NZSUPERFUND
Te Kaitiaki Tahua Penihana Kaumātua o Aotearoa

23 April 2021

Israel Institute of New Zealand

Dear

REQUEST UNDER THE OFFICIAL INFORMATION ACT 1982

Thank you for your Official Information Act 1982 ("**OIA**") request, which we received on **12 April 2021**. I note that on 19 April 2021 we responded to the letter of 24 March 2021 to which you refer in the first sentence of your request.

We have set out below our response to the questions and requests put to us in your 21 April 2021. The information you have requested is shown in *italics*.

We have withheld portions of certain documents, and some documents entirely, on the basis that we have good reason for doing so under section 9 of the OIA. Where we have done so, we considered whether the public interest in favour of disclosure outweighs our reasons for withholding it and concluded that it does not.

1. *Following your recommendation on 14 January 2021 to exclude the securities issued by the Israeli Banks, what date did you write to the Israeli Banks (as per para 4.1 of the Divestment Reasons)?*

   26 February 2021.

2. *Please provide copies of those letters to Israeli Banks.*

   Copies of these letters are attached at Appendix 1.

   Names and contact details of individuals at both the banks and the Guardians have been withheld based on Section 9(2)(a) of the OIA – "protect the privacy of natural persons". We cannot see any public interest in, or public benefit from, the release of this personal information. Information regarding the identity of these individuals is not required for the purposes of transparency and accountability of the Guardians' activities. There is no good reason why these individuals in particular should be subjected to potential public scrutiny.

3. *How long did you give the Israeli Banks to respond before you communicated to the investment managers that you had placed the securities on the exclusion list?*

   The securities were sold before we wrote to the banks. This is common commercial practice, as explained in our letter to you of 19 April 2021, given the potential price sensitivity of an investor signalling its intentions.

4. *Which investment managers had previously made the investment decisions to invest in the Israeli Banks and which are therefore now expected to divest?*

   The following investment managers held the stocks:
   - Black Rock
   - Northern Trust
   - State Street
   - AQR.

As explained in our letter of 19 April 2021, the relevant stocks were managed by our investment managers pursuant to (i) investment mandates created to track indices we specify or (ii) automated quantitative models. In both cases, our investment managers apply company exclusions that we specify.

5. *Please also provide copies of the applicable investment management agreements.*

This request is declined. These documents are agreed between the Guardians and the investment manager concerned under an obligation of confidence. They are highly commercially sensitive both to ourselves and our counterparties. The applicable grounds under the OIA are:

Section 9(2)(i) – "enable a Minister of the Crown or any department or organisation holding the information to carry out, without prejudice or disadvantage, commercial activities".	Investing the Fund is a commercial activity. When we invest we compete in a global market for access to the best investment managers and other advisers, and it is critical that we are perceived to be in a position to respect confidentiality of commercially sensitive documents and contracts that we hold. Our ability to compete will be prejudiced or disadvantaged if non-public information/documents such as our investment management agreements are released to the market. These agreements are very commercially sensitive. By disclosing the terms on which we have appointed managers (including sensitive details such as fee arrangements), this compromises our ability to negotiate optimal commercial and legal terms in future appointments. Similarly it compromises the position of our managers and deters them from dealing with us. Potential future managers and suppliers we may wish to appoint and counterparties to investment transactions will be discouraged from dealing with us if they do not have trust in our ability to maintain the confidentiality of such sensitive materials. It is in the public interest that we can maintain the highest standards of confidentiality and commercial sensitivity with those we work with, as well as our own commercial sensitivity. If we cannot do so, this impairs our ability to effectively discharge our statutory mandate for the benefit of New Zealanders.
Section 9(2)(k) – "prevent the disclosure or use of official information for improper gain or improper advantage".	Withholding the Guardians' investment management agreements with third party managers is necessary to prevent that information being used for improper gain or improper advantage. The Guardians and those third party managers have made significant investments of time and money in developing and negotiating these agreements. Making these agreements publicly available would give competitors of both the Guardians and the investment managers the benefit of the work undertaken without having to pay for it. Furthermore, the same reasons for this apply as set out above, in respect of commercial prejudice. Disclosure of this

