



## Introduction

bp supports the Ministry for the Environment's ('Ministry' hereafter) ongoing work to design a governance framework of the New Zealand Emissions Trading Scheme and welcomes an opportunity to provide feedback on the discussion document, *Market governance of the New Zealand Emissions Trading Scheme*.

We believe that ambitious climate policies will be essential to enable the world to meet the Paris climate goals. bp welcomes well-designed, stable, and long-term policy frameworks to incentivize and support the necessary investments in low carbon solutions. bp strongly supports New Zealand's legislated goal of net zero emissions by 2050 and the New Zealand Emission Trading Scheme (NZ ETS) as a central policy to achieve those goals. We are committed to working with the New Zealand Government to ensure the ongoing integrity and efficiency of the market.

Our submission provides responses to the first 3 topics, noting no further AML/CFT obligations to the NZU market beyond what already applies at present are proposed.

## About bp

bp's purpose is to reimagine energy for people and our planet. Our ambition is to become a net-zero company by 2050 or sooner; and to help the world get there, too. Globally, bp aims to be net-zero across our operations (scope 1 & 2), in our oil and gas production (scope 3) and in the energy products we sell (life-cycle emissions intensity). For each of these we have also set short-term (2025) and medium-term targets (2030). You can read more about our net-zero aims [here](#).

bp is a global energy company committed to delivering energy products and services to people around the world. bp has been active in New Zealand since 1946. Under our new purpose and ambition, bp will continue to invest in our assets, infrastructure, people and the New Zealand community.

In New Zealand, we currently operate more than 100 bp Connect stores and Wild Bean Cafes, and maintain a national network of bp branded independent retailers, distributor partners, truck stops, and a terminals and logistics operation. Our wider operations include the Castrol lubricants business and the Air bp aviation business. Many of our retail sites are owned and operated by New Zealand small to medium businesses and roughly 3,000 New Zealanders are employed across our wider operations. As a major supplier of liquid fuels, bp New Zealand is a liable entity under the NZ ETS with the costs of compliance passed on to our end consumers.

For our New Zealand ETS activity, BP Energy Asia Pte. Ltd (BPEA) provides a single face to market participating in Over-The-Counter trades both direct and facilitated via brokers (such as via Jarden, and Carbon Match) and forestry consultants acting as aggregators (such as PF Olsen and Forest360), as well as, in the NZX-run Auctions. Direct activities can range from small spot deals for 1,000 New Zealand Units (NZUs) through to 10-year deals for millions of tonnes. BPEA's activities are conducted

to support bp New Zealand's compliance obligations, proprietary trading activity and to support third-party customers. They have been consistently active in the market since its inception in 2008.

## Topic 1: Regulating the market based on financial legislation

bp is broadly comfortable with the proposal to regulate the NZU market using the FMC Act with suitable modifications.

In general, we have no objections to the proposed insider-trading prohibition with respect to NZUs. If such a prohibition is to be imposed, we are supportive of the scope of the prohibition proposed in Option Two overall, subject to our comments below.

### *Targeted consultation*

We note the proposed arrangements to impose terms that prohibit trading for a defined period when an entity participates in targeted consultation. We believe these terms could mean many entities may not participate in targeted consultation given the temporary prohibition on trading is likely to materially affect their legitimate business activities. This would likely undermine the development of ETS policy. We propose instead entities who are invited to participate in targeted consultation, or who may otherwise have received information about Government policy from the Government, be given the opportunity to create or demonstrate separate teams internally for trading (trading team) and engaging with the Government (clean team), for a defined relevant period.

The clean team that receives government information and assists with targeted consultation or other legitimate engagement would be required to keep such information confidential from the trading team during the defined period (or until the Government information is made public).

### *OTC market*

We believe that further policy work and consultation may be required to work through how an insider trading regime would work for both on-exchange and off-exchange trading (OTC). We believe there may be significant off-exchange market activity, including the following:

- NZUs may be the subject of a "spot trade" (single transaction, short settlement period);
- Certain transactions may involve longer settlement periods;
- NZUs might also be procured in long term offtake arrangements with project developers involving delivery in tranches and where prices are agreed a long time before settlement;
- In certain transactions, NZUs may form part of the consideration for a carbon-intensive product (together with a cash consideration component for that product);
- Trades can be entered into off-market and then given up to an exchange for settlement.

