



NEW ZEALAND'S EXCHANGE
TE PAEHOKO O AOTEAROA

NZX Limited
Level 1, NZX Centre
11 Cable Street
Wellington 6140
New Zealand

www.nzx.com

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Committee Secretariat,
Economic Development, Science and Innovation Committee,
Parliament Buildings,
1 Museum Street,
Wellington 6160,
New Zealand

NZX Submission on the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Bill

1. NZX Limited (**NZX**) is providing this submission to the Economic Development, Science and Innovation Committee (**Committee**) considering the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Bill (**Bill**).
2. We thank the Committee for the opportunity to make this submission and to contribute to the Government's work in developing climate-related disclosure requirements for the financial sector. Nothing in this submission is confidential.

About NZX

3. NZX is a licensed market operator and New Zealand's exchange. NZX operates New Zealand's securities, debt, funds, derivatives and electricity markets. NZX has approximately 200 listed issuers with a total market capitalisation of approximately \$229 billion, who will be affected by the matters raised in the Bill. In 2016 NZX became a partner exchange of the Sustainable Stock Exchange initiative, making a voluntary commitment to promote ESG disclosure to our issuers.
4. NZX considers that ESG reporting acts as a foundation for New Zealand's development of a sustainable and climate resilient economy, by enabling investors to make informed investment decisions based on environmental, social and governance considerations, including an entity's climate related risks and opportunities. In our view, New Zealand has a unique opportunity to demonstrate global leadership, by developing a climate-related reporting regime that delivers competitive advantages for New Zealand entities, as well as broader environmental benefits.
5. Recommendation 4.3 of NZX's Corporate Governance Code (**Code**) requires NZX listed issuers of quoted equity securities to provide at least annual reporting of non-financial matters on a 'comply or explain' basis. In December 2017, NZX released an ESG Guidance Note to assist issuers in understanding how to interpret recommendation 4.3 of the Code, and the benefits and importance of ESG (including climate related) reporting.

6. In 2019 we further promoted greater awareness of ESG reporting in New Zealand, through the release of the ESG Reporting Uptake report¹. This work continued in 2020 when we published an additional report providing insights into New Zealand's ESG reporting practices².

Submission on the Bill

7. We support the objectives of the Bill and consider that the proposed amendments will provide greater clarity as to the manner in which New Zealand's climate-related reporting framework will be developed. While the standards and parameters of climate-related reporting are yet to be determined by the External Reporting Board (**XR**B), the Bill clearly outlines the expected framework for climate-related reporting for the finance sector in New Zealand.
8. In 2019, NZX previously provided a submission to the Ministry for Business, Innovation and Employment and the Ministry for the Environment, in relation to the development of a climate related reporting framework for New Zealand. We understand that the Government has subsequently made policy decisions as to the nature and scope of the climate-related reporting framework for New Zealand which are reflected in the Bill.
9. We wish to provide the following additional submissions on the Bill for the Committee's consideration.

Climate-related disclosure for issuers of wholesale debt securities

10. In 2019 as part of the holistic review of the NZX Listing Rules, NZX recognised the benefits of introducing a wholesale debt market to broaden the range of listed products available on NZX's markets. Wholesale debt securities are listed on NZX's markets but do not trade through NZX's Trading System, rather trades of these products are conducted on an 'over-the-counter' (OTC) basis. No periodic or continuous disclosure obligations apply to issuers of these products³, however issuers may utilise NZX's markets announcement platform to make disclosures in respect of wholesale debt securities if they wish to do so. We note that differential disclosure requirements also apply to offers of wholesale securities under the Financial Markets Conduct Act 2013 (**FMC Act**).
11. There are currently only 2 issuers with wholesale debt securities listed on the NZX Debt Market. We note that NZX's website clearly differentiates wholesale debt securities from other debt securities quoted on the NZX Debt Market, including through a filter checkbox which enables easy identification of listed issuers offering wholesale debt securities. We

¹ 'ESG Reporting Uptake in S&P/NZX 50 Index and Investor Perspective' September 2019, NZX Limited and Wright Communications Limited, available [here](#).

² 'Environment, Social, Governance, ESG Report 2020', December 2020, NZX Limited and Wright Communications Limited, available [here](#).

