



PROACTIVE RELEASE COVERSHEET

Minister	Hon Simon Watts	Portfolio	Climate Change
Name of package	Policy decisions for New Zealand Emissions Trading Scheme market governance	Date to be published	28/05/2025

List of documents that have been proactively released

Date	Title	Author
28 May 2025	Cabinet paper: Policy decisions for New Zealand Emissions Trading Scheme market governance	Ministry for the Environment
28 May 2025	Appendix 1: Core Components of Protocol for New Zealand Carbon Unit (NZU) Market Sensitive Information	Ministry for the Environment
28 May 2025	Appendix 2: Regulatory Impact Statement: New Zealand Emissions Trading Scheme market governance	Ministry for the Environment
28 May 2025	Cabinet Minute of Decision CAB-25-MIN-0086.01	Cabinet Office

Information redacted **YES**

Any information redacted in this document is redacted in accordance with the Ministry for the Environment's policy on proactive release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

Summary of reasons for redaction

Some information has been withheld from *Cabinet paper: Policy decisions for New Zealand Emissions Trading Scheme market governance*, *CAB-25-MIN-0086.01 – Cabinet Minute of Decision*, and *Appendix 2: Regulatory Impact Statement* under the following sections of the Official Information Act:

- section 9(f)(iv), to maintain the constitutional conventions for the time being which protect the confidentiality of advice tendered by Ministers of the Crown and officials
- section 9(2)(b)(ii), to protect information where the making available of the information would be likely unreasonably to prejudice the commercial position of the person who supplied or who is the subject of the information
- section 9(2)(ba)(i) to protect information which is subject to an obligation of confidence or which any person has been or could be compelled to provide under the authority of any enactment, where the making available of the information would be likely to prejudice the supply of similar information, or information from the same source, and it is

in the public interest that such information should continue to be supplied

- section 9(2)(d), to avoid prejudice to the substantial economic interests of New Zealand, and
- section 9(2)(j), to enable a Minister of the Crown or any public service agency or organisation holding the information to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations).

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In-Confidence

Office of the Minister of Climate Change

Cabinet Economic Policy Committee

Policy decisions for New Zealand Emissions Trading Scheme market governance

Proposal

- 1 This paper seeks Cabinet's agreement to establish market governance provisions for the New Zealand Emissions Trading Scheme (ETS) in the Climate Change Response Act 2002 (CCRA).

Relation to Government priorities

- 2 The policy proposals in this paper support the credible markets pillar of the Government's Climate Change Strategy.

Executive Summary

- 3 The ETS is at the foundation of the Government's approach to reducing net emissions in New Zealand. Officials estimate that \$1-2 billion NZD worth of New Zealand Units (NZUs) are exchanged each year on NZU trading platforms in the ETS secondary market (NZU market).¹ Market participants trade NZUs via the four privately provided platforms or through over-the-counter (OTC) trading.² As both prices and the volume of trading have risen, the effective and efficient functioning of the NZU market has become increasingly important for New Zealand's economic growth performance.
- 4 The Government lacks visibility of key trading information, such as price and volume, which is needed to monitor the market. Transparency issues also extend to market participants, where sophisticated parties can have greater access to trading information than smaller players.³ Some trading information is recorded in the New Zealand Emissions Trading Register (the Register), but it is limited. Although platforms provide some trading data to the public, some restrict the most useful information to onboarded clients.
- 5 NZU market conduct is governed under competition and consumer laws through the Fair Trading Act 1986 (FTA) and regulated by the Commerce Commission. It is not clear how the FTA should apply to the NZU market and there is no agency specifically tasked with monitoring for market misconduct.
- 6 Together, these problems mean that New Zealand's regulatory framework is increasingly out of step with carbon markets internationally. They weaken the efficiency of the NZU market, erode confidence, and risk undermining the effectiveness of the ETS. Since 2015, there have been two independent reviews of market governance arrangements in the ETS and five rounds of public consultation.⁴ Both

¹ \$1-2 billion NZD figure is based on recent secondary market prices of \$63.00–\$64.00 per NZU. It is not possible to reliably estimate total volumes of over-the-counter trading given the limited information currently available.

² The four platform providers are: Carbon Match; Commtrade, operated by Jarden; emsTradepoint, operated by Transpower; and Neon, operated by Marex

³ Participation in the NZU market is broad, ranging from large financial institutions and emitters with ETS obligations, through to small foresters who receive units, and individual investors in the market.

⁴ MfE commissioned reviews by Covec and Catalyst Advisory Partners (2017) and by Ernst and Young (2019). Public consultation occurred in 2015, 2018, 2021, 2022, and targeted engagement in 2024.

IN C O N F I D E N C E

reviews highlighted risks, while consultation feedback recommended change. To date, no substantive changes have been made.

