusinessNZ Network is New Zealand’s largest business organisation, representing:

- Business groups EMA, Business Central, Major Companies Canterbury, and Business South
- BusinessNZ policy and advocacy services
- Major Companies Group of New Zealand’s largest businesses
- Gold Group of medium-sized businesses
- Affiliated Industries Group of national industry associations
- ExportNZ representing New Zealand exporting enterprises.
- ManufacturingNZ representing New Zealand manufacturing enterprises.
- Sustainable Business Council of enterprises leading sustainable business practice.
- BusinessNZ Energy Council of enterprises leading sustainable energy production and use.
- Buy NZ Made - country of origin licensing organisation for NZ-made products, NZ-grown ingredients, and NZ-coded software services.

The BusinessNZ Network is able to tap into the views of over 76,000 employers and businesses, ranging from the smallest to the largest and reflecting the make-up of the New Zealand economy.

The BusinessNZ Network contributes to Government, tripartite working parties and international bodies including the International Labour Organisation (ILO), the International Organisation of Employers (IOE) and Business at OECD (BIAC).