

# Regulatory Impact Statement: New Zealand Emissions Trading Scheme market governance

Decision sought:	Analysis produced for the purpose of informing Cabinet policy decisions and delegated ministerial decisions for ETS market governance
Advising agencies:	Ministry for the Environment
Proposing Ministers:	Minister for Climate Change
Date finalised:	Initial version: 20/12/2024 Final version (updated with penalty regime): 28/04/2026

## Briefly describe the Minister's regulatory proposal

To improve market transparency and market conduct in the New Zealand Emissions Trading Scheme (ETS) market (NZU market), the following changes are proposed:

- Require New Zealand Unit (NZU) trading platforms to report price and volume information to the government for monitoring and other government purposes and maintain a broader history of trading information
- Require NZU market participants to record trading information into the New Zealand Emissions Trading Register (the Register) when entering into an NZU transaction, and for this trading information to be aggregated and published periodically
- Add market conduct obligations to the Climate Change Response Act 2002 (CCRA) prohibiting manipulating the price of NZUs and prohibiting false, unsubstantiated and misleading conduct in relation to buying, holding or selling NZUs, and
- Enable relevant agencies to share and receive information to the extent necessary to give effect to their regulatory responsibilities, require trading platforms to retain records of trades that can be requested by monitoring agencies, and allow a dedicated market monitor to assess trading information as required.

*[Added December 2025]* Following Cabinet's delegation of decision-making powers, the Minister of Climate Change agreed to the following penalty and enforcement regime for the ETS market governance changes:

- **Penalty for failing to meet information reporting requirements:**
  - An administrative penalty that increases with each breach, in combination with the publication of non-compliance.
- **Penalty for failing to meet Register reporting requirements:**

- An infringement offence regime, in combination with the publication of non-compliance.
- **Penalty for contravening the market conduct obligations:**
  - NZU price manipulation:
    - A criminal penalty where the participant knowingly manipulated the price of NZUs or a civil pecuniary penalty.
  - False, unsubstantiated, and misleading conduct in relation to buying, holding, or selling NZUs:
    - A civil pecuniary penalty, dependent on the value of the false, unsubstantiated, or misleading conduct.

## Summary: Problem definition and options

### What is the policy problem?

The Government has adopted an Emissions Trading Scheme (ETS)-led approach to reducing New Zealand's net emissions. However, the secondary market (NZU market), a key element of the ETS, lacks essential governance provisions. These regulatory gaps risk eroding confidence in the market's integrity, misaligning New Zealand with international carbon market standards, and undermining the overall effectiveness of the ETS.

**Issue one:** There is a lack of transparency in the NZU market, meaning that the same information is not available to all market participants. A significant number of trades occur directly between participants, without government or the rest of the market having visibility of this activity.

Some information is already required to be reported through the Register, which records transfers of NZUs between market participants. These existing requirements are set out in regulations and changes would therefore require regulatory amendments. Some market platform providers voluntarily publish trading information for users of their platforms. As this status quo has led to information asymmetries and a general lack of transparency for market participants, only regulatory options to improve information transparency were considered in response to this issue.

**Issue two:** NZU market conduct is currently governed under the broad remit of general competition and consumer laws through the Fair Trading Act 1986 (FTA) and regulated by the Commerce Commission. However, the Commerce Commission does not have the suitable regulatory tools or expertise to respond to market misconduct. It is also not clear how the FTA should apply specifically to the NZU market and there is no guidance around what constitutes acceptable market behaviour. There is also no government department or agency currently charged with monitoring NZU market activity for misconduct, and the data necessary to conduct monitoring is not available.

A non-regulatory option of a voluntary code of conduct was considered in response to this issue.

Five rounds of consultation on market governance issues have been conducted since 2015. Stakeholders have provided feedback that improvements to the governance of the scheme are required but they need to be fit-for-purpose and not impose unnecessary or

excessive costs. The proposals in this paper were tested through targeted engagement with a small group of NZU market stakeholders. A significant majority of the respondents expressed support for these changes.

### ***[Added December 2025]* Penalty and enforcement regime**

In the absence of a sufficiently robust penalty regime, the market monitor and market regulator will have no tools to enforce breaches of the new market governance provisions. Without facing any penalties for breaches of the new requirements, some market participants may not comply with the new requirements. Weak enforcement therefore risks retaining the problems of eroding confidence in the market's integrity, misaligning New Zealand with international carbon market standards, and undermining the overall effectiveness of the ETS.

### **What is the policy objective?**

The objective of the changes is to support the effective functioning and integrity of the NZU market, by:

- supporting more efficient price discovery to help users make informed decisions
- providing equal access to the same trading information for all market participants
- enabling trades to be monitored to detect misconduct
- clearly outlining what types of market conduct are unacceptable, and
- enabling the agency tasked with market oversight to monitor for suspected misconduct and report potential breaches to an enforcement agency.

The success of market transparency changes would be measured through the Ministry for the Environment's (MfE) regular engagement with NZU market stakeholders, to determine whether they have improved access to the information that they need.

Implementation of these changes would also enable better collection of baseline data to understand whether market misconduct is occurring. The market monitor will then continue to observe the market for any misconduct using the new data, alongside existing activities that MfE carries out to gather market intelligence.

*[Added December 2025]* The key objective of the penalty and enforcement regime is to support compliance with the proposed ETS market governance changes, while maintaining:

- Consistency with other legislation
- Equity between market participants
- Ease of implementation
- Deterrence effect on offending.

### **What policy options have been considered, including any alternatives to regulation?**

In response to **Issue One**, the following policy options have been considered:

- **Option A (status quo)** – no additional requirements to report or publish trading information. There are some existing requirements to report information when transferring NZUs through the Register, and some trading platforms choose to publish market information for their users.
- **Option B** – require trading platforms to publish their daily closing price on their websites, and to report additional trading information to the government, such as daily volume, and the high and low price for the day. This additional information would be made public in aggregate form by the government at regular intervals.

Platforms would also be required to build up and maintain a history of month-to-date and year-to-date information.

- **Option C** – the same as option B, plus new requirements for market participants to report over-the-counter trades over a defined threshold in the Register.
- **Option D** – creating additional requirements for information that must be provided through the Register. This would capture data for over-the-counter (OTC) trades that are not made through trading platforms. Government would then publish some of this information in aggregate format.
- **Option E (recommended option)** – legislative change to require trading platforms to publish and report specified trading information (Option B) and additional requirements for information that must be reported through the Register (Option D). Platform reporting would aim to commence quickly, while Register reporting would only be implemented in the medium-term, due to the required replacement of the Register.

In response to **Issue Two**, the following policy options have been considered:

- **Option A (status quo)** – unclear market conduct obligations for participants, no changes are made, and the government is limited in its ability to monitor the market, due to a lack of data transparency and associated monitoring powers.
- **Option B (non-regulatory option)** – develop a code of conduct that defines best practice for NZU trading platforms and promote customer protection. As a voluntary measure, only customers of trading platforms that have agreed to the measures would be protected.
- **Option C (recommended option)** – legislative change to introduce clear NZU market conduct obligations prohibiting price manipulation and false, unsubstantiated and misleading conduct, and introducing a dedicated market monitor with powers to enforce these prohibitions.
- **Option D** – in addition to the market conduct obligations in Option C, this option would also introduce the regulation of NZU advice and require trading to take place solely on a registered platform.

*[Added December 2025]* Across the new market governance requirements, associated penalties that were considered included fines, tiered or fixed infringement fees, administrative penalties, criminal offences, pecuniary penalties, directors' liability, and publishing details of non-compliance.

#### **What consultation has been undertaken?**

Targeted engagement on the options in this Regulatory Impact Statement (RIS) was carried out in September and October 2024 with a small group of NZU market participants. This follows multiple rounds of public consultation on market governance issues over the last several years, most recently in 2022.

Stakeholders generally agree that improvements to market governance are needed, but that these should be fit-for-purpose and not impose excessive costs for market participants.

Feedback from stakeholders supported steps to ensure greater market transparency, citing that these would improve understanding of supply and demand in the market, while increasing accessibility to key trading information, such as OTC activity. Some feedback

raised concerns about potential disclosure of commercially sensitive information, alongside the potential for increased administrative and compliance costs.

Regarding market conduct provisions, stakeholders expressed overall support for general prohibitions for market misconduct. In terms of the appropriate market regulator to enforce the misconduct prohibitions, several respondents specifically supported the Financial Markets Authority (FMA) as being the most appropriate agency to retain this oversight.

*[Added December 2025]* Consultation with market stakeholders on the proposed penalty regime was limited. A group of key market stakeholders were informed of the proposed regime following the proactive release of specific policy development details, and they were reminded of their opportunity to make submissions on the proposed changes as part of the select committee process. Stakeholders did not raise concerns in the immediate period following this communication.

Relevant agencies, including the Environmental Protection Authority (EPA), MPI, FMA and the Offence and Penalty Vet team at Ministry of Justice, were consulted.

*[Added March 2026]* Three months after the initial communication, 9(2)(b)(ii) stakeholders contacted the Ministry about the proposed penalty regime. Key concerns included the design of the penalty regime, whether discretion would be available for genuine errors in reporting trading information, and whether the requirement to maintain trading information would apply retrospectively.

The Ministry is engaging with these stakeholders and has provided assurance that the policy intent is for MfE to be able to waive a penalty where a failure to comply has occurred through no fault of the platform or market participant and that information maintenance requirements won't apply retrospectively. Stakeholders were encouraged to submit on proposals as part of the parliamentary process.

### **Is the preferred option in the Cabinet paper the same as preferred option in the RIS?**

The Minister's preferred option in response to Issue 1 is to require platforms to report price and volume information to the government (but not to require any of this information to be published by the platforms), coupled with Register reporting to be implemented in the medium term. The preferred option in the RIS is for platforms to publish price information and report additional trading information to government, coupled with Register reporting in the medium term.

In response to Issue 2, the preferred option in the Cabinet paper is the same as the preferred option in the RIS, to introduce NZU market conduct obligations.

*[Added December 2025]* The Minister of Climate Change received delegated decision-making authority from Cabinet to determine an appropriate penalty and enforcement regime. The Minister consulted with the Minister of Justice of the proposed regime during its development and no concerns were raised.

## **Summary: Minister's preferred option**

### **Costs (Core information)**

**Outline the key monetised and non-monetised costs, where those costs fall (e.g. what people or organisations, or environments), and the nature of those impacts (e.g. direct or indirect)**

The key costs for Issue One are:

- The costs of these changes will primarily fall on the four platform providers. The platforms may incur upfront costs to implement reporting requirements, estimated at \$10,000-50,000 spread across for all four providers. Some of the providers will also stop receiving the 9(2)(b)(ii) that the government currently pays to purchase market data.

9(2)(ba)(i)

- Costs for the agency tasked with market monitoring. The level of funding would be dependent on the level of effort and could be scaled over time to respond to any emerging market risks.

The key costs for Issue Two are:

- A one-off transitional cost for market participants to understand new market conduct obligations (estimated at less than \$300,000, spread across all market participants)
- The level of resourcing needed for market monitoring is estimated at \$150,000 per annum in the short term (met within agency baselines) and decisions about whether to scale up monitoring over time will be sought later.

*[Added December 2025]* The key costs of the proposed penalty regime are:

- For market participants, trading platforms, and people that provide advice or services related to the NZU market:
  - Will be subject to penalties for non-compliance with the market governance requirements
  - Costs associated with improving internal systems to ensure compliance with requirements, monetised costs for this are same as directly above for Issue One and Two
  - Meeting ongoing compliance obligations, including obligations to provide information on request.
- For MfE, acting as the market monitor, and FMA, as the market regulator:
  - Resourcing implications to stand up and administer the penalty regime and to conduct regular analysis of market activity.
  - Monetised costs are same as directly above, these will be absorbed within agency baselines.
  - **Note:** MfE will begin as the market monitor, with the ability to potentially delegate parts of this role to the EPA when Register reporting is implemented.

## Benefits (Core information)

**Outline the key monetised and non-monetised benefits, where those benefits fall (e.g. what people or organisations, or environments), and the nature of those impacts (e.g. direct or indirect)**

The key benefits for Issue One are:

- Trading platform operators would benefit from improved data transparency increasing investor confidence, leading to greater activity from existing participants, and new and previous participants entering the market (estimated at potentially \$100-500,000 spread across all platform operators)
- Market participants will benefit from improved data transparency supporting informed trading decisions
- Improved transaction reporting data will improve market oversight and the ability to detect market misconduct.

The key benefits for Issue Two are:

- Clear market conduct obligations will give users increased confidence in the market
- Monitoring and enforcement of market conduct will have flow-on benefits for the regulator, such as a better understanding of the market, user behaviours, or other issues with trading that users face.

*[Added December 2025]* The key benefits of the proposed penalty regime are:

- For market participants, trading platforms, and people that provide advice or services related to the NZU market:
  - The establishment of a coherent enforcement regime will add an additional layer of confidence in the integrity of the market among market participants and other stakeholders.
- For MfE, acting as the market monitor, and FMA, as the market regulator:
  - The market monitor, and by extension, MfE policy teams, will benefit from increased information transparency
  - The penalty regime also improves enforcement, allowing the regulator to encourage compliance, while lifting overall integrity in the scheme.

