MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

Submission template

Capital Markets Reforms Phase Two

This is the submission template for the discussion document, *Capital Markets Reforms, Phase Two*. The Ministry of Business, Innovation and Employment (MBIE) seeks written submissions on the issues raised in the discussion document by **Tuesday, 25 August 2026, 5:00pm** (six weeks from release).

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    c. Email your submission, with "Capital Markets Consultation" in the subject line, to:
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        - you may also submit by mail to:

            Financial Markets Policy
            Business, Resources and Markets
            Ministry of Business, Innovation & Employment
            PO Box 1473
            Wellington 6140
            New Zealand

Please send any questions you have about the consultation process to the financial markets email above.

Submission on discussion document: *Capital Markets Reforms Phase Two*

Your name and organisation

Name	Bridget Unsworth, CEO
Date	
Organisation (if applicable)	Angel Association New Zealand
Responding primarily as or on behalf of …	☐ **Investor / investor interests** ☐ Company / business / issuer ☐ Fund manager / KiwiSaver provider ☐ Financial advisor ☐ Lawyer / legal analyst ☐ Economist or academic ☐ Other _____
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Capital Markets Reforms Phase Two

Submission template

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? Angel Association New Zealand (AANZ) supports the Government's focus on strengthening New Zealand's capital markets and considers that the overarching priority should be to improve the flow of capital to productive New Zealand businesses at every stage of their growth. New Zealand has a relatively shallow pool of risk capital compared with the scale of the opportunity presented by our innovative and high-growth businesses. The issue is therefore not simply the cost of regulation; it is whether our regulatory settings facilitate the formation, deployment, and recycling of capital through the entire business growth cycle. The cost of inaction is not neutral. Where settings governing a stage of the equity ladder are miscalibrated, businesses do not simply pay a higher compliance bill, they make different commercial decisions. Growth companies unable to access capital on reasonable terms may delay hiring, defer product development, or pass up opportunities that require upfront investment, not because the opportunity is unsound but because the capital to pursue it is constrained or too costly to access. In some cases, businesses fail outright for want of timely capital; in others, they survive but underperform relative to their potential, effectively limping along on a capital structure shaped by regulatory friction rather than commercial logic. Increasingly, businesses facing these constraints look to offshore capital, ownership, or listing venues instead. AANZ considers that the actual cost of an inefficient capital markets framework is best measured not in compliance dollars, but in the businesses that fail, stall, or leave New Zealand because of it. AANZ considers the Government's reform programme should be guided by the following priorities: 1. Build a genuine capital pathway for New Zealand businesses New Zealand needs a functioning "equity ladder" that enables businesses to move efficiently from founder and angel capital, through venture capital and growth capital, and into public markets or other forms of institutional capital. Regulatory settings should support this progression rather than create discontinuities between distinct stages of a company's development. Reforms should consider whether businesses can realistically transition from private early-stage capital into larger pools of domestic and international growth capital. 2. Make regulation proportionate to risk, scale and investor sophistication AANZ supports strong investor protection and market integrity. However, investor protection should not be equated with maximum regulation. Regulatory requirements should be proportionate to the size and stage of the issuer, the amount of capital being raised, the nature of the investment and the sophistication of the investors involved. A regulatory framework designed primarily around larger public market issuers can impose disproportionate costs on smaller and earlier-stage businesses. The Government should therefore adopt a more explicit principle of proportionate regulation, ensuring that compliance obligations increase as the scale, complexity and potential impact of an issuer increases. 3. Increase the supply and diversity of risk capital Capital markets reform should consider not only how businesses raise capital, but whether there is sufficient capital available to them in the first place.

	New Zealand needs to encourage a broader range of investors to participate across the capital spectrum, including angel investors, venture capital funds, family offices, experienced founders and institutional investors. The recycling of capital and expertise from successful founders and investors back into the next generation of businesses should also be encouraged. Equally important is growing the pool itself: bringing new investors into the market at each stage of the equity ladder, rather than relying solely on the same capital moving through the system, is what will deepen New Zealand's capital markets over time. This is particularly important at the early and growth stages, where access to risk capital can determine whether a business is able to scale in New Zealand or is forced to seek capital, ownership or an exit offshore. 4. Ensure New Zealand remains internationally competitive New Zealand is competing globally for both capital and companies. Regulatory settings should therefore be assessed against comparable jurisdictions, particularly Australia, the UK, Singapore and other markets competing for investment and listings. Where New Zealand imposes materially higher costs or liability than comparable jurisdictions, there should be a clear policy rationale for doing so. 5. Design regulation for the market of the future The regulatory framework needs to anticipate changes in technology, digital markets, artificial intelligence and new forms of capital raising. Rather than continually adding new rules in response to emerging technologies, the Government should seek to establish principles-based and technology-neutral settings that can accommodate innovation while maintaining appropriate investor protections. Overall, AANZ considers the test for future regulatory change should be: Does this setting improve confidence and market integrity while enabling capital to flow efficiently to businesses with the potential to innovate, grow and contribute to New Zealand's economic performance? This should be the central test applied to both existing regulation and future reforms.
0.2	Do you support the three objectives for change framing this document? What objectives would you recommend to guide considerations of future changes? AANZ supports the three objectives proposed by the Government and consider these objectives provide a sound framework for considering both the specific reforms proposed in this consultation and future changes to New Zealand's capital markets framework. However, AANZ recommends that the objectives be interpreted through a broader capital formation and capital allocation lens. In particular, the objective of creating a strong and dynamic equity ladder should explicitly recognise the importance of ensuring that there is sufficient capital available at each stage of a business's development. The effectiveness of the equity ladder should not be measured simply by whether each individual market operates effectively. It should also be assessed by whether businesses can move between those markets as they grow, and whether capital and investment expertise continue to flow back into the system over time. AANZ therefore considers that future regulatory changes should be assessed against four complementary principles: • Proportionality – As outlined in our response to Question 0.1, regulatory obligations should reflect the issuer's size, stage and risk, and the sophistication of the investors it is directed at.

Regulation should not impose costs on smaller businesses that are disproportionate to the risks being addressed.

- Capital formation and allocation – Regulation should facilitate the efficient formation and deployment of capital into productive businesses and support its reinvestment as returns are realised. Investor protection is important, but settings should not unnecessarily restrict the availability of risk capital to businesses capable of generating innovation, productivity and economic growth.
- Market progression – New Zealand should have a genuine and functioning capital pathway in which businesses can progress from early-stage private capital through growth capital and, where appropriate, into public markets. Regulatory settings should avoid creating unnecessary barriers between these stages.
- International competitiveness – New Zealand's regulatory settings should enable us to compete effectively for both domestic and international capital. Where our requirements differ materially from comparable jurisdictions, there should be a clear rationale for those differences.

AANZ considers these principles would provide a useful test for future regulatory reform. The question should not simply be whether a particular regulation reduces risk, but whether it achieves an appropriate balance between investor confidence, proportionality and the efficient flow of capital.
In our view, a successful capital markets framework is one that protects investors while also making it easier for good businesses to access the capital they need to start, grow and scale in New Zealand.

Are there aspects of the current FMC regime we have not mentioned in our overview that are limiting our capital markets?

0.3

AANZ considers that there are several broader aspects of the current FMC regime that can limit capital formation, particularly for smaller and early-stage businesses.

The central issue is that the regulatory framework can impose relatively significant compliance costs and obligations on businesses that are small, high-growth and seeking relatively modest amounts of capital, without those requirements necessarily being proportionate to the risks involved.

AANZ considers the following areas warrant further consideration:

1. Regulatory requirements that do not sufficiently reflect the size and stage of the issuer
The FMC regime can result in obligations being applied in a uniform manner across businesses at very different stages of development. AANZ considers there should be greater recognition that a business raising its first $2–5 million of growth capital presents a different regulatory profile from a large, established issuer accessing public markets.

Consistent with the proportionality principle outlined above, future reform should consider whether obligations can be more precisely calibrated to reflect the issuer's circumstances and the nature of the raise.

2. The cumulative cost of compliance
While individual FMC requirements may each have a reasonable rationale, the cumulative effect of legal, accounting, audit, governance, disclosure and compliance requirements can materially increase the cost and complexity of raising capital.

For smaller businesses, these costs can represent a meaningful proportion of the capital being raised. This can discourage businesses from raising capital in New Zealand or result in them seeking alternative structures or offshore capital. AANZ encourages MBIE and the FMA to consider the cumulative regulatory burden across a capital raising, rather than assessing individual requirements in isolation.

3. Uncertainty and the need for greater regulatory clarity
AANZ considers that uncertainty about how particular FMC requirements will be interpreted or applied can itself act as a barrier to capital raising.

For early-stage businesses and their advisers, the cost of obtaining legal advice to establish whether a particular activity falls within a regulatory requirement can be significant. Clearer guidance, safe harbours and more principles-based approaches could reduce this friction without compromising investor protection.

4. The interaction between the FMC regime and director liability
AANZ considers that director liability settings should be considered as part of the broader capital markets framework. The availability of appropriately skilled directors is a vital component of a functioning capital market. If the combined effect of FMC obligations and personal liability exposure makes directors materially more reluctant to serve on the boards of early-stage or growth companies, this can constrain access to both capital and governance capability.

AANZ supports appropriate accountability for directors, but considers liability should be proportionate, predictable and consistent with the role directors are realistically able to perform.

5. Barriers between stages of the equity ladder
The FMC framework should be assessed not only by how individual markets operate, but by how effectively businesses can progress between them. AANZ is concerned that regulatory settings can create a significant step-up in cost and complexity as businesses move from private early-stage capital towards larger growth raises and public markets.
The objective should be a genuine equity ladder, where businesses can progressively access larger pools of capital without encountering regulatory "cliffs" that make the next stage of capital raising disproportionately difficult or expensive.

6. The treatment of sophisticated investors and risk capital
AANZ considers there is an important distinction between protecting investors who may not understand the risks of an investment and restricting access to investment opportunities for investors who are demonstrably capable of assessing those risks.

New Zealand relies heavily on sophisticated private investors, including angels, family offices and experienced founders, to provide risk capital at the early stages of the equity ladder. The FMC regime should preserve appropriate pathways for these investors to participate while maintaining effective safeguards against inappropriate offers or misselling.

AANZ therefore supports a regulatory approach that focuses on investor capability and informed decision-making, rather than unnecessarily restricting access to risk capital.

7. The regulatory treatment of successful companies that have outgrown early-stage markets
There should also be greater consideration of how regulatory settings affect companies that are successfully progressing through the equity ladder.

A capital market is most effective when businesses can access the right capital for their age and stage. AANZ considers the Government should actively identify and remove regulatory barriers that cause businesses to bypass New Zealand capital markets altogether as they scale.

Overall, AANZ considers that the FMC regime would benefit from a more explicit proportionality principle. The question for future reform should not simply be whether a regulatory requirement provides additional protection, but whether the protection achieved is proportionate to the risk being addressed and to the cost imposed on issuers and investors.