- 7 To improve market transparency, provide conduct standards, and enable monitoring, with minimal additional compliance burden, I propose the following framework:
 - 7.1 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;
 - 7.2 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;
 - 7.3 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; and
 - 7.4 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.
- 8 These proposals will be phased-in over time, with Market Conduct Obligations and Platform Reporting requirements implemented first. Platform Reporting will improve the Government's access to information. Additional trading information can be made available when Register Reporting is implemented, noting that this is not possible within the current Register. This will enhance Government oversight of over-the-counter (OTC) trading and enable improvements in market transparency. Monitoring can also be scaled as more information becomes available.
- 9 I consider that the proposals in this paper effectively address key market governance risks with light-touch, low-cost regulation. These proposals are expected to improve confidence and integrity, which will increase market activity and provide benefits for trading platforms. Participants will benefit from changes, with increased market transparency supporting better trading decisions, and conduct rules providing for improved confidence and greater investment certainty. A key benefit is a reduction in the risks of market misconduct, supporting participants and strengthening the Government's ETS-led approach to emissions reductions.
- 10 I expect the costs of these changes will be small. The platforms may incur some upfront costs to implement reporting requirements, estimated at a maximum of \$25,000 in total for all four providers. Some of the platforms will also stop receiving payments from the Government to purchase market data. 9(2)(b)(ii)
- 11 Additional to Platform Reporting I have considered requiring platforms to publish price and for the Government to publish the platforms' aggregated trading volume. I have discounted that on the basis that the opportunity to provide transparency of trading data will come together with Register Reporting. The priority in the short term is to establish Platform Reporting for the Government, together with Market Monitoring and Information Sharing, and to put in place the Market Conduct Obligations. I have also considered and discounted more heavy-handed regulatory measures such as treating NZUs as a financial product. I also do not propose to progress with the previous

Government's intention to procure a government-funded exchange for the NZU market.

- 12 Officials recently engaged with a group of NZU market stakeholders, and a majority expressed support for changes of this scale. Changes can be accommodated within agency baselines and progressed through a planned CCRA Amendment Bill.
- 13 This paper also proposes a protocol for NZU market-sensitive information (see **Appendix 1**). The protocol recognises the significant impact that Government announcements and information releases have on the NZU market, and the need to protect market-sensitive information. I propose to finalise and formalise the protocol in a Cabinet Office circular.

Background: the ETS is at the foundation of the Government's approach to reducing emissions

- 14 The size of the NZU market has grown substantially, with its effective functioning becoming increasingly important for New Zealand's economic growth performance. In 2010, the Register had 2,946 private holding accounts, with 7 million NZUs in circulation. Today, this has expanded to 13,572 accounts,⁵ with total holdings of 146 million NZUs that are worth over \$9.2 billion NZD based on recent NZU prices.
- 15 Participation has broadened, moving from an initial compliance base of emitters and foresters, to now include significant involvement from a wide range of industrial sectors, financial institutions, and offshore market participants. Trading primarily occurs across four trading platforms, supplemented by a notable segment of OTC transactions. This activity contributes essential liquidity to the market. Together, these trades determine the NZU price, the key signal (and driver) that incentivises emissions reduction behaviour.
- 16 Government lacks visibility of key trading information, such as price and volume, which is needed to monitor the market. Transparency issues also extend to market participants, where sophisticated parties can have greater access to trading information than smaller players. Platforms are not required to publish trading information that is generally available in carbon markets internationally.⁶ Some platforms make basic information public, while others restrict access to those that have gone through an onboarding process. There is currently no visibility of OTC trading price and volume, other than limited reporting on information captured in the Register, provided by the Environmental Protection Authority (EPA).
- 17 The CCRA does not provide conduct standards for the NZU market. Instead, NZUs are largely governed by the FTA.⁷ The FTA is not primarily concerned with market-based trading, and it is unclear how it applies to the NZU market. As the administering agency of the FTA, the Commerce Commission does not currently have suitable regulatory tools, remit or ability to respond to market conduct complaints.

- 18 9(2)(d)

⁵ This figure includes a material number of inactive accounts (i.e. dormant for > 3 years) in the Register.

⁶ Such as closing price, daily volume, and daily highs and lows.

⁷ Anti-competitive behaviour is prohibited under the Commerce Act 1986, and the corrupt use or disclosure of official information by officials is covered by the Crimes Act 1961. Derivative products are regulated under the Financial Markets Conduct Act 2013.

⁸ 9(2)(d)

9(2)(d) Experience overseas shows that carbon markets are vulnerable to misconduct without sufficient oversight.⁹

- 19 The governance arrangements for the NZU market have previously been subject to external reviews that found the NZU market is exposed to risks and current settings require enhancement. Feedback through previous rounds of public consultation, and from recent targeted engagement, has also indicated support for strengthened market governance measures.

Problem definition: the NZU market lacks transparency of trading activity and clear Market Conduct Obligations

- 20 The NZU market lacks essential governance provisions. These 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. The current lack of transparency poses problems for price discovery and trading activity in the market. These information gaps create obstacles for participants looking to make fully informed decisions. In addition, without clear and readily accessible pricing information, smaller participants are at a disadvantage compared with well-resourced firms with access to data, impacting fairness and efficiency.
- 21 The NZU market is also extremely vulnerable without a market monitor. The conditions exist in the NZU market that allow for market manipulation. Where data is currently available in the primary market, Government has observed suspicious trading behaviour. Poor price discovery, limited trade volume transparency, potential for outsize trades, the presence of sophisticated participants, and the absence of a monitor, leave the market open to inappropriate participant behaviour.
- 22 To improve market operations and efficiency, there must be adequate transparency of trading information for the Government to monitor the market, and for participants to make informed trading decisions. To strengthen credibility, clear market standards and fit for purpose monitoring and intervention powers must be in place to ensure standards are met.

Analysis: I propose light-touch, targeted regulatory amendments to address these problems

- 23 I propose a package of targeted changes to improve ETS market governance by supporting access to trading information for all market participants, creating clear market conduct standards, and enabling market monitoring. These proposals have been designed to ensure the lowest possible compliance burden for participants and the lowest cost to implement, while addressing current market risks.

