



# Financial Markets Conduct (Catalist Public Market) Regulations 2021

Patsy Reddy, Governor-General

## Order in Council

At Wellington this 17th day of May 2021

Present:

Her Excellency the Governor-General in Council

These regulations are made under section 351(1) of the Financial Markets Conduct Act 2013—

- (a) on the advice and with the consent of the Executive Council; and
- (b) on the recommendation of the Minister of Commerce and Consumer Affairs made in accordance with section 351(3) of that Act.

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## **Regulations**

### **1 Title**

These regulations are the Financial Markets Conduct (Catalist Public Market) Regulations 2021.

### **2 Commencement**

These regulations come into force on 21 June 2021.

### **3 Interpretation**

(1) In these regulations, unless the context otherwise requires,—

**Act** means the Financial Markets Conduct Act 2013

**alternative disclosure obligation** means an obligation under regulation 8 and any alternative disclosure provision with which that regulation requires compliance

**alternative disclosure provisions** means provisions contained in the Catalist market rules that, for the purpose of material information being made available to participants in the market, require—

(a) a Catalist issuer to—

- (i) notify material information about events or matters that arise before an auction no later than the start of the auction; and
- (ii) ensure the information remains available during the auction; and

(b) a Catalist issuer to—

- (i) notify material information about events or matters that arise during an auction as those events or matters arise; and
- (ii) ensure the information remains available for the remaining period of the auction

**auction**, in relation to a Catalist issuer, means a process, conducted in accordance with the Catalist market rules and lasting for a defined period of time, in which quoted financial products of the issuer are traded on the Catalist Public Market

**Catalist issuer** means a person that is a party to a listing agreement with Catalist Markets Limited in relation to the Catalist Public Market

**Catalist market rules** means the market rules for the Catalist Public Market that are approved by the FMA under the Act and these regulations

**Catalist Public Market** means the financial product market—

- (a) operated by Catalist Markets Limited under that name; and
- (b) that is subject to licence conditions under Part 5 of the Act that—
  - (i) limit the size of issuers that are eligible to become listed issuers on the market to issuers with a market capitalisation that does not exceed \$60 million; and
  - (ii) require listed issuers on the market with a market capitalisation that exceeds \$100 million to cease being listed issuers on the market within 2 years after the market capitalisation first exceeds that amount (unless, in accordance with the licence conditions, the issuer obtains a waiver from Catalist Markets Limited due to exceptional circumstances); and
  - (iii) require that there are adequate arrangements for ensuring that investors in the market have been provided with information about the nature of the market (including how it differs from a continuous trading market) and information about the particular risks associated with investing on a market that is targeted at small- and medium-sized issuers

**market capitalisation**, in relation to—

- (a) an issuer of equity securities that are or will be quoted on the Catalist Public Market (whether or not it is also an issuer of other kinds of quoted financial products), means the higher of the following:
  - (i) the value of all of the issuer's equity securities, as implied by the market price or fair value of those equity securities (*see* subclause (2));
  - (ii) the net assets of the issuer and its subsidiaries (if any) as reported in the most recent financial statements or group financial statements prepared in accordance with generally accepted accounting practice for the issuer and those subsidiaries (if any):
- (b) an issuer to which paragraph (a) does not apply and that is an issuer of debt securities that are or will be quoted on the Catalist Public Market, means the net assets of the issuer and its subsidiaries (if any) as reported in the most recent financial statements or group financial statements prepared in accordance with generally accepted accounting practice for the issuer and those subsidiaries (if any):
- (c) an issuer to which neither paragraph (a) nor paragraph (b) applies and that is an issuer of managed investment products that are or will be quoted on the Catalist Public Market, means the total gross value of assets under management by the issuer in respect of all managed investment

schemes of which it is the manager (calculated in accordance with generally accepted accounting practice)

**material information** has the same meaning as in section 231 of the Act.

- (2) For the purposes of paragraph (a)(i) of the definition of market capitalisation in subclause (1), fair value must be determined in accordance with generally accepted accounting practice.

#### **4 Transitional, savings, and related provisions**

The transitional, savings, and related provisions (if any) set out in Schedule 1 have effect according to their terms.

#### **5 Application**

These regulations apply to the Catalist Public Market.

#### **6 Purpose**

The purpose of these regulations is to enable Catalist Markets Limited to operate a market—

- (a) with market rules that—
- (i) contain alternative disclosure provisions, in place of continuous disclosure provisions, that require Catalist issuers to disclose material information no later than the start of, and during, each auction; and
  - (ii) provide for modified requirements relating to financial reporting to apply to Catalist issuers (*see* regulation 12(1), which provides that those issuers are not FMC reporting entities by reason only of being listed issuers on the Catalist Public Market); and
- (b) that takes into account the needs and objectives of—
- (i) small- and medium-sized issuers, including by reducing the costs of listing for those issuers; and
  - (ii) investors by increasing investment opportunities, including by providing for alternative disclosure provisions to deal with information asymmetries in the market.

#### **7 Subpart 4 of Part 5 of Act (continuous disclosure) does not apply to Catalist Public Market**

Subpart 4 of Part 5 of the Act does not apply in respect of the Catalist Public Market.

