NZSUPERFUND
Te Kaitiaki Tahua Penihana Kaumātua o Aotearoa

22 May 2024

Financial Markets Authority
Attention: Tansy Leung
Email: consultation@fma.gov.nz

PROSPECTIVE FINANCIAL INFORMATION

This feedback is provided by the Guardians of New Zealand Superannuation (**Guardians, we, our**) as manager and administrator of the New Zealand Superannuation Fund (**Fund**) in response to the above consultation (the **Consultation**).

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GUARDIANS AND THE FUND

The Fund was established by the New Zealand Government in 2001 to help pre-fund the future cost of universal superannuation. The Fund size is approximately $74 billion.

As a long-term, growth-oriented investor, the Fund has a diversified investment portfolio that is invested globally and locally across a wide range of asset classes.

The Guardians has operational independence from the Government and is required by legislation to manage the Fund on a prudent, commercial basis, in a manner consistent with:

- Best practice portfolio management;
- Maximising return without undue risk to the Fund as a whole; and
- Avoiding prejudice to New Zealand's reputation as a responsible member of the world community.

For more information, please refer to www.nzsuperfund.nz.

We are an active participant in the New Zealand Corporate Governance Forum (see https://www.nzcgf.org.nz/) and are committed to promoting a fair and efficient listed market and encouraging good governance for the successful growth of New Zealand issuers. The Fund has significant long-term investment in the New Zealand listed market, with ~NZ$3 billion of exposure to NZX-listed equities via a range of internal and external investment mandates.

SUMMARY / KEY FEEDBACK

Our key feedback is that ***we support a relaxation of the current requirements for PFI disclosures in IPO offer documents and consider the disclosure requirements should be aligned with Australia / ASX***. We have a concern that the current requirements act as a constraint on NZX's ability to attract new listings, and therefore develop and expand NZ's listed equity markets.

That said, amending PFI requirements is only part of a broader package of reforms which have been flagged as necessary to stimulate NZ's listed equity markets[1]. We also note below that there are certain risks associated with relaxing the current settings which should be monitored as part of implementation.

[1] See for example the other recommendations set out in https://www.fma.govt.nz/library/reports-and-papers/growing-new-zealands-capital-markets-2029/

DETAILED FEEDBACK

Our more detailed feedback is:

- The current requirement for 2-years of GAAP-compliant PFI would (if there were any IPOs and such information was provided) assist our investment decisions, and ensure that issuers develop robust forward-looking business assumptions to underpin the disclosures, which they can justify to the market.
- The PFI disclosures also assist us, as an active shareholder, to monitor company performance and hold issuers and their boards to account during the forecast period.
- However, GAAP-compliant PFI is not the only information that is useful for investors to understand an issuer and its future prospects and to derive appropriate valuations. For instance, issuers that provide well thought-out disclosure around key business / revenue metrics and their dependencies can also assist investors in their evaluation of offers.
- Some of the main issues with NZ's current PFI requirements are:
    - it creates a substantial regulatory arbitrage between NZX and ASX, reducing the attractiveness of NZX as an exchange for primary listings (see further below);
    - we understand the cost of preparing the requisite PFI is substantial and becomes a material consideration in the choice of whether to list and if so on what exchange. This is particularly the case for growth companies where there is inherently a higher level of uncertainty with longer term forecasts and significant market and reputational consequences for issuers and their directors if they fail to achieve PFI targets;
    - NZ's legislative framework personalises liability to directors of an issuer (who are often independent directors appointed shortly before the IPO), creating a regulatory incentive for boards and their advisors to favour processes and disclosures prepared from a liability mitigation perspective. While investors wish to understand there are robust processes underpinning the preparation of IPO offer documents, we share a sentiment in the market that the liability regime creates an element of 'gold plating' so that boards can be certain that due diligence defences to personal liability are available. We suggest that FMA also considers the extent to which the current liability regime may curtail other potentially useful disclosures issuers might otherwise be willing to make to investors.
- Critically, Australia/ASX does not mandate PFI within IPO offer documents, and instead leaves market forces to dictate what PFI is provided. We understand that market practice is for issuers to provide up to one year of PFI, although this is often timed to follow the availability of half-year financial information meaning there may be six-nine months of forecasts.
- We note that the Australian regime essentially places greater responsibility on institutional and other investors to be actively engaged in IPOs and ensure boards/issuers are providing appropriate prospective disclosure as a matter of market practice. Fundamentally, we don't see that as a bad thing when compared to a highly prescribed 'one size fits all' approach, particularly as the nature and focus of relevant disclosures may differ based on the particular issuer/industry, etc. For example, investors may be more comfortable with more limited PFI for an early-stage growth issuer (recognising uncertainties around this information) so long as there are alternative disclosures around key performance metrics.
- We also note that:
    - issuers have a strong incentive to provide sufficient disclosure about its prospects, as this enables investors to price the IPO with higher confidence and not apply any discount given uncertainty or lack of understanding around the issuer's outlook;
    - there is a conceptual inconsistency as to the level of prospective information that needs to be available to the market over time. For instance, the current settings require two years of GAAP-compliant PFI at IPO, but then on an ongoing basis