The objective should be to create a regulatory environment in which good businesses can raise capital efficiently, investors can make informed decisions, and regulatory obligations increase appropriately as the scale, complexity and risk of the issuer increases.

0.4	Has our general overview of current trends in domestic and global capital markets left out anything particularly relevant for considering the strength of New Zealand's capital markets?

AANZ considers that the overview would benefit from greater recognition of the importance of early-stage and private risk capital to the overall strength of New Zealand's capital markets.

The strength of a capital market should not be assessed solely by the depth or performance of its public markets. It also depends on the availability of capital at the earlier stages of the business lifecycle and the extent to which businesses can successfully progress these investment stages.

New Zealand has a small domestic market and a limited pool of risk capital. This makes efficient capital formation particularly important, alongside the ability to draw in capital from offshore. The ability to attract international capital and connect it with New Zealand businesses is also critical.

AANZ considers that several trends are particularly relevant to assessing the strength of New Zealand's capital markets:

- The increasing importance of private capital. Globally, companies are remaining private for longer and accessing larger pools of private capital before considering public markets. New Zealand therefore needs strong private markets alongside effective public markets.
- The importance of the full equity ladder. The transition between angel, venture, growth and public-market capital is as important as the individual markets themselves. Regulatory or structural barriers at any point in this pathway can restrict the flow of capital and prevent businesses from progressing.
- The recycling of capital and capability. Mature founders and successful investors are an important source of both capital and expertise for the next generation of companies. New Zealand should encourage this rather than relying disproportionately on offshore capital.
- The need to attract international capital. Given the size of New Zealand's domestic capital pool, international investors will remain an important source of growth capital. Regulatory settings therefore need to be competitive with comparable jurisdictions and provide international investors with confidence that New Zealand is an efficient and credible place to deploy capital.
- The relationship between capital and company capability. Early-stage investment is not simply about providing money. Angel and venture investors can provide governance, networks, commercial expertise and international connections. The depth of this capability ecosystem is an important, but less easily measured, component of capital-market strength.

AANZ therefore considers that the Government should assess the strength of New Zealand's capital markets by looking at the whole capital formation ecosystem. The key question should be whether a high-potential New Zealand business can access the appropriate capital and capability at each stage of its development, and whether there is a clear pathway for that business to continue accessing increasingly larger pools of capital as it grows.

A strong capital market should enable capital to be formed, deployed and reused efficiently within New Zealand as it scales, while also drawing in capital from offshore.

0.5

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?

AANZ considers that the FMC Act would benefit from a more fundamental review to ensure that its architecture remains fit for purpose in a rapidly changing capital markets environment.

AANZ does not suggest that the Act requires wholesale reform simply for the sake of change. However, the evolution of capital markets, including the increasing importance of private capital, the growth of sophisticated private investors, technological change and the need for businesses to access capital across various stages of growth, warrants consideration of whether the current framework remains appropriately designed.

AANZ considers that the review should move beyond considering individual regulatory requirements and examine whether the overall architecture of the FMC regime facilitates an efficient capital formation ecosystem:

1. Proportionality across the capital markets
The regulatory framework should recognise that issuers and investors operate across a broad spectrum. A small, early-stage company raising several million dollars from experienced angel or wholesale investors presents a fundamentally different risk profile from a large listed company raising capital from retail investors.

The review should therefore consider whether the Act is flexible enough to apply the proportionality principle described above across the full range of issuers, offers and investors. In AANZ's view, proportionality should be an explicit and overarching principle of the FMC framework, not an incidental feature of individual settings.

2. The role of private and wholesale capital
Global capital markets have seen significant growth in private capital, with businesses accessing private funding for longer before entering public markets. This makes the private capital ecosystem increasingly important to the overall health of capital markets.

The review should therefore ensure that the FMC framework appropriately recognises the role of sophisticated investors, including angel investors, family offices, venture capital and other wholesale investors, while maintaining appropriate safeguards for investors who may not have the capability to assess higher-risk investments.

3. The cumulative cost of regulation
Legal, accounting, audit, disclosure, governance and compliance costs can be significant for an early-stage or growth company. These costs can influence whether a business raises capital at all, how it structures a raise, and whether it seeks capital in New Zealand or offshore.

AANZ considers the review should therefore include a systematic assessment of the regulatory cost of capital raising for smaller and growth-stage businesses.

4. Greater use of principles-based regulation
The capital markets are evolving more quickly than legislation can be amended. The FMC framework should therefore be sufficiently principles-based and technology-neutral to accommodate new financial products, digital platforms, AI-enabled activity and new models of capital raising without requiring repeated legislative intervention.

Clear guidance and appropriate regulatory safe harbours could provide greater certainty while preserving flexibility.

5. The relationship between regulation and director capability
The review should also consider whether liability settings unintentionally discourage experienced individuals from contributing to the governance of early-stage and growth companies. New Zealand's capital markets depend not only on capital, but also on governance capability. Experienced independent directors can materially improve the quality of decision-making, risk management and investor protection in high-growth companies. Director accountability is important, but liability should be proportionate, predictable and aligned with the actual role and influence of the director.

AANZ considers that the existing purposes remain fundamentally appropriate, particularly the objectives of promoting confident and informed participation by investors and promoting the development of fair, efficient and transparent financial markets.

AANZ does not consider that economic growth should replace investor protection or market integrity as a purpose of the FMC Act. Rather, the purposes should recognise that well-functioning capital markets have two complementary functions: protecting and informing investors and enabling capital to flow

	efficiently to productive uses. It should be a regulatory framework that is fit for purpose, proportionate to risk and capable of supporting a dynamic capital market in which businesses can start, grow, scale and access capital efficiently in New Zealand.
0.6	If you could address 2-3 strategic priorities with substantial impact in the FMC regime, what would they be? New Zealand requires a capital market in which businesses can move efficiently between successive stages of capital as their circumstances warrant. Regulatory reform should focus on who is able and willing to provide capital, particularly at the early and growth stages. New Zealand has a small domestic pool of risk capital. Sophisticated private investors, including angel investors, experienced founders, family offices and venture capital investors, therefore play a critical role in financing high-growth businesses. The FMC framework should preserve appropriate access for sophisticated investors while maintaining effective safeguards for investors who may not have the capability to assess higher-risk investments. AANZ also considers there is scope to improve the visibility and connectivity of investment opportunities, particularly for smaller issuers. Businesses need reasonable access to investors beyond their immediate networks, while investors need effective ways to identify credible opportunities. More broadly, Government should support successful founders and investors in reinvesting their capital, time and networks back into the businesses coming up behind them. The ultimate measure of success should be whether a high-potential New Zealand business can access the appropriate capital and capability at each stage of its development, without being unnecessarily constrained by the regulatory framework.
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? AANZ considers that New Zealand has a credible and well-regulated capital markets system, but one that remains small, shallow and domestically focused by international standards. Our size is both a constraint and an opportunity. New Zealand is unlikely to compete with major financial centres on market scale, liquidity or the breadth of financial products available. We should therefore avoid trying to replicate larger markets and instead focus on the areas where New Zealand can develop a genuine competitive advantage. New Zealand has several important strengths on which to build. We have a high-trust institutional environment, supported by a well-developed legal and regulatory framework. Confidence in the integrity of our markets is an important foundation for attracting international capital. New Zealand has a strong entrepreneurial and innovation ecosystem relative to the size of our economy. We have businesses with significant global potential, particularly in technology, science, agriculture, climate and other innovation-intensive sectors. We have an increasingly capable early-stage investment ecosystem, including angel investors, venture capital, family offices, experienced founders and other private investors. These investors provide not only capital but governance capability, networks and commercial expertise. New Zealand has the potential to offer international investors access to high-quality companies at an earlier stage of their growth, where capital and capability can have a significant impact on the trajectory of a business. However, these strengths are not yet translating into a capital market of sufficient depth and scale. The key challenge is therefore not simply improving individual markets but building stronger connections between them and with international sources of capital.

AANZ does not believe New Zealand should attempt to become a smaller version of a major international financial centre. Instead, we should aspire to become one of the world's most connected, trusted and effective small capital markets for innovative and high-growth businesses.

This would mean creating a market where:

- ambitious New Zealand companies can access appropriate capital at every stage of their development.
- international investors can readily identify and invest in high-quality New Zealand businesses.
- successful founders and investors reinvest their capital, expertise and networks into the next generation of businesses.
- businesses can move efficiently from angel and venture capital through growth capital and, where appropriate, into public markets.
- New Zealand companies can remain connected to global capital even when they scale beyond the capacity of the domestic market; and
- regulation provides confidence without imposing unnecessary costs or friction.

In this context, connectivity should be regarded as a competitive advantage. Ambition should be measured less by the absolute size of the New Zealand market and more by the quality and effectiveness of the capital ecosystem.

We should aspire to a situation where a high-potential New Zealand company does not need to leave New Zealand simply to access the next stage of capital, expertise or market opportunity. That does not necessarily mean every company should list in New Zealand or that all capital should remain domestic. International expansion and offshore capital are essential to the success of globally ambitious companies. Rather, New Zealand should be the place from which these companies can start, access early capital, build capability, attract international investment and scale globally.

AANZ considers the ambition should be to make New Zealand a small market with outsized impact: a trusted and globally connected capital ecosystem that is exceptionally effective at turning innovation and entrepreneurial capability into companies capable of competing on the world stage.
The measure of success should therefore not simply be how large our capital markets are, but whether they are deep enough, connected enough and responsive enough to enable New Zealand's most ambitious businesses to grow and scale globally.

0.8

What competitive strengths do you think New Zealand could build toward with regulatory change, and what change is needed?

AANZ's views on the competitive positioning New Zealand should aspire to are set out above. In terms of the role of regulatory change in achieving that ambition, we see three areas of opportunity.

First, New Zealand could develop a genuinely strong and connected equity ladder for high-growth businesses. Regulation should support businesses in progressively accessing larger and more varied capital as they grow, rather than creating barriers between one funding stage and the next. This requires reducing unnecessary regulatory cliffs between these stages and ensuring that disclosure, audit, governance and other obligations are proportionate to the size, stage and risk of the business.

Second, New Zealand could build a reputation for smart, proportionate regulation. Rather than competing with larger financial centres on scale, New Zealand could differentiate itself through a regulatory environment that is trusted and robust, but also responsive to the realities of a small market. Where we benchmark against larger markets such as Australia, the UK and Singapore elsewhere in this submission, the purpose is to ensure New Zealand is not needlessly more costly or onerous to operate in than comparable jurisdictions, not to compete with them on scale. This means applying regulation according to risk and the characteristics of the issuer and investors, rather than imposing the same requirements regardless of scale or sophistication.

Third, New Zealand could become more attractive and accessible to international risk capital. Given the size of our domestic capital pool, regulatory settings should make it straightforward for international investors to participate in New Zealand's growth businesses and for New Zealand companies to access

offshore capital as they scale. This includes ensuring our wholesale investor settings, market access, disclosure requirements and market infrastructure are internationally competitive and do not create unnecessary barriers to cross-border investment.

The regulatory changes discussed throughout this submission — particularly those relating to proportionality, the equity ladder, wholesale investment, Catalist, audit and issuer obligations — can collectively support these objectives.

