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Submission on Adjustments to the Climate-related Disclosures Regime

Thank you for the opportunity to provide feedback on the proposed adjustments to the Climate-related Disclosures (CRD) Regime.

Guardians of New Zealand Superannuation

The Guardians of New Zealand Superannuation (Guardians) is a Crown entity that manages and invests the NZ Super Fund (Fund) to help pay for the increased cost of universal superannuation entitlements in the future. The Fund's size is approximately NZ$80 billion. Further information about our investment approach is available here.

The Guardians is not a climate-reporting entity (CRE) under the Financial Markets Conduct Act 2013. Nonetheless, we have adopted the Standards as the basis for our climate-related disclosures, due to our commitment to transparency, best practice, and application of the Crown Responsible Investment Framework (since December 2021). Our 2024 report is available here.

As a long-term investor, we are committed to active ownership and the promotion of good governance to advance the overall health of New Zealand's capital markets. We have approximately $2.6 billion invested in NZ listed equities (directly or through our managers) as at 31 December 2024, and are an active member of the NZ Corporate Governance Forum to promote good governance rules and practices for the NZX Equity Market.

We expect boards and executive teams of investee businesses to be active in considering how to account for the changing risk profiles of the companies they are responsible for, including climate-related risks and opportunities.

In our management of the Fund, we recognise the material risks that climate change presents to the returns of long-horizon investors like us. We have worked to reduce the Fund's exposure to these risks and position the Fund in readiness for a range of uncertain global and local climate and economic pathways and outcomes.

For our Climate Change Investment Strategy to be successful, we ultimately depend on broad adoption of credible and comprehensive climate-related disclosures. Investee company disclosures provide us, our investment managers and our advisers with the information we need to ensure that the risks and opportunities stemming from climate change are factored into our investment strategies and ownership practices.

Key issues with current settings

Director liability

In broad terms, we consider the regulatory regime for CRD reporting should be as aligned as possible with that governing financial reporting. Areas of divergence could become complex over time as integration and connectivity between climate-related and financial disclosures increases. This could lead to repeated, custom legislative reforms to reflect evolving sustainability-related reporting contexts.

That said, there are important differences in the nature and maturity of climate and financial reporting which we believe need to be recognised in the overall settings, and for reasons set out below we agree that targeted changes should be made to the CRD liability settings in order to reduce cost and support improved disclosure outcomes.

We agree with MBIE's observations in the Discussion Document that some of the CRD regime's liability settings have had unintended consequences for the cost and quality of reporting, and that this could be mitigated through regulatory change.

A regime which automatically personalises liability to directors, unless they prove that they "took all reasonable steps" to ensure compliance, risks encouraging negative and unintended consequences.

First, it creates incentives which lead to conservative, technical and liability-focused disclosures, as opposed to broader, strategically-focused approach to reporting. We consider that a broader approach is more likely to be of value to both shareholders seeking to understand the climate risks and opportunities facing the company, as well as to the business's own understanding and approach to the issues at hand. From a process perspective, it also creates a regulatory incentive for extensive and costly verification and assurance processes designed to mitigate the risk of personal liability.

Second, in our experience quality disclosures also depend on good governance, and experienced and appropriately skilled directors. Personalising liability to directors, in circumstances where it is not appropriate and reasonable to do so, can ultimately weaken the pool of company directors willing to take on such liability. This can, in turn, impact adversely on the quality of governance, strategy, risk management and practical action.

We also query whether, conceptually, presumptive or secondary civil liability of directors under the fair dealing provisions is appropriate for a regime that, by its nature, requires disclosure based on matters that are inherently uncertain and less capable of substantiation compared to other statements captured by these provisions.

We also suggest that MBIE considers the overall liability framework holistically, including through assessing whether differential reporting requirements and proportionality mechanisms should be implemented to further address liability issues whilst maintaining expectations of relevant reporting.

Listed vs unlisted

For a disclosure regime to have a significant impact on both commercial behaviours and climate outcomes, it needs to be broadly applied. Limiting the requirements to only listed companies is too narrow and restricts the potential benefits for both climate outcomes and the New Zealand economy.

As we have previously submitted, the regime should be expanded to include both listed and unlisted companies at an appropriate threshold. This is because companies' climate reporting is crucial for investors to understand and manage climate-related risks and opportunities across their entire portfolios, whether listed or unlisted, and both equity and debt.