³ Unless the issuer is otherwise subject to those requirements, because for example, they are also a listed issuer of quoted equity securities.

have provided a snapshot of our website, at the end of this submission, for the Committee's reference.

12. NZX understands that the Government did not intend to extend the climate related disclosure reporting framework to the wholesale debt market, reflecting the differential settings that already exist for such products and the disproportionate compliance burden that would be created by including issuers of such products within the new climate-related reporting regime.
13. We understand that this decision is reflected in the Bill because section 461O(1)(a) creates a climate-reporting obligation for any listed issuer of quoted equity securities or *quoted* debt securities (or both). The term 'quoted' in relation to financial products is defined in the FMC Act as 'financial products of [an] issuer that are approved for trading on a licensed market', which is consistent with the definition of 'quoted' adopted by the NZX Listing Rules⁴. As wholesale debt securities listed on NZX's Debt Market are not tradeable through the NZX trading system, we consider that they are not *quoted* debt securities for the purposes of the Bill and that no climate-reporting obligations will apply to an entity solely because it is an issuer of a wholesale debt security that is listed on the NZX Debt Market.
14. If the Committee considers that there is any uncertainty as to whether listed issuers of wholesale debt securities are climate-reporting entities for the purposes of the Bill, we suggest that proposed section 461O(1)(a) of the FMC Act which is contained in clause 7 of the Bill, could be amended to expressly exclude a listed issuer who is solely an issuer of wholesale debt securities from the definition of a climate reporting entity⁵.

Foreign exempt issuers

15. As noted in our 2019 submission, NZX has a number of foreign exempt issuers whose home exchanges are domiciled overseas⁶, and who are deemed to meet the NZX Listing Rule requirements (including in respect of the disclosures required by the Code) by complying with the requirements of their home exchange. While climate-related financial disclosure is becoming more common internationally, we consider that these issuers should be permitted to comply with their home jurisdiction requirements in relation to climate-related reporting.
16. In this regard, we note that clause 6 of the Bill proposes to amend section 351(1)(ab) of the FMC Act to enable differential requirements for CRD records and climate-related disclosures to be made in respect of 'persons that are listed issuers only in respect of a

⁴ The term 'quoted' is defined in the NZX Listing Rules as 'a Financial Product of an Issuer that is approved for trading on NZX (for the avoidance of doubt, a Financial Product does not cease to be Quoted merely because trading of that product is suspended or halted).'

⁵ We suggest that if this approach is to be followed that the definition of 'wholesale debt securities' contained in the NZX Listing Rules could provide the basis of the exemption. Under the NZX Listing Rules 'wholesale debt securities' are defined as 'Debt Securities where the terms of offer by the Issuer limit subscription in New Zealand to wholesale investors (as defined in Schedule 1 of the FMC Act) or a subset of such wholesale investors.'

⁶ NZX has approved the following stock exchanges for the purposes of eligibility for an issuer to list as a foreign exempt issuer: Australian Securities Exchange (Australia); Hong Kong Exchanges and Clearing Limited (Hong Kong); London Stock Exchange Group (United Kingdom); NASDAQ Stock Market (USA); Singapore Exchange (Singapore); and TMX Group Inc (Canada).

licensed market or class of licensed markets'. We query whether the intention of this provision is to enable regulations to be promulgated that create differential standards for foreign exempt issuers. If so, we suggest that section 351(1)(ab) be amended to refer to 'persons that are a *class of listed issuers*', rather than referring to a 'class of licensed markets'.

17. We note that there may be other mechanisms by which differential climate reporting requirements could be adopted for such issuers, including because clause 29 of the Bill proposes a new section 19C of the FMC Act that would allow climate standards issued by XRB to be expressed to apply to a specified class of reporting entity or group.
18. We note that proposed section 461X(3)(a) of the FMC Act will operate to differentiate large overseas climate reporting entities on the basis of their listing status, such that listed entities must provide group statements in respect of their entire group activities, rather than solely in relation to their New Zealand business as is permitted for other large overseas reporting entities (refer to proposed section 461Y). We do not consider that the listing status of an issuer should create a differential reporting requirement for these entities, and consider that to the extent large overseas entities fall within the regime that it is appropriate for them to report solely in respect of their New Zealand business.