## **Balance of benefits and costs (Core information)**

### **Does the RIS indicate that the benefits of the Minister's preferred option are likely to outweigh the costs?**

Analysis of the costs and benefits indicate that the benefits outweigh the costs. The preferred options provide a light-touch regulatory regime that minimises costs to market participants, while increasing market transparency and clarifying market conduct obligations. Overall, this is expected to increase the effective functioning of the NZU market, and lead to increased investor confidence which will have benefits for market participants and trading platform operators.

*[Added December 2025]* Additional analyses of the proposed penalty regime in this impact analysis indicate that the benefits of the proposed regime significantly outweigh the costs.

## **Implementation**

### **How will the proposal be implemented, who will implement it, and what are the risks?**

In response to Issue One, reporting requirements will be implemented in a phased approach. In the short term, platform reporting requirements can be implemented. Increased Register reporting requirements will not be able to be implemented until the Register is replaced, which is planned to occur separately to the proposals in this RIS as the Register is nearing end-of-life.

Once fully implemented (i.e. when the new Register is ready), additional reporting requirements will allow for more comprehensive monitoring of misconduct. Following this, the interim enhancements provided by platform reporting requirements can be re-evaluated, as this information could be collectively captured in any new Register system.

In response to Issue Two, guidance will be provided to market participants about the new market conduct obligations.

The agencies tasked with compliance oversight will be responsible for ongoing investigation and enforcement. The FMA will be responsible for the market conduct obligations, leveraging their existing statutory function as a financial market regulator. MfE will be responsible for the initial phase of platform reporting, including receiving daily trading information from the trading platforms and imposing

There is no significant change proposed for the FMA's legal duties already in place; therefore, these changes could have a relatively short implementation period. However, the FMA's ability to investigate any suspected misconduct is reliant on replacing the Register to enable collection of the necessary data for the monitoring agency.

As part of implementing these new requirements, legislative changes will also be required to ensure information can be shared between relevant agencies, including MfE, EPA and the FMA.

Agencies with stewardship roles in the regulatory system will continue to work collaboratively to monitor, evaluate, and review the impact of the new policies.

### **Limitations and Constraints on Analysis**

**Outline all significant limitations and constraints e.g. lack of data, other forms of evidence, constraint on the range of options considered, lack of time or freedom to consult**

No government department or agency is currently charged with monitoring NZU market activity for misconduct and the data necessary to conduct monitoring is not available, there is therefore no evidence of poor market conduct in the NZU market to date. However, the conditions that allow for poor market behaviour are present – poor price discovery, limited traded volume transparency, potential for outsize trades, and the lack of a dedicated monitor for the NZU market.

9(2)(d)

External reviews of the NZU market completed in 2017 and 2019 noted that the NZU market is exposed to risks.

[Added December 2025] Consultation with market stakeholders on the proposed penalty regime was limited. A group of key market stakeholders were directly informed of the proposed regime following proactive release of policy documents in December 2025 and were reminded of their opportunity to make submissions on the proposed changes through the select committee process. No stakeholders raised any concerns in the immediate period following this communication. [Added March 2026] Three months after the proactive release of policy documentation, 9(2)(b)(ii) stakeholders contacted the Ministry to raise questions and provide feedback on the proposals.

I have read the Regulatory Impact Statement and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impacts of the preferred option.

Signed by the responsible Manager:



Date: 28/04/2026

**Quality Assurance (completed by QA panel)**

**Reviewing Agency:** Ministry for the Environment and Ministry for Business Innovation and Employment

**QA rating:** Meets

**Panel comments:**

**Panel comment:** ‘A quality assurance panel with members from Ministry for the Environment’s and Ministry of Business Innovation and Employment’s delegated Regulatory Impact Analysis Team has reviewed the Regulatory Impact Statement. The team assessed this using assessment criteria (complete, convincing, clear & concise, and consulted), for all relevant sections of the report. The team considers that all its feedback was addressed and therefore it **meets** the Quality Assurance criteria.’

**Panel comment [Added January 2026 by MfE internal panel]:** ‘An independent panel with members from the Ministry for the Environment has assessed the Regulatory Impact Statement: ‘New Zealand Emissions Trading Scheme market governance’ against Cabinet’s impact assessment criteria.

The Panel considers that the RIS **meets** the criteria. The case for improved NZ ETS market governance was established in the last version. This version provides a detailed and well-justified approach to penalties. Notably, the proposals draw upon, and seek to align with, other penalty regimes, as appropriate.

The RIS transparently declares a lack of detailed public consultation on the proposed penalty regime. Relevant advice was proactively released to key stakeholders for feedback.

*Several government agencies and experts were consulted. The Panel did not feel the lack of public consultation impacted the analysis.'*

# Section 1: Diagnosing the policy problem

## Context

- 1 The New Zealand Emissions Trading Scheme (ETS) was established in 2008 under the Climate Change Response Act 2002 (CCRA). It is key in assisting New Zealand to meet its international obligations, domestic emissions target and emissions budgets. It is the Government's main tool to reduce net emissions.
- 2 The ETS helps reduce emissions by requiring participants to measure and report on their greenhouse gas emissions and to surrender one 'emissions unit' (NZU) to the government for each tonne of carbon they emit. A core component of the ETS is the trading of NZUs, which occurs on what is referred to as the secondary market, or the NZU market.
- 3 A well-functioning NZU market is vital, as the people who need NZUs to meet their surrender obligations under the ETS (such as large emitters) often need to trade with people who generate NZUs (such as foresters). Investors may also trade in the NZU market, adding useful liquidity or activity to the market. Collectively, this trading determines the NZU price.
- 4 Over time, the size of the NZU market has grown substantially. In 2010, the New Zealand Emissions Trading Register (the Register) had 2,946 holding accounts, with 7 million NZUs in circulation. Today, this has expanded to 13,572 accounts in the Register, with total holdings of 146 million NZUs, worth over \$9.2 billion NZD based on recent NZU prices.<sup>1</sup> Officials also estimate that between 20 to 30 million NZUs are exchanged per annum across the privately provided trading platforms. Based on recent NZU prices, this trading volume is worth \$1 to \$2 billion NZD.
- 5 A variety of people and businesses participate in the ETS and the NZU market, resulting in different levels of sophistication. Some are large corporates with trading desks and access to in-depth market analysis and detailed data, while others are small companies, including foresters, relying solely on publicly available information to make their trading decisions. The information publicly available varies between platforms, but there is no quality price or market volume information available. Some platforms share pricing and volume information once they have a formal client relationship, but this is not shared with all clients. The Register does not capture price data.
- 6 People also trade NZUs for different reasons. Some have compliance obligations and need to obtain units to cover mandatory ETS-related activity. Others participate voluntarily, as investors in the market, or to on-sell units allocated to them by the government, like foresters (as mentioned above).
- 7 Participants can purchase NZUs directly from other market participants — this is known as over the counter (OTC) trading. They can also purchase NZUs via one of the four privately-owned trading platforms. Anecdotal evidence indicates that one third to one half of all NZU trading has occurred OTC over time. The remaining portion of trading occurs across the four platforms.
- 8 9(2)(j) [REDACTED]  
[REDACTED] We will work with the EPA on the

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<sup>1</sup> Officials estimate that there are a material number of inactive accounts (i.e. dormant for > 3 years) in the Register, this figure includes those accounts.

implementation of this, however the specific requirements for the Register replacement are out of scope for this RIS.

- 9 For any market to function effectively and be credible, there must be sufficient governance settings that provide transparency of market activity and encourage good market conduct. Good conduct is often achieved through a combination of clear market standards and monitoring to ensure the standards are being followed.
- 10 Different markets achieve transparency and good market conduct in different ways. For example, the New Zealand stock market is regulated by listing rules and the NZ Reg Co. This ensures it operates in a fair, orderly and transparent manner and has monitoring and compliance measures in place. In addition, the Financial Markets Conduct Act 2013 (FMCA) sets out, amongst other things, requirements for the trading of financial products. These requirements include that advice relating to financial products must not be false or misleading, and that for listed financial products, market manipulation is prohibited.
- 11 Internationally, a lack of appropriate regulation for emissions trading schemes has proven costly. For example, in the European Union (EU), €5 billion (NZD 8.9 billion) in potential revenue was lost due to fraudulent carbon market trading that circumvented Value Added Tax (VAT) requirements.<sup>2</sup> While the EU's situation is different to New Zealand's and this risk to our Goods and Services tax (our equivalent to their VAT) is not present, it demonstrates the potential consequences of weak market governance.

## The policy problem definition

- 12 The NZU market does not have the necessary measures to ensure transparency and good market conduct. This presents risks to the proper functioning of the market. As a result, there are risks that economic efficiency could be reduced, information asymmetry could be taken advantage of, and that confidence and trust in the market could be eroded.

### Issue One: There is a lack of transparency in the NZU market

- 13 Market transparency is weak for NZUs, both for the government and market participants. Trading platforms do publish some information, but it is not consistent or complete. The platforms make differing levels of information available both on a free-to-view and on a subscriber model. This means that the same information is not available to everyone. In addition, a significant number of trades occur directly between participants. There is no visibility of these OTC trades, either for the government or the rest of the market until settlement, at which point there is volume information only.

### Issue Two: The regulatory regime for market conduct is not fit for purpose

- 14 In terms of encouraging good market conduct, the current regulatory regime for NZUs is weak. Market conduct for NZUs is currently governed under general competition and consumer laws, mainly the FTA.<sup>3</sup> This means action to prevent or respond to NZU

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<sup>2</sup> Europol (Press Release), "Carbon Credit fraud causes more than 5 billion euros damage for European Taxpayer", *Europol*, 28 December, 2010, [Carbon Credit fraud causes more than 5 billion euros damage for European Taxpayer | Europol](#).

<sup>3</sup> Anti-competitive behaviour, such as colluding on bids in NZU auctions, is prohibited under the Commerce Act, and the corrupt use or disclosure of official information by officials, such as insider trading by officials, is covered by the Crimes Act. Derivative products, such as futures, are regulated under the FMCA.

market misconduct, such as price manipulation, would need to be taken by the Commerce Commission, or directly by market participants, under the FTA.

- 15 The Commerce Commission does not have the suitable regulatory tools or expertise to respond to market misconduct. Further, the FTA is not primarily concerned with trading markets, as general competition and consumer laws only set out what constitutes unacceptable behaviour in a broad sense. It is therefore not clear how these general laws should apply specifically to the NZU market and there is no guidance on what constitutes acceptable market behaviour.
- 16 In addition, no government department or agency is currently charged with monitoring NZU market activity for misconduct and the data necessary to conduct monitoring is not available. While there is no evidence of poor market conduct in the secondary market to date, the conditions that would allow for poor market behaviour are present — poor price discovery, limited traded volume transparency, potential for outsize trades, and the lack of a dedicated monitor for the NZU market.

9(2)(d)

- 18 As mentioned in the context section, there is also evidence internationally that carbon trading schemes have been used for fraud. In response to fraud in the EU carbon market, the European Commission strengthened governance and oversight arrangements. While the EU's circumstances differ from New Zealand's and the risk to our Goods and Services tax (our equivalent to their VAT) is not present, the example highlights that carbon markets can be vulnerable to bad actors.
- 19 There are aspects unique to the ETS, such as its relative size and the inclusion of forestry, which will mean that the specific regulatory approaches in other jurisdictions are not necessarily well suited to the New Zealand context. This is particularly relevant for small foresters who may be less sophisticated and where compliance and administrative costs could be burdensome.
- 20 It should also be noted that other countries often regulate emissions units under regimes designed for financial products (the equivalent to our FMCA), so that there are mechanisms in place to provide transparency of key trading information, clear conduct requirements, and market monitoring.
- 21 Our market governance arrangements are out of step with the international norm, including the EU, United Kingdom, California and Australia. If no action is taken, a regulatory gap will persist, this puts the overall framework at risk. Any market failure would materially reduce confidence in the integrity of the NZU market and, therefore, the effectiveness of the ETS more broadly.

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<sup>4</sup> In certain circumstances, an auction bid below the confidential reserve price will mean the auction will fail to clear – meaning no units will be sold.

- 22 Current market governance arrangements for the NZU market have previously been subject to external reviews.<sup>5</sup> Those reviews both noted that the NZU market is exposed to risks and recommended enhancements to the market governance arrangements.
- 23 The NZU market continues to grow. Over the next five years there will be a decline in auction volumes in line with emissions targets (currently expected to reach zero in the mid-2030s, at which point there will be no further units to auction).<sup>6</sup> It is imperative that ETS participants can trade in a well-functioning market to meet their compliance obligations.

*Ongoing government work programmes with linkages to this area*

- 24 This work is aligned with the credible markets pillar of the Government’s Climate Change Strategy, which is focussed on fair and effective emissions pricing to incentivise emissions reductions.
- 25 The proposals outlined in this work are also identified as an action in the second emissions reduction plan (ERP2) to ensure the ETS remains an effective tool to drive reductions in net emissions.<sup>7</sup>

**Scope options are considered within**

- 26 The options considered in this Regulatory Impact Statement (RIS) are informed by the following:
  - previous Cabinet decisions that considered a market governance framework;
  - feedback from consultations and recent targeted engagement<sup>8</sup>; and
  - the progression of other non-regulatory measures to address risks, including information and guidance for ETS participants and NZU market investors.