AANZ therefore sees the opportunity not as creating a larger version of an existing financial centre, but as establishing a highly trusted, proportionate and connected small capital market that is exceptionally effective at supporting high-growth businesses and connecting them with global capital.

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?

AANZ considers that regulatory reform is only one part of strengthening New Zealand's capital markets. Government can also play a significant role in building the depth, connectivity and capability of the market through non-regulatory measures.
We would highlight five areas of particular importance:

1. Grow the supply of risk capital, including reinvestment by experienced founders and investors
New Zealand has a small domestic pool of capital available for high-growth and early-stage businesses. Government can help address this through initiatives that encourage greater institutional and private investment into venture capital, growth capital and other forms of risk capital.

This includes ensuring that Government-backed investment programmes are designed to crowd in private capital rather than substitute for it, and that capital can follow companies through the equity ladder as they mature.

There is also an opportunity to place greater emphasis on encouraging experienced founders and investors to reinvest their capital, mentoring and networks into the next generation of businesses. Government initiatives that support this can have a multiplier effect across the ecosystem.

2. Strengthen the connections between New Zealand companies and international capital
Given the size of New Zealand's domestic capital pool, international capital will remain essential to funding companies with significant growth ambitions. Government can play a greater role in connecting high-potential New Zealand businesses with international investors and ensuring that New Zealand is visible as an investable market.

The objective should not necessarily be to keep capital or companies in New Zealand at all costs. Rather, it should be to ensure that New Zealand companies remain connected to New Zealand and global capital as they scale.

3. Improve market information, visibility and data
A more effective capital market requires investors to be able to identify opportunities and understand how the market is performing. Government could support better aggregation and accessibility of information on investment activity, capital flows, emerging sectors, company growth and investor participation.

There is also value in improving coordination across the organisations involved in capital formation and business growth. A more connected ecosystem would reduce fragmentation and make it easier for investors, founders and international participants to navigate New Zealand's capital markets.

4. Use Government procurement and investment as market catalysts
Government is itself a significant participant in the economy and can have a meaningful influence on the development of innovative businesses. Where appropriate, Government procurement can provide an important pathway for innovative New Zealand companies to secure their first major customers, demonstrate commercial traction and become investment-ready.

	Similarly, Government investment programmes should be designed with a clear understanding of their role within the wider capital ecosystem — particularly where Government capital can help de-risk investment and attract additional private and international capital. Overall, AANZ considers that the Government should take a whole-of-ecosystem approach to capital markets policy. Regulatory settings are important, but they should sit alongside measures that grow the supply of capital and encourage its reinvestment, strengthen connections with international investors, improve market visibility and build the capability of participants. The ultimate objective should be a capital market that is not only well regulated, but deep, connected and capable of funding New Zealand businesses from early-stage investment through to global scale.
0.10	What non-regulatory steps do you think the sector could lead to support capital markets? AANZ considers that the sector itself has a vital role to play in strengthening New Zealand's capital markets and that regulatory reform should not be viewed as a substitute for industry leadership. Given the size of the New Zealand market, greater collaboration across the capital markets ecosystem is particularly important. Industry participants can collectively contribute to a stronger market by sharing expertise, developing capability, promoting high standards of governance and conduct, and creating stronger connections between investors, companies, intermediaries and international participants. There is also an opportunity for the sector to take greater collective responsibility for developing the next generation of market participants. Experienced investors, founders, directors and professional advisers have a key role in mentoring and developing capability, particularly as businesses and investors progress through different stages of the equity ladder. More broadly, AANZ believes the sector should continue to demonstrate that it can lead on market development, capability and standards, rather than relying solely on regulation to drive better outcomes. This will also help build confidence in a more proportionate regulatory framework. AANZ would therefore encourage Government and industry to view capital markets development as a shared responsibility: Government providing an appropriate and proportionate regulatory and policy framework, and the sector actively building the capability, connectivity, standards and culture needed for the market to operate effectively.
0.11	Please provide any other thoughts you would like to share with the Government on capital markets regulation. AANZ welcomes the Government's willingness to consider whether New Zealand's capital markets regulatory settings remain fit for purpose. Our overarching message is that investor protection and efficient capital formation should not be viewed as competing objectives. A well-designed regulatory framework should achieve both by applying requirements that are proportionate to the risk, scale and characteristics of the issuer, the investors involved and the financial product being offered. In considering reform, we encourage the Government to take a whole-of-capital-market and whole-of-business-lifecycle perspective. The strength of New Zealand's capital markets cannot be assessed solely by the depth of our public markets or the number of listed companies. It also depends on whether businesses can access appropriate capital and capability at each stage of their development — from founder and angel capital, through venture and growth capital, to institutional and public markets. AANZ also encourages the Government to consider New Zealand's regulatory settings in an international context. New Zealand is a small market with a limited domestic pool of risk capital, meaning international investment will remain important to funding ambitious companies. Rather than modelling our settings

on larger jurisdictions, we should focus on making New Zealand disproportionately effective for its size: efficient, dependable and appealing to both domestic and offshore capital.

Finally, we encourage the Government to view this reform programme as an opportunity to establish a more enduring framework for capital markets, rather than addressing individual settings in isolation. Markets, technologies and business models will continue to evolve. A more principles-based, risk-proportionate and technology-neutral framework would provide greater certainty while reducing the need for repeated regulatory intervention as markets change.

New Zealand does not need to have the biggest capital market. It needs to have a capital market that works exceptionally well for ambitious businesses and investors, is connected to global capital, and keeps channelling capital and capability back into the next generation of New Zealand companies.

2. 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.

AANZ agrees with the problem definition identified in relation to deemed director liability under the current regime.

We consider there is a legitimate policy objective in ensuring directors are accountable for the quality and integrity of an issuer's disclosure and financial reporting. However, AANZ considers that the current deemed liability settings can impose a level of personal risk and associated compliance cost on directors that is disproportionate to their individual conduct, particularly where liability arises from a contravention by the issuer rather than from any proven fault, knowledge or involvement on the part of the individual director.

This distinction is important in the context of New Zealand's early-stage and growth capital markets. Directors of growth companies are often operating in environments characterised by rapid change, limited resources and evolving governance structures. The costs associated with satisfying deemed liability requirements — including additional assurance, legal and compliance processes and Directors and Officers (D&O) insurance — can be material relative to the size and resources of the business.

AANZ is particularly concerned that these settings may have a chilling effect on the willingness of appropriately qualified individuals to take on director roles, particularly in smaller and growing companies. The issue is not simply the prospect of liability being imposed. The potential personal exposure can influence behaviour before any contravention occurs, resulting in more defensive governance, increased reliance on external advisers and additional compliance costs. These costs fall on the company and its shareholders and can divert capital and management attention away from growth.

AANZ also considers that the current settings can create challenges for New Zealand's ability to attract experienced directors to growth companies. Individuals with relevant commercial, investment or governance experience may weigh the personal liability exposure against the benefits of taking on a director role. This is particularly relevant for companies seeking to build boards with experienced independent directors as they transition from founder-led businesses to more sophisticated governance structures.

The potential impact should also be considered in the context of New Zealand's broader capital-market objectives. If liability settings make it more difficult or costly to recruit directors, or encourage companies and investors to favour private capital-raising structures over public markets, this can weaken the progression of businesses through the capital and equity ladder.

AANZ notes that the Government's consultation paper identifies similar concerns, including increased due diligence, assurance, governance and insurance costs, difficulties in recruiting suitably qualified directors and the risk that directors focus disproportionately on detailed compliance processes rather

	than strategic governance. We consider these to be credible concerns that warrant further consideration. The international context also supports reviewing whether New Zealand's settings remain appropriately calibrated. The consultation paper notes that the OECD has characterised New Zealand's director liability settings as onerous and identifies differences between New Zealand and other comparable markets, including Australia. While international comparisons need to be treated carefully given differences in legal and market environments, they indicate that strong director accountability can be achieved through mechanisms other than deemed liability. AANZ's experience in the early-stage investment ecosystem indicates that director capability and willingness to participate are important constraints on the development of growing businesses. Experienced directors and investors are often being asked to take on roles in businesses where the governance infrastructure is still developing and where the commercial and operational risks are already significant. In this environment, a liability framework that attributes a company's contravention to every director unless a statutory defence can subsequently be established may add a further layer of personal risk that is difficult to justify where the individual director has not been personally at fault. AANZ considers that the relevant question should therefore be whether the liability framework appropriately distinguishes between: • a director who has acted appropriately, taken reasonable steps and engaged meaningfully in the company's disclosure and financial reporting processes; and • a director who has failed to discharge their responsibilities, acted negligently or recklessly, or has knowingly participated in a contravention. In our view, there is a material difference between these circumstances, and the liability framework should recognise that difference. AANZ does not advocate reducing accountability for directors who fail to meet their obligations. Rather, we consider that personal civil liability should be more connected to the conduct and level of fault of the individual director.
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? AANZ considers civil liability settings to be a significant, although not standalone, factor affecting decisions about whether businesses and their directors participate in New Zealand's public markets. AANZ does not suggest that civil liability settings are the primary reason companies choose not to list, remain private or seek capital offshore. Factors such as market depth and liquidity, access to private capital, listing and ongoing compliance costs, investor demand and broader economic conditions are likely to have a greater direct influence on those decisions. However, AANZ considers that civil liability settings are an important part of the overall cost-benefit assessment of public-market participation. In particular, the potential personal liability exposure for directors can compound the other costs and risks associated with listing and may influence both a company's decision to list and the willingness of experienced individuals to serve as directors. For a smaller or growth-stage company, the decision to list is already influenced by a range of factors, including: • the cost and complexity of the initial listing process. • ongoing compliance and reporting obligations. • the availability and cost of alternative private capital.