A range of regulatory and non-regulatory options have been considered

- 24 I have considered stronger regulatory measures that have previously been proposed, such as treating NZUs as a financial product and requiring people who give NZU advice or provide market platforms to be licensed. Engagement feedback raised concerns about these measures, and I do not propose to progress them. There may be scope for Government to work with market participants on voluntary measures.

⁹ For example, in the EU, €5 billion (NZD 8.9 billion) in potential revenue was lost due to fraudulent carbon market trading that circumvented Value Added Tax requirements. The European Commission strengthened governance and oversight of the market.

- 25 Other options were also considered by officials in the Regulatory Impact Statement (RIS). These included more stringent reporting requirements, and broader market conduct rules. These were found to have undue impact on market participants compared to the more minor changes I am proposing in this paper. I do not propose progressing with the previous Government's intention to procure a government-funded exchange and clearing house for the NZU market. Stakeholder feedback largely opposed this due to the significant cost, potential impact on existing platforms, and it being an ineffective and un-targeted means of enhancing market monitoring.

The industry has expressed support for practical and low-cost improvements

- 26 Since 2015, market governance has gone through multiple rounds of public consultation. Current proposals were designed with this feedback in mind, aiming to ensure practicality and low compliance costs. Through targeted engagement in 2024, the industry expressed support for changes of this scale and scope.

Requirements for platforms to report trading information to the Government, and maintain records

- 27 To improve market transparency, I propose Platform Reporting that will require platforms to report price and volume information to the Government and to retain a private history of this information. I seek delegated authority to make final decisions on these details. I am also seeking delegation from Cabinet to make final decisions on the associated penalty for failing to meet this new requirement, and the Register Reporting requirements discussed below, in consultation with the Minister of Justice.

Requirements for participants to record trading information into the Register

- 28 I propose creating a new regulation making power to require participants to input specified trading information into the Register (Register Reporting). This would include reporting on different types of trades and would include OTC transactions. This information could then be published periodically in aggregated form to increase transparency and support informed trading. Register Reporting would also enable enhanced market monitoring for suspected misconduct. Participants already need to engage with the Register to transact NZUs, so collecting this additional information should have low compliance costs. Nevertheless, officials will engage with market participants before using this regulation making power.

- 29 The EPA,¹⁰ following recent independent advice, has placed a permanent freeze on the Register, restricting any changes to those which support its security or stability. While the register is currently stable, it is ageing and there are several factors contributing to increased risk. This means that Register Reporting cannot currently be implemented. Nonetheless, I recommend proceeding with this regulation making power so that it can be implemented when the future state Register is ready. 9(2)(f)(iv)

- 30 As proposals are implemented, there will be a phase-in over time of trading information that becomes available to market stakeholders. Platform Reporting will be implemented as soon as the requirements are introduced through legislative change, with the Government receiving this trading information. The Government can make information from Register Reporting available for the wider market in the longer term.

¹⁰ The EPA is responsible for appointing the Registrar. The EPA Board has appointed the role of Registrar to the EPA's Chief Executive.

Market Conduct Obligations to prohibit price manipulation and false, misleading, and/or unsubstantiated conduct

- 31 To provide clear market conduct standards for the NZU market, I propose to proceed with the following two prohibitions:
- 31.1 prohibit manipulating the price of NZUs; and
- 31.2 prohibit false, unsubstantiated, and misleading conduct in relation to buying, holding, or selling NZUs.
- 32 I propose the Financial Markets Authority (FMA) be the agency with regulatory responsibility for enforcing these prohibitions and reporting requirements. The FMA supports this approach, which enable it to use its existing toolkit under the FMCA (e.g. direction and stop orders)¹¹ to respond to (and act on) suspected market misconduct in a proportionate way. Feedback gathered through public consultation¹² informed us that they supported the FMA having this regulatory responsibility.
- 33 Until the functionality required for Register Reporting is developed, and without additional funding, the FMA will have limited ability to proactively investigate suspected misconduct. As the FMA will manage NZU market responsibilities within their existing baseline, their involvement will be small to begin with. Cabinet will have the ability to make decisions to scale up FMA involvement in the future. However, some reactive monitoring can commence immediately. I consider it appropriate to put these provisions in place to act as a deterrent, while also sending clear expectations of behaviour to NZU market participants. I am seeking delegation to determine the penalty for these prohibitions in consultation with the Minister of Justice, following further advice from officials in early 2025.

Monitoring powers and agency information sharing

- 34 I propose creating monitoring powers for the NZU market and auctions that will allow MfE and EPA to obtain further information to investigate and determine whether there is a matter to refer to FMA for enforcement. I also propose to enable the sharing of information between MfE, EPA, FMA, the Ministry for Primary Industries (MPI), and the Ministry of Business, Innovation and Employment (MBIE), and to require platforms to retain trading records that can be requested by monitoring agencies. This will include enabling the EPA to share information gathered through Register Reporting.
- 35 The Government needs to monitor the NZU market to detect unacceptable conduct. Register Reporting will provide for complete market monitoring, but this cannot be implemented until the functionality is developed for the Register. These are interim changes that can signal the Government's establishment of market monitoring and ensure that the necessary legislative framework is in place. Platform Reporting will also provide Government with some price and volume information until Register Reporting is implemented.

The benefits of these proposals substantially outweigh the costs to platform providers

- 36 Greater data transparency will increase confidence for all participants, likely contributing to greater trading activity on platforms, with flow on benefits for platforms'

¹¹ A direction order is a regulatory tool the FMA can use to direct a recipient to comply with the law and stipulate steps they must take by a given timeframe. A stop order is a regulatory tool that the FMA can use to stop or prevent advertising or disclosure that confuses, or is likely to confuse consumers or investors, on matters that influence their investment decision.