**The seven market risks**

- 27 In 2018, the Government consulted on improving the ETS. An outcome of this consultation was the identification of seven risks in relation to market governance. The risks are outlined in Table 1.

**Table 1: Seven market risks**

RISK	DESCRIPTION
<b>Risk 1:</b> Inadequate, false, or misleading advice to ETS participants	An ETS participant is given bad advice which they rely on and are negatively affected. Market power is exerted to unfairly benefit one party.
<b>Risk 2:</b> Conflicts of interest	When a person who advises on the ETS has several interests, financial or otherwise, and serving one could involve working against another.

<sup>5</sup> By Covec and Catalyst Advisory Partners (2017) and by Ernst and Young (2019).  
<sup>6</sup> Climate Change Commission, February 2024, ‘Advice on NZ ETS unit limits and price control settings for 2025-2029’.  
<sup>7</sup> Ministry for the Environment (2024). *New Zealand’s second emissions reduction plan 2026-30*. Wellington: Ministry for the Environment.  
<sup>8</sup> In 2015, 2018, 2021, 2022, and 2024.

<b>Risk 3:</b> Potential lack of transparency, oversight, and monitoring of trades in the ETS market	There is a lack of market information which would assist ETS participants to make informed decisions when trading in the ETS. Lack of market transparency also hinders the government's ability to monitor the market for any suspected misconduct.
<b>Risk 4:</b> Credit and counter-party risks	The possibility that one of the parties to an NZU trade are unable to fulfil their obligations.
<b>Risk 5:</b> Insider trading and information asymmetry	Insider trading refers to buying or selling NZUs while in possession of material information that is not generally available to the market or passing on and sharing material information that is not generally available to the market.
<b>Risk 6:</b> Manipulation of NZU prices	Market manipulation includes spreading false market information or giving false impressions of market supply or demand for NZUs, typically with the aim of influencing the market price for profit.
<b>Risk 7:</b> Money laundering/financing of terrorism in the ETS	Money laundering involves transferring illegitimate money into the economy through a market such as the ETS. This is achieved by distancing criminal proceeds from their source until the funds are no longer traceable and appear to be legitimate.

### Key issues and addressed risks

- 28 This section considers the key policy issues for market governance and addresses the following named risks:
- Issue 1: Transaction reporting
    - Risk 3: Potential lack of transparency, oversight, and monitoring of trades in the ETS market
  - Issue 2: Market compliance oversight
    - Risk 1: Inadequate, false, or misleading advice to ETS participants
    - Risk 6: Manipulation of NZU prices
- 29 The above issues are considered separately in this paper due to the distinct roles they play within the wider market governance work. However, the issues and the proposed solutions are interdependent on each other. The solutions will lead to improvements in market efficiency, information symmetry, and confidence.
- 30 Policy work related to Risks 2, 4, 5, and 7 is not being progressed as part of this regulatory package. Specifically –
- Risk 2: Conflicts of interest – feedback from the most recent targeted engagement was that this is not a significant concern and would have implementation challenges (for example, since there is no requirement for people giving NZU advice to be registered, it would be difficult to monitor and enforce a requirement to disclose conflicts).
  - Risk 4: Credit and counter-party risks – follow up consultation indicated that this is not a significant concern for market participants. Further, the NZU market information initiative, a non-regulatory response, will support and help inform active participants about the NZU market, which could help improve awareness and management of this risk.
  - Risk 5: Insider trading and information asymmetry – the most significant insider trading risk is from government officials and their misuse of official information. This is already prohibited under the Crimes Act and MfE is working to strengthen

the controls to protect market sensitive information. Market monitoring would help respond to the risk of insider trading by third parties.

- Risk 7: Money laundering/financing of terrorism in the ETS –anti-money laundering and counter financing of terrorism (AML/CFT) obligations already apply to the NZU market. The Department of Internal Affairs is responsible for the AML/CFT regime, and the treatment of NZUs could be considered if they conduct a wider review of the regime in the future.

31 We have compared the status quo against the basic features of a well-functioning market, and we have compared the NZU market to other jurisdictions’ carbon markets. We conclude that the status quo falls short of meeting market first principles and that basic measures to support a credible NZU market are absent, putting the ETS, as the key tool for New Zealand’s climate change response, at risk.

## Section 2: Deciding upon an option to address the policy problem

### Criteria used to compare options to the status quo

32 We considered a range of options to improve transparency of the NZU market, and to provide market standards, and market monitoring. We analysed previous market governance work and consultations to help shape the options. We also worked extensively with the Ministry of Business, Innovation and Employment, the Financial Markets Authority, the Ministry for Primary Industry, and the Environmental Protection Authority. Table 2 below outlines the four impact criteria we have used in the options analysis.

**Table 2: Criteria used for options analysis**

Criteria	Description
Integrity	Ensuring market price information is accurate and reflects underlying market fundamentals. Detecting misconduct, to ensure outcomes in the market aren’t arrived at via price manipulation, and finally, ensuring that the relevant regulatory bodies are able to provide for the above outcomes, in effect protecting buyers and sellers from misconduct.
Minimal complexity and compliance cost for market participants	All rules, regulations and legislation are as simple and clear as possible. How the NZU market is governed has clear regard for the impacts on market participation and engagement of key intermediaries, NZU traders and other parties.
Administrative cost and complexity for the Crown	Wherever practicable, the costs to administer the market are at the least financial cost and are commensurate to the level of benefit.
Market efficiency	Providing relevant market information and clear policy will help NZU market users identify and understand the overall supply and demand conditions for NZUs, facilitating efficient price discovery. This will produce a reliable price signal that informs investment decisions, while minimising the cost impact of the carbon price.

33 Options are assessed for how well they perform for each criterion, against the status quo. Table 3 provides a key of symbols representing the results of the assessment.

**Table 3: Key to criteria analysis assessment**

Symbol	Meaning
++	Significant improvement over doing nothing/the status quo
+	Improvement over doing nothing/the status quo
0	Equal to doing nothing/the status quo
-	Worse than doing nothing/the status quo
--	Significantly worse than doing nothing/the status quo

## Issue 1: There is a lack of transparency in the NZU market

- 34 To support a credible market and ensure market confidence and information symmetry, good market transparency is required. This will foster liquidity, support informed decision making, and improve market monitoring and oversight.

### Objectives of the policy proposal

- 35 Transparency is an important aspect of an efficient market. The objectives of the policy are to:
- support price discovery to help users make informed decisions;
  - provide equal access to the same trading information for all market participants; and
  - enable the monitoring of trades to allow the government to detect suspected misconduct and refer it to the agency tasked with enforcement.

### Stakeholder views

- 36 Overall, feedback from stakeholders supported improved transaction reporting and the publication of trading information by the platforms, citing that it would improve market understanding of the supply/demand balance, increase information accessibility, and remove the currently opaque nature of transaction data.
- 37 Some feedback raised concerns about the potential for mandated requirements to disclose commercially sensitive information, alongside increased administrative and compliance costs.
- 38 Stakeholders did not generally identify specific risks related to the current arrangements. Instead, they mainly noted the importance of data transparency to support market confidence, facilitate market liquidity, and an ability to manage their exposure and long-term costs.

### Options being considered

- 39 Five options were considered to respond to this issue. The options include various elements of improved transaction reporting and the publication of trading information by the private platforms.
- 40 Note: the specific details of the trading information (e.g. price and volumes) to be reported, as presented under options B, C, and E, are yet to be determined and will be worked out as part of the legislative process. *[Added December 2025]* Final policy decisions on the trading information to be reported have been made. Details are listed in bullet #109 of this RIS.

#### Option A – *[Status quo – no additional reporting or publishing requirements]*

- 41 The status quo is a scenario where the collection and recording of activities that are reported to the EPA remains unchanged. The status quo does not provide for overall visibility of price and volume information for the NZU market, with a significant portion of information about private platform trading only available to platform subscribers. As the market continues to mature, this option presents risks, including undermining the efficiency, information symmetry, and participant confidence and trust in the market.

#### Option B – *[Platform reporting only]*

- 42 This option requires (through legislation) trading platforms to publish their daily closing price on their websites, and to report additional trading information to the

government, such as daily volume, and the high and low price for the day. This information would be made public in aggregate form by the government at regular intervals. It will also be a requirement to build up and maintain a history of month-to-date and year-to-date information.

- 43 Platforms would be required to make granular, transaction information available via their reporting to the government, but this would not be publicly published. This would provide transparency on transactions that are made on the platforms but would not capture other OTC trades that occur. This would improve transparency over the status quo. It would not enable a comprehensive monitoring framework due to it only capturing a portion of the market.

**Option C – [Platform reporting plus Register reporting of transactions above a defined threshold]**

- 44 Option C includes the platform reporting as outlined in Option B plus requiring OTC trades over a defined threshold to be reported in the Register. This would capture a portion of the OTC market compared to Option B, which captures none, however, it would come with increased complexity and cost.
- 45 Requiring reporting for OTC trades over a defined threshold would provide more information for monitoring purposes compared to Option B. However, it still provides an incomplete picture as transactions under a defined threshold would not be covered. It may also incentivise altered trading behaviour to circumvent the requirement, such as trading units in smaller amounts.

**Option D – [Enhanced information collection via the Register]**

- 46 Option D requires participants to provide specified trading information, such as trade price, volume, and settlement date, and would capture administrative transfers when recording a transfer of NZUs in the Register, as well as different types of trades such as forward and future trades. Government would then publish some of this information in aggregate format, increasing data transparency and allowing market participants to make more informed trading decisions. The market monitor would also have access to this data to scan for any misconduct occurring OTC.
- 47 It would not capture trades occurring on the platforms and the data would likely only be available at intervals (i.e. fortnightly, monthly) rather than daily, resulting in delays for participants seeking visibility of trading activity.

**Option E – [Enhanced information collection and reporting via the Register (Option D) coupled with platform reporting (Option B)]**

- 48 Option E takes a two-pronged approach to data reporting and requires platforms to publish their daily closing price on their websites and to report additional trading information (such as daily volume and granular trade information) to the government (as outlined in Option B) coupled with requiring OTC participants to provide key trading information via the Register (Option D). Platform reporting would aim to commence quickly, while Register reporting would only be implemented in the medium-term (noting the required replacement of the Register). This phased implementation means only partial data capture in the short-term.
- 49 Once fully implemented across both Platform and Register reporting, this option will allow for monitoring of any misconduct. Requiring the platforms to report their trading data would bring immediate improvements to transparency in the short-term, while longer term changes are made to enable enhanced Register reporting. Following the implementation of Register reporting, the interim enhancements provided by platform reporting can be re-evaluated, as this information could be collectively captured directly in any new register system.

## How do the options compare to the status quo/counterfactual?

**Table 4: Multi-criteria analysis of options to respond to the lack of transparency in the NZU market**

Criteria	Option A: Status quo/counterfactual	Option B: Platform reporting only	Option C: Platform reporting plus Register reporting of transactions above a defined threshold	Option D: Enhanced information collection via the Register	Option E: Enhanced information collection and reporting via the Register (Option D) coupled with platform reporting (Option B)
<b>Integrity</b>	0 <ul style="list-style-type: none"> <li>Limited market information available.</li> <li>Impacts informed decision making and overall market confidence.</li> </ul>	+	+	+	++
<b>Minimal complexity/ Compliance cost for market participants</b>	0 <ul style="list-style-type: none"> <li>No additional complexity.</li> <li>No additional compliance cost.</li> </ul>	0	-	-	-

			frequency of reporting requirements.		
<b>Administrative costs for the Crown</b>	0 <ul style="list-style-type: none"> <li>No short-term associated costs.</li> <li>Note: for all options the medium term the Register will require replacement due to its aging infrastructure which comes at a cost.</li> </ul>	- <ul style="list-style-type: none"> <li>Some cost to the Crown to collate and publish additional aggregated information.</li> </ul>	- <ul style="list-style-type: none"> <li>Increased cost to develop a framework as there is no system in place to capture and publish the data.</li> </ul>	- <ul style="list-style-type: none"> <li>Including this functionality in the replacement Register is not expected to have a significant additional cost.</li> </ul>	- <ul style="list-style-type: none"> <li>Including this functionality in the replacement Register is not expected to have a significant additional cost.</li> </ul>
<b>Market efficiency</b>	0 <ul style="list-style-type: none"> <li>Low market efficiency as transaction information for the OTC market is not available.</li> <li>Platform trading information is not public, and where available only captures a portion of market.</li> </ul>	+ <ul style="list-style-type: none"> <li>Partial improvement but only captures platforms.</li> </ul>	+ <ul style="list-style-type: none"> <li>Improvement with platform reporting, but OTC transaction reporting doesn't capture whole market.</li> <li>Trades could be structured to avoid reporting threshold.</li> </ul>	++ <ul style="list-style-type: none"> <li>Clear improvement with transaction information available to all participants.</li> <li>Enables monitoring.</li> </ul>	++ <ul style="list-style-type: none"> <li>Clear improvement with transaction information made available to all participants.</li> <li>Enables monitoring.</li> <li>Covers OTC and platform trading in full.</li> </ul>
<b>Overall assessment</b>	0	1	0	1	2 (preferred option)

## Option best to address the problem, meet the policy objectives and deliver the highest net benefits

- 50 Our preferred option is Option E: Enhanced information collection and reporting via the Register (Option D) coupled with platform reporting (Option B).
- 51 This option provides immediate and ongoing improvements to market transparency via platform reporting and comprehensive transaction data via Register reporting (noting that this will take place in the medium-term, with the Register replacement). Together, this information will provide substantial improvements to market transparency and enable monitoring of both platform and OTC trading.
- 52 Register reporting will require participants to provide specified trading information such as trade price, volume, and settlement date, along with administrative transfers when recording a transfer of NZUs into the Register (once the replacement becomes available). The information will also be published in aggregate format to increase data transparency and allow market participants to make more informed trading decisions.
- 53 Platform reporting will require, through legislative amendments, trading platforms to publish on their websites their daily closing price, alongside reporting specified trading information to the government (noting that the specific details of the trading information to be reported on are yet to be determined and will be worked out as part of the legislative process). *[Added December 2025]* Final policy decisions on the trading information to be reported have been made. Details are listed in bullet #109 of this RIS.
- 54 Platform reporting will provide transparency of trading information on the trading platforms. Making the specified trading information publicly available in aggregate is an improvement over the status quo and will support timely price and flow visibility.
- 55 This new information in the Register will also provide data to enable monitoring for suspected misconduct in the OTC market.