#### **8 Alternative disclosure provisions apply to Catalist Public Market**

- (1) A Catalist issuer must notify material information no later than the start of, and during, an auction in accordance with the alternative disclosure provisions if it has information that those alternative disclosure provisions require it to notify.

- (2) Subclause (1) does not affect or limit the situations in which action can be taken for a failure to comply with provisions of the Catalist market rules.

**9 No contravention of alternative disclosure obligations by person who takes reasonable steps to ensure Catalist issuer complies**

A person (A) does not, in relation to the contravention by a Catalist issuer of an alternative disclosure obligation, contravene, or become involved in the contravention of, that obligation if—

- (a) A took all steps (if any) that were reasonable in the circumstances to ensure that the Catalist issuer complied with the obligation; and
- (b) after doing so, A believed on reasonable grounds that the Catalist issuer was complying with the obligation.

**10 Alternative disclosure obligation is Part 5 market provision and contravention may give rise to civil liability**

- (1) Regulation 8 is a Part 5 market provision.
- (2) A contravention of regulation 8 may give rise to civil liability under section 385(3) of the Act.

**11 Approval of proposed market rules and changes**

- (1) Section 331(1)(b) of the Act does not apply in respect of the Catalist Public Market.
- (2) The test in subclause (3) applies in place of the test in section 331(1)(b) of the Act for the purpose of approving the proposed Catalist market rules or a rule change provided to the FMA under section 330 of the Act.
- (3) The test is that the rules, or the rules as changed, for the Catalist Public Market will not provide appropriate disclosure by Catalist issuers of material information that is not generally available to the market, after having regard to—
- (a) the purpose of these regulations; and
- (b) the purposes of Part 5 of the Act (and the main and additional purposes of the Act stated in sections 3 and 4 of the Act); and
- (c) any other matters that the FMA considers relevant.

**12 Catalist issuer not FMC reporting entity**

- (1) Section 451(1)(d) of the Act does not apply in respect of persons that are listed issuers only in respect of the Catalist Public Market.
- (2) If any retail investor is able to participate in an auction of the financial products of a Catalist issuer, the Catalist issuer must not opt out of compliance with financial reporting requirements that are imposed under an Act (for example, the Companies Act 1993).
- (3) A Catalist issuer must comply with the Catalist market rules that relate to the following:

- (a) the preparation of financial statements or group financial statements:
  - (b) the audit of those statements by a qualified auditor (within the meaning of section 35 of the Financial Reporting Act 2013):
  - (c) the registration or lodgement of those statements and a copy of the auditor's report on those statements.
- (4) Subclauses (2) and (3) are Part 5 market provisions.
  - (5) A contravention of subclause (2) or (3) may give rise to civil liability under section 385(3) of the Act.

## Schedule 1

### Transitional, savings, and related provisions

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### Part 1

#### Provisions relating to these regulations as made

There are no transitional, savings, or related provisions relating to these regulations as made.

Michael Webster,  
Clerk of the Executive Council.

### Explanatory note

*This note is not part of the regulations, but is intended to indicate their general effect.*

These regulations, which come into force on 21 June 2021, provide for replacement requirements to apply in respect of Catalist Public Market, a new financial product market operated by Catalist Markets Limited for small- and medium-sized issuers where financial products are to be traded in auctions.

The main effect of these regulations is as follows:

- subpart 4 of Part 5 of the Financial Markets Conduct Act 2013 (the **Act**) (which provides for continuous disclosure of material information) is replaced in respect of the Catalist Public Market so that Catalist issuers must instead comply with alternative disclosure provisions (to be contained in the Catalist market rules) that require issuers to disclose material information no later than the start of, and during, each auction:
- the test set out in section 331(1)(b) of the Act is replaced with the effect that the Financial Markets Authority (**FMA**) is not obliged to approve Catalist market rules (or changes to the rules) if the FMA is satisfied that the proposed

rules (or proposed changes) will not provide appropriate disclosure by Catalist issuers of material information that is not generally available to the market:

- section 451(1)(d) of the Act (which defines FMC reporting entity as including listed issuers and which, as a consequence, would impose financial reporting obligations on Catalist issuers under Part 7 of that Act) is replaced in respect of the Catalist Public Market so that Catalist issuers must instead comply with requirements to be set out in the Catalist market rules:
- the obligations to comply with alternative disclosure provisions and the financial reporting requirements are stated to be Part 5 market provisions and to give rise to civil liability under section 385(3) of the Act.

### **Regulatory impact assessment**

The Ministry of Business, Innovation, and Employment produced a regulatory impact assessment in November 2019 to help inform the decisions taken by the Government relating to the contents of this instrument.

A copy of this regulatory impact assessment can be found at—

- <https://www.mbie.govt.nz/business-and-employment/business/financial-markets-regulation/financial-markets-conduct-act/development-of-financial-market-conduct-act-regulations/>
- <http://www.treasury.govt.nz/publications/informationreleases/ria>

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*: 20 May 2021.

These regulations are administered by the Ministry of Business, Innovation, and Employment.