	• the depth and liquidity of the public market. • the ability to attract sufficient investor and analyst attention. • the company's ability to justify the ongoing costs of being publicly listed; and • broader economic and market conditions. Against this backdrop, additional personal liability exposure for directors can become a further consideration when assessing whether the benefits of public-market participation justify the associated costs and risks. For a large, well-established company with substantial investor coverage and liquidity, the incremental cost and risk associated with director liability may be less significant. For a smaller growth company, however, fixed compliance costs and director liability exposure can represent a much greater proportion of the overall cost of accessing public capital. This is particularly relevant to the development of an effective equity capital pathway in New Zealand. Smaller companies need access to a range of funding options as they move from angel and venture investment towards growth capital and public markets. If the combined costs and risks of listing are perceived to be too high relative to the capital that can realistically be raised, companies may remain private for longer, seek offshore markets or rely on alternative forms of capital. The decision to list is made by a company, but the associated liability framework can also influence the individuals required to govern that company. A business may be willing to accept the costs of listing, but if it is unable to attract suitably experienced directors because of the perceived personal liability exposure, this can affect the overall attractiveness and feasibility of public-market participation. The issue is therefore not simply the direct financial cost of civil liability. As set out in our response to Question 2.1, this exposure compounds the other costs of public-market participation — not only in direct financial terms, but in how it shapes governance behaviour and board recruitment. AANZ considers that reforms to civil liability settings should therefore be viewed as one part of a broader programme to strengthen New Zealand's public equity markets. Changes to liability settings will not, on their own, resolve issues such as limited market depth, liquidity or analyst coverage. These require broader market and policy responses. However, appropriately calibrated liability settings could remove an unnecessary barrier and reduce the cumulative cost and risk associated with public-market participation. AANZ's view is that the objective should be to ensure that New Zealand's liability framework does not make public-market participation materially less attractive than comparable jurisdictions without delivering a commensurate increase in investor protection. In this context, AANZ considers that proportionate civil liability settings are an important enabling condition for a stronger public-market ecosystem, alongside measures to improve liquidity, market depth, access to capital and the overall attractiveness of listing in New Zealand.
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. AANZ's preferred position is that continuous disclosure liability move to a fault-based standard, consistent with our answer to Question 2.10; if Government does not adopt that broader change, our fallback within the current framework would be Option B(ii), strengthening the statutory defences. AANZ considers that directors should remain accountable for their responsibilities in relation to continuous disclosure. However, the liability framework should appropriately distinguish between directors who have failed to discharge those responsibilities and directors who have acted diligently, taken reasonable steps and relied appropriately on the company's disclosure processes and information.

	In AANZ's view, the current settings may create a degree of personal liability risk that is disproportionate to the conduct of an individual director, particularly where liability depends on a director being found to have been involved in an issuer's contravention. As with the broader concerns set out in our response to Question 2.1, this uncertainty can push directors toward overly cautious, defensive disclosure rather than sound commercial judgement. AANZ considers that clearer and more effective statutory defences would provide a better balance between investor protection and director accountability. Directors who have taken reasonable steps to ensure compliance and have reasonable grounds for believing the issuer is complying should have greater certainty that they will not face personal civil liability simply because the issuer subsequently breaches its continuous disclosure obligations. This is particularly important because continuous disclosure operates in an environment where directors are required to make decisions about materiality, timing and the interpretation of information, often in circumstances of considerable uncertainty. A liability regime should not create incentives for directors to disclose defensively simply to minimise personal exposure. AANZ is not suggesting that directors who knowingly, recklessly or negligently contribute to a disclosure contravention should be protected from liability. Rather, the framework should ensure that personal liability is appropriately connected to the individual's conduct and level of responsibility. AANZ considers that strengthening and clarifying the statutory defences would also provide greater certainty for boards and prospective directors when assessing the risks associated with public-market participation. AANZ recognises that any change to the liability settings must preserve investor confidence in the quality and timeliness of market disclosure. We therefore favour a targeted reform that maintains meaningful accountability for directors who contribute to or knowingly participate in a contravention, while providing greater protection for those who have taken reasonable steps to comply. Consistent with the position set out above, and as a fallback should Government not adopt the broader fault-based reform addressed in Question 2.10, AANZ's position is Option B(ii): strengthening and clarifying the statutory defences.
2.4	Do you have a preference not reflected in the options in relation to continuous disclosure contravention for directors and other persons? AANZ does not have a preference beyond the options outlined. Our fallback position, should Option G(iii) not be adopted, is Option B(ii), as set out above.
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? AANZ considers that the Government should also consider the practical and behavioural effects of the liability regime, particularly on director recruitment, governance behaviour and the overall cost of participating in New Zealand's public markets. As set out in our response to Question 2.1, this behavioural effect operates independently of enforcement outcomes: the deterrent extends even to directors who would be found blameless, since the cost is incurred in anticipation of exposure, not only where liability is proven. The Government should therefore consider not only the incidence of actual enforcement, but also the behavioural effect of the liability settings. A regime can impose significant costs through additional legal advice, assurance, documentation and governance processes even where no contravention occurs. AANZ is also concerned about the potential for liability settings to encourage defensive disclosure. While timely and comprehensive disclosure is fundamental to market integrity, disclosure driven primarily by a desire to minimise personal liability may result in excessive or unnecessarily cautious disclosure. This can

	increase compliance costs for issuers and make it more difficult for investors to distinguish genuinely material information from information disclosed primarily as a precaution. The interaction with Directors and Officers (D&O) insurance is also relevant. The availability and cost of D&O insurance can influence both the willingness of experienced directors to participate in public companies and the overall cost of governance. Changes to liability settings should therefore be considered in terms of their practical impact on insurance availability and premiums, rather than focusing solely on the legal liability that arises following a contravention. AANZ also considers that the Government should assess the cumulative effect of liability settings alongside the other costs of public-market participation. Civil liability is unlikely to be the sole reason a company chooses not to list, but it can add to the costs and risks associated with listing, including initial listing costs, ongoing compliance, reporting obligations and limited market liquidity. This is particularly important for smaller and growth-stage companies. For these businesses, fixed compliance and governance costs can represent a materially greater proportion of the benefits of accessing public capital than they do for larger issuers. Finally, AANZ considers that any reform should preserve a clear distinction between directors who have taken reasonable steps to discharge their responsibilities and those who have knowingly, recklessly or negligently contributed to a contravention. The objective should be to maintain strong incentives for directors to engage actively in disclosure processes without creating disproportionate personal risk for directors who have acted appropriately. AANZ therefore encourages the Government to consider the real-world behavioural, recruitment, insurance and cost impacts of the liability regime, in addition to its effect on formal enforcement outcomes. In our view, a well-calibrated regime should promote high-quality and timely disclosure while enabling directors to exercise appropriate judgement without an undue incentive towards defensive governance.
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. AANZ supports Option C – retaining the current strict civil liability settings for issuers in relation to continuous disclosure contraventions. While AANZ has identified concerns regarding the proportionality of personal liability for directors, we consider there is an important distinction between the liability of an individual director and the liability of the issuer itself. From an investor perspective, timely, accurate and complete disclosure is fundamental to the integrity and effectiveness of a public market. Investors need confidence that material information affecting the value of their investment will be disclosed to the market promptly and consistently. AANZ considers that retaining strict liability for the issuer provides an important incentive for listed companies to maintain effective systems, processes and governance arrangements to identify and disclose material information. Importantly, it places responsibility on the party best positioned to establish and control those systems. Moving to a fault-based standard for issuers could make it more difficult for investors or regulators to establish liability following a failure to disclose material information. It could also create uncertainty around the circumstances in which an issuer would be liable, potentially weakening the incentive for timely disclosure. AANZ recognises the concerns identified in the consultation paper that strict liability may contribute to defensive disclosure and increased compliance costs. However, we consider these concerns need to be

	balanced against the importance of maintaining investor confidence in the integrity of New Zealand's public markets. We therefore do not consider that moving to a fault-based standard for issuers is necessary to address the concerns identified in relation to director liability. In AANZ's view, those concerns can be more appropriately addressed through the separate settings applying to directors and other individuals. AANZ considers that the distinction between issuer and director liability is important: • The issuer should retain a high level of responsibility for ensuring that material information is identified and disclosed to the market. • Directors should be accountable for their own conduct and contribution to disclosure processes but should not face disproportionate personal liability where they have taken reasonable steps to discharge their responsibilities. This approach maintains a strong incentive for issuers to provide timely and reliable information to investors while allowing the director liability settings to be calibrated more proportionately. AANZ also considers that the potential compliance costs associated with strict liability should be addressed, where appropriate, through clearer guidance, effective statutory defences and proportionate disclosure expectations rather than by removing strict issuer liability altogether. We consider that the investor-protection benefits of maintaining a clear and strong obligation on issuers to disclose material information outweigh the potential benefits of moving to a fault-based standard. This position should be distinguished from AANZ's position on individual director liability. AANZ considers there is a strong case for reviewing deemed and personal director liability to ensure it is proportionate to the individual's conduct, while retaining strong issuer-level accountability for the quality and timeliness of information provided to investors. In our view, this provides an appropriate balance between investor protection, market integrity and proportionate director accountability, while recognising the importance of maintaining an attractive and functioning public equity market in New Zealand.
2.7	Do you have a preference not reflected in the options in relation to continuous disclosure contravention for issuers? No. AANZ's preferred approach is Option C, as outlined above.
2.8	Are there any other issues or impacts the Government should consider in relation to liability for continuous disclosure contraventions for issuers? AANZ considers that the Government should take into account the broader impact of issuer liability on investor confidence, market integrity and the attractiveness of New Zealand's public markets. From an investor perspective, the primary benefit of continuous disclosure is that it provides confidence that all investors have timely and equal access to material information that may affect the value of their investment. Maintaining clear accountability for issuers is therefore important to the integrity and effectiveness of the public market. AANZ recognises the concern that strict liability may contribute to defensive disclosure and increased legal and compliance costs for issuers. However, we consider that these potential costs need to be weighed against the risk that weakening issuer liability could reduce the quality, timeliness or consistency of information available to investors. In particular, the Government should consider whether any move away from strict liability could: • reduce incentives for issuers to maintain robust systems and processes for identifying and disclosing material information;

- increase uncertainty for investors about whether material information will be disclosed promptly.
- make enforcement and investor remedies more difficult where a material disclosure failure occurs; or
- reduce confidence in the fairness and transparency of New Zealand's public markets.

AANZ considers that the potential for defensive disclosure is better addressed through clearer guidance around materiality, disclosure expectations and appropriate processes, rather than by weakening the fundamental accountability of the issuer.
There is also an important distinction between the impact of strict liability on the issuer and its impact on individual directors. AANZ considers that the concerns around personal liability and director behaviour can be addressed through appropriate reform of the director liability settings, without reducing the issuer's responsibility for ensuring that its disclosure obligations are met.

AANZ therefore encourages the Government to consider the cumulative regulatory cost of public-market participation, particularly for smaller issuers, while maintaining a strong issuer-level obligation to provide timely and reliable information to investors.

In AANZ's view, the objective should be to ensure that continuous disclosure requirements are clear, proportionate and practical to comply with, while retaining sufficient issuer accountability to protect investors and maintain confidence in the market.

2.9

Do you think changes to deemed director liability should be considered in relation to all markets, or for NZX only?

AANZ considers that changes to deemed director liability should be considered across all markets to which the current deemed liability provisions apply, rather than being limited to NZX-listed issuers.

The underlying concern identified by AANZ is one of proportionality: directors should not face personal civil liability simply because an issuer has contravened an obligation, where there is no evidence of personal fault, involvement or failure to discharge their responsibilities.

That principle applies regardless of the market through which an issuer accesses capital. Indeed, the issue may be particularly significant for smaller and growth-stage businesses, where the fixed costs and personal risks associated with director participation can have a greater impact on the company's ability to attract experienced governance capability.

AANZ therefore considers that limiting reform to NZX would risk creating an inconsistent framework in which directors of otherwise comparable businesses face materially different personal liability depending on the market in which the company operates.

However, AANZ does not consider that this necessarily means identical liability settings should apply across every market. The nature of the market, the scale of the issuer, the amount of capital raised, the number and type of investors, and the nature of the relevant disclosure obligation should all be relevant when determining the appropriate level of assurance and accountability.

