

Feedback form: Review of Wholesale Investor Exclusion \$750,000 Minimum Investment Exemption

Please submit this feedback form electronically in both PDF and MS Word formats via email to consultation@fma.govt.nz with 'Feedback: Review of wholesale investor exclusion \$750,000 minimum investment exemption' in the subject line. Thank you. **Submissions close at 5pm on Friday 26 February 2021.**

Name of submitter: NZ Shareholders Association


Company or entity:

Organisation type: Investor Association

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Question number	Name of notice	Comment	Recommendation
<p><i>You don't need to quote from the consultation document if you use question or page numbers. You may insert additional lines or pages - please label each additional page with your name & organisation.</i></p>			
1		The total level of household investment in Kauri Bonds is extremely low (approx. \$16m from a total of \$24bn).	NZSA believes there is no practical impediment to maintaining the current exemption on Kauri Bonds
2		<p>NZSA notes that the current bright-line test for wholesale investors does not necessarily correlate to investor sophistication or experience.</p> <p>NZSA believes that the current exemption regime for unsubordinated debt securities does not recognise how this market may evolve in future.</p> <p>While we understand that bank issuers of such debt have appropriate controls in place to focus mainly on institutional investors, the exemption makes no reference as to other current or potential types of issuers of these type of securities, and their differing behaviours.</p> <p>For example, we note that property syndicate issuers have been advertising in major daily newspapers, promoting investment offers containing the wholesale investor exclusion. It is not clear from the advertisements whether these are debt or equity products, or whether they are unsubordinated, but they do rely on the wholesale investor exclusion (albeit noted in very small type at the bottom of the advertisement).</p> <p>Please see attached below a typical advertisement from the <i>Dominion Post</i> on May 5th 2021.</p>	<p>NZSA believes that the wholesale investor exclusion limit should be replaced by the provision of an 'investor capability' questionnaire, with a practical application similar to that applied by banks under the Responsible Lending Code for debt finance.</p> <p>NZSA would consider that recognition of issuer behaviour and the nature of investor targeting of unsubordinated debt securities becomes a key determinant as to whether the exclusion and an investor capability questionnaire should be mandated.</p>

		 <p>From a consumer/investor perspective, the existence of a 'bright-line' test does not necessarily bear a relationship to investor experience – an inexperienced investor is likely to see the headline return and not read the fine print containing the exclusion.</p> <p>From an issuer perspective, it is questionable whether such an offer is genuinely targeted at 'wholesale investors', as it is advertised in major daily newspapers.</p>	
3		<p>NZSA believes that the addition of compliance costs will drive some benefit for investor protection.</p> <p>An investor questionnaire may in some cases discourage offers that are NOT targeted at institutions.</p>	<p>NZSA supports any compliance cost required to protect investors who lack appropriate experience of investment in unsubordinated debt securities.</p>
4		<p>NZSA does not believe that the current regime or our proposed amendments lead to any unnecessary compliance costs.</p>	
5		<p>The removal of a wholesale investor exemption for unsubordinated debt securities is unlikely to have any major impact – but that does mean that restrictions should not exist.</p> <p>Refer to the Silverfin example above – the notice is so small as to be rendered irrelevant for unsophisticated investors. Even if they could read it, that does not mean they would necessarily understand its implications.</p>	<p>NZSA would like to see an improved regime focused on issuer behaviour and investor sophistication – rather than relying on a simple 'bright-line' test of total funds.</p>
6			<p>NZSA does not support the renewal of the exemption in its current form.</p>
8			<p>See the recommendation associated with Question 5 (above)</p>

Feedback summary – if you wish to highlight anything in particular.

Please note: Feedback received is subject to the Official Information Act 1982. We may make submissions available on our website, compile a summary of submissions, or draw attention to individual submissions in internal or external reports. If you want us to withhold any commercially sensitive or proprietary information in your submission, please clearly state this and note the specific section. We will consider your request in line with our obligations under the Official Information Act.

The information we gather from this consultation will be utilised primarily for the purpose of considering whether the exemption noted should be granted for a further period and it may be used for other regulatory purposes as noted in the Transparency Statement on our website www.fma.govt.nz.

Personal information gathered in this consultation will be handled in accordance with our Privacy Statement on our website www.fma.govt.nz.

Thank you for your feedback – we appreciate your time and input.