	information would enable competitors and counterparties of the Guardians and the investment managers concerned to obtain an improper advantage in circumstances where similar information about those competitors and counterparties is not available to the public.
Section 9(2)(b)(i) – "protect information where the making available of the information would disclose a trade secret".	We carry out commercial activities in relation to the Fund in highly competitive markets, as do our investment managers. The terms of the investment management agreement comprise trade secrets, which provide a competitive advantage while the information remains generally unknown – this includes the terms on which they are prepared to transact and on which we have appointed managers to invest.
Section 9(2)(b)(ii) – "protect information where the making available of the information would be likely unreasonably to prejudice the commercial position of the person who supplied or who is the subject of the information	We carry out commercial activities in relation to the Fund. In investing the Fund we compete in a global market for access to the best investment managers and investment opportunities, as well as competing for a variety of suppliers such as investment advisers, responsible investment screening agencies, and custodians. Our business partners and suppliers are each commercial entities in their own highly competitive markets. We and our managers are concerned about protecting information relating to investment strategies, appointment terms and other sensitive commercial information contained in the investment management agreements. Investment managers and other counterparties will not work with us if we cannot uphold the confidentiality of this truly sensitive information. We strongly believe that it is in the public interest that we can maintain the highest standards of commercial sensitivity with those we work with.
Section 9(2)(ba)(i) – "protect information which is subject to an obligation of confidence or which any person has been or could be compelled to provide under the authority of any enactment, where the making available of the information would be likely to prejudice the supply of similar information, or information from the same source, and it is in the public interest that such information should continue to be supplied".	We operate in a competitive market and if we cannot uphold the confidentiality of commercially sensitive information provided to us, the supply of such information will be jeopardised. In the event the Guardians was to disclose this confidential information to the public, it is likely that other entities with which the Guardians might wish to invest or contract, or enter into a substantive commercial arrangement with, will be reluctant to engage with the Guardians because of the risk of disclosure of their confidential information. It is in the public interest that we can maintain the highest standards of confidentiality and commercial sensitivity with those we work with, in order to compete on a level playing field with other investors and maximise returns to the Fund.

6. *Please provide evidence that clerical addition of the Israeli Banks to the exclusion list constitute an express and actionable instruction to the investment managers in accordance with the terms of the applicable investment management agreement.*

   We confirm that the relevant agreements include provisions under which the Guardians instructed the investment managers to exclude the relevant securities.

7. *Please confirm you communicated to the investment managers that your decision is the subject of challenge by us and that no action should be taken until that is resolved.*

   We do not accept the premise of this question and in any event it has been superseded given we have clarified the stocks were sold prior to announcing the exclusions.

8. *Have any divestments of securities issued by the Israeli Banks occurred since 14 January?*

   All of them.

9. *As there were a number of red flags to put the investment managers on inquiry that there were reasonable grounds for querying the instructions, did any investment managers query your instructions or your addition to the Israeli Banks to the exclusion list?*

   We do not accept the premise of this question (i.e. that managers had any reason or basis to query the exclusion instruction). However, please refer to our OIA response to you of 21 April 2021 for copies of the relevant correspondence with managers.

10. *Which banks, prime brokers and/or custodians ('Custodians') were instructed by the investment managers to settle (as opposed to exclude) the divestment transactions?*

    Our custodian is The Northern Trust Company (London Branch) and the relevant securities were held for the Fund by the custodian. Our investment managers are at liberty to choose which counterparties they wish to transact with. All transactions are then settled with our custodian Northern Trust.

11. *Did any of the Custodians query these settlement instructions?*

    We have not received any such query.

12. *Did any of the investment managers report to you, as the principal, that they had a potential conflict between their contractual duty to execute a valid and proper instructions [sic] and their duty to exercise judgement in connection with the instructions?*

    We do not accept the premise of the question (i.e. that there was a duty in the nature you envisage), but confirm we received no such report.

13. *In what circumstances will you revisit your decision to exclude: just on a material change in facts on the ground in relation to the companies or also on receipt of a different analysis?*

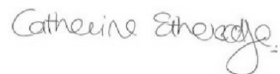
    In broad terms we would revisit the decision where there is a change of relevant facts or alternatively we become aware of new information that is relevant under our responsible investment framework.

General

You have the right to seek a review by the Ombudsman's Office of our decision to withhold the information. Contact details for the Ombudsman's Office can be found at: http://www.ombudsman.parliament.nz.

Please note that we may choose to publish our response to your request on our website at www.nzsuperfund.co.nz.

Yours sincerely



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