AANZ would therefore favour a consistent underlying principle across markets, with proportionate application according to the characteristics and risk of the particular market and issuer.

In particular, AANZ considers that:

- deemed liability should not be used as a substitute for establishing an individual director's responsibility or fault.
- directors should remain subject to clear positive duties to exercise appropriate oversight of disclosure and financial reporting.
- personal civil liability should generally be linked to the director's own conduct, including negligence, recklessness, knowledge or other appropriate fault thresholds.

- appropriate statutory defences should be available where a director has taken reasonable steps to discharge their responsibilities; and
- any differences between markets should be based on genuine differences in investor protection needs and market characteristics, rather than simply listing status.

AANZ considers this approach would provide greater consistency and certainty for directors while supporting the broader objective of encouraging experienced governance capability to participate in New Zealand's growth companies and capital markets.

AANZ therefore supports the Government considering reform of deemed director liability across all relevant markets, rather than restricting the review to NZX.

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.

AANZ supports Option G(iii): removing deemed director liability and replacing it with fault-based liability for both disclosure and financial reporting contraventions.

AANZ considers that personal liability for directors should generally be based on the director's own conduct, rather than arising automatically from a contravention by the issuer. The current deemed liability framework can expose directors to significant personal risk even where there is no evidence that the director was personally at fault or failed to discharge their responsibilities appropriately.

AANZ considers this creates several undesirable consequences. As set out in our response to Question 2.1, deemed liability's practical effects on compliance and insurance costs, on governance behaviour, and on the recruitment of growth-company boards are, in AANZ's view, sufficient reason to move to a fault-based standard. These costs and risks can be particularly significant for smaller and growing businesses, where governance resources are more constrained.

AANZ therefore considers that fault-based liability provides a more appropriate basis for individual director accountability. Directors who knowingly, recklessly, negligently or otherwise culpably contribute to a contravention should remain appropriately exposed to liability. However, directors who have exercised appropriate oversight, taken reasonable steps and acted within their responsibilities should not be deemed liable solely because the issuer has contravened a disclosure or financial reporting obligation.

AANZ prefers G(iii), rather than treating disclosure and financial reporting separately, because the underlying principle is the same: individual liability should reflect an individual's conduct and responsibility. While the nature of the underlying obligations differs, a consistent fault-based approach would provide greater clarity and reduce the complexity and uncertainty associated with different liability regimes.

AANZ considers that moving to fault-based liability should be accompanied by clear positive duties for directors and appropriate statutory defences, so that directors understand the standard of conduct expected of them and can demonstrate that they have taken reasonable steps to discharge their responsibilities.

Importantly, AANZ's preference for fault-based director liability should not be interpreted as support for reducing accountability at the issuer level. Companies should continue to have strong obligations in relation to disclosure and financial reporting, with appropriate consequences where those obligations are not met. The distinction is between issuer accountability and automatic attribution of liability to individual directors.

Overall, AANZ considers that Option G(iii) would provide a more proportionate framework that maintains meaningful director accountability while reducing unnecessary personal risk, defensive governance and compliance costs. It would also support the ability of growth companies to attract experienced directors and participate in New Zealand's capital markets.

2.11	Do you have a preference not reflected in the options in relation to deemed director liability? No. AANZ's preferred approach is Option G(iii), as outlined above.
2.12	Do you have other comments on what the Government should consider in relation to deemed director liability? AANZ considers that the Government should assess deemed director liability in the context of the broader personal liability framework applying to directors under the Companies Act 1993. In AANZ's view, it is important that the cumulative effect of these provisions is considered when assessing whether the overall regulatory settings are appropriately calibrated to attract capable directors to growth companies. Several provisions of the Companies Act are particularly relevant: • Section 4 – solvency: establishes the statutory tests for solvency, including whether a company can pay its debts as they fall due and whether the value of its assets exceeds its liabilities. These tests are fundamental to the operation of the Companies Act and to directors' responsibilities when assessing the company's financial position. • Section 135 – reckless trading: prohibits directors from allowing a company to be operated in a manner that is likely to create a substantial risk of serious loss to creditors. • Section 136 – incurring obligations: requires directors to have reasonable grounds to believe that a company will be able to perform an obligation before the company incurs it. • Section 301 – personal liability and enforcement: provides significant enforcement mechanisms where a company is in liquidation, including the ability for the court to order directors to personally repay or contribute money where their conduct has breached relevant duties and contributed to loss. AANZ considers these provisions provide substantial existing protections for creditors and mechanisms for personal director accountability. The Government should therefore consider the interaction between these Companies Act provisions and the deemed liability provisions under the Financial Markets Conduct Act, rather than considering each liability regime in isolation. AANZ also considers the structure of sections 135 and 136 is relevant to this discussion. Unlike comparable provisions in Australia and the United Kingdom, these duties sit within New Zealand's general framework of directors' duties rather than being confined to the insolvency provisions of the Companies Act. This means that New Zealand directors need to identify and manage the risk of breaching these duties before a company is necessarily formally insolvent. For directors of growth and early-stage companies, this distinction is important. Such companies frequently operate in environments of significant uncertainty and may require boards to make decisions involving genuine commercial risk, additional capital investment or restructuring. A framework that exposes directors to significant personal liability for decisions that are ultimately unsuccessful may encourage overly conservative or defensive decision-making, including exiting or liquidating a business earlier than may otherwise be commercially appropriate. AANZ does not question the importance of these protections or the need for directors to be accountable where their conduct is reckless or otherwise culpable. However, the way these provisions are structured can create a significant impediment to directors participating in growth and early-stage companies, where commercial decisions necessarily involve uncertainty, investment ahead of revenue and the possibility that a business will not ultimately succeed. AANZ therefore encourages the Government to consider the cumulative liability environment facing directors, including the interaction between the Companies Act and Financial Markets Conduct Act. Greater alignment around fault-based liability, appropriate statutory defences and protection for informed business judgement would help ensure that New Zealand maintains strong creditor and investor protections while also creating an environment capable of attracting experienced directors to growth companies.

In AANZ's view, this balance is important not only for individual directors, but for the quality of governance and capital allocation across New Zealand's growth-company ecosystem. Better-calibrated personal liability can support better boards, stronger companies and greater willingness to make informed decisions in pursuit of growth, while preserving meaningful consequences for genuinely culpable conduct.

AANZ considers there is merit in ensuring that this broader framework strikes an appropriate balance between accountability and encouraging sound business judgement, responsible risk-taking and entrepreneurship. Beyond the recruitment effects discussed in our response to Question 2.1, an overly broad liability regime also shapes decisions after directors are already on the board, encouraging conservative capital allocation and risk-averse strategy at the expense of growth.

This is particularly relevant for growth companies, where boards with genuine operating, commercial and risk experience can add significant value. AANZ is concerned that overly broad or automatic personal liability can make it more difficult to attract experienced directors, including internationally experienced directors, to New Zealand companies.

AANZ therefore encourages the Government to consider whether the overall liability framework is appropriately calibrated to distinguish between poor or culpable director conduct and legitimate commercial decisions that carry inherent risk. Moving from deemed to fault-based liability for disclosure and financial reporting would be an important step in this direction.

A better-calibrated framework would maintain strong accountability while supporting boards to exercise informed business judgement, attract high-quality governance capability and allocate capital effectively. In AANZ's view, this ultimately contributes to stronger companies, improved productivity and greater economic prosperity for New Zealand.

2.13

Are there international models you would like the Government to consider?

AANZ considers that the Government should look closely at international models that seek to balance director accountability with appropriate commercial judgement, responsible risk-taking and business rescue.

In particular, AANZ considers the following models relevant:

- United States — Delaware: The Delaware business judgment rule provides a strong protection for informed, good-faith commercial decisions, with courts generally reluctant to substitute hindsight for directors' judgement. Intervention is focused on matters such as fraud, bad faith, conflicts of interest or genuine breaches of fiduciary duty. The broader US framework, including Chapter 11, also supports a culture of restructuring and business rescue rather than making failure itself the basis for personal liability.
- Australia: Section 180(2) of the Corporations Act provides a statutory business judgment rule, protecting directors from hindsight-based assessment of the duty of care where the relevant conditions are met. Australia has also introduced a separate safe harbour under section 588GA for directors pursuing a credible course of action that is reasonably likely to lead to a better outcome than immediate liquidation. AANZ considers the combination of these protections particularly relevant to New Zealand because it recognises both the importance of sound commercial decision-making and the need to give directors appropriate scope to attempt to rescue businesses experiencing financial distress.
- United Kingdom: The UK's wrongful trading provisions under section 214 of the Insolvency Act 1986 operate at a later stage than New Zealand's equivalent provisions, with the focus on when a director knew or ought to have concluded that insolvent liquidation could not reasonably be avoided. The UK's restructuring moratorium also provides businesses with breathing space to pursue a rescue before creditor enforcement proceeds.

	AANZ considers these approaches relevant because New Zealand currently has neither a statutory business judgment rule nor a comparable safe harbour for directors pursuing a responsible restructuring strategy, while the trigger points for director liability under sections 135 and 136 of the Companies Act can arise earlier than comparable provisions in Australia and the UK. AANZ is not suggesting that New Zealand should adopt any overseas model wholesale. However, the Government should consider whether elements of these approaches could provide greater protection for directors who make informed, good-faith commercial decisions or take reasonable steps to rescue a viable business, while retaining strong consequences for fraud, bad faith, conflicts of interest, reckless conduct and other genuine breaches of directors' duties. In AANZ's view, the objective should be a liability framework that protects creditors and investors without creating incentives for directors to prioritise avoiding personal liability over making sound commercial decisions, investing for growth or attempting to rescue businesses facing temporary financial distress.
2.14	Please share any other comments, evidence or data you have on civil liabilities. AANZ considers that the Government should assess civil liability settings not only by reference to legal accountability, but also by their practical impact on director behaviour, board composition, governance costs and companies' willingness to pursue growth and restructuring opportunities. AANZ considers it important that additional liability regimes do not inadvertently create cumulative or disproportionate personal risk, particularly for directors of growth companies operating in inherently uncertain environments. New Zealand's framework does not currently contain a statutory business judgment rule or a specific safe harbour for directors seeking to responsibly manage financial distress, unlike some comparable jurisdictions. AANZ encourages the Government to consider the broader economic effects of these settings, including whether they discourage experienced directors from joining boards, increase legal, assurance and insurance costs, or encourage overly conservative or defensive decision-making. The objective should be to maintain strong accountability for fraud, recklessness, negligence and other culpable conduct, while giving directors appropriate scope to exercise informed commercial judgement. AANZ's broader concern is that liability settings should encourage better governance, rather than governance primarily focused on avoiding personal exposure. A well-calibrated framework should help attract experienced directors, support responsible risk-taking and business rescue, and ultimately contribute to stronger and more productive New Zealand companies.
3.	**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. AANZ's answers in this section distinguish between market capitalisation — a poor proxy for risk, which we do not support as a gatekeeping test — and the amount raised or size of the investor base, which we consider a better proxy and continue to support as a basis for specific requirements such as audit obligations. AANZ supports a review of the current thresholds applying to Catalist. In our view, the existing thresholds may unnecessarily constrain the role Catalist can play in supporting New Zealand businesses through different stages of their growth and capital journey. We agree that there is a compelling case for reconsidering the assumptions underpinning the current thresholds, particularly given the experience of the market since its establishment.