Broader disclosure requirements would ensure that climate-related reporting covers a larger portion of the New Zealand economy, including large unlisted companies that are significant emitters and have substantial potential for decarbonisation.

Additionally, the broader policy drivers and benefits of the climate reporting regime, as outlined in the Discussion Document, support extending the regime to unlisted entities. These benefits include achieving emission reduction outcomes and accessing trade opportunities in export markets that require mandatory ESG reporting.

We also agree that the current approach creates a regulatory disadvantage for New Zealand's listed markets compared to private markets, which can deter new listing activity. However, we acknowledge that many factors influence the attractiveness of listing and it is difficult to identify the impact of any single factor.

Longer term review

CRD was first implemented using the broader frameworks of the Financial Markets Conduct Act 2013. This regime was not designed for sustainability-related disclosures, but to establish a regulatory framework for public offering of financial products, highly regulated entities, and more mature disclosure practices. This legislative history has in part influenced some of the issues around liability and scope of the regime that we outline above.

By way of example, we recently commented to the Financial Markets Authority on the requirements for prospective financial information within IPO offer documents. In that context, we noted that there was a sentiment in the market that the framework for personalising liability to directors for offer document disclosures could curtail certain disclosures and deter new listings due to the associated cost impact, neither of which are desirable from a market perspective. See: https://nzsuperfund.nz/assets/Publications/Submissions/Submission-to-the-Financial-Markets-Authority-on-Prospective-Financial-Information.pdf

Over the longer term, if the CRD regime is extended to unlisted entities, we suggest that MBIE undertakes a holistic review of the appropriate legislative framework for sustainability-related reporting (i.e. climate and other) in particular. Over time it is likely that other reporting requirements arise (e.g. modern slavery, nature-related disclosures) and we consider that a more cohesive, centralised legislative framework would be desirable rather than a series of separate legislative regimes.

There may be opportunities for such wider reviews and reforms to bring the New Zealand regime more into line with equivalent legislation in key markets like Australia and the United Kingdom.

The Law Commission is also currently tasked with reviewing director duties and liabilities. We agree there is significant benefit in a comprehensive review of overall director liability across NZ legislation generally, including ensuring there is a cohesive policy approach to the circumstances when personalisation of liability to directors is appropriate, the parameters and defences of such liability, and an understanding of the likely impacts on D&O insurance market, the director pool and second-order implications such as incremental costs for business. In our experience there are differing approaches to director liability across different legislation, and the rationale for those differences is not always apparent.

Responses to submission questions

We do not submit on each of the questions set out in the Discussion Document, but rather focus on targeted questions which are more applicable to us as an investor:

	Question	**Brief comments**
1	Do you have information about the cost of reporting for listed issuers?	Our sense from market interactions and available information is broadly consistent with the cost estimate ranges in the Discussion Document. Where such costs reflect an overly onerous, compliance-driven burden, costs appear unreasonable.

		Where a portion of those costs represent an upfront, strategic investment by CREs in analysis, advice, and integration of climate-related risks and opportunities into the maturing of their broader governance, strategy and risk management approach - we can see potential for proportional return on this investment.
2	Do you consider that the listed issuer thresholds (and director liability settings) are a barrier to listing in New Zealand?	Yes. The current settings create a meaningful regulatory arbitrage between listed and unlisted markets and between different listed market options. We are aware from our interactions within the market that the additional climate reporting impost that applies to listed entities is a factor that is considered in evaluating whether and/or where to list. Because the Australian climate-reporting thresholds are currently more generous for issuers, the CRD regime may be a factor in encouraging issuers to prefer an ASX listing in lieu of the NZX Equity Market. However, this is just one of a range of factors that contribute to the lack of new listings in the NZ market or the choice between the NZX Equity Market and ASX, and it is difficult to isolate the impact of any given factor. Valid concerns around onerous CRD requirements being a barrier to listing by not matching the degree of novelty, complexity and uncertainty around climate change, could be further addressed through reform of the Climate Standards, as discussed in response to Q4.
3	When considering the listed issuer reporting threshold, which of the three options do you prefer, and why?	As noted above, we consider that reporting should be extended to large unlisted companies. As part of this change, the appropriate reporting threshold and test should be evaluated in that context – i.e. with metrics that can apply in an unlisted context. While we do not comment on a particular threshold that would be appropriate, we do consider that the current threshold of $60m market capitalisation to mandate reporting requirements for equity issuers is relatively low. For issuers of this market capitalisation, the cost impact associated with CRD is proportionately much more significant. The market capitalisation-based approach to the test for reporting requirements can also create issues for growth firms which aspire to list on the NZX Equity Market. These issuers may trade on high revenue multiples, and so meet the market capitalisation threshold despite having relatively limited staffing and resource with which to meet climate reporting