¹² Refer to footnote 5.

overall revenue, therefore supporting New Zealand's economic growth. Improved market transparency will also support participants to make better-informed trading decisions. The changes will particularly support less sophisticated market participants, who may not currently have access to trading information, to make more informed decisions. These proposals will also have the key benefit of limiting the risks of market misconduct occurring, which could create significant reputational damage to the integrity of the ETS.

- 37 Developing and delivering reports containing trading price and volume information to Government may create one-off costs of a maximum of \$25,000 in total for all four platform providers. Some of the platforms will also stop receiving payments from the Government to purchase market data. 9(2)(b)(ii)

A Protocol for NZU Market Sensitive Information

- 38 I propose to establish a protocol for ETS announcements and other information releases into the NZU market. This will create a consistent and robust process for Government to protect and announce market-sensitive information in a way that maintains an even playing field for market participants, protects the ETS auctions, aligns the NZU market with other markets, and enhances credibility and integrity. I recommend that the protocol applies across the whole of the Government. Appendix 1 sets out the core components of the proposed protocol. I request delegated authority to develop the detail of this protocol in a Cabinet Office circular, in consultation with the Forestry, Environment, Agriculture, Finance, Energy and Resources, and Transport Ministers.

Cost-of-living Implications

- 39 The policy proposals do not create any direct cost-of-living implications.

Financial Implications

- 40 The proposals in this paper can be implemented without further funding. There are no cost pressures associated with these proposals that cannot be managed within agency baselines. 9(2)(f)(iv)

At this stage, I only seek to create a regulation making power that could be used in future to enable Register Reporting. The Government will have discretion over when to use this power. Without new funding, and until Register Reporting is implemented, market monitoring and enforcement will be limited and the FMA's work will be reactive. The Government will have choices over whether to scale up funding for this function in the longer term.

Legislative Implications

- 41 9(2)(f)(iv)

Impact Analysis

Regulatory Impact Statement

- 42 A RIS was prepared (see **Appendix 2**). The Quality Assurance Panel provided the following statement: “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.*”

Climate Implications of Policy Assessment

- 43 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this proposal as its impacts on emissions are indirect through enhancing ETS market functions and subsequent emission reductions.

Population Implications

- 44 There are no population implications of the proposed policy changes.

Human Rights

- 45 The proposals in this paper are consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

Consultation

Public consultation and targeted engagement

- 46 Market governance has been through consultation in 2015, 2018, 2021, 2022, and 2024. The most recent round, which consisted of targeted engagement with a select group of stakeholders,¹³ was from 17 September to 4 October 2024. The feedback from all consultations has been considered in developing current proposals.

Departmental consultation

- 47 The Department of the Prime Minister and Cabinet, the EPA, the FMA, MBIE, the Ministry of Justice, MPI, the Ministry for Regulation, the New Zealand Infrastructure Commission, Te Arawhiti, Te Puni Kōkiri, and the Treasury were consulted on this paper. The Parliamentary Counsel Office was informed.

Communications

- 48 The decisions will be announced via press release, email communications to stakeholders, and publication on MfE’s website.

Proactive Release

- 49 Following Cabinet consideration, I will release this paper on the MfE website in whole or in part, subject to appropriate redactions.

¹³ 35 stakeholders were contacted during the recent targeted engagement, with 21 providing feedback.

Recommendations

The Minister of Climate Change recommends that the Committee:

- 1 **Note** that conditions exist in the NZU market that allow for market manipulation and, where data is currently available in the primary market, Government has observed suspicious trading behaviour.

Require platforms to report information to the Government, and maintain records

- 2 **Agree** that NZU trading platform providers be required to report NZU price and volume information deemed necessary by the Minister of Climate Change to the Government for monitoring and other Government purposes, and to maintain a history of this information.
- 3 **Authorise** the Minister of Climate Change to determine the details of the information that will be required and obligated to be reported to the Government under recommendation 2.

Require participants to record trading information into the Register

- 4 **Agree** to a regulation making power in the Climate Change Response Act 2002 that, 9(2)(f)(iv) [REDACTED], can be used to create regulations to require NZU market participants to record specified trading information into the ETS Register when entering into an NZU transaction.
- 5 **Note** that there are no funding implications from the decision in recommendation 4. 9(2)(f)(iv) [REDACTED]
- 6 **Agree** that the trading information collected from Register Reporting can be published periodically in aggregate by the Government.
- 7 **Authorise** the Minister of Climate Change to determine the details of the specified trading information that will be required under recommendation 4 and how that will be reported under recommendation 6 following further consultation with market stakeholders
- 8 **Note** that the ETS Register is ageing, and this will prevent implementation of Register Reporting. Information about trading activity will only become available to market participants once Register Reporting is implemented.

9 9(2)(f)(iv) [REDACTED]

Create new Market Conduct Obligations

- 10 **Agree** to add the following market conduct prohibitions to the Climate Change Response Act 2002:
 - 10.1 prohibit manipulating the price of NZUs; and
 - 10.2 prohibit false, unsubstantiated, and misleading conduct in relation to buying, holding or selling NZUs.

I N C O N F I D E N C E

- 11 **Note** that appropriate penalties will need to be created in legislation to ensure compliance with the requirements described in recommendations 2, 4, 14, and 15, and the prohibitions outlined in recommendation 10, and that further work on the type of penalty (civil and/or criminal) will be carried out by officials.
- 12 **Delegate** responsibility to the Minister of Climate Change to make decisions on penalties, in consultation with the Minister of Justice.
- 13 **Agree** that FMA is the agency with regulatory responsibility for enforcing these requirements, controls and prohibitions, that the FMA can use the same powers as those under the Financial Markets Conduct Act 2013 to respond to equivalent misconduct (in kind) under these proposals, and that the FMA will manage these new responsibilities within its existing baseline funding.

