



7 November 2014

FTR Manager  
Energy Market Services  
By email: [ftmanager@ems.co.nz](mailto:ftmanager@ems.co.nz)

### **Variation to the FTR Allocation Plan 2014**

Meridian welcomes the opportunity to provide feedback on the FTR Manager's consultation paper 'Variation to the FTR Allocation Plan 2014'.

Our responses to the specific consultation questions are attached in Appendix A. Our responses are based on advice provided by our legal advisors.

Our key points are as follows:

- Eligibility certificates from all participants should be made available to other participants to enable bilateral FTR trading;
- The text of the variation to the FTR Allocation Plan should be limited to "large" investors or additional forms of certificate should be prepared to cover wholesale investors that are not "large";
- We consider the standard form statement currently proposed in the "eligible" investor certificate will be insufficient on its own to meet the certification requirements. As the eligibility criteria are subjective, the investor must set out their grounds for certifying that it meets the criteria. The grounds will need to be tailored to each investor completing this type of certificate;
- The warning statements set out in clauses 46 and 47 of Schedule 8 to the draft Financial Market Conduct Regulations should be included in the self-certification forms as appropriate (see: <http://www.med.govt.nz/business/business-law/current-business-law-work/financial-markets-conduct-act/pdf-and-document-library/unofficial-draft-of-the-fmc-regulations.pdf>).

In addition, Meridian suggests the FTR Manager sends reminders to participants 3 months and 1 month prior to the expiry of a participant's self-certification. This will help ensure re-certification is carried out smoothly, and that administrative issues do not hinder participation in FTR auctions.

Please contact me if you have any questions regarding this submission.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'M. Hall', written in a cursive style.

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## Appendix A: Meridian responses to consultation questions

	Question	Meridian Response
1.	Have we reflected the legal requirement of the FMCA accurately in our proposed variations to the FTR Allocation Plan?	<p><b>Variation to the text of the FTR Allocation Plan</b></p> <p>The Financial Markets Conduct Act (FMCA) regulates the initial issue of a financial product and, in some circumstances, secondary sales of those products (see, for example, clause 31 of Schedule 1 to the FMCA). In those circumstances, the offeror can be liable for offering the financial product for sale if the requirements of the FMCA are not satisfied (for example, section 48 of the FMCA). However, an offer for sale does not require disclosure if an exclusion in Schedule 1 (such as the wholesale investor exclusions) applies.</p> <p>Applying this to FTRs, if the issue of FTRs does not require disclosure under the FMCA (because they are only offered to Participants, each of whom has certified that it is a wholesale investor), and a Participant on-sells FTRs, the Participant will also need to ensure that it only sells the FTRs to persons who are wholesale investors (e.g. through an FTR Assignment). Under the proposed variation, the certificates will only be given to the FTR Manager, so a seller Participant does not have the benefit of those certificates and will need to make its own assessment as to whether the purchasing Participant is a wholesale investor. A way of dealing with this could be for the certificates to also be made available to other Participants (e.g. on the Participants' section of the FTR website), so that the other Participants can also rely on them.</p> <p>Also, the proposed variation refers to a wholesale investor certificate "under clause 44 of Schedule 1 of the FMCA". Clause 44 is not limited to investors who are wholesale investors because they are "large". An investor can also be a wholesale investor because, for example, the investor is in "an investment business" or meets specified "investment criteria". However, the Wholesale Investor Certificate provided in Appendix A of the consultation paper only provides for certification by "large" wholesale investors. Accordingly, we suggest that either the text of the variation to the FTR Allocation Plan is limited to "large" investors or additional forms of certificate are prepared to cover wholesale investors that are not "large".</p> <p>While the criteria of each of the categories of wholesale investor can be objectively verified quite easily, the criteria for the "eligible investor" are very subjective. The certificate completed by</p>

		<p>the investor must set out the investor's grounds for certifying that it meets the criteria. The grounds will need to be tailored to each investor completing this type of certificate. General standard form statements such as those currently proposed in the form of eligible investor certificate will not be sufficient. Given these complexities and the need for the FTR Manager and Participants to consider the adequacy of the grounds set out in eligible investor certificates, we query how useful it will be to allow for eligible person certifications.</p> <p><b>Forms of Certificate</b></p> <p>In relation to the forms of certificate, we have the following comments:</p> <ul style="list-style-type: none"> <li>• The warning statements set out in clauses 46 and 47 of Schedule 8 to the draft FMC Regulations should be included as appropriate (see: <a href="http://www.med.govt.nz/business/business-law/current-business-law-work/financial-markets-conduct-act/pdf-and-document-library/unofficial-draft-of-the-fmc-regulations.pdf">http://www.med.govt.nz/business/business-law/current-business-law-work/financial-markets-conduct-act/pdf-and-document-library/unofficial-draft-of-the-fmc-regulations.pdf</a>).</li> <li>• The second paragraph of each certificate should refer to the certificate being given to the FTR Manager and other Participants (see comments above).</li> <li>• As discussed above, we do not consider that the grounds currently set out in the eligible investor certificate will be adequate. The grounds for giving the certificate will need to be tailored for each investor.</li> </ul>
2.	Does the language we are proposing for variation to the FTR Allocation Plan describe the legal requirements clearly and unambiguously, for existing and potential market participants alike?	See response to Question 1 above.
3.	Does the form of FTR Self Certification meet participant requirements to be signed by your organisation, and submitted by the required due date?	Subject to our comments above, the form meets our requirements.
4.	Is it sufficient to provide forms of self-certification for eligible investors and wholesale investors who are "large" only, or is it also important to provide a form for other categories of wholesale investor (investment businesses, investment activity and government agencies)?	<p>If it is intended that Participants can certify themselves to be wholesale investors on the basis of tests other than the "large" investor test, we suggest that additional forms of certificate be prepared.</p> <p>As noted above, if other types of wholesale investor are not provided for, the text of the variation to the FTR Allocation Plan should be amended to reflect this.</p>