		obligations. There is already a trend of issuers within this category seeking to list on the ASX.
4	If the XRB introduced differential reporting, would this impact on your choice of preferred option	While we have not identified a particular preferred option above, we agree that this is a relevant factor to consider when determining the appropriate CRD reporting threshold. A well-designed differential reporting regime could significantly streamline reporting obligations and ensure the requirements are better calibrated for the nature and scale of the issuer. This potentially reduces the need to adjust the reporting thresholds over time and avoids the "start/stop" concerns identified in the Discussion Document. The Climate Standards could be updated to include: a) Carefully differentiated reporting requirements based on the nature of the CRE (subject of XRB's proposed consultation in 2025), and; b) Proportionality mechanisms (as per IFRS S2), which seek to rationalise the effort and cost of CRD aspects, based on the nature of information, capabilities and resources available to the CRE. Such mechanisms could focus on the same technical aspects of CRD that are typically subject to the greatest degree of complexity, uncertainty and difficulty of substantiation (e.g. climate scenarios, future implication, Scope 3 GHGs, value chain, etc.) – and thus represent the areas most likely to trouble / cost CREs and their directors.
6	If option 2 or 3 was preferred do you think that some listed issuers would still choose to voluntarily report (even if not required to do so by law)? And, if so, why?	New Zealand's climate reporting regime was ultimately based on the TCFD framework which was designed as a voluntary, comply/explain disclosure framework. Many issuers (internationally and in New Zealand) applied that framework before being mandated to do so. If the reporting obligation was removed for certain listed issuers, then NZX Policy could include an expectation for climate reporting within the NZX Corporate Governance Code. This would instead leave the ultimate decision to issuers on whether reporting was necessary or desirable in the company's circumstances including the interests of its shareholders and stakeholders, and the issuer would then "comply or explain" accordingly. The Crown Financial Institutions are not CREs and so are not strictly required to undertake climate reporting but nevertheless choose to do so for a range of reasons, as explained in the background.

15	When considering the director liability settings, which of the four options do you prefer, and why?	We prefer option 3. The most critical change is to remove presumptive director liability under section 534 of the FMC Act. In our view, it is inappropriate for directors to be automatically liable in the event of a contravention by a CRE of a climate-related disclosure obligation, which is inherently an area that is subjective and still developing. Refer further to our covering comments. While we see civil liability for being “involved in a contravention” of the fair dealing provisions in the FMC Act as a less critical concern, on balance we also consider this should be removed. This is because: • The fair dealing provisions apply to statements that are misleading/deceptive or which are unsubstantiated representations. • While we expect appropriate rigour in the preparation of climate reports, the nature of the reporting is that disclosures may relate to matters that are less certain and capable of substantiation. In other words, the fair dealing regime is much less suited to climate reporting than traditional financial reporting information which tends to be retrospective and more readily verifiable. • If the “involved in a contravention” provisions were retained, and presumptive liability under section 534 of the FMC Act was removed, this could create a perverse outcome where directors are incentivised to be less involved in the climate reporting disclosures. Directors would still be sufficiently motivated to ensure climate disclosures are robustly prepared, whilst being more able to ensure the disclosures are as relevant as possible for investors. We note that directors could still be exposed to criminal liability in instances of knowing breach, and there can be wider reputational and related consequences of perceived poor governance around issuer disclosure practices.
17	If the director liability settings are amended do you think that will impact on investor trust in the climate statements?	No. Refer to comments above. Whilst the current regime may result in more extensive due diligence and liability management within how climate reports are prepared, the intent

		would be that the revised liability settings would empower boards and their advisers to be less constrained by concerns as to liability and to frame the disclosures around what information is most useful and relevant to investors and other stakeholders.
18	If you support Option 3, should this be extended so that section 23 is disapplied for both climate reporting entities and directors? If so, why?	We do not see an immediate need to do so.

Thank you again for the opportunity to submit on the proposed adjustments to the Climate-related Disclosures Regime. We would welcome an opportunity to discuss the points we have raised in more detail.

Yours sincerely

Will Goodwin
Co-Chief Investment Officer