	AANZ is aware of businesses that may exceed the current $60 million market capitalisation threshold but for whom Catalist could nevertheless provide an appropriate and valuable source of growth capital and liquidity. These businesses may not consider the NZX to be an appropriate alternative, particularly where the costs and obligations of a full NZX listing are disproportionate to the size and stage of the business. The original rationale for the $60 million threshold was based, in part, on an expectation about the types of businesses that would benefit from a market designed to raise up to $20 million annually. AANZ considers there is merit in revisiting that assumption based on the experience of Catalist to date and the needs of the businesses and investors it is intended to serve. AANZ also considers that Catalist should not be viewed solely as a step-up market to the NZX. While providing a pathway for growing companies to transition to the NZX remains important, there is also a legitimate role for Catalist as a step-down market for businesses that no longer require (or are not suited to) the full requirements of an NZX listing but would continue to benefit from the liquidity, transparency and capital access associated with being listed. Removing or increasing the current size threshold could enable Catalist to fulfil this role more effectively and provide businesses with greater flexibility as their circumstances and capital requirements change. AANZ considers that the current step-up from Catalist to NZX can be too significant for smaller issuers. The costs, compliance obligations and ongoing requirements associated with an NZX listing may outweigh the benefits for businesses that remain small, particularly where there is limited investor coverage, research or liquidity. This is particularly relevant in the context of New Zealand's small capital market and reduced broker coverage of smaller companies. The result can be that smaller businesses receive limited investment, research coverage or investor attention on NZX, which can undermine the benefits of listing. In this context, enabling suitable companies to remain on Catalist for longer could provide a more appropriate and sustainable listing environment, rather than creating an artificial requirement to transition to a larger market before the business or investor base is ready. Overall, AANZ considers that the Catalist thresholds should be reviewed to ensure they reflect the market's actual role and the needs of New Zealand businesses and investors, rather than being constrained by assumptions made at the time the market was established. A more flexible threshold framework would enable Catalist to support businesses at different stages of their lifecycle; from growing companies seeking access to capital, through to established businesses seeking continued liquidity, while providing a more proportionate alternative to the costs and obligations of an NZX listing. AANZ therefore supports increasing or removing the current thresholds where there is a clear rationale to do so, while retaining appropriate safeguards to ensure Catalist remains an effective, credible and appropriately regulated market. The issue isn't simply that the $60m threshold is too low; it's that Catalist's role has evolved and the regulatory framework should reflect how businesses actually use the market.
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?
	AANZ considers that the original policy rationale for Catalist remains sound, but that there is a strong case for expanding its intended role beyond its original conception as a stepping-stone market for small growth companies seeking to raise between $2 million and $20 million. The fundamental market failure that Catalist was designed to address remains relevant. New Zealand companies can face a significant funding gap as they move beyond early-stage and angel investment but

are not yet of a scale, maturity or capital requirement where an NZX listing is appropriate. The costs, compliance requirements and limited liquidity associated with a full public market listing can be disproportionate for smaller issuers, while private capital alone may not provide the scale or liquidity required to support their next stage of growth.

In AANZ's view, Catalist should therefore be considered as part of the equity ladder set out in our response to Question 0.1, rather than solely as a transitional market on the way to NZX.

AANZ considers there is merit in enabling Catalist to support a broader range of businesses, including:

- early growth companies that have progressed beyond angel and early-stage investment but are not yet ready for an NZX listing.
- established SMEs seeking growth capital, where a public market provides an appropriate source of capital and liquidity, but the scale of an NZX listing is disproportionate.
- companies that have reached or exceeded the current thresholds but continue to benefit from the lower-cost and proportionate structure of Catalist; and
- businesses seeking a longer-term listing environment, including companies that may be better suited to remaining on Catalist rather than transitioning to NZX.

We also see a potential role for Catalist as a step-down market for businesses that are no longer suited to the scale or requirements of NZX but would continue to benefit from the transparency, liquidity and access to capital that a public market provides.

This would give businesses greater flexibility to move between different forms of capital as their needs evolve, rather than creating an artificial requirement to move to a larger market once a particular threshold is reached.

AANZ considers that the regulatory concessions underpinning Catalist remain justified, provided they continue to be appropriately calibrated to the characteristics and risks of the issuers and investors using the market.

The rationale for a proportionate regulatory framework has not fundamentally changed. Smaller issuers typically have more limited resources and face higher relative compliance costs than larger companies. Requiring them to meet the full suite of regulatory and market obligations applicable to substantially larger listed businesses can impose costs that are disproportionate to the risks being addressed.

Catalist's periodic trading model, proportionate disclosure regime and ability to make smaller offers without the full regulated offer requirements were designed to recognise these differences. AANZ considers this approach remains consistent with the Act's objective of encouraging a diversity of financial product markets that reflects the unique needs and objectives of issuers and investors.

Importantly, AANZ does not consider that expanding Catalist's role should mean reducing investor protections. Rather, the objective should be to apply the proportionality principle set out earlier in this submission — ensuring the level of regulation matches the actual risk of the issuer and the raise.

AANZ believes there is an opportunity to position Catalist as an important part of New Zealand's broader growth capital ecosystem.

The success of the market should not necessarily be measured solely by the number of companies that graduate from Catalist to NZX. For some businesses, remaining on Catalist may be the most appropriate long-term outcome. Equally, a company that has outgrown the original parameters of Catalist may not necessarily be better served by being required to move to NZX if the costs and obligations of doing so outweigh the benefits.

A more flexible approach would allow the market to respond to the actual needs of issuers and investors, while maintaining appropriate regulatory safeguards.

	AANZ therefore supports expanding the original policy rationale for Catalist from a narrowly defined stepping-stone market to a proportionate public market for New Zealand growth businesses that sit between private early-stage capital and the larger NZX market. We consider that this would better reflect the realities of New Zealand's capital markets, provide businesses with greater access to growth capital and liquidity, and reduce the barriers businesses face as their capital needs increase. The original rationale for hard thresholds and differentiated obligations was understandable. However, the key policy question now is whether those settings remain appropriately calibrated or whether they have become blunt barriers to participation. AANZ considers that the thresholds should not be viewed as defining the point at which a company ceases to be an "early growth" business. The appropriate regulatory framework should instead reflect the characteristics, scale and risks of the issuer and the needs of its investors, recognising that capital requirements can vary significantly between businesses and sectors.
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? AANZ supports Option D – removal of both the entry and exit thresholds for Catalist. We consider that the current market capitalisation thresholds are no longer necessary to achieve the underlying policy objective of Catalist and may, in fact, constrain the development of New Zealand's capital markets by limiting the options available to businesses and investors. The original rationale for Catalist – to provide a proportionate, lower-cost public market for smaller growth companies that are not yet ready for NZX remains valid. However, we do not consider that the size of a company should determine whether Catalist is an appropriate market for it. The more relevant consideration is whether the market provides an appropriate regulatory and capital-raising environment for the issuer, its investors and the amount of capital being raised. Removing the thresholds would allow Catalist to fulfil a broader role as a complementary market to NZX, providing businesses with greater choice as they move through different stages of growth. AANZ considers that the size of an issuer and the amount it seeks to raise are distinct considerations. A larger, established business may have a modest capital requirement, while a smaller growth company may need to raise a significant amount of capital to fund its next stage of development. Where a larger company is seeking to raise less than the existing $20 million Catalist limit, it may be entirely appropriate for that company to consider a market with Catalist's proportionate regulatory settings. Preventing access solely because the company's market capitalisation exceeds $60 million does not necessarily provide greater protection to investors. In our view, the risks associated with a particular capital raising are better assessed by considering the nature and scale of the offer, the characteristics of the investors and the information available to the market, rather than applying an arbitrary market-capitalisation threshold. Removing the thresholds would therefore allow the regulatory settings to be more closely aligned with the underlying risk and purpose of the capital raising. Removing the entry threshold would expand the pool of businesses that could consider Catalist as a source of public capital. This would be particularly valuable for businesses that have achieved a level of scale beyond the current $60 million threshold but for whom an NZX listing may still be disproportionate to their capital requirements, stage of development or investor base. For these businesses, Catalist could provide a lower-cost and more proportionate pathway to public capital and liquidity without requiring them to take on the full costs and obligations associated with an NZX listing. It could also encourage more businesses to consider a public-market pathway at an earlier stage, rather than remaining private for longer because the available public-market options do not align with their circumstances.

Removing the exit threshold would similarly provide greater flexibility to companies already listed on Catalist. Businesses should not be required to leave a market simply because they have grown beyond an arbitrary market-capitalisation threshold if Catalist continues to meet their capital and liquidity requirements. This could also allow Catalist to fulfil a broader step-down role for businesses that have previously been listed on NZX but for whom the scale and cost of remaining on NZX is no longer appropriate.

For investors, removing the thresholds would increase the range of investment opportunities available through Catalist. Importantly, this would not necessarily mean that investors are being exposed to greater risk simply because an issuer is larger. Larger businesses may, in many cases, have more established operations, financial histories and governance structures than smaller growth companies. Investors would continue to make decisions based on the information available about the issuer, its financial position, strategy, governance and prospects. Catalist's regulatory framework and market rules would continue to provide the relevant protections. Greater choice may also improve liquidity and diversification opportunities for investors by increasing the range of businesses able to access the market.

AANZ considers that investor protection is best supported through clear disclosure, appropriate market conduct requirements and proportionate regulation, rather than through a market-capitalisation threshold that may prevent otherwise suitable issuers from accessing the market.

AANZ considers that removing both the entry and exit thresholds would represent an evolution, rather than a departure from, the original policy rationale for Catalist.

The objective should remain to provide a proportionate public market that meets the needs of issuers and investors that may not be well served by the full NZX model. However, the market should have sufficient flexibility to serve businesses according to their individual circumstances rather than being constrained by arbitrary market-capitalisation limits.

We do not consider that this would weaken New Zealand's capital markets or undermine NZX. On the contrary, providing businesses with a greater range of appropriate capital-market options should strengthen the overall ecosystem, increase the number of businesses able to access public capital, support greater investor participation and reduce the likelihood of businesses exiting public markets altogether when their circumstances change.

AANZ therefore supports the removal of both the $60 million entry threshold and the $100 million exit threshold. We consider this would create a more flexible, proportionate and sustainable public-market framework that better reflects the diversity of New Zealand businesses, and the different capital and liquidity needs they have as they grow and evolve.

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?

AANZ does not consider that any resulting movement between the two markets would be a harmful outcome. Rather, we believe the two markets can play complementary roles within a stronger and more diverse New Zealand capital-market ecosystem.

The retention of Catalist's $20 million capital-raising limit provides a natural distinction between the two markets. Companies requiring access to larger amounts of public capital will continue to have a strong incentive to consider NZX, while companies whose capital requirements are more modest may find Catalist better suited to their needs.