Monitoring powers and agency information sharing

- 14 **Agree** that MfE and EPA should have the ability to require information to be provided to them by market participants, including platform providers, for the purposes of monitoring the NZU market and NZU auctions.
- 15 **Agree** that NZU trading platform providers will be required to retain records of trades and that these details can be obtained by the agency monitoring the market and the agency with regulatory responsibility to support their enquiries.
- 16 **Agree** that FMA, MfE, MPI, MBIE, and EPA may share and receive information to the extent necessary for those agencies to give effect to their regulatory responsibilities, including for the EPA to share information gathered through Register Reporting and for MfE to share information gathered through Platform Reporting.

Issuing drafting instructions

- 17 **Invite** the Minister of Climate Change to issue drafting instructions to the Parliamentary Counsel Office to amend the Climate Change Response Act 2002 to give effect to these decisions.
- 18 **Authorise** the Minister of Climate Change to make any further policy decisions relating to the above amendments, consistent with Cabinet's decisions.
- 19 **Note** that initial market monitoring and enforcement will be absorbed within agency baselines. There will be future choices to scale up market monitoring and enforcement.

Market sensitive protocol

- 20 **Note** the Core Components of Protocol for New Zealand Carbon Unit (NZU) Market Sensitive Information contained in Appendix 1.
- 21 **Delegate** responsibility to the Minister of Climate Change to finalise the protocol in a Cabinet Office circular, in consultation with the Finance, Energy and Resources, Transport, Forestry, Environment, and Agriculture Ministers.

Authorised for lodgement

Hon Simon Watts
Minister of Climate Change

Core Components of Protocol for New Zealand Carbon Unit (NZU) Market Sensitive Information

Market-sensitive information is information that is not publicly available and, if known, could influence someone to trade NZUs or could influence the price of NZUs.

Ministers and Government organisations must ensure that:

- they identify when information is or may be market-sensitive;
- market-sensitive information is accessed only by those people who have a legitimate need to see it;
- market-sensitive information is not discussed in public, or inappropriately within an open-plan office environment;
- the information is labelled as 'market sensitive' when shared elsewhere within Government;
- market-sensitive information is only shared with a person or organisation outside Government when there is a legitimate reason to do so and with appropriate controls in place (for example, to a contractor or consultant that needs access to the information to perform their work and subject to a confidentiality agreement);
- they appropriately manage conflicts of interest related to the Emissions Trading Scheme (ETS) and the NZU market, including buying, selling, or holding NZUs, NZU-linked products, and businesses that deal in NZUs or NZU-linked products (such as ETS participants or managed funds).

For the purposes of this protocol, there are four categories of information:

- **Category 1:** Market-sensitive information with high potential impact and high complexity, e.g. the release of the discussion document for the second emissions reduction plan.
- **Category 2:** Market-sensitive information with high potential impact, but not high complexity, e.g. the annual release of ETS settings decisions.
- **Category 3:** Other market-sensitive information, e.g. the release of modelling or responses to questions following an earlier announcement or an announcement that does not have high potential impact but is market sensitive.
- **Category 4:** Information that is not directly market sensitive but is of interest to the market.

Announcements that contain market-sensitive information should not be made within the two weeks before, or two days after, each of the quarterly ETS auctions.

Information within categories 1–4 will be released applying the following controls:

Table 1: Controls for categories 1–4	
Category	Controls
Category 1 & 2	<p>Market participants are provided with at least 24 hours' advance email notice that the release is coming. The advance notice must not contain market-sensitive information and therefore it can be sent during trading hours.</p> <p>Announcements are made outside trading hours (8am–8pm) and with a short buffer, no later than 7:30am, with a preference for releasing in the morning rather than the evening.</p> <p>The only exception arises where information must be released during trading hours, for example where a Climate Change Commission report must be</p>

	tabled in Parliament. The advance email notice will alert the market to this timing.
Category 3	Announcements are made outside trading hours (8am–8pm) and with a short buffer, no later than 7:30am, with a preference for releasing in the morning rather than the evening.
Category 4	Market participants are emailed to inform them of the release. The email can be released within trading hours. If there is an announcement, this can also be made within trading hours.

For the avoidance of doubt, this protocol is not intended to replace any legislative requirements.

Regulatory Impact Statement: New Zealand Emissions Trading Scheme market governance

Decision sought:	Analysis produced for the purpose of informing Cabinet policy decisions for ETS market governance
Advising agencies:	Ministry for the Environment
Proposing Ministers:	Minister for Climate Change
Date finalised:	20/12/2024

Briefly describe the Minister's regulatory proposal

To improve market transparency and market conduct in the New Zealand Emissions Trading Scheme 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 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.

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.

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.

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.

What consultation has been undertaken?

Targeted engagement on the options in this 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.

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), 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.

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 \$5,000-25,000 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.

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,

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and new and previous participants entering the market (estimated at \$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.

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.

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 comprehensive monitoring of any 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 agency tasked with compliance oversight will be responsible for ongoing investigation and enforcement. We envisage this agency to be the FMA. This would leverage their existing statutory function as it relates to market conduct obligations.

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, Ministry for the Environment, the Environmental Protection Agency (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.

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: 20/12/2024

Quality Assurance (completed by QA panel)

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

QA rating: Meets

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.”

