

4 May 2022

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### **Submission on Climate-related Disclosures: Strategy, Metrics and Targets**

- 1 Chapman Tripp welcomes the opportunity to comment on the Strategy, Metrics and Targets section of *Aotearoa New Zealand Climate Standard 1: Climate-related Disclosures (NZ CS 1)*.
- 2 Overall we support the direction of the proposed Strategy, Metrics and Targets sections of CS 1. We have worked with a number of clients as they have formulated their submissions on the Consultation.
- 3 This submission focuses on two aspects:
  - 3.1 that the GHG emissions disclosures at paragraphs 4(a), (b) and 8 – 10 of the Metrics and Targets disclosure should focus on larger climate reporting entities with compliance by smaller listed entities voluntary. Accordingly, the requirements that GHG emissions disclosures are assured would not apply to smaller listed entities, and
  - 3.2 that the materiality test should pivot more towards a qualitative standard, consistent with the materiality disclosure standard in section 59 of the Financial Markets Conduct Act 2013 (*FMCA*).

#### **Smaller listed issuers – reduced disclosure (differential reporting)**

##### ***Introduction***

- 4 In response to submissions on the Financial Sector (Climate-related Disclosures and Other Matters) Bill, including our submission, the Bill was amended by Supplementary Order Paper at the committee stage to focus on “**large listed issuers**” and to provide for “**excluded listed issuers**”. Smaller listed issuers or growth market issuers can still, if they wish, voluntarily comply with the climate-related disclosure reporting.
- 5 Despite this statutory narrowing of application, we remain concerned that some aspects of the proposed climate statement requirements will require disproportionate time of smaller listed climate reporting entities, relative to the benefits for their stakeholders and the overall efficacy of the reporting regime.



6 Accordingly, we submit that the proposed climate statement