Transition timetable

19. We understand that the amendments contained in Part 1 of the Bill will be brought into effect on the XRB's issuance of an applicable climate standards with a mandatory back-stop commencement of one-year after the Bill received Royal assent. As a result, the disclosure regime will come into force for financial years commencing on or after a date to be determined in 2022.
20. We reiterate the comments made in our 2019 submission that there should be an adequate transition period for climate reporting entities to implement arrangements to comply with the new regime. In this regard, we understand that XRB standards are usually implemented after a 3-4 year transition window. We also note that the Canadian Expert Panel on Sustainable Finance recommended that large companies and financial institutions be afforded a five-year implementation period for the adoption of certain aspects of the TCFD, including scenario testing and the requirements to disclose metrics and targets used to manage climate change risks⁷. We consider that a longer transition timeframe will enable entities to have more confidence that the information being disclosed is robust, and aid comparability, as over-time market practice and industry specific guidance is developed.
21. We are concerned that a short transition time could also be problematic for climate reporting entities, given the calibration of the civil liability provisions within the Bill. Clause 7 of the Bill proposes a new section 461ZS of the FMC Act which designates a number of climate reporting obligations contained in the Bill as civil liability provisions. Under section 494 of the FMC Act, a court can make a compensatory order to an aggrieved person for the breach of a civil liability provision. We are concerned that

⁷ We note that the Canadian Panel, recommended that small and medium-sized companies be afforded a seven year transition period. Please refer to recommendation 5.2, of the Canadian Sustainable Finance Panel's Final Report, June 2019, available [here](#).

climate reporting entities are provided with sufficient time to develop compliance frameworks for the new climate reporting obligations, and to consider and understand the climate standards to be issued by the XRB, before becoming subject to a compliance regime which exposes them to liability to the general public.

NZX scope to make exemptions

22. MBIE has noted in its departmental disclosure statement⁸, that ‘the FMA and NZX have been given scope to make exemptions, including making an exemption subject to conditions’. We have not been able to identify any exemption powers within the Bill that have been granted to NZX as a licensed market operator. We understand that only the FMA has the power to grant exemptions from the FMC Act’s legislative requirements and that NZX does not have standing as a regulator to do so. We do not consider that it would be appropriate for the Bill to grant NZX with legislative exemptive powers.

Closing comments

23. We would like to thank the Committee for considering our submission. We would also be pleased to appear before the Select Committee to discuss the matters contained in our submission.

Yours faithfully,



Kristin Brandon
Head of Policy and Regulatory Affairs
NZX Limited

⁸ The departmental disclosure statement from MBIE, date 30 March 2021, is available [here](#).

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NZX Debt Market (NZDX)

The NZX Debt Market (NZDX) is New Zealand's flagship market for listed debt securities, providing access to a diverse range of New Zealand and Asia-Pacific corporate and government debt. Product quoted/listed includes retail and wholesale debt facilities, and other related securities.

Market Outstanding	\$5,100,000,000.00	Instrument Count	8
Trade Count	0		

Filter market data

All
 Gainers
 Decliners

Instrument type

All
 Wholesale
 Retail Vanilla Corporate Bonds
 Retail Structured Debt
 Retail Debt/Equity Hybrids
 Sustainability Bonds
 Green Bonds

Code	Company	Price	Change	Volume	Value	Outstanding
HNZ0001	Housing New ...	-	0.00% / 0.00%			\$300,000,000
HNZ0002	Housing New ...	-	0.00% / 0.00%			\$1,275,000,000
HNZ0003	Housing New ...	-	0.00% / 0.00%			\$1,125,000,000
HNZ0004	Housing New ...	-	0.00% / 0.00%			\$950,000,000
HNZ0005	Housing New ...	-	0.00% / 0.00%			\$550,000,000
HNZ0006	Housing New ...	-	0.00% / 0.00%			\$300,000,000
HNZ0007	Housing New ...	-	0.00% / 0.00%			\$600,000,000
SPF0001	Spark Finance...	-	0.00% / 0.00%			NOK 1,000,000,000