Taking account of the scenarios above, if the insider trading regime does extend to off-exchange trading, it needs to be kept in mind that it is quite conceivable that certain transactions could be required to be settled during a period when a trading party might have inside information due to targeted consultation or for any other reason, but the terms of the trade were agreed when the party was not an information insider.

Such settlement activity should not be considered to be a breach of insider trading prohibitions, given that the terms of the transaction would have been agreed earlier including as to price or price setting mechanism.

The regulator will also need to take into account the off-exchange market in terms of enforcement approach and decisions.

#### *Derivatives*

The consultation document does not work through the implications of an insider trading regime for derivatives with NZUs as the underlying. We recommend further policy work and consultation on the application of insider trading regulation to OTC derivatives that have NZUs as the underlying. In the meantime, we make some preliminary comments below.

Section 233 of the Financial Markets Act 2013 (FMA Act) provides that if the underlying of a derivative is a quoted financial product of a listed issuer, the derivative must be treated as being a quoted financial product of the listed issuer.

It is not clear from the consultation material whether s 233 is intended to apply in the case of derivatives with NZUs as the underlying. If it would apply, OTC options and other derivatives with NZUs as the underlying would be captured once NZUs are quoted on a licensed exchange, and would be considered to be a quoted financial product of the Crown.

If OTC derivatives with NZUs as the underlying are to be captured by virtue of s 233, a similar definition of inside information to that proposed for NZUs themselves should apply to the derivatives, the underlying and the issuer of the financial product (ie the three aspects covered in s 234(3)(a)). That is, inside information should be limited to material information that is non-public Government information about NZUs.

#### *Market manipulation*

We believe that further policy work and consultation may be required to work through how market manipulation provisions would work as between on-exchange and off-exchange trading (OTC) and derivatives. In particular, it may be very unclear to persons involved in OTC trades as to whether their trading behaviour could create a false or misleading appearance of trading, given the (at least initial) disparity in size between the OTC market and the likely size of the market on any licensed exchange (at least when such an exchange is initially launched, when exchange volumes will probably be lower than OTC volumes).

#### *Regulatory responsibility*

We support the FMA having responsibility for insider trading and market manipulation. The FMA has an in-depth understanding of financial markets regulation and financial markets behaviours.

## Topic 2: Regulating NZU financial advice, transactional and/or custodial service

bp is also broadly comfortable with the proposal to regulate NZU financial advice, transactional and/or custodial services. We understand this would regulate a person who makes recommendation or gives an opinion about acquiring, disposing of or holding NZUs. We understand that would require a license, registration and compliance with fair dealing and statutory duties. We have previously support the regulation of NZU financial advice under the FMA Act.

## Topic 3: Improved transaction reporting

We support promoting greater transparency in the market. However, it is important that in assessing the market information collected, the regulators consider the full picture of the market.

We understand the proposal for volume and price information to be entered into the registry system when a trade is settled, not when the trade is entered into. Certain trades are entered into a long time before they settle, and settlement timing is also often standardised to occur at a defined date before the surrender deadline of 31 May each calendar year (for emitting participants). This means that the volume and price information that would be obtained from registry entries for such trades would not in fact be indicative of current supply and demand conditions, given the time gap between execution and settlement. Instead, such information would be shaped by the market conditions at the time the trade was entered into.

Further, we suggest that if Option Two is adopted, the EPA will need to provide a clear description of the market information that it provides. So that there is not unwarranted reliance on it by users of the information when making NZU trading decisions, to the extent that the information may not reflect current market conditions for the reasons discussed above.

## Closing

bp is supportive of a well-functioning and transparent market, and in protecting the integrity of the ETS scheme through an appropriate governance framework. We look forward to working with the government as these reforms are finalised.

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