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.¹ 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] . We will work with the EPA on the

¹ 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.

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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, €5 billion (NZD 8.9 billion) in potential revenue was lost due to fraudulent carbon market trading that circumvented Value Added Tax (VAT) requirements.² 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.³ This means action to prevent or respond to NZU market misconduct, such as price manipulation, would need to be taken by the Commerce Commission, or directly by market participants, under the FTA.

² 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](#).

³ 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.

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- 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.
- 17 9(2)(d)
- 18 There is also evidence internationally that carbon trading schemes have been used for fraud. 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. In response, the European Commission strengthened the governance and oversight of their carbon market. 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, the example illustrates that carbon markets are 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. Internationally, governments have identified fraudulent behaviour within their schemes and responded by strengthening governance and oversight.⁵ If no action is taken, a regulatory gap will persist, this puts the overall framework at risk. Any market failure

⁴ 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.

⁵ For example, in the European Union €5 billion (NZD 8.9 billion) in potential revenue was lost due to fraudulent carbon market trading that circumvented Value Added Tax (VAT) requirements. In response, the European Commission strengthened the governance and oversight of their carbon market.

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would materially reduce confidence in the integrity of the NZU market and, therefore, the effectiveness of the ETS more broadly.

- 22 Current market governance arrangements for the NZU market have previously been subject to external reviews.⁶ 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 auction⁷). 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.

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 consultations⁸ and recent targeted engagement; 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.

⁶ By Covec and Catalyst Advisory Partners (2017) and by Ernst and Young (2019).

⁷ Climate Change Commission, February 2024, 'Advice on NZ ETS unit limits and price control settings for 2025-2029'.

⁸ In 2015, 2018, 2021, 2022, and 2024.

Table 1: Seven market risks

RISK	DESCRIPTION
Risk 1: 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.
Risk 2: 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.
Risk 3: 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.
Risk 4: Credit and counter-party risks	The possibility that one of the parties to an NZU trade are unable to fulfil their obligations.
Risk 5: 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.
Risk 6: 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.
Risk 7: 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 – previous consultation indicated that this is not a significant concern for market participants. Further, the NZU market

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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 first principles 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 compliance oversight.

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.

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 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

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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.

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

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)
Integrity	0 <ul style="list-style-type: none"> Limited market information available. Impacts informed decision making and overall market confidence. 	0 <ul style="list-style-type: none"> Little improvement as it only captures a portion of the NZU market. Provides some transaction information for Government monitoring. 	+	+	++ <ul style="list-style-type: none"> Clear improvement and captures information about all NZU trades. Requiring Platform Reporting (Option B) in addition to Register Reporting will fill the information gap for on platform trading.
Minimal complexity/ Compliance cost for market participants	0 <ul style="list-style-type: none"> No additional complexity. No additional compliance cost. 	0 <ul style="list-style-type: none"> Low complexity as differing levels of information are already available. Low compliance cost. 	- <ul style="list-style-type: none"> Low complexity as differing levels of information already available. Increased complexity for users to comply with a new system in the Register. Increased compliance, degree would depend on the threshold / frequency of reporting requirements. 	- <ul style="list-style-type: none"> Low compliance cost and complexity as users will enter limited additional data into the Register from what is currently required. 	- <ul style="list-style-type: none"> Low compliance cost and complexity as users will enter limited additional data into the Register from what is currently required. Low complexity for Platform Reporting as most information is already captured and made accessible to platform subscribers.

Classification

Administrative costs for the Crown	0 <ul style="list-style-type: none"> • No short-term associated costs. • Note: for all options the medium term the Register will require replacement due to its aging infrastructure which comes at a cost. 	0 <ul style="list-style-type: none"> • No associated cost to the Crown. 	– <ul style="list-style-type: none"> • Increased cost to develop a framework as there is no system in place to capture and publish the data. 	– <ul style="list-style-type: none"> • Including this functionality in the replacement Register is not expected to have a significant additional cost. 	– <ul style="list-style-type: none"> • Including this functionality in the replacement Register is not expected to have a significant additional cost.
Market efficiency	0 <ul style="list-style-type: none"> • Low market efficiency as transaction information for the OTC market is not available. • Platform trading information is not public, and where available only captures a portion of market. 	+	+	++ <ul style="list-style-type: none"> • Clear improvement with transaction information available to all participants. • Enables monitoring. 	++ <ul style="list-style-type: none"> • Clear improvement with transaction information made available to all participants. • Enables monitoring. • Covers OTC and platform trading in full.
Overall assessment	0	1	0	1	2

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).
- 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 be carried out either by the Ministry for the Environment or the Environmental Protection Authority. 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. The monitoring functions could also shift over time – for example, MfE could initially be the market monitor, with that function shifting to the EPA at a later time.

- 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 4: Marginal costs and benefits – Transaction Reporting (Preferred Option E)

Affected groups (identify)	Comment <i>nature of cost or benefit (e.g. ongoing, one-off), evidence and assumption (e.g. compliance rates), risks.</i>	Impact <i>\$m present value for monetised impacts; high, medium or low for non-monetised impacts.</i>	Evidence Certainty <i>High, medium, or low.</i>
Additional costs of the preferred option compared to taking no action			
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 monthly 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	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.	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</p>

			the overall cost of the replacement.
Total monetised costs		\$10–50,000, for reporting requirements, \$50–100,000 from potential loss of revenue, spread across all platform operators.	Low
Non-monetised costs		Low	Medium–High
Additional benefits of the preferred option compared to taking no action			
Trading platform operators	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. Platforms will be able to monetise this increased activity using their existing operating models.	High	Low For commerciality reasons, platforms do not share their pricing structures. 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.
Market participants trading NZUs	Increased market transparency will support better-informed trading decisions for all market participants. Once fully implemented with complete capture across platform and OTC activity, market participants will also benefit from improved confidence from market monitoring.	High	Medium Some market participants will already have access to some trading information via their platform operator. However, the changes will increase market transparency and will particularly support less sophisticated market participants to make more informed trading decisions.
Government	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.	High	High Agencies are currently unable to quantify key data about the ETS market, so the change will significantly improve Government's

			understanding of the market.
Total monetised benefits		\$100–500,000	Low
Non-monetised benefits		High	Medium–High

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.⁹ 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.