### Implementation

- 56 The phased approach to improving transparency will make some immediate improvements and will enable future improvements to be implemented when the Register replacement is available.
- 57 Platform reporting is the first step in providing equal access to trade information for all market participants, before commencing the legislative design process, further work will progress with the platforms to ensure that the right balance is struck between the provision of useful information and protecting data that is commercially sensitive.
- 58 Register reporting will not be able to be implemented until the Register is replaced 9(2)(j)  
 Accordingly, the implementation of Register reporting will be progressed first by creating a new regulation-making power. This power would then be used in the future to require participants to input specified trading information (to be determined in the legislative process) relating to NZUs into the Register (post-replacement).
- 59 Consultation would be undertaken before this regulation-making power is used, to ensure that participants fully understand the new requirements for disclosing information in the Register.
- 60 In the medium-term, once the Register replacement is operational, platform reporting requirements will be re-evaluated, as the replacement Register could collectively capture this information, in effect covering both the platform and OTC segments of the market.

- 61 Market monitoring functions will initially be carried out by MfE, with the potential to delegate this responsibility to EPA at a later date and once a replacement Register is available. This would be an administrative decision (determined, for example, by resourcing) – under the proposed option, the necessary information to enable monitoring could be available to either agency.
- 62 Legislation will be amended to allow the EPA to capture and share trade data and to require platforms to publish trade data. This will ensure that trade information is accessible to all participants.

**Who is affected and how**

- 63 Requiring platform operators to report their trading data to the government will have minimal effects on their operations as they already do this for subscribing platform users. However, the requirement to publish closing prices may impact some platforms more than others; some have their own subscriber models for making such information available and could lose some revenue from a new legislative requirement to provide this information publicly.
- 64 NZU market participants could incur additional costs when complying with new transaction reporting as they would be required to record additional fields of information. However, this is expected to be minimal, as it is a relatively small addition to the reporting requirements that already exist.
- 65 The right balance must be achieved between information that can be made publicly available versus information that is commercially sensitive. This will be developed during the regulation-making stage and there will be further detailed conversations with platforms and others as necessary to define the specific trade information parameters.

**Marginal costs and benefits of the option**

- 66 The existing private trading platform operators employ a mix of operating models, although they share common features. Larger platforms restrict reader access to trading information to those that have successfully gone through a client-onboarding process, which requires that the participant will be an active trading participant going forward. Access is then free, with visibility of price, volume, indicative bid, and offer information. The platforms aim to secure trading participants and their business, in order that they can monetise that trade flow going forward – for example, by a small trading fee on every transaction (or equivalent charge).
- 67 Option E will improve market information on pricing and volume, which will be positive for market development, in time leading to increased market activity. It is difficult to accurately quantify the benefits of this market development. However, a useful reference point is the Australian Securities Exchange (ASX), which launched a series of environmental futures in mid-2024. The offering made trading in two Australian futures products and one New Zealand futures product (the NZU) available. Challenges in visibility of price and traded volume information materially contributed to an outcome where NZU futures were approximately twice as expensive to trade as the Australian futures products.

**Table 5: Marginal costs and benefits – Transaction reporting (Preferred Option E)**

<b>Affected groups</b> <i>(identify)</i>	<b>Comment</b> <i>nature of cost or benefit (e.g. ongoing, one-off), evidence and assumption (e.g. compliance rates), risks.</i>	<b>Impact</b> <i>\$m present value for monetised impacts; high, medium or low</i>	<b>Evidence Certainty</b> <i>High, medium, or low.</i>
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		<i>for non-monetised impacts.</i>	
<b>Additional costs of the preferred option compared to taking no action</b>			
Trading platform operators	<p>Some small additional costs will be generated by platform operators needing to publish price information and develop and deliver reports containing volume information to provide to government.</p> <p>A potential additional cost to some platform operators who may currently be able to sell price and summary volume data to external data agencies, such as Bloomberg. There is potential disruption to this income, due to the information being made publicly available either on the platforms or in aggregate reports by the government.</p> <p>As platform providers do not currently charge users for trading information, but rather make that information available to people trading on their platform, there would be no associated loss of revenue from making this information publicly available.</p>	<p>\$10–50,000 spread across all platform operators.</p> <p>\$50–100,000.</p>	<p>Low</p> <p>Based on the estimated time to complete reporting requirements.</p> <p>Low</p> <p>We do not currently know how much revenue platform operators may be making by selling trading information.</p>
Market participants trading NZUs	<p>Some additional time will be required to report additional data through the Register when recording a transfer of NZUs. However, this impact would not be felt until the Register was replaced, enabling new reporting requirements to be implemented. At that point, overall improvements to the functioning of the Register would likely reduce the overall time to record a transfer.</p>	Low	<p>High</p> <p>There will be some variation in time impacts for different market participants. Those who use the Register regularly will be faster at completing a record.</p>
Government	<p>There will be costs to enhance the information collection and data sharing capability in the Register. This will form part of an existing piece of work to replace the Register so will not have significant additional costs.</p> <p>There will also be resourcing requirements to publish aggregate data gathered from the Register. This will be covered within agency baselines.</p>	Low	<p>Medium</p> <p>The costs of the Register replacement are not yet known, but we are confident the additional costs to include some new data collection requirements will be minimal compared to the overall cost of the replacement.</p>
<b>Total monetised costs</b>		\$10–50,000, for reporting requirements, \$50–100,000	Low

		from potential loss of revenue, spread across all platform operators.	
<b>Non-monetised costs</b>		Low	Medium–High
<b>Additional benefits of the preferred option compared to taking no action</b>			
Trading platform operators	<p>Trading platform operators would benefit from the impacts that improved data transparency would have on the market. Greater data transparency would increase investor confidence, likely contributing to greater activity from existing participants, along with attracting previous participants to re-enter and some new participants to enter the market. This would increase the number of market participants trading on platforms, increasing their overall revenue.</p> <p>Platforms will be able to monetise this increased activity using their existing operating models.</p>	High	<p>Low</p> <p>For commerciality reasons, platforms do not share their pricing structures.</p> <p>It would be reasonable to expect a modest increase in trading activity overall. Applying an expected charge to this modest scenario gives an indication of potential revenue increase.</p>
Market participants trading NZUs	<p>Increased market transparency will support better-informed trading decisions for all market participants.</p> <p>Once fully implemented with complete capture across platform and OTC activity, market participants will also benefit from improved confidence from market monitoring.</p>	High	<p>Medium</p> <p>Some market participants will already have access to some trading information via their platform operator.</p> <p>However, the changes will increase market transparency and will particularly support less sophisticated market participants to make more informed trading decisions.</p>
Government	<p>The changes will enable improved transaction reporting data to be captured, which will improve government’s ability to provide market oversight and make informed ETS policy decisions.</p>	High	<p>High</p> <p>Agencies are currently unable to quantify key data about the ETS market, so the change will significantly improve government’s understanding of the market.</p>
<b>Total monetised benefits</b>		High	Low

Non-monetised benefits		High	Medium–High
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## Other impacts of the preferred option

- 68 Consideration will be given during implementation to decisions around what market information is required to be published by platform operators on their own websites, and what information is reported to the government and published in aggregate form. There is potential for very high commercial risk to platforms, which will be considered in making these decisions. While publishing summary price information publicly is straight-forward with minimal commercial risks to platforms, 9(2)(b)(ii)
- 69 Requiring increased transaction reporting through the Register means that changes are needed to enable the sharing of necessary information for the introduction of market monitoring and enforcement (the latter of which is addressed under issue 2), between agencies (FMA, MfE, MPI, MBIE, and EPA).
- 70 The status quo is tied to specific obligations in the CCRA for the EPA to maintain confidentiality except for listed instances.<sup>9</sup> This restricts the type of information that the EPA can share with other parties. Expanding the data sharing capabilities of the EPA would ensure that there is an ability to share data captured through the Register with the market monitor.
- 71 Any suspicious activity detected by the monitor would also need to be shared with the regulator for potential investigation. Without access to this information, the monitor would have limited oversight of market trading and the type of conduct that may occur during these transactions.
- 72 Expanding the EPA’s data collection and data sharing capabilities will require amendments to legislation.
- 73 There may be a risk that market participants do not fully understand the new reporting requirements. However, these requirements will not be implemented until regulations require them to do so, which will follow the replacement of the Register. An opportunity exists to explore options to clearly communicate the requirements and changes in the Register prior to its implementation. It should be noted that reporting requirements largely remain unchanged and that this option will only add some additional reporting fields.

## Issue 2: Market conduct obligations

- 74 To support economic efficiency and to maintain trust, the NZU market must operate within a framework that clearly outlines unacceptable conduct.

### Objectives of the policy proposal

- 75 The objective of this policy is that it ensures the integrity of NZU market trading, functions efficiently, promotes confidence, and addresses the risks of misconduct. Specifically, it aims to:
- clearly outline what types of market conduct are unacceptable; and

<sup>9</sup> Section 99, Climate Change Response Act 2002.

- enable the agency tasked with market compliance oversight to respond to suspected market misconduct.

## Stakeholder views

- 76 Discussion documents from previous rounds of consultation contained various options, including re-defining NZUs as financial products to bring trading under the remit of existing financial market rules. Feedback was mixed in relation to the broad theme of 'Regulating the NZU market based on financial legislation'.
- 77 The stakeholder views expressed were relatively consistent, and there was overall support for prohibitions on market misconduct. Some submitters pointed out that the risk of market misconduct is not problematic in the current market environment. However, it was also noted that this risk is difficult to detect under the status quo.
- 78 In a more recent round of targeted consultation, stakeholders, both large and small, generally maintained their support for the introduction of market conduct measures. Regarding the appropriate regulatory body, respondents supported the Financial Markets Authority having market oversight, with MfE or the EPA acting as the monitoring agency.

## What options are being considered?

### Option A – [status quo]

- 79 Currently, the lack of transaction reporting data and data transparency limits the ability of the government to monitor the market, leading to a general lack of oversight and the corresponding inability to respond to occurrences of misconduct. In the long run, this presents risks to market integrity. There is no fiscal cost associated with the status quo.
- 80 Current settings leave the government vulnerable. Should misconduct, such as price manipulation, occur, it could severely impact ongoing confidence in the NZU market, therefore reducing the overall effectiveness of the ETS.

### Option B – [voluntary measures]

- 81 Option B would resemble a code of conduct that defines best practice for NZU trading platforms and promote customer protection. As a voluntary measure, only customers of platforms that have agreed to the measures would be protected. This is a least-cost option and relies heavily on NZU trading platform and market participants to buy-in and support the initiative.
- 82 The benefit of this option is that the adoption of such measures could, at least initially, be seen as a point of differentiation for the trading platforms. Over time, this may encourage most, if not all, of the trading platforms to adopt the measures. However, on balance, the voluntary nature of the option risks poor initial uptake, and until the measures are broadly adopted, it will result in little to no change from the status quo.

### Option C – [market conduct obligations]

- 83 Option C introduces clear and adequate NZU market conduct obligations. This includes:
- prohibiting manipulating the price of NZUs;
  - prohibiting false, unsubstantiated, and misleading conduct in relation to buying or selling NZUs – either in the context of giving advice or providing services.
- 84 The increase in regulatory oversight associated with this option would require more funding than an approach with less direct oversight. Nonetheless, market monitoring could start small, and progress further with additional changes taking place in the medium-term, such as the Register replacement.

- 85 There is also an opportunity within this option to seek help from trading platforms regarding voluntary measures with which they could assist. This could include platform agreement to inform the regulator about suspected suspicious activity.