Importantly, AANZ does not believe that a company choosing Catalist over NZX should necessarily be viewed as a failure of the NZX market. Different businesses have different requirements, and providing a broader range of appropriate market options should strengthen participation and confidence in New Zealand's capital markets. A functioning capital market should provide businesses with appropriate

	options at various stages of their development, rather than requiring all businesses to fit within a single market structure. AANZ acknowledges the FMA's concern that removing the exit threshold could potentially result in companies moving from NZX to Catalist. However, we do not consider this should be viewed as a negative outcome. If a company determines that Catalist is a more appropriate market for its current size, capital requirements and investor base, enabling that company to move to a proportionate market may be preferable to the company withdrawing from public markets altogether. Moreover, the availability of Catalist as an alternative may encourage companies to remain within New Zealand's public-market ecosystem rather than delisting entirely when the costs or requirements of NZX become disproportionate.
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? AANZ supports removing the current entry and exit thresholds and does not consider that significant additional safeguards are necessary as a consequence. In our view, the removal of the market-capitalisation thresholds should not be treated as a material reduction in investor protection. The thresholds are primarily a measure of the size of the issuer rather than the risk associated with a particular capital raising. A larger company may, for example, have a more established financial history, stronger governance and greater disclosure capability than a smaller early-stage issuer. We therefore consider that investor protection should continue to be primarily achieved through Catalist's existing market rules, disclosure requirements, governance requirements and oversight, rather than introducing additional requirements based solely on an issuer's market capitalisation. That said, AANZ recognises the need to ensure that removing the thresholds does not create opportunities for regulatory arbitrage or undermine investor confidence. We consider that the following safeguards would be appropriate: <u>Retain the existing $20 million capital-raising limit</u> The $20 million annual capital-raising limit provides an important distinction between Catalist and NZX and should be retained. This ensures that removing the market-capitalisation thresholds does not simply create an alternative market for larger-scale capital raising. <u>Maintain appropriate disclosure and market conduct requirements</u> Issuers should continue to be subject to the disclosure, governance and market conduct requirements applicable to Catalist. These requirements should be reviewed periodically to ensure they remain appropriate as the range of issuers using the market evolves. The focus should be on ensuring investors have access to sufficient, timely and reliable information to make informed investment decisions, rather than imposing additional requirements simply because an issuer exceeds a particular market-capitalisation level. <u>Monitor for regulatory arbitrage</u> AANZ supports the FMA and NZX monitoring the composition and behaviour of issuers using Catalist following any removal of the thresholds. This could include monitoring whether issuers are structuring capital raisings or corporate transactions specifically to avoid requirements that would otherwise apply on NZX. We would favour monitoring and targeted intervention where evidence of arbitrage emerges, rather than imposing broad restrictions on all issuers in anticipation of a problem that may not materialise. <u>Maintain clear eligibility and suitability requirements</u>

	Catalist should continue to have clear requirements around issuer eligibility, governance, financial reporting and disclosure. If the removal of the thresholds results in a materially different profile of issuer using the market, these requirements could be reviewed to ensure they remain fit for purpose. AANZ considers this would provide a more proportionate approach than reinstating market-capitalisation thresholds through another mechanism. <u>Review investor understanding and market confidence</u> As the market evolves, consideration could also be given to ensuring that investors clearly understand the nature of Catalist and how its regulatory settings differ from NZX. Maintaining a clear distinction between the two markets will be important for investor confidence, particularly if larger issuers are able to access Catalist. The purpose of removing the thresholds is to allow businesses and investors to choose the market that is most appropriate to their circumstances. That flexibility should be supported by proportionate regulation, not constrained by rules based on company size alone. AANZ does not support introducing additional safeguards that would effectively recreate the market-capitalisation thresholds through more complex or burdensome requirements. In our view, the appropriate approach is therefore to retain the existing $20 million capital-raising limit, maintain the core investor protection and market conduct requirements, and monitor the market for evidence of regulatory arbitrage or emerging investor risks. If evidence of a specific risk emerges, targeted regulatory responses can then be considered. This would allow the market to evolve while ensuring that regulation remains proportionate to actual, rather than theoretical, risks.
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)?
	AANZ supports amending the Catalist exemption so that the amount that can be raised without a Product Disclosure Statement (PDS) increases if the equivalent crowdfunding and small-offer thresholds are increased. The current $2 million limit for Catalist is closely aligned with the thresholds applying to other forms of smaller capital raising. The rationale for this alignment remains sound: these mechanisms are intended to provide proportionate pathways for businesses to raise modest amounts of capital without incurring the cost and complexity associated with a full regulated offer. If the Government determines that the existing $2 million thresholds are no longer appropriate, AANZ considers that the Catalist exemption should be reviewed at the same time. Maintaining a lower threshold for Catalist would create an unnecessary inconsistency between otherwise comparable capital-raising mechanisms and could reduce the effectiveness of the reforms. AANZ does not see a strong rationale for treating a company raising capital through Catalist differently from a company raising the same amount through a licensed crowdfunding platform, particularly where investors are receiving access to information through an established and regulated market. Indeed, Catalist-listed issuers are subject to ongoing market and disclosure requirements, and offers made under the Catalist exemption remain subject to the Catalist market rules. The current exemption also retains the $20 million annual capital-raising limit, providing an important distinction between the simplified offer exemption and larger-scale capital raising. AANZ therefore supports maintaining alignment between the Catalist exemption and the equivalent Schedule 1 thresholds, subject to any increase being supported by the Government's assessment of the appropriate level for smaller capital raisings.

	More broadly, AANZ considers that the regulatory framework should avoid creating different compliance outcomes for businesses based primarily on the mechanism through which they access capital, where the underlying risks to investors are comparable. If the relevant thresholds are increased, AANZ would support the Catalist exemption being increased accordingly, rather than requiring a separate policy process or maintaining the current $2 million limit. We consider this would improve consistency across the capital-raising framework, reduce unnecessary compliance costs for businesses and support the overall objective of providing proportionate access to capital while maintaining appropriate investor protections.
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? AANZ supports Option G – removing the audit requirement for issuers raising up to the applicable Schedule 1 exclusion threshold, currently $2 million. Consistent with the distinction set out in our response to Question 3.1, AANZ considers the amount being raised — rather than market capitalisation — to be the appropriate basis for calibrating audit and assurance requirements. We consider this to be the most proportionate approach and the one that best aligns the treatment of Catalist issuers with other mechanisms available to businesses raising modest amounts of capital. The current requirement for a full audit can impose a material cost on smaller and early-stage businesses. For an issuer raising $1 million or $2 million, the cost of a full audit can represent a meaningful proportion of the capital being raised and may divert funds away from product development, employment, market expansion and other activities that support growth. AANZ does not consider that a full audit is necessarily proportionate to the risk presented to investors in these circumstances. The decision to invest in an early-stage or growth company involves a range of risks that a financial statement audit cannot eliminate, and investors will typically consider a broader range of information when assessing an investment opportunity. We also consider that there is a strong policy rationale for ensuring consistency across capital-raising mechanisms. If an issuer can raise up to the applicable Schedule 1 threshold through a small offer or crowdfunding without being subject to a full audit requirement, there should be a clear rationale for imposing a higher requirement simply because the same issuer has chosen to access capital through Catalist. AANZ therefore supports a framework under which the audit requirement is determined by the scale and nature of the capital raising, rather than the fact that an issuer is listed on Catalist. AANZ's support for removing the audit requirement should not be interpreted as support for removing financial reporting or transparency requirements. Issuers should continue to be required to prepare appropriate financial statements and maintain proper accounting records, and investors should continue to have access to sufficient information to make informed investment decisions. We would also support appropriate safeguards based on the size of the capital raising and/or number of voting shareholders. This would ensure that the exemption is targeted at genuinely smaller capital raisings and does not become a mechanism for larger or widely held issuers to avoid appropriate assurance requirements. AANZ would support the Government considering whether a review engagement should be required in circumstances where the issuer exceeds the relevant capital-raising or shareholder threshold. This could provide a proportionate middle ground between a full audit and no independent assurance. <u>Accounting standards</u> AANZ considers that the question of the appropriate accounting standard should be considered separately from the question of whether a full audit is required.

If the Government is proposing to remove the current IFRS Tier 2 requirements, AANZ would support a recognised and appropriate financial reporting standard that is proportionate to the size and nature of the issuer, rather than creating a bespoke reporting framework for Catalist.

The replacement standard should provide investors with reliable, comparable and understandable financial information while avoiding unnecessary complexity and cost for smaller issuers. AANZ would be cautious about introducing a significantly lower accounting standard simply as a consequence of removing the audit requirement. The objective should be to reduce the cost of assurance where appropriate, rather than reduce the quality or usefulness of financial information available to investors.

AANZ supports moving away from the current one-size-fits-all audit requirement and towards a tiered and proportionate assurance framework.
Our preferred approach is:

- Up to the applicable Schedule 1 capital-raising threshold: no mandatory audit.
- Above that threshold: a review engagement or other proportionate independent assurance could apply, depending on the size and nature of the issuer; and
- At a higher level of scale or shareholder participation: a full audit requirement could apply.

This approach would reduce unnecessary compliance costs for smaller issuers, improve consistency across different capital-raising mechanisms and allow more of the capital raised to be directed towards business growth, while maintaining appropriate investor protection as companies increase in size and complexity.

AANZ considers this is more consistent with the purpose of Catalist as a proportionate public market and with the broader objective of ensuring that New Zealand's regulatory settings support, rather than unnecessarily constrain, access to growth capital.

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 (e.g., all, or only a specific size measured by number of investors, or shareholders, or voting shareholders)?

AANZ agrees that some businesses should not be required to produce audited accounts prior to initial listing on Catalist. However, we do not consider that a blanket exemption should apply to all issuers.

We favour a proportionate, risk-based approach, with eligibility for the exemption determined primarily by the amount of capital being raised and the size of the investor base, rather than market capitalisation alone, consistent with the distinction between these two types of thresholds set out in our response to Question 3.1.

AANZ would support an exemption for issuers undertaking a smaller capital raising, up to a defined threshold, and with a limited number of shareholders or voting shareholders. We consider these to be the most relevant indicators of the potential investor-protection risk.

AANZ would therefore support a framework in which:

- smaller or more modest capital raisings can proceed without the requirement for audited accounts prior to initial listing.
- the exemption is determined by clear and objective criteria, with the amount being raised and number of shareholders/investors being key considerations.
- more extensive assurance requirements apply as the issuer grows or its investor base becomes broader.
- a review engagement could provide an appropriate intermediate level of assurance where a full audit is not considered proportionate; and
- investors are clearly informed where financial statements have not been audited.

AANZ considers the amount being raised should be the primary threshold, with the number of shareholders or voting shareholders providing an additional safeguard. We do not consider market

capitalisation should be the primary test, as it does not necessarily reflect the risk associated with the capital raising.