issuers will typically provide much more limited guidance to the market despite significant amounts of secondary trading occurring in respect of the issuer.

- The disparity of requirements between NZX and ASX creates a meaningful regulatory incentive for issuers to primary or sole list on ASX. While the extent to which PFI requirements ultimately contribute to this outcome is uncertain, it is clearly a factor in the mix. There are now a total of 65 NZ companies listed on ASX, of which 18 are sole (rather than dual) listed (see further context at https://www.asx.com.au/listings/why-list-on-asx/new-zealand). There have only been 5 NZX primary equity listings over the last 5 years (and none since 2021)[2].
- It is not clear that the current settings are effective in terms of ensuring NZ investors receive the intended PFI disclosures. Issuers can choose to primary list on ASX and offer equity into NZ using a Corporations Act prospectus and the mutual recognition regime, meaning NZ investors still participate in the offer and only receive the truncated PFI disclosures.
- If the changes are implemented, we recommend that NZX closely monitors the quality of listing candidates, as the shortened prospective period does open up a theoretical risk of lower quality listings which can also impact on the integrity of and confidence in the market.

OTHER MATTERS

Global weakening of shareholder rights

We believe that good governance, an efficient and fair regulatory environment, protection of shareholder rights, and good information flows between companies, investors and key stakeholders improve company performance, create shareholder value and increase confidence in the capital market.

Over recent years we have observed a global trend in regulated markets, in which exchange operators weaken shareholder rights to make their market more appealing as they compete for new listings. We recently signed the International Corporate Governance Network's statement raising concerns on regulatory proposals which could weaken the UK corporate governance standards and shareholder protections.[3]

As a member of the NZ Corporate Governance Forum, we have advocated for the retention and expansion of shareholder rights and supported issuer practices that lead to good governance and maintain a high level of integrity in NZX as a listed market.

On this occasion we are supporting a reform that could reduce the amount of prospective information that is available to investors at IPO. However, the reason we support this particular change is that we consider the overall (disclosure and liability) settings are having negative impacts on the market and that investors can play a greater role in ensuring there is appropriate disclosure under a less prescriptive regime.

Climate reporting

We strongly support climate reporting for listed issuers under NZ's CRD regime, but the regime currently does not apply to comparable unlisted companies. Climate reporting is essential for investors to manage climate-related risks and opportunities across their listed and unlisted portfolios.

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[2] Note also that of these listings, the issuers did not provide PFI in two cases. This was on the basis that doing so would have been misleading and deceptive as the issuers essentially did not have an existing commercial business model, and were therefore able to rely upon an extremely narrow opt-out exception to the requirement to provide PFI under New Zealand law.

[3] https://www.icgn.org/sites/default/files/2024-01/1.%20Statement%20on%20Corporate%20Governance%20as%20a%20Pre-requisite%20for%20Capital%20Market%20Competitiveness%20310124.pdf

This creates a regulatory disadvantage for listed markets as compared to private markets, without a clear policy rationale. The public, customers and other stakeholders may equally have dealings with unlisted companies, and requiring broader disclosure would ensure there is climate reporting capturing a wider part of the NZ economy. We have in the past suggested that CRD reporting obligations should apply to unlisted entities above a particular size threshold, and suggest that this be given further consideration.

Director liability
We have noted above certain potential issues relating to the liability regime in respect of IPO offer documentation, and similar issues apply to CRD disclosures. We suggest that the FMA considers whether liability for these matters is appropriately personalised to directors, which can drive more technical and liability-focused disclosures. An alternative approach, which we would support, would be to confine liability to the company, other than where there is a fraudulent or knowing breach by the director.

More generally we note that quality disclosures also depend on good governance and experienced and appropriately skilled directors. Personalising liability to directors can ultimately weaken the pool of company directors. This can in turn impact adversely on the quality of disclosures.

Guardians of New Zealand Superannuation