**Option D – [expansive market conduct rules]**

- 86 This option would introduce the most comprehensive regulatory oversight measures and would be the highest cost to implement. In addition to introducing the same obligations as described in Option C, it would also introduce the regulation of NZU advice as well as requiring trading to take place on a registered platform.
- 87 The benefit of this option is that would introduce a comprehensive set of rules for the market, allowing for the strongest possible oversight by the designated regulator. Regarding costs, this option would take considerable time to implement given the significant changes that it would introduce, and it could disrupt the market.

## How do the options compare to the status quo/counterfactual?

**Table 6: Multi-criteria analysis of options to establish clear market conduct obligations for the NZU market**

Criteria	Option A: Status quo	Option B: Voluntary standards	Option C: Market conduct obligations (i.e. prohibit market manipulation, false or misleading advice, misleading or deceptive conduct)	Option D: Expansive market conduct rules (i.e. regulating NZU advice, trading solely on registered platform)
<b>Integrity</b>	0 <ul style="list-style-type: none"> <li>Unclear regulatory framework. Risk to market integrity.</li> </ul>	+	+	++
<b>Minimal complexity/ Compliance cost for market participants</b>	0 <ul style="list-style-type: none"> <li>Low-cost option.</li> <li>No additional complexity; however, could become high if rules are not in place to be able to appropriately address market misconduct if detected.</li> </ul>	-	-	--
<b>Administrative cost for the Crown</b>	0 <ul style="list-style-type: none"> <li>Lowest-cost option, with potential for significant</li> </ul>	0	-	--

Classification

	administrative burden if market misconduct occurs.	<ul style="list-style-type: none"> <li>• Minimal cost to the Crown.</li> </ul>	<ul style="list-style-type: none"> <li>• Increased regulatory oversight or building regulator capacity would require more funding than a model with less oversight.</li> <li>• Phasing of the implementation is an option and can be adjusted to achieve optimal compliance based on risk.</li> </ul>	
<b>Clarity/ Transparency</b>	<p>0</p> <ul style="list-style-type: none"> <li>• Little clarity on how market misconduct is handled.</li> </ul>	<p>0</p> <ul style="list-style-type: none"> <li>• Low transparency as unregulated and voluntary.</li> </ul>	<p>+</p> <ul style="list-style-type: none"> <li>• Improvement in clarity with clear regulatory framework.</li> <li>• Regulator can issue guidance to assist with clarity.</li> </ul>	<p>+</p> <ul style="list-style-type: none"> <li>• Improvement in clarity with clear regulatory framework.</li> </ul>
<b>Market efficiency</b>	<p>0</p> <ul style="list-style-type: none"> <li>• No improvement to market integrity and could impact market efficiency (if misconduct is taking place).</li> </ul>	<p>0</p> <ul style="list-style-type: none"> <li>• There may be some improvement over the status quo if the standards are taken up, but it also means that improvements are not guaranteed and could result in the same as status quo.</li> </ul>	<p>+</p> <ul style="list-style-type: none"> <li>• Improvement in market integrity.</li> <li>• Enforceable.</li> <li>• Increases protections without imposing increase in compliance costs on market participants.</li> </ul>	<p>+</p> <ul style="list-style-type: none"> <li>• Improvement in market integrity with clear market misconduct standards.</li> <li>• Enforceable.</li> </ul>
<b>Total</b>	0	0	1 (preferred option)	0

## Option best to address the problem, meet the policy objectives and deliver the highest net benefits

- 88 Our preferred option is Option C: market conduct obligations. We believe that introducing targeted measures would go some way to addressing misconduct risks, would be enforceable, and could be implemented in a reasonable amount of time. It is also proportionate to our estimation of the current risks.
- 89 This option is consistent with how good conduct is encouraged by other emissions trading schemes internationally and it can be achieved with minor additional costs to participants.
- 90 The option avoids complex legislative changes, as it is very similar to the approach taken in the FMCA for this kind of conduct in analogous financial markets. The option also sends a clear message from the government regarding its expectations in relation to market misconduct and how/why it is prohibited (i.e. they always apply and the potential consequence is a regulator will have powers to enforce this conduct).
- 91 There may be some administrative costs for the government, such as costs associated with market monitoring and undertaking enforcement action. However, the costs should be proportionate to the benefits to achieve optimal compliance, they are also scalable and will be considered during the implementation phase.

### Implementation

- 92 The market monitoring component of this option will initially be carried out by MfE, with the potential to delegate some or all of this responsibility to the EPA at a later date. This would be an administrative decision, with the potential for shifting the monitoring functions over time.
- 93 The monitoring agencies will then refer occurrences of suspected market misconduct to the FMA, as the agency with enforcement responsibility for the associated market misconduct prohibitions.
- 94 Initial market monitoring and enforcement will necessarily be small in scale and absorbed within agency baselines. Over time, there will be choices regarding additional costs to scale up market monitoring and enforcement.
- 95 Regarding market conduct prohibitions, additional work will also be carried out by officials during the legislative development phase to ensure the appropriate level of civil and/or criminal penalties. *[Added December 2025]* Final policy decisions on civil and criminal penalties have been made. Details are included in section 3 of this RIS.

### Who is affected and how

- 96 The behaviour or conduct that the government is seeking to deter or prevent is likely to be engaged in by only a small number of people. However, should market misconduct occur, it could have significant impacts on the confidence in and credibility of the NZU market and the wider ETS.
- 97 The vast majority of NZU market participants who already abide by standard market norms will be largely unaffected by these proposals. Conversely, those who seek gains through market manipulation without real risk of detection and enforcement action may not be in favour of market conduct obligations and will likely be impacted by their introduction.

## What are the marginal costs and benefits of the option?

### Table 7: Marginal costs and benefits – Market oversight and standards

<b>Affected groups</b> <i>(identify)</i>	<b>Comment</b> <i>nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks.</i>	<b>Impact</b> <i>\$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.</i>	<b>Evidence Certainty</b> <i>High, medium, or low, and explain reasoning in comment column.</i>
<b>Additional costs of the preferred option compared to taking no action</b>			
Market participants, including people that provide advice or services related to the NZU market	Minimal cost to understand new market conduct obligations. These are non-complex and guidance will be provided to assist market participants to understand the changes. This is a one-off transitional cost.	Less than \$300,000	Medium Based on 13,000 participants with accounts in the Register each taking 30 minutes at \$50/hour to understand the changes. This may double count some participants and not count others, such as advisors who do not have Register accounts.
MfE (market monitor) and FMA (market regulator)	<p>Costs for market monitoring in the short term will be absorbed within agency baselines. There will be choices in future about how to scale this up.</p> <p>Cost to provide guidance for market participants about new market conduct obligations. This cost would also be absorbed within agency baselines.</p>	<p>Approximately \$150,000 in the short term and met within agency baselines.</p> <p>Costs could increase over time as monitoring is scaled up, but informed decisions about that would be made in future and costs would only increase if there was reason to think the benefits justified it, for example because data indicated stronger market oversight was necessary.</p>	Medium Short term cost based on 1FTE that would be absorbed within baselines. We are unable to calculate the exact costs as it will depend on the scale of market monitoring undertaken.
<b>Total monetised costs</b>		\$150–450,000	Medium
<b>Non-monetised costs</b>		Low	Medium
<b>Additional benefits of the preferred option compared to taking no action</b>			
Market participants, including people that provide advice or services related to the NZU market	Clear market conduct obligations will give users increased confidence in the market and provide protections against situations where misconduct occurs. The	Medium While these benefits cannot be quantified, they would further support the benefits of increased market confidence discussed	Low

	benefits to users may be unclear, but real.	and monetised in the previous cost-benefit table.	
MfE (market monitor) and FMA (market regulator)	Proactive monitoring and enforcement will have follow-on benefits, resulting in a better understanding of the market and user behaviours. Government can be more confident that it is not exposing itself to risks that could significantly impact the credibility of the ETS.	Medium While these benefits cannot be quantified, they would further support the benefits of increased market confidence discussed and monetised in the previous cost-benefit table.	Low
<b>Total monetised benefits</b>		N/A	N/A
<b>Non-monetised benefits</b>	Clear market conduct obligations leading to market confidence.	Medium	Low

### Other impacts of the preferred option

- 98 There is a small risk that market users may not understand the new prohibitions. Current market conduct obligations as they relate to the NZU market are unclear. This package is a step to improve clarity and expectations of market conduct for market users. Further, there is an opportunity to educate market users prior to implementation.
- 99 With the introduction of clear conduct obligations for market participants, the government will have to ensure that it is also meeting, and in some areas, improving standards that ensure the integrity of the NZU market. This includes, but is not limited to, the correct handling of market-sensitive information and remaining alert to any potential risk of insider trading.

## Section 3: Analysis of penalty options and proposed penalty and enforcement regime [added December 2025]

### Background

- 100 As part of the ETS market governance decisions, Cabinet agreed to delegate responsibility to the Minister of Climate Change, in consultation with the Minister of Justice, to make decisions on a penalty and enforcement regime to ensure compliance with the market governance provisions listed below [CAB-25-MIN-0086.01 refers]:
- Platform reporting: require platforms to report price and volume information to the government for monitoring and other government purposes, and maintain a broader history of trading information
  - Register reporting: require NZU market participants to record trading information in the Register, and enable the government to periodically publish online aspects of this trading information in aggregate
  - Market monitoring and information sharing: enable relevant agencies to share information as necessary to give effect to their regulatory responsibilities and allow the dedicated market monitor to request and assess information from market participants, including platform providers, as required

- Market conduct obligations: add market conduct obligations to the CCRA to prohibit price manipulation, and false, unsubstantiated, and/or misleading conduct, and allow the market regulator to intervene in market misconduct.

101 For this section, we define the status quo as a situation where Cabinet’s decisions on ETS market governance are progressed into law, with no associated penalty regime put in place to enforce these new provisions.

### Problem definition

102 In the absence of a sufficiently robust penalty regime, the market monitor and market regulator will have no tools to enforce breaches of the new market governance provisions. Weak enforcement therefore risks retaining the problems of reduced economic efficiency, persistent information asymmetries between participants, and eroding confidence in the NZU market.

### Scope options are considered within

103 While the proposed penalties are new, in that they apply specifically to the new market governance provisions, the options considered were based on existing similar penalties in the CCRA, FMCA, and other related legislation such as the Fair Trading Act 1986 (FTA).

104 We aimed to align the final, preferred penalty option for each market governance provision as closely as possible with existing legislation. This will enable the new penalties to fit logically alongside New Zealand’s existing commercial and financial markets law.

### Criteria used to compare options to the status quo

105 Table 8 outlines the four criteria selected to assess the various penalty options against the status quo.

106 We note that this section uses a different set of assessment criteria than Section 2 of the RIS. This reflects the fact that the penalty regime is designed to support compliance with the policy interventions identified in the last section, rather than directly addressing the core policy problem.

**Table 8: Criteria used for analysis of ETS market governance penalty options**

Criteria	Description
Consistency with other legislation	Ensuring that the preferred penalty options align with other related legislation is essential. Misalignment with the penalty regimes of the Climate Change Response Act 2002, Financial Markets Conduct Act 2013, Financial Markets Authority Act 2011, Fair Trading Act 1986, and Commerce Act 1986 risks ETS market governance being out of step with the standards set in other financial markets and commerce-based legislation.
Equity between market participants	NZU market participants vary significantly in size and purpose, as do the platform providers. To ensure fairness and proportionality in enforcement, it is important that the chosen penalties do not prejudice either end of the spectrum.
Ease of implementation	Cabinet agreed that ETS market governance provisions must operate in a light-touch and low-cost way. Accordingly, the preferred penalty options should also be easy to implement and administer.

Likelihood of deterring offending	Penalty regimes exist to enforce and provide punishment for violations of the law. They also exist to deter or discourage potential offending. Accordingly, the preferred penalty options should deter individuals from seeking to circumvent the new ETS market governance requirements.
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107 Each option was assessed against the status quo to determine how well it meets each criterion. The key below shows the symbols used to indicate the assessed marks for each criterion (see **Table 9**).

**Table 9: Key to criteria analysis assessment**

Symbol	Meaning
++	Significant improvement over doing nothing/the status quo
+	Improvement over doing nothing/the status quo
0	Equal to doing nothing/the status quo
–	Worse than doing nothing/the status quo
--	Significantly worse than doing nothing/the status quo

### Issue one: Information reporting requirements

108 Appropriate penalties are required to encourage compliance with the following information reporting requirements and provide an enforcement response to any compliance breaches. We consider that the below requirements are similar in that they all relate to maintaining and providing information to government:

- NZU market trading platforms to report price and volume information to the government daily (platform reporting)
- NZU market trading platforms to maintain a history of trading information, which can be requested by the market monitor (platform history), and
- NZU market trading platforms and NZU market participants to provide information to the market monitor upon request (market monitoring).

109 In relation to platform reporting, the Minister of Climate Change made delegated policy decisions on the information that platform providers would be required to report to the government daily:

- closing bid and closing offer price
- price and volume of the final trade of the day
- high and low traded price of the day
- total volume of NZUs transacted on the day.