⁹ S 99 CCRA.

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
 - 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 buy-in and support.
- 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:
- i. prohibiting manipulating the price of NZUs;
 - ii. 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 compared to the other options, 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 solely 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?

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)
Integrity	0 <ul style="list-style-type: none"> Unclear regulatory framework. Risk to market integrity. 	+	+	++ <ul style="list-style-type: none"> Improvement in regulatory oversight of market conduct alongside significant steps that provide for additional integrity (requiring trading on registered platforms only).
Minimal complexity/ Compliance cost for market participants	0 <ul style="list-style-type: none"> Low-cost option. No additional complexity; however, could become high if rules are not in place to be able to appropriately address market misconduct if detected. 	- <ul style="list-style-type: none"> Low compliance costs relative to mandatory alternatives. Minimal complexity due to voluntary nature. 	- <ul style="list-style-type: none"> Relatively low compliance costs. Low complexity to educate participants, expected to subside once implemented. 	-- <ul style="list-style-type: none"> Significant impacts to NZU trading platforms due to mandatory registration requirement. Significant impact to private institutions operating into the platforms and in the OTC market.
Administrative cost for the Crown	0 <ul style="list-style-type: none"> Lowest-cost option, with potential for significant administrative burden if market misconduct occurs. 	0 <ul style="list-style-type: none"> Some complexity for Government to set up processes. Minimal cost to the Crown. 	- <ul style="list-style-type: none"> Low cost for the Crown, depending on level of benefit. Increased regulatory oversight or building 	-- <ul style="list-style-type: none"> Expected to have design and roll-out costs.

Classification

			<p>regulator capacity would require more funding than a model with less oversight.</p> <ul style="list-style-type: none"> • Phasing of the implementation is an option and can be adjusted to achieve optimal compliance based on risk. 	
Clarity/ Transparency	<p>0</p> <ul style="list-style-type: none"> • Little clarity on how market misconduct is handled. 	<p>0</p> <ul style="list-style-type: none"> • Low transparency as unregulated and voluntary. 	<p>+</p> <ul style="list-style-type: none"> • Improvement in clarity with clear regulatory framework. • Regulator can issue guidance to assist with clarity. 	<p>+</p> <ul style="list-style-type: none"> • Improvement in clarity with clear regulatory framework.
Market efficiency	<p>0</p> <ul style="list-style-type: none"> • No improvement to market integrity and could impact market efficiency (if misconduct is taking place). 	<p>0</p> <ul style="list-style-type: none"> • 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. 	<p>+</p> <ul style="list-style-type: none"> • Improvement in market efficiency. • Enforceable. • Increases protections without imposing increase in compliance costs on market participants. 	<p>+</p> <ul style="list-style-type: none"> • Improvement in market efficiency with improved market misconduct standards. • Enforceable.
Total	0	0	1	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 As mentioned previously, the market monitoring component of this option could be carried out either by MfE or the EPA. 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 regulatory 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.

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 5: Marginal costs and benefits – Market oversight and standards

Affected groups (identify)	Comment <i>nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks.</i>	Impact <i>\$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.</i>	Evidence Certainty <i>High, medium, or low, and explain reasoning in comment column.</i>
Additional costs of the preferred option compared to taking no action			
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 and EPA (market monitor) and FMA (market regulator)	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. Cost to provide guidance for market participants about new market conduct obligations. This cost would also be absorbed within agency baselines.	Approximately \$150,000 in the short term and met within agency baselines. 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.	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.
Total monetised costs		\$150–450,000	Medium
Non-monetised costs		Low	Medium
Additional benefits of the preferred option compared to taking no action			
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	Medium While these benefits cannot be quantified, they would further support the benefits of	Low

	misconduct occurs. The benefits to users may be unclear, but real.	increased market confidence discussed and monetised in the previous cost-benefit table.	
MfE and EPA (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
Total monetised benefits		N/A	N/A
Non-monetised benefits	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: Delivering an option

How will the new arrangements be implemented?

Arrangements coming into effect

- 100 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.
- 101 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 for the platforms to publish the required information.
- 102 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.
- 103 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.
- 104 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

- 105 There would be a requirement placed on trading platforms to publish and report prescribed data, which will require legislative amendments.
- 106 It is also likely that platforms will be required to privately provide volumes data to the Government, which would 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 be privately reported to the Government.

Register Reporting

- 107 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

- 108 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.

- 109 To capture increased data, we have worked closely with the EPA and their service provider to determine feasibility and functionality of modifying the existing register to collect additional data.
- 110 The EPA would continue as the Registrar as currently set out in the CCRA.
- 111 The agency responsible for the monitoring function is yet to be conclusively determined. We envisage that this function will sit with either the EPA or MfE.

