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Submission on the Proposed 2024 Amendments to Climate and Assurance Standards

Thank you for the opportunity to provide feedback on the External Reporting Board's (XRB) proposals to amend the New Zealand Climate Standards (NZCS) regime, and the associated exposure drafts.

Guardians of New Zealand Superannuation

The Guardians of New Zealand Superannuation (Guardians) is a Crown entity that manages and invests the NZ Super 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.

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. In particular, 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 socio-economic pathways and outcomes.

For our Climate Change Investment Strategy to be successful, we require the companies we invest in to make 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.

The Guardians is not a climate-reporting entity 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 (December 2021). Our 2024 report is available here.

Overall Position on the Proposals

Our support of high quality climate reporting dates to well before the passage of the disclosure legislation and the development of the NZCS regime. This remains our position.

We note the XRB's statement that early evidence is that disclosure can improve business decision-making and inform capital allocation. This is consistent with our experiences and observations as an investor, both domestically and globally. Climate disclosure delivers significantly more value than the foot-printing exercise itself, given disclosure also covers, and impacts on, governance, strategy, transition and physical scenario analysis, risk analysis and management, and business opportunity.

As we have previously submitted to the XRB, as a Crown Financial Institution investor undertaking climate-related disclosures, there are a number of benefits to climate reporting: it allows us to test our Climate Change Investment Strategy and identify improvements; it serves as a single report source setting out our approach to climate change for both internal and external audiences; and it allows us to walk the talk with the investee companies with whom we engage on ESG disclosure matters.

We note research by Chapman Tripp for the Aotearoa Circle estimating that up to 80% of New Zealand's exports, by value, are now going to countries with mandatory climate disclosures either in effect or proposed. This is significant – as is another statistic they presented, which is that 60% of world GDP is now subject to mandatory climate-related disclosure measures (proposed or in force). The New Zealand Climate Standards encourages CREs to deeply consider the implications of climate-related reporting regimes in their target markets, enhancing their positioning and New Zealand's ongoing potential as a trading nation. In short, it is likely to be good for business and for our overall economy.

In our view, the XRB deserves to be congratulated both for the quality of its work in developing the NZCS in a manner that creates the impetus for deep discussion, analysis and integration of climate-related risks and opportunities into entities' broader governance, strategy and risk management. We also commend the considerable effort the XRB has gone to in raising awareness and providing support to CREs in preparing for disclosures. Finally, we respect the XRB's willingness to now take stock, critically review, and propose amendments through this consultation process.

The Guardians is generally supportive of each of the five amendments proposed by the XRB, specifically:

- extending Adoption Provisions 4, 5, and 7 for scope 3 GHG emissions disclosures from one accounting period to two;
- adding a new Adoption Provision 8, giving relief of one accounting period before scope 3 GHG assurance is mandatory;
- a one-year delay for scope 3 GHG emissions assurance;
- extending Adoption Provision 2 for anticipated financial impacts from one accounting period to two;
- extending Adoption Provision 3 for transition planning from one accounting period to two.

From our experience, any transition such as that involved in implementation of the NZCS regime will involve significant challenges and costs for those involved in, and impacted by it. In the area of climate, this was always likely to be particularly acute given the complexity of the science and issues involved, along with how (unfortunately) far it was outside the previous business-as-usual considerations of many entities.

For a disclosure regime to be effective and deliver on its potential benefits, it needs to not only be meaningful and robust, but also practically and commercially feasible and sustainable. Despite the XRB's extensive efforts to encourage early and earnest effort on the behalf of CREs to prepare, it was inevitably difficult to achieve such balance. In our view, the proposed amendments will improve the extent to which the NZCS regime, and its implementation process, delivers the necessary balance. We are also open to the XRB giving deeper consideration to reporting thresholds, pressure on data/assurance resource availability and coordination with the Australian regime's timeline.

Alongside our general view, there are two issues which, while outside the exact scope of this consultation, we consider central to achieving the balance referred to above and which should be considered alongside the proposals to amend the approach. Consideration of the proposals (and the regime's effective implementation more broadly) in isolation of these issues significantly increases the risk of unintended consequences and/or sub-optimal policy and regulatory settings and outcomes. The remainder of this submission touches briefly on these issues.

Directors' Liability

We are of the view that the current regime involves issues relating to the liability provisions associated with NZCS disclosures. While we acknowledge that liability issues are beyond the remit of the XRB and this consultation, we believe that a meaningful consideration of the challenges involved with implementing the NZCS cannot be undertaken in isolation from the impact of liability settings.

Specifically, it is our view that a regime which can personalise 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 drive more conservative, technical and liability-focused disclosures, as opposed to a broader focused disclosure, which is more likely to have a material and meaningful impact on the businesses understanding and approach. From a process perspective, it also creates a regulatory incentive for extensive and costly due diligence processes designed to mitigate the risk of personal liability.

Second, 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.

An alternative approach to apportioning liability, which we support, is to confine liability to the company, aside from where there is a fraudulent or knowing breach by a director. Importantly we note that directors are already subject to their general duties of care under the Companies Act 1993, which includes climate change as set out in the Aotearoa Circle legal advisory opinion by Chapman Tripp. We consider this approach would strike a more effective balance of ensuring there is personal accountability for egregious breaches whilst supporting higher quality climate-related disclosures.

Listed v Unlisted Companies

If a disclosure regime is to have a material, real world impact on both commercial behaviours and climate outcomes it needs to be broadly based in its effect.

It is the view of the Guardians that the current NZCS approach, with the requirements applying to only listed companies, is overly narrow, thereby unnecessarily restricting the benefits the regime can drive, both in terms of climate outcomes and the New Zealand economy.

The NZCS regime should be extended in its effect to include both listed and comparable unlisted companies. In part, this view reflects the fact that climate reporting is essential for investors to manage climate-related risks and opportunities across their listed and unlisted portfolios.

Further, the current approach contributes to a regulatory disadvantage/cost for listed markets as compared to private markets that can deter new listing activity, without a clear policy rationale as to why listed companies should be treated differently. The public, customers, investors and other stakeholders may equally have dealings with unlisted companies. Requiring broader disclosure would ensure that climate-related reporting captured a wider section of the NZ economy – including large New Zealand unlisted companies who are material emitters, with significant potential for decarbonisation.

We accept the need for criteria to determine which companies are captured by the NZCS regime, but believe that listed-status is not an effective criterion, either in terms of capturing all major emitters, or as a proxy for companies being large enough to be reasonably expected to comply with the requirements. As stated earlier in our submission, however, we absolutely accept that achieving an appropriate balance is key to delivering the optimal public policy settings. Careful consideration around the appropriate reporting threshold is required.

Thank you again for the opportunity to submit on the amendment proposals and the NZCS framework. We would welcome an opportunity to discuss the points we have raised with the XRB in more detail.

Yours sincerely

Alex Bacchus
Acting Chief Investment Officer

Yours sincerely

Anne-Maree O'Connor
Head of Sustainable Investment