110 The Minister also made delegated policy decisions in relation to platform trading history and the information that must be maintained and made available upon request by the market monitor:

- executed trade history, also referred to as an ‘activity log’, detailing for each NZU or NZU derivative transaction:
  - i. trade date
  - ii. settlement date

- iii. trade type (e.g. base NZU, NZU forward, NZU future, etc.)
- iv. volume of NZUs exchanged in trade
- v. counterparties to the trade
- additional information that platforms are required to maintain a history of includes:
  - i. balance sheet, on an annual basis per the financial year
  - ii. number of NZUs exchange in a given year on platform.

111 We consider that the failure to maintain a history of trading information (platform history) to be the most serious violation of the three requirements. This is because it prevents the market monitor or regulator from being able to obtain information and conduct thorough audits in cases of suspected misconduct, posing a risk to NZU market integrity. Accordingly, the penalty amounts for this breach, including the final preferred option, are higher than those for platform reporting and market monitoring.

### Scope options are considered within

- 112 The penalty options for each of the three information reporting requirements were initially assessed separately and comprehensively. However, for the sake of simplicity and to avoid unnecessary length, we have consolidated the penalty options into one table.
- 113 We have ruled out of scope the options for fines based on a formula that uses average daily trading volumes, as this method is overly complex and results in fines that are too low for smaller platforms and participants to act as an effective deterrent.
- 114 Criminal penalties have also been ruled out of scope for these requirements as we consider them disproportionate to the level of offending.

### Options being considered

#### Option A – *Status quo*

115 Retaining the status quo, with no penalty created to enforce the new requirements.

#### Option B – *A fine with a maximum amount, with a list of factors for the court to consider*

- 116 A fine with a maximum amount of \$30,000, based on a list of defined considerations that the courts could consider to determine the appropriate penalty, including:
- the volume of NZUs traded on the platform or by the participant
  - the number of times the platform or participant have been non-compliant
  - whether the offender made efforts to avoid, mitigate, or resolve their failure to comply
  - any circumstances of the platform or participant that would make a high penalty disproportionately severe.

#### Option C – *Tiered infringement fees*

117 Tiered infringement fees, determined by the volume of NZUs traded on the platform or by the participant, with an additional fee per business day of continued non-compliance.

Breaches of requirement	Applies to	Amount
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Platform reporting Market monitoring	Smaller platform providers and participants	\$2,500
	Larger platform providers or participants	\$5,000
Platform trading history	Smaller platform providers	\$5,000
	Larger platforms	\$7,500

**Option D – Administrative penalty that increases with each breach (preferred option)**

118 A fixed administrative penalty that increases with each occurrence of non-compliance by the platform or participant.

Breaches of requirement	Applies to	Amount
Platform reporting Market monitoring	First-time breach	\$8,000
	Second-time breach	\$16,000
	Each subsequent breach	\$24,000
Platform trading history	First-time breach	\$12,000
	Second-time breach	\$24,000
	Each subsequent breach	\$32,000

119 These amounts would reset to the first-time breach penalty after a 12-month period has passed without further breaches.

**Option E – A flat rate infringement fee**

120 A flat rate infringement fee of \$1,000 for an individual or a fine not exceeding \$3,000, or an infringement fee of \$2,000 in any other case or a fine not exceeding \$6,000.

**Option F – Publication of breach (preferred option)**

121 EPA or MfE to publish details of non-compliance, in line with section 89 of the CCRA, which requires the EPA to publish details of other non-compliance under the CCRA.

## How do the options compare to the status quo/counterfactual?

**Table 10: Multi-criteria analysis of options to establish penalties to enforce the information reporting requirements**

Criteria	Option A: Status quo	Option B: A fine with a maximum amount, with a list of factors for the court to consider	Option C: Tiered infringement fees	Option D: Administrative penalty that increases with each breach	Option E: A flat rate infringement fee	Option F: Publication of breach
<b>Consistency with other legislation</b>	0 <ul style="list-style-type: none"> <li>No additional enforcement from the status quo.</li> </ul>	++ <ul style="list-style-type: none"> <li>There are existing examples in associated legislation where the court can consider additional factors before imposing a fine (e.g. CCRA for failing to provide required information to the inventory agency<sup>10</sup>).</li> </ul>	+ <ul style="list-style-type: none"> <li>There are existing penalties, but not infringement fees specifically, in the CCRA with tiers in place.<sup>11</sup></li> <li>Low evidence of tiered infringement fees in other related legislation.</li> </ul>	+ <ul style="list-style-type: none"> <li>There are existing penalties in the CCRA that provide for increasing/scaling penalties, based on reoccurrence of offence.<sup>12</sup></li> <li>There are existing administrative penalties in the CCRA (e.g. failure to surrender or repay NZUs.<sup>13</sup>)</li> </ul>	+ <ul style="list-style-type: none"> <li>CCRA, FMCA, and FTA includes infringement fees/offences.<sup>14</sup></li> </ul>	++ <ul style="list-style-type: none"> <li>CCRA requires publication of participants facing other penalties.<sup>15</sup></li> </ul>

<sup>10</sup> Section 46, Climate Change Response Act 2002, and Section 98, Financial Markets Conduct Act 2013.

<sup>11</sup> Section 131, Climate Change Response Act 2002.

<sup>12</sup> Section 129(2), Climate Change Response Act 2002.

<sup>13</sup> Section 134, Climate Change Response Act 2002.

<sup>14</sup> Section 30L, Climate Change Response Act 2002, and Section 40B, Fair Trading Act 1986.

<sup>15</sup> Section 89, Climate Change Response Act 2002.

Classification

	0	-	-	+	++	++
<b>Equity between participants</b>	<ul style="list-style-type: none"> <li>• ETS participants will face various legal obligations to meet the new market governance requirements.</li> <li>• However, with no enforcement mechanism, they could opt out of these requirements.</li> </ul>	<ul style="list-style-type: none"> <li>• A list of factors that includes participant size may mitigate the risk of imposing disproportionate fines on smaller platforms or participants.</li> <li>• However, for these penalties, we consider the same requirement and associated fine should apply equally because all platforms and market participants are similarly capable of complying.</li> </ul>	<ul style="list-style-type: none"> <li>• Fees based on tiers (based on trading volume or value of transaction) would limit the potential for disproportionate fee imposition.</li> <li>• However, for these penalties, we consider the same requirement and associated fine should apply equally because all platforms and market participants are similarly capable of complying.</li> </ul>	<ul style="list-style-type: none"> <li>• Imposed equally across platforms.</li> <li>• Some risk that smaller platforms may be more financially impacted by increasing penalties.</li> </ul>	<ul style="list-style-type: none"> <li>• Imposed equally across platforms.</li> <li>• Some risk that fees may be trivial for larger platform providers and participants.</li> </ul>	<ul style="list-style-type: none"> <li>• All platforms would be treated equally with the publication of their non-compliance.</li> </ul>
<b>Ease of implementation</b>	<ul style="list-style-type: none"> <li>• Departments will stand up new monitoring processes, but with no associated compliance framework to implement.</li> </ul>	<ul style="list-style-type: none"> <li>• Requirement for court involvement may result in delays.</li> <li>• May result in administrative burden for the compliance and enforcement agency.</li> <li>• Compliance action may not be taken if the costs of court involvement do not outweigh the</li> </ul>	<ul style="list-style-type: none"> <li>• Infringement fees can be issued directly by the enforcement agency.</li> <li>• May require some court involvement if challenged.</li> </ul>	<ul style="list-style-type: none"> <li>• Straightforward if aligned with a set/basic penalty structure with set increments.</li> <li>• May require some court involvement if challenged.</li> </ul>	<ul style="list-style-type: none"> <li>• Can be issued directly by the enforcement agency.</li> <li>• May require some court involvement if challenged.</li> </ul>	<ul style="list-style-type: none"> <li>• CCRA publication requirements already exist for other penalties, processes straightforward for the market monitor to implement.</li> </ul>

		benefits of pursuing compliance action.				
<b>Likelihood of deterring offending</b>	0 <ul style="list-style-type: none"> <li>Legal requirement may have some influence, but with no enforcement mechanism the deterrence effect is negligible.</li> </ul>	+	+	++	-	+
		<ul style="list-style-type: none"> <li>The list of factors would ensure that punishments for the worst cases of offending are commensurate.</li> <li>May not be effective as a deterrent if it becomes clear the regulator is rarely able to pursue court action due to high administrative burden.</li> </ul>	<ul style="list-style-type: none"> <li>Fee amounts for large platforms may not be as harsh as other options and may not be an effective deterrent.</li> <li>Likely to be sufficient for smaller platforms.</li> </ul>	<ul style="list-style-type: none"> <li>Recurring penalties, with increases for each case of non-compliance, would significantly strengthen deterrence.</li> </ul>	<ul style="list-style-type: none"> <li>Lower infringement fees are likely to be weaker than alternatives.</li> </ul>	<ul style="list-style-type: none"> <li>Publishing non-compliance is likely to impact on platform and participant reputation, in turn encouraging compliance with requirements.</li> </ul>
<b>Total</b>	0	1	2	5 (preferred option)	3	7 (preferred option)

## Option best to address the problem, meet the policy objectives and deliver the highest net benefits

- 122 Our preferred option to address issue one (information reporting requirements) is an administrative penalty that increases with each breach, in combination with the publication of non-compliance.
- 123 The purpose of the administrative penalties is to encourage compliance, rather than severely punish behaviour. Administrative penalties are instant, fixed monetary penalties enforced directly by the regulator. This makes them an effective deterrent against non-compliance. They are also efficient and cost effective, as they generally avoid court proceedings. The regulator will be able to clearly determine whether a breach has occurred – proof of intent does not need to be established, either the information was provided by the platform provider or participant, or it was not.
- 124 In addition to the administrative penalty, publication of platform or participant non-compliance is a simple and cost-effective way to further encourage compliance with the new requirement. There is also a pre-existing requirement in the CCRA to publish details of penalties imposed during the financial year.
- 125 Across the three administrative penalties, two are set at the same amount, with the third penalty set at a higher rate, to reflect the more serious nature of the offence:
- Platform reporting – failure to report price and volume information to government; and market monitoring – failure to provide information to the market monitor:
    - i. first-time breach: a penalty of \$8,000
    - ii. second-time breach: a penalty of \$16,000
    - iii. subsequent breaches: a penalty of \$24,000 per breach
    - iv. the amount will reset to the first-time breach level after a 12-month period has passed without further breaches.
  - Platform history – failure to maintain a history of trading information
    - i. first-time breach: a penalty of \$12,000
    - ii. second-time breach: a penalty of \$24,000
    - iii. subsequent breaches: a penalty of \$32,000 per breach
    - iv. the amount will reset to the first-time breach level after a 12-month period has passed without further breaches.
- 126 Existing administrative penalties in the CCRA have a review and appeal process for decisions made by the regulator. The process provides a formal avenue for review of decisions and gives a person the right to appeal the decision to the District Court and to appeal to the High Court on matters of law only, ensuring the principles of natural justice are upheld. The same review and appeals process would apply for the new administrative penalties.
- 127 Platform history requirements will not take effect retrospectively. Rather, trading platforms will only be required to maintain and build up their trading records from the date of passage into law.

## Issue two: Register reporting requirements

- 128 Register reporting requirements will not be implemented until the future state Register can receive trading information. As a result, the preferred penalty will also not be implemented until this time.
- 129 Once Register reporting is implemented, NZU market participants will be required to record specified trading information in the Register.

- 130 The details of what trading information participants will have to record is subject to further targeted consultation, ministerial consideration, and additional decisions regarding technical details. However, in general, we expect that the information requirements will capture the trading of both base NZUs and NZU derivative products.
- 131 While associated penalties would not be enforced until Register reporting is implemented, we are considering and assessing penalty options now as this will:
- support a smooth process following the introduction of the Register reporting requirements
  - enable any necessary legislative change to be made as part of the CCRA Amendment Bill that is being progressed.

### Options being considered

#### Option A – *Status quo*

132 Retaining the status quo, with no penalty created to enforce the new requirement.

#### Option B – *A tiered infringement fee*

133 Tiered infringement fees that are determined by the volume of NZUs exchanged. For example, \$5,000 for participants trading below a certain threshold and \$7,500 for those trading above this threshold.

#### Option C – *A fine with a maximum amount, based on a list of factors*

- 134 A fine up to a maximum amount of \$30,000, based on a list of factors, such as:
- the value of the NZU transaction not reported
  - the number of times the participant had previously failed to comply
  - specific circumstances that would make a high penalty disproportionate.

#### Option D – *A fine that increases with each occurrence*

135 A fine that increases with each occurrence of non-compliance. These amounts would reset to the first-time penalty after a 12-month period has passed without further breaches.

Applies to	Amount
First-time breach	\$8,000
Second-time breach	\$16,000
Each subsequent breach	\$24,000

#### Option E – *A flat rate infringement fee (preferred option)*

136 A flat rate infringement fee of \$1,000 for an individual or a fine not exceeding \$3,000, or an infringement fee of \$2,000 in any other case or a fine not exceeding \$6,000.