Any exemption should be accompanied by clear disclosure to investors that the financial statements have not been audited, together with appropriate requirements to ensure that financial information provided to investors is prepared on a recognised and appropriate accounting basis.

This approach would reduce the fixed cost of accessing Catalist for smaller growth companies while ensuring that greater assurance is required as the scale of the capital raising or breadth of the investor base increases.

AANZ's preferred approach is therefore not an exemption for all Catalist issuers, but a clearly defined exemption for smaller capital raisings and appropriately limited investor bases, with graduated assurance requirements applying as issuers grow.

3.9

Please share any other comments, evidence or data you have on changes to Catalist settings.

AANZ supports the review of the current Catalist settings and considers that reform is warranted if the market is to function as a genuinely useful pathway for smaller and growth-oriented issuers.

Catalist exists to provide an alternative market pathway better suited to smaller and growth-oriented businesses. If its thresholds or compliance settings are too rigid, the market risks becoming underused or commercially irrelevant. That outcome would undermine the original policy intent. Thresholds should not harden into rigid cut-offs that shut out the very growth companies Catalist was designed to serve.

AANZ advocates for reform to make Catalist a more viable and commercially useful pathway. Specifically, we support:

- reconsidering the appropriateness of current thresholds
- tailoring audit requirements for smaller issuers
- ensuring any revised settings still maintain confidence, transparency, and clear market positioning.

Done well, this could improve the pipeline from early-stage and growth capital into more mature capital market participation.

AANZ therefore supports settings that:

- allow smaller and growth-oriented businesses to access public capital through a more proportionate framework.
- preserve a clear distinction from the main board without making Catalist unattractive in practice.
- take account of issuer scale, investor profile, and capital raised, rather than relying on rigid proxies alone.

6. 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.

AANZ's starting point is that the wholesale regime is an essential part of how early-stage and growth-company capital is raised in New Zealand. Any reform in this area should therefore focus on clarity, certainty, and proportionality, while targeting actual misuse rather than creating new friction for legitimate market participants.

FMA case stated outcomes

The recent case stated on eligible investors is highly relevant to this review. As the published overview notes, the Court clarified several important aspects of the regime.

In summary, the Court found that:

- an eligible investor certificate does not need to explicitly describe the investor's experience or explain in detail how that experience enables them to assess the investment, although it must state grounds that are not patently inadequate.
- the offeror must ensure the certificate is formally valid and meets statutory requirements but does not have a positive duty to verify that the investor's stated grounds are substantively sufficient.
- validity is to be assessed by reference to the certificate itself, rather than external information known to the offeror.
- if the offeror cannot rely on the certificate, and the investor is not otherwise wholesale, disclosure obligations apply.

AANZ considers these outcomes important because they provide greater certainty around the intended operation of the eligible investor pathway. That certainty is especially important in angel and venture contexts, where parties need to be able to rely on a workable certification process without fear that compliance will later be reassessed against an uncertain or effectively retrospective standard.
In our view, the case stated outcomes support three policy conclusions.

First, the law should continue to recognise that eligible investors bear responsibility for self-certifying their own experience, provided the statutory certification requirements are properly met.

Second, issuers and intermediaries should be required to ensure formal compliance and good faith reliance, but should not be made the de facto guarantors of an investor's subjective capability absent knowledge of misuse or obvious inadequacy.

Third, where the courts have had to clarify how the regime works, there is merit in using this reform process to improve the accessibility and certainty of the statutory settings, rather than narrowing the exemption in a way that would undermine legitimate wholesale activity.

AANZ considers this clarification helpful. It confirms that the self-certification pathway is intended to be workable in practice, while still setting limits around formal validity and misuse. In our view, difficulties in this area are more often caused by uncertainty about how the regime operates than by the existence of the pathway itself.

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?

AANZ strongly supports a clearer, more workable, and more proportionate wholesale investor regime, particularly as it applies to angel investment, venture syndication, and nominee structures.

The growth of private market activity justifies periodic review, but reform should not treat wholesale capital raising as if it were simply retail investment without disclosure. In our view, the central policy challenge is to ensure that the regime clearly distinguishes between:

- genuine wholesale participation by capable and informed investors.
- situations where investors may technically fall within an exemption but may not in substance understand the risks.
- common early-stage investment structures, including nominee and syndicated arrangements, which aggregate sophisticated investors efficiently.

In the angel investment context, overly restrictive or uncertain wholesale settings can impede capital formation without necessarily improving investor outcomes.

AANZ's strong view is that properly governed nominee structures used in angel investing should be expressly recognised as legitimate within the wholesale framework. These arrangements commonly improve market functioning by:

- simplifying cap tables for issuers

- reducing administrative burden
- enabling coordinated investor engagement
- supporting more efficient follow-on investment processes
- improving communication and governance through a single representative structure.

The policy question should be whether the structure and its underlying participants are wholesale in substance, not whether collective participation itself should attract suspicion. Reform should therefore avoid settings that would inadvertently penalise nominee or syndicated investment simply because it is organised efficiently.

This is consistent with the broader principle reflected in AANZ's earlier submission work: regulation should distinguish between retail custody and intermediation risks on the one hand, and private wholesale nominee arrangements among experienced investors on the other.

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).

AANZ supports a wholesale framework that preserves multiple pathways to wholesale status, including experience-based pathways. We would caution against any approach that relies too heavily on wealth or investment amount thresholds alone. Financial metrics can be useful proxies, but they are imperfect measures of sophistication. In the angel context, capability often arises from prior investment activity, governance experience, startup operating experience, and repeated participation in early-stage capital raising.

AANZ therefore supports retaining a framework that recognises experience and capability alongside financial means and would support option A - Develop more objective 'experience' definitions for an eligible investor. To be clear, AANZ's support for more objective experience criteria is intended to give investors a clearer basis on which to self-certify accurately — not to create a new verification or due-diligence obligation for issuers or intermediaries, who should continue to be entitled to rely in good faith on a formally valid certificate, consistent with the case stated outcomes discussed in our response to Question 6.1.

AANZ is open to reviewing whether existing wholesale investor categories remain fit for purpose but cautions against any move toward an overly narrow or mechanical framework.
Financial thresholds can be useful proxies, but they are not perfect measures of sophistication. In the angel context, relevant capability often comes from:

- prior investment experience
- governance experience
- operational experience in startups or growth companies
- repeated participation in early-stage rounds
- access to professional advice and informed peer networks.

For that reason, AANZ supports retaining a regime that recognises experience and capability alongside financial means. A purely wealth-based approach would risk excluding investors who are in substance sophisticated and capable, while doing little by itself to improve investor understanding.

AANZ recommends that the reform is used to improve clarity rather than materially narrow the wholesale regime. In particular, we support:

- clearer legislative wording and/or guidance following the case stated
- confirmation of the intended role and limits of eligible investor certificates
- proportionate treatment of angel nominee and syndicate structures
- a substance-over-form approach to determining whether an offer is genuinely wholesale
- targeted regulatory intervention where there is evidence of misuse, rather than across-the-board tightening.

	In our view, this would improve market confidence and compliance while preserving the flexibility that private capital markets need to function effectively.
6.4	Which option do you prefer in relation to the period of validity for eligible investor certificates (currently 2 years)?
	AANZ supports retaining a requirement for eligible investor certificates to be renewed periodically but would be comfortable with the validity period being extended from the current two years to five years. We consider an extended validity period to be reasonable and proportionate. It is unlikely that an investor would lose their knowledge and understanding of the relevant investment context simply because two years had elapsed. Extending the period would also reduce unnecessary administrative burden for investors. At the same time, we consider it useful to retain a defined validity period and renewal requirement. This provides an appropriate opportunity for eligible investors to refresh their understanding and remain engaged with developments in the early-stage investment market, including changes in investment practices, risks and the broader regulatory environment. On balance, AANZ would therefore support extending the validity period to five years, while retaining the requirement for periodic renewal.
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?
	AANZ has not experienced or observed significant concerns regarding the advertising or promotion of wholesale investment opportunities within the angel investment ecosystem. Angel investment opportunities are generally not publicly advertised outside the activities of established angel clubs and networks. In practice, angel deals are conducted through the Catalist platform, with all participating investors required to hold a valid wholesale investor certificate. AANZ does publish a quarterly newsletter which provides visibility of companies that are currently raising, or have recently completed a raise, through an angel club. However, this is intended to provide ecosystem visibility rather than promote specific wholesale offers. The newsletter does not include details of the investment opportunity, terms of the raise or an ability for readers to access or participate in the investment directly. Engagement with the relevant angel club is required to obtain further information and participate in any investment opportunity. AANZ therefore considers that the existing approach provides an appropriate balance between maintaining visibility of New Zealand's early-stage investment ecosystem and ensuring that wholesale investment opportunities are not broadly promoted to, or made directly accessible by, retail investors. We would support any measures that preserve this distinction and ensure that promotional activity does not circumvent the requirement for investors to meet the relevant wholesale eligibility criteria.
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?
	AANZ does not have significant concerns with other aspects of the wholesale regime at this time. In relation to the $750,000 individual investment threshold, we would not support an increase without a clear and evidence-based rationale demonstrating that an uplift would improve investor protection or otherwise achieve a meaningful regulatory benefit. An increase in the threshold could have unintended consequences by restricting access to capital for early-stage businesses and reducing the pool of investors able to participate in these opportunities, without necessarily providing a commensurate improvement in investor outcomes or protection. AANZ's preference is therefore to retain the current $750,000 threshold unless there is compelling evidence that an increase is necessary and proportionate to address a clearly identified risk. In our view,

	any changes to the wholesale regime should carefully balance investor protection with maintaining appropriate access to capital for New Zealand businesses.
	Please share any other comments, evidence or data you may have on wholesale settings.
6.7	AANZ supports targeted reform or clarification that: • preserves multiple pathways to wholesale status, including experience-based pathways rather than wealth-only tests. • confirms that eligible investor certificates are a legitimate and workable mechanism when properly completed. • avoids imposing a broader verification burden on issuers than the legislation intends. • focuses enforcement and regulatory attention on sham certifications, obvious inadequacy, knowing misuse, or structures that are retail in substance. • provides greater certainty for commonly used angel and venture investment structures, including nominees and syndicates. AANZ members need legal certainty when relying on wholesale pathways. Uncertainty increases transaction cost, slows capital raising, and can cause avoidable restructuring of otherwise legitimate investment activity. AANZ considers that the recent FMA court case outcomes on wholesale investor rules are highly relevant to this review. Those outcomes appear to have clarified the legal boundaries of the current regime, which is helpful. But they also underline a broader point: where important aspects of market practice require court clarification, the underlying law may no longer be sufficiently clear or accessible for efficient market use. In our view, the policy response should not be to overcorrect by narrowing wholesale pathways indiscriminately. Instead, the Government should use the opportunity created by the court's clarification to: • codify clearer statutory guidance where ambiguity has been exposed. • preserve legitimate wholesale market activity. • ensure enforcement attention remains focused on misuse, mischaracterisation, or conduct that effectively circumvents retail protections. That would be a better outcome than adding friction for compliant participants who are already operating in good faith within sophisticated investor networks.