



NEW ZEALAND'S EXCHANGE
TE PAEHOKO O AOTEAROA

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Financial Markets Authority

Level 2, 1 Grey Street

Wellington, New Zealand

by email only: consultation@fma.govt.nz

NZX Submission: Guidance on references to climate statements in disclosure documents – proposed information sheet

1. NZX Limited (**NZX**) submits this response to the Financial Markets Authority (**FMA**) consultation on the proposed information sheet (**Draft Information Sheet**) that provides guidance for climate reporting entities (**CREs**) on references to climate statements in certain disclosure documents.
2. NZX is a licensed market operator and New Zealand's exchange. As a 'large listed issuer', NZX is a CRE and is subject to the climate related disclosures (**CRD**) regime under Part 7A of the Financial Markets Conduct Act 2013 (**FMC Act**). A number of listed issuers on NZX's markets, and in some instances prospective IPO issuers, will also be CREs.
3. We make this submission from both the position of NZX as a listed issuer, and from a broader capital markets' perspective as a licensed market operator.
4. Nothing in this submission is confidential. We thank the FMA for the opportunity to provide this submission.

Response to Consultation

Q1. What are your views on the proposed guidance for PDS content?

5. We consider that implementing guidance that advises issuers to include a reference to CRDs in Product Disclosure Statements (**PDS**) goes beyond the existing requirements of the FMC Act and overstates the status of climate statements as material information in relation to an offer.
6. The current regulated offer disclosure regime is sufficient to ensure that all material information in relation to an offer is disclosed either within the PDS, or as other material information (**OMI**) in relation to the offer on Disclose. We do not consider that special considerations apply to the assessment of the materiality of climate statements above other information (such as financial statements).

7. We are concerned with the FMA's policy position articulated in the Draft Information Sheet that the '*climate statements of a CRE are likely to be material information that may influence an investor's decision-making*', as the basis for suggesting that a reference to where climate statements are available should be included in the PDS. The treatment of climate statements as material information in relation to an offer will give rise to additional liability for issuers and directors in relation to the disclosures contained in climate statements, and would trigger the application of the voidable offer provisions of section 80 and section 82 of the FMC Act if a disclosure in climate statements is defective in that it is materially adverse and likely to mislead an investor.
8. In practice, this will result in issuers and their directors needing to complete a full due diligence process in relation to climate statements at the time of an offer, to determine whether there are disclosures within the climate statement that are materially adverse that could mislead an investor, or whether there is additional information that needs to be included in the PDS or OMI disclosures, to ensure that the climate statements are not misleading due to a material omission. While this is appropriate where an issuer applies the existing disclosure tests and determines that the climate statements do contain material information in relation to the offer, we consider that the FMA's proposed policy position overstates the importance of climate statements to an investor when making an investment decision.
9. The need to complete this due diligence is likely to act as a deterrent both for existing CRE issuers looking to undertake a regulated offer to raise capital, and for prospective issuers who are CREs that are looking to raise capital via an IPO. While we expect it to be unusual for an issuer/offeree to be a CRE prior to listing in an IPO context, we remain concerned with a FMA policy position that climate statements are likely to be material information in relation to an offer, particularly should the CRD regime be extended to apply to private entities in future. We are concerned that the FMA's policy position will have the broader effect of reducing investors' ability to participate in New Zealand's capital markets.
10. We also consider that the application of the CRD regime to an issuer is not something that falls within the section 59 FMC Act definition of material information. The regime applies to all entities that are CREs, which can be determined through consideration of the CRE definition in the FMC Act. We do not consider disclosure that the CRE regime applies to an entity to be a disclosure that is particular to the issuer, within the material information definition.

Q3. What are your views on the proposed guidance for OMI?

11. As noted in our response to Q1, we have concerns with the views expressed in the Draft Information Sheet that as a matter of course, climate statements are likely to be material to an investor's decision making in relation to an offer and should be lodged on Disclose as OMI in relation to an offer.



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12. Under the FMC Act, significant liability and consequences (such as the voidable offer provisions) apply to lodging OMI on the Disclose register that is misleading, and that is materially adverse to an investor. A contravention of section 80 or section 82 may give rise to civil liability including pecuniary penalties¹, while directors of CREs may be found personally liable for a breach of section 82 and may be ordered to pay a pecuniary penalty or compensation². Additionally, CREs and their directors may be found criminally liable for knowingly or recklessly contravening section 82 which can result in imprisonment or a significant fine³.
13. CREs who wish to raise capital will likely need to conduct extensive due diligence to avoid the risk of incurring the additional liability associated with lodging defective disclosure on Disclose as OMI. A regulated offer may be made at a later date than the date of a CRE's climate statements were made, meaning that CREs may need to re-validate their climate statements at the time of an offer to ensure that they are up to date and not defective, including by omission.
14. As a CRE's climate statements will be accessible on the CRD register, which was created specifically for the lodgement of climate statements, we consider that investors who wish to review climate statements will have a suitable opportunity to do so without the inclusion of climate statements on Disclose.

Q5. What are your views on the proposed information about annual reports?

15. NZX supports the Information Sheet providing CREs with a concise summary on the annual report requirements in the FMC Act and the Aotearoa New Zealand Climate Standards in relation to climate statements.
16. We would be happy to discuss any aspect of this submission with you further.

Yours sincerely,

Kristin Brandon
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NZX Limited

¹ s 101, Financial Markets Conduct Act 2013.

² s 534, Financial Markets Conduct Act 2013.

³ s 510, Financial Markets Conduct Act 2013.