#### Option F – *Publication of breach (preferred option)*

137 EPA or MfE to publish details of non-compliance, in line with section 89 of the CCRA.

## How do the options compare to the status quo/counterfactual?

**Table 11: Multi-criteria analysis of options to establish penalties to enforce Register reporting requirements**

Criteria	Option A: Status quo	Option B: Tiered infringement fees	Option C: A fine with a maximum amount	Option D: A fine that increases with each occurrence	Option E: A flat rate infringement fee	Option F: Publication of breach
<b>Consistency with other legislation</b>	0 <ul style="list-style-type: none"> <li>No additional enforcement from the status quo.</li> </ul>	- <ul style="list-style-type: none"> <li>Penalties are imposed under other commercial legislation for failing to provide information to a Registrar.<sup>16</sup></li> <li>Lack of tiered infringement offences in related legislation.</li> </ul>	+ <ul style="list-style-type: none"> <li>Low evidence of similar penalties in other relevant legislation.</li> <li>Existing legislation provides for the application of a list of factors.<sup>17</sup></li> </ul>	++ <ul style="list-style-type: none"> <li>Other relevant CCRA fees and penalties broadly analogous to providing/recording information (e.g. failing to comply with emissions returns requirements).<sup>18</sup></li> </ul>	++ <ul style="list-style-type: none"> <li>CCRA has a list of relevant infringement offences in secondary legislation about failing to provide information.<sup>19</sup> It also allows for the creation of additional fees and fines.<sup>20</sup></li> </ul>	++ <ul style="list-style-type: none"> <li>CCRA already requires publication of participants facing penalties.<sup>21</sup></li> </ul>

<sup>16</sup> Section 207G, Companies Act 1993.

<sup>17</sup> Section 492, Financial Markets Conduct Act 2013.

<sup>18</sup> Section 129, Climate Change Response Act 2002.

<sup>19</sup> Climate Change Response (Infringement Offences) Regulations 2021.

<sup>20</sup> Section 30M Climate Change Response Act 200.

<sup>21</sup> Section 89, Climate Change Response Act 2002.



Classification

	deterrence effect is negligible.	<ul style="list-style-type: none"> <li>Potential for insufficient penalties for smaller value trades.</li> </ul>	<p>punished accordingly.</p> <ul style="list-style-type: none"> <li>Administrative complexity may reduce the amount of compliance action taken.</li> </ul>			participant – encouraging compliance.
<b>Total</b>	0	0	2	3	4 (preferred option)	5 (preferred option)

## Option best to address the problem, meet the policy objectives and deliver the highest net benefits

- 138 Our preferred penalty option to enforce Register reporting requirements is a flat rate infringement fee of \$1,000 for an individual or a fine not exceeding \$3,000, or an infringement fee of \$2,000 in any other case or a fine not exceeding \$6,000.
- 139 In addition, the failure to comply with the requirement to record trading information and/or to record information in the Register accurately, will be published. Publication of platform or participant non-compliance is a simple and cost-effective way to further encourage compliance with the new requirement. There is also a pre-existing requirement in the CCRA to publish details of penalties imposed during the financial year.
- 140 The proposed infringement offences will be established through regulations, the existing regulation making power in the primary legislation for infringement offences will need to be amended to enable this particular infringement offence and the associated tiered fees.

### Issue three: Market conduct obligations

- 141 We consider that the market conduct obligations are similar in that they are related to misconduct and can often occur in conjunction with one another:
- prohibition of NZU price manipulation, and
  - prohibition of false, unsubstantiated, and/or misleading conduct
- 142 The penalty options were initially assessed separately and comprehensively. However, we have combined the assessment of options into one table for the sake of simplicity. Similar to platform reporting penalties, there will be two separate penalties to enforce these prohibitions.
- 143 The underlying penalties assessed to enforce these prohibitions are stronger than the penalties under the information reporting and Register reporting requirements. This is because the violation of either market conduct obligation would pose significant and systemic risks to the operation and integrity of the NZU market.
- 144 We also placed a particular emphasis on assessing the various options against existing financial markets legislation in New Zealand. Cabinet agreed the FMA would use their existing regulatory toolkit to enforce these prohibitions; therefore, the underlying penalties should be aligned with their regulatory powers in other markets.

### Options being considered

#### Option A – *Status quo*

- 145 Retaining the status quo, with no penalty created to enforce the new requirements.

#### Option B – *Either a criminal or civil penalty, pursued at the discretion of the regulator (preferred option to enforce the prohibition of NZU price manipulation)*

- 146 Allowing the regulator the discretion to pursue either a criminal or civil penalty, with the application of the criminal law being appropriate where a *mens rea* element is present in the offending.<sup>23</sup>
- 147 The criminal penalty could only be applied where the person knew their actions or omission would have, or would be likely to have, the effect of manipulating the price of NZUs, and would be:
- imprisonment not exceeding 5 years for an individual, or a fine not exceeding \$500,000, or both
  - in any other case, a fine not exceeding \$2.5 million.
- 148 The civil pecuniary penalty would not have the threshold of requiring the person to have known that their actions or omission would have, or would be likely to have, the effect of manipulating the price of NZUs. The penalty would be:
- three times the amount of the gain made or loss avoided
  - \$1 million in the case of an individual  
\$5 million in any other case.

**Option C – A criminal offence, with a fine not exceeding a specified amount, alongside the potential for imprisonment**

- 149 Allowing the regulator to pursue a mens rea offence, with the penalty being a fine not exceeding \$300,000.

**Option D – A penalty that makes directors personally liable**

- 150 Allowing directors to face individual liability for contraventions by the company.

**Option E – A penalty not exceeding a specified amount in the case of an individual, and an additional, higher amount, in any other case**

- 151 A penalty with a maximum amount for an individual, scaled higher in any other case, such as any large institutional body.
- 152 For price manipulation, the amount of the fine would be not exceeding \$200,000 in the case of an individual and \$1 million in any other case.
- 153 For false, unsubstantiated and misleading conduct, the amount of the fine would be not exceeding \$200,000 in the case of an individual and \$600,000 in any other case.

**Option F – A civil pecuniary penalty that is dependent on the value of the false, unsubstantiated, or misleading conduct (preferred option to enforce the prohibition of false, unsubstantiated, and/or misleading conduct)**

- 154 A civil penalty, with no *mens rea* element or ability to take proceedings under the criminal law, set at the value of false, unsubstantiated, or misleading conduct:
- three times the amount of the gain made or loss avoided
  - \$1 million in the case of an individual
  - \$5 million in any other case.

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<sup>23</sup> Mens rea is a criminal law concept referring to the mental state, such as intention, knowledge, recklessness, or negligence, required to establish criminal liability.

## How do the options compare to the status quo/counterfactual?

**Table 12: Multi-criteria analysis of options to establish penalties to enforce the market conduct obligations**

Criteria	Option A: Status quo	Option B: Either a criminal or civil penalty, pursued at the discretion of the regulator	Option C: A criminal offence, with a fine not exceeding a specified amount, alongside the potential for imprisonment	Option D: A penalty that makes directors personally liable	Option E: A civil pecuniary penalty dependent on the value of the false, unsubstantiated, or misleading conduct
<b>Consistency with other legislation</b>	0 <ul style="list-style-type: none"> <li>Despite the market governance changes, there is no additional enforcement from the status quo as other legislation does not provide penalties to enforce poor conduct in the ETS or NZU market.</li> </ul>	++ <ul style="list-style-type: none"> <li>Aligns with existing legislation in the FMCA to pursue criminal liability or civil proceedings for similar offences.<sup>24</sup></li> </ul>	+ <ul style="list-style-type: none"> <li>Aligns with other commercially focussed legislation.<sup>25</sup></li> <li>Aligns with similar offences outlined in the FMCA, which tend to establish criminal liability for contraventions.</li> </ul>	++ <ul style="list-style-type: none"> <li>The Companies Act provides for director liability.<sup>26</sup></li> <li>Under certain circumstances (e.g. financial reporting or climate-related disclosures), directors can be treated as having contravened requirements.<sup>27</sup></li> </ul>	++ <ul style="list-style-type: none"> <li>Aligns with existing provisions in the FMCA.<sup>28</sup></li> <li>Similar penalties also outlined in the Commerce Act.<sup>29</sup></li> </ul>

<sup>24</sup> Sections 264 and 269, Financial Markets Conduct Act 2013.

<sup>25</sup> Section 87B, Commerce Act 1986.

<sup>26</sup> Section 301, Companies Act 1993.

<sup>27</sup> Section 534, Financial Markets Conduct Act 2013.

<sup>28</sup> Sections 38 and 449, Financial Markets Conduct Act 2013.

<sup>29</sup> Section 80, Commerce Act 1986.

<b>Equity between participants</b>	<p>0</p> <ul style="list-style-type: none"> <li>• ETS and NZU market participants will face various legal obligations to meet the new market governance requirements.</li> <li>• There is no enforcement mechanism, so they can opt out.</li> </ul>	<p>++</p> <ul style="list-style-type: none"> <li>• Would apply equally across all NZU market participants.</li> </ul>	<p>++</p> <ul style="list-style-type: none"> <li>• Would apply equally across all NZU market participants.</li> </ul>	<p>0</p> <ul style="list-style-type: none"> <li>• May create inequity between individual market participants and corporate entities.</li> <li>• Largely dependent on firm structure.</li> </ul>	<p>++</p> <ul style="list-style-type: none"> <li>• Basing the penalty on the potential gain obtained via the poor conduct is likely to mitigate risks of inequitable outcome.</li> </ul>
<b>Ease of implementation</b>	<p>0</p> <ul style="list-style-type: none"> <li>• FMA will be empowered to use toolkit (e.g. stop orders etc.) with no associated compliance and penalty framework.</li> </ul>	<p>-</p> <ul style="list-style-type: none"> <li>• Criminal liability likely to require significant administrative effort on behalf of the enforcement agency and courts.</li> <li>• Option to pursue civil liability is less administratively burdensome, if appropriate to scale of offending.</li> </ul>	<p>--</p> <ul style="list-style-type: none"> <li>• Requires involvement from the enforcement agency and courts.</li> </ul>	<p>--</p> <ul style="list-style-type: none"> <li>• Requires significant administrative effort on behalf of enforcement agency and the courts.</li> </ul>	<p>-</p> <ul style="list-style-type: none"> <li>• Requires involvement from the enforcement agency and the courts.</li> </ul>
<b>Likelihood of deterring offending</b>	<p>0</p> <ul style="list-style-type: none"> <li>• Prohibitions may have some influence and create future potential for legal intervention.</li> <li>• FMA will be empowered to use toolkit (e.g. stop orders)</li> </ul>	<p>++</p> <ul style="list-style-type: none"> <li>• Creation of criminal liability, with potential for imprisonment and high penalty caps, are likely to act as significant deterrents.</li> </ul>	<p>+</p> <ul style="list-style-type: none"> <li>• Potential for significantly high penalties is likely to act as a deterrent.</li> </ul>	<p>++</p> <ul style="list-style-type: none"> <li>• Director liability likely to deter offending both at management level and through the organisation.</li> </ul>	<p>+</p> <ul style="list-style-type: none"> <li>• Equating the penalty with the size of the potential gain should limit the opportunity for platforms to absorb penalties as the 'cost of doing business'.</li> </ul>

Classification

	<ul style="list-style-type: none"> <li>• With no enforcement mechanism the deterrence effect in the short to medium term is negligible.</li> </ul>				
<b>Total</b>	0	5 (preferred option)	2	2	4 (preferred option)

## Option best to address the problem, meet the policy objectives and deliver the highest net benefits

### *Penalty for NZU price manipulation*

- 155 Our preferred penalty option for NZU price manipulation is a criminal or civil pecuniary penalty, pursued at the discretion of the regulator. This approach is consistent with the FMCA approach to market manipulation.
- 156 The penalty for NZU price manipulation is significantly stronger than the administrative and infringement penalties proposed elsewhere. This highlights that price manipulation poses systemic risks to the operation and integrity of the NZU market. Additionally, NZU price manipulation may, in certain circumstances, have a *mens rea* element, which is typically addressed under criminal law in New Zealand.
- 157 The option carries risk that enforcement action for a criminal offence may not be pursued in cases where the cost to the regulator is prohibitive. However, it strikes the balance between providing the significant deterrent of a criminal offence, while enabling the FMA to exercise discretion to pursue a civil pecuniary penalty, if deemed appropriate.
- 158 While the civil pecuniary penalties may result in a higher fine than criminal penalties, criminal convictions carry significant consequences in addition to the monetary fine – for example, the person may experience a loss of liberty (e.g. imprisonment), as well as acquiring the stigma of a criminal conviction.
- 159 The criminal penalty also has a higher threshold for imposition, being that the person knew that their actions or omission would have, or would be likely to have, the effect of manipulating the price of NZUs.
- 160 To ensure the penalties are fair and credible, the penalty regime will include statutory defences for criminal and civil liability. These defences recognise that not all breaches stem from intentional or careless conduct – individuals may act responsibly but are affected by factors outside their control.
- 161 To ensure fairness and proportionality in enforcement, the penalty regime will also include protections against double jeopardy.