Market conduct obligations

- 112 The agency tasked with compliance oversight will be responsible for ongoing investigation and enforcement. We recommend this agency to be the FMA. This would leverage their existing statutory function as it relates to market conduct obligations.
- 113 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, their ability to investigate any suspected misconduct is reliant on replacing the Register to enable collection of the necessary data for monitoring purposes.
- 114 During the legislative development phase, officials will carry out work in consultation with the relevant agencies to ensure that appropriate level of civil and/or criminal penalties are associated with the market conduct prohibitions.

Risks

- 115 Replacing the Register will require funding, which presents a risk to implementation. However, policy decisions can be made now — 9(2)(f)(iv)
- 116 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

- 117 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.
- 118 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.
- 119 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.
- 120 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:
- via ETS Information Hub;
 - EPA newsletter;
 - MPI TUR newsletter;
 - MfE's standard ETS announcement processes.

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

- 121 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.

- 122 Agencies can raise any concerns through already established interagency groups, including at the director level as well as manager and workstream levels.
- 123 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.



Cabinet

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

NZ Emissions Trading Scheme Market Governance: Final Policy Decisions

Portfolio Climate Change

On 31 March 2025, following reference from the Cabinet Economic Policy Committee (ECO), Cabinet:

Require platforms to report information to the Government, and maintain records

- 1 **noted** that conditions exist in the New Zealand Unit (NZU) market that allow for market manipulation and, where data is currently available in the primary market, the Government has observed suspicious trading behaviour;
- 2 **agreed** that NZU trading platform providers be required to report NZU price and volume information deemed necessary by the Minister of Climate Change to the Government for monitoring and other Government purposes, and to maintain a history of this information;
- 3 **authorised** the Minister of Climate Change to determine the details of the information that will be required and obligated to be reported to the Government under paragraph 2;

Require participants to record trading information into the Register

- 4 **agreed** to a regulation-making power in the Climate Change Response Act 2002 that, 9(2)(f)(iv) [REDACTED] can be used to create regulations to require NZU market participants to record specified trading information into the ETS Register when entering into an NZU transaction (Register Reporting);
- 5 **noted** that there are no funding implications from the decision in paragraph 4 above, and 9(2)(f)(iv) [REDACTED];
- 6 **agreed** that the trading information collected from Register Reporting can be published periodically in aggregate by the Government;
- 7 **authorised** the Minister of Climate Change to determine the details of the specified trading information that will be required under paragraph 4 and how that will be reported under paragraph 6 following further consultation with market stakeholders;

8 **noted** that:

8.1 the ETS Register is ageing, and this will prevent implementation of Register Reporting;

8.2 information about trading activity will only become available to market participants once Register Reporting is implemented;

9 9(2)(f)(iv)

Create new Market Conduct Obligations

10 **agreed** to add the following market conduct prohibitions to the Climate Change Response Act 2002:

10.1 prohibit manipulating the price of NZUs;

10.2 prohibit false, unsubstantiated, and misleading conduct in relation to buying, holding or selling NZUs;

11 **noted** that appropriate penalties will need to be created in legislation to ensure compliance with the requirements described in paragraphs 2, 4, 14 and 15, and the prohibitions outlined in paragraph 10, and that further work on the type of penalty (civil and/or criminal) will be carried out by officials;

12 **authorised** the Minister of Climate Change to make decisions on penalties, as described above, in consultation with the Minister of Justice;

13 **agreed** that the Financial Markets Authority (FMA) is the agency with regulatory responsibility for enforcing the above requirements, controls and prohibitions, that the FMA can use the same powers as those under the Financial Markets Conduct Act 2013 to respond to equivalent misconduct (in kind) under the above proposals, and that the FMA will manage these new responsibilities within its existing baseline funding;

Monitoring powers and agency information sharing

14 **agreed** that the Ministry for the Environment (MfE) and the Environmental Protection Authority (EPA) should have the ability to require information to be provided to them by market participants, including platform providers, for the purposes of monitoring the NZU market and NZU auctions;

15 **agreed** that NZU trading platform providers be required to retain records of trades and that these details can be obtained by the agency monitoring the market and the agency with regulatory responsibility to support their enquiries;

16 **agreed** that the FMA, MfE, Ministry for Primary Industries (MPI), Ministry of Business, Innovation and Employment (MBIE), and the EPA may share and receive information to the extent necessary for those agencies to give effect to their regulatory responsibilities, including for the EPA to share information gathered through Register Reporting and for MfE to share information gathered through Platform Reporting;

Issuing drafting instructions

- 17 **invited** the Minister of Climate Change to issue drafting instructions to the Parliamentary Counsel Office to amend the Climate Change Response Act 2002 to give effect to the above decisions;
- 18 **authorised** the Minister of Climate Change to make any further policy decisions relating to the above amendments, consistent with Cabinet's decisions;
- 19 **noted** that:
- 19.1 initial market monitoring and enforcement will be absorbed within agency baselines;
- 19.2 there will be future choices to scale up market monitoring and enforcement;

Market sensitive protocol

- 20 **noted** the *Core Components of Protocol for New Zealand Carbon Unit Market Sensitive Information* (the Protocol) contained in Appendix 1 to the paper under ECO-25-SUB-0028;
- 21 **authorised** the Minister of Climate Change to finalise the Protocol in a Cabinet Office circular, in consultation with the Minister of Finance, Minister for Energy, Minister for Resources, Minister of Transport, Minister of Forestry, Minister of Agriculture, and Minister for the Environment.

Rachel Hayward
Secretary of the Cabinet

Secretary's Note: This minute replaces ECO-25-MIN-0028. Cabinet agreed to add paragraph 1.