### *Penalty for false, unsubstantiated, and misleading conduct in relation to buying, holding, or selling NZUs*

- 162 A civil pecuniary penalty, dependent on the value of the false, unsubstantiated, or misleading conduct, is our preferred option for violating the prohibition of false, unsubstantiated, and misleading conduct in relation to buying, holding, or selling NZUs.
- 163 This approach:
- takes a civil penalty pathway
  - does not provide the option for the FMA to take action under the criminal law
  - aligns with the civil penalty pathway in the FMCA for contravention of fair dealing provisions
  - provides an equitable approach, as the penalty amount is proportionate to the value gained through the false, unsubstantiated and misleading conduct.
- 164 The civil pecuniary penalty amount shall not exceed the greatest of:
- three times the amount of the gain made or loss avoided
  - \$1 million in the case of an individual

- \$5 million in any other case.

165 To ensure the penalty framework is fair and credible, the proposed civil penalty will include the same statutory defences as for the price manipulation penalties.

### What are the marginal costs and benefits of the option?

166 We have considered the additional costs and benefits of our package of penalties, assessing them together as a coherent regime.

**Table 13: Marginal costs and benefits – Proposed penalty and enforcement regime**

<b>Affected groups</b> <i>(identify)</i>	<b>Comment</b> <i>nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks.</i>	<b>Impact</b> <i>\$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.</i>	<b>Evidence Certainty</b> <i>High, medium, or low, and explain reasoning in comment column.</i>
<b>Additional costs of the preferred option compared to taking no action</b>			
Market participants, trading platforms, and people that provide advice or services related to the NZU market	<p>Will be subject to penalties for non-compliance with the market governance requirements.</p> <p>There is a cost associated with improving internal systems to ensure compliance with requirements.</p> <p>Requirements to comply with obligations will be ongoing.</p>	<p>Medium impact</p> <p>Table 5 provides estimated monetary impacts for the trading platforms to meet their new requirements.</p> <p>Table 7 provides estimated monetary impacts for market participants to meet their new requirements.</p> <p>Specific costs for non-compliance only apply to entities who fail to meet the new requirements.</p>	<p>Low to medium</p> <p>Tables 5 and 7 outline the evidence certainty for platforms and market participants.</p> <p>Regarding penalty imposition, we anticipate non-compliance with platform reporting and the market conduct obligations will be low from inception, as platform providers and larger market participants are aware of the new requirements.</p> <p>Non-compliance with Register reporting may be higher, due to smaller participants not understanding their obligations. This can be mitigated by providing clear communications about new requirements.</p>

MfE (market monitor) and FMA (market regulator)	<p>There will be costs and resourcing implications for the market monitor to stand up and administer the penalty regime and to conduct regular analysis of market activity to detect poor conduct.</p> <p>As agreed by Cabinet, these costs will be absorbed within agency baselines. MfE will begin as the market monitor, with parts of this role potentially being delegated to the EPA when Register reporting is implemented.</p>	Estimates are in the realm of \$150,000 for agencies to initially stand-up monitoring, with potential for increases in the medium term.	<p>Medium</p> <p>Short term cost based on 1FTE that would be absorbed within baselines.</p> <p>We are unable to calculate the exact costs as it will depend on the scale of market monitoring undertaken.</p>
<b>Total monetised costs</b>		Refer estimates in tables 5 & 7	Low to medium
<b>Non-monetised costs</b>		Medium	Medium
<b>Additional benefits of the preferred option compared to taking no action</b>			
Market participants, trading platforms, and people that provide advice or services related to the NZU market	<p>Benefits for this group are the same as outlined in Tables 5 and 7.</p> <p>In general, the establishment of a credible and coherent enforcement regime should add a layer of confidence among market participants and other stakeholders.</p>	<p>Medium</p> <p>Refer to tables 5 and 7.</p>	Low to Medium
MfE (market monitor) and FMA (market regulator)	<p>Refer to tables 5 and 7.</p> <p>In general, the market monitors, and by extension, policy teams, will benefit from increased information transparency.</p> <p>Existence of the penalty regime also adds an enforcement mechanism, allowing the regulator to encourage compliance, while lifting overall integrity in the scheme.</p>	<p>Medium</p> <p>Refer to tables 5 and 7.</p>	Low
<b>Total monetised benefits</b>		N/A	N/A
<b>Non-monetised benefits</b>	<p>The enforcement regime will support the new policies.</p> <p>Clear market conduct</p>	Medium	Low

	obligations will strengthen market confidence and monitoring powers will improve government's ability to provide oversight.		
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## Section 4: Delivering an option

### How will the new arrangements be implemented?

#### Arrangements coming into effect

- 167 We propose that this policy package is implemented in phases due to current resource and fiscal constraints. Changes to require platform providers to publish and report specified NZU trading information can be implemented in the first phase, with changes to require the input of transaction data into the Register by market participants to be made once the Register is replaced.
- 168 It should again be noted that until the replacement Register is implemented, market monitoring will be limited. Specific to platform transaction reporting, adequate time following the passing of the relevant legislation will be provided (e.g., a grace period) for the platforms to begin their publication of the required information.
- 169 There are no new operations and enforcement systems proposed. Additionally, no new legislation would be created; instead, proposals will amend existing legislation to clarify the measures applying to the NZU market.
- 170 Given that the amendments will largely clarify or add some further requirements under existing legislation, implementation of market standards could happen within a short period of time and ahead of increased transaction reporting via the replacement Register.
- 171 Given the nature of the changes, there should be little change to regulatory systems, implementation, and ongoing operations for both stakeholders and other agencies with substantive interests.

#### Responsibilities

##### *Platform reporting*

- 172 There would be a requirement placed on platform providers to publish and report prescribed data, which will require legislative amendments.
- 173 It is also likely that platforms will be required to privately provide trade volume data to the government, which would then be aggregated and a total platform market volume publicly published (with no contributor details made available). Similarly, it is unlikely that platforms will be asked to publish granular trade-by-trade information to the public. Platforms have their own contractual relationships with customers and will have their own duty of care regarding safeguarding visibility of customer activity. Granular trading information would only be privately reported to the government.

##### *Register reporting*

- 174 Participants will be required to input additional trade information into data fields once the Register replacement occurs in the medium-term.

##### *Enhanced information collection and monitoring*

- 175 New provisions will enable increased data collection by the EPA, in addition to the information they already collect as set out in the CCRA. Amendments will also include the appropriate data sharing provisions between agencies to enable the efficient sharing of data for monitoring and enforcement functions.
- 176 The EPA would continue as the Registrar as currently set out in the CCRA.
- 177 We recommend that the agency responsible for the monitoring function will initially be MfE. We envisage that this function potentially shifting to the EPA, following the implementation of Register reporting in the medium term.

#### *Market conduct obligations*

- 178 We recommend the FMA as the agency tasked with compliance oversight and responsibility for ongoing investigation and enforcement. This would leverage their existing statutory function as it relates to market conduct obligations.
- 179 There is no significant change proposed to the FMA's legal duties already in place; therefore, these changes could have a relatively short implementation period. However, their ability to investigate any suspected misconduct is reliant on replacing the Register to enable collection of the necessary data for monitoring purposes.
- 180 During the legislative development phase, officials will carry out work in consultation with the relevant agencies, and also the relevant legislative advisory bodies, to ensure that appropriate civil and/or criminal penalties are introduced to enforce the market conduct prohibitions.

#### **Compliance and enforcement [added December 2025]**

- 181 On authority from Cabinet [CAB-25-MIN-0086.01 refers] the Minister of Climate Change, in consultation with the Minister of Justice, made delegated decisions to establish a penalty regime to enforce the proposed market governance provisions.
- 182 Penalties were developed by MfE officials, in consultation with the Ministry of Justice, Ministry for Primary Industries, Environmental Protection Authority, and Financial Markets Authority. The impact analysis for these penalties was added in December 2025, to ensure the Regulatory Impact Statement remained up to date with the latest policy work, ahead of the introduction of the Bill into the House of Representatives.
- 183 The proposed penalty regime was designed to be low-cost to administer, while still providing a proportionate response to non-compliance with the proposed market governance requirements. By way of providing clear enforcement pathways, the regime, as documented in section 3 of this Regulatory Impact Statement, will support market credibility, confidence, and greater investment certainty.

#### *Agency roles and responsibilities*

- 184 On initial standup of the regime, MfE will act as the market monitor, with the FMA acting as the designated regulator for market misconduct.
- 185 MfE was designated as the monitor and the agency with responsibility for enforcing the administrative penalty component of the regime, as it is the entity that will receive daily trading information from platform providers and can request trading information from market participants. MfE can carry out this function within baseline funding. When Register reporting is implemented, MfE may delegate some or all of its monitoring role to the EPA. The FMA will be enabled to use their existing enforcement toolkit to respond to market misconduct and enforce the associated penalties.
- 186 For the penalties that have this enforcement feature, MfE will have responsibility for the publication of details related to non-complying trading platforms and ETS participants. As for the other penalties under MfE's regulatory remit, responsibility for

the publication of information may shift to another agency, such as the EPA, at a future date.

*Additional features of the penalty regime*

- 187 Existing administrative penalties in the CCRA have a review and appeal process for decisions made by the EPA. The process provides a formal avenue for review of decisions and gives a person the right to appeal to the District Court, ensuring the principles of natural justice are upheld. The same review and appeals process would be mirrored for any market governance administrative penalty imposed by MfE.
- 188 Additional features of the administrative penalty regime include:
- if MfE is satisfied that the compliance breach occurred through no fault of the person, such as they tried to comply but there was a system outage, a person is not liable to pay a penalty.
  - a limitation period will apply, so that no penalty can be issued if the breach is identified after more than four years has passed from when it occurred
  - if a participant fails to pay an administrative penalty, MfE may seek to recover penalties owed to the Crown through the courts, and
  - only one administrative penalty will be able to apply to the same conduct to avoid issues of double jeopardy.
- 189 For the two market conduct penalties, statutory defences for criminal and civil liability will be created. These defences recognise that not all breaches stem from intentional or careless conduct – individuals may act responsibly but are affected by factors outside their control. A person will not be liable if:
- the conduct was in line with accepted market practices and for a proper purpose
  - the breach was due to reasonable reliance on information supplied by another person, or other means beyond the person's control, provided they took reasonable precautions and exercised due diligence to avoid the contravention
  - they made all appropriate inquiries, took all reasonable steps, and genuinely believed that their statement was not false or misleading.
- 190 A provision protecting against double jeopardy will also be introduced, to prevent a person from being subject to both a criminal fine and a civil pecuniary penalty for the same conduct. This safeguard is essential where serious misconduct may trigger both criminal and civil proceedings, as it avoids excessive punishment and upholds the integrity of the regulatory framework.

*Timing for implementation of penalty regime*

- 191 Implementation of the penalty regime is intended to be staged. Penalties for platform reporting, platform history, market monitoring, and the market conduct obligations, will all be implemented first. A grace period of one month is proposed between platform reporting requirements coming into effect and the associated penalties being enforced, to enable platform providers to establish systems and processes to report information daily to the government.
- 192 As market conduct penalties relate to misconduct of a more serious nature, and with similar prohibitions already existing in other financial markets legislation, no grace period will apply.
- 193 Penalties for Register reporting will take effect in the future, once the Register is replaced and the new requirements able to be implemented. The current proposal will introduce a regulation-making power to the CCRA, so that an infringement regime for Register reporting can be established once the new provisions are in place.

## Risks

- 194 Replacing the Register will require funding, which presents a risk to implementation. However, policy decisions can be made now — 9(2)(f)(iv)
- 195 In avoidance of the additional risk of creating an unfunded mandate, legislation could enable the legislative provisions to be 'switched on' or activated when implementation is decided.

## Notification of changes

- 196 Given the likely delayed implementation, proposed policy changes would remain on standby in legislation until they are activated after the replacement of the Register. This means there will be an opportunity to give sufficient notice to stakeholders and the public of the changes.
- 197 The biggest changes for users will be the requirement to enter additional data in the replacement Register; however, this will only be a few more data fields than is currently required under existing NZU settlement reporting.
- 198 For trading platforms, they may need some time to make any changes to their internal systems to ensure the long-term capture of relevant trading; however, they already collect this information and make it available via subscription.
- 199 The changes to market conduct obligations do not require anything from users and standard communication of the changes could occur through a range of channels, including but not limited to:
- i. via ETS Information Hub;
  - ii. EPA newsletter;
  - iii. MPI TUR newsletter;
  - iv. MfE's standard ETS announcement processes.

## How will the new arrangements be monitored, evaluated, and reviewed?

- 200 We work closely with MPI, MBIE, EPA, and FMA on market governance issues and opportunities. Agencies with stewardship roles in the regulatory system will continue to work collaboratively to monitor, evaluate, and review the impact of the new policies.
- 201 Agencies can raise any concerns through established interagency groups, including at the director level as well as manager and workstream levels.
- 202 Once the changes are implemented, monitoring can commence. This will provide valuable insight into the market including patterns and behaviours. It will also provide insight into the level of market misconduct risk, enabling responsible agencies to adjust their oversight accordingly. This ensures a flexible approach to achieving optimal compliance with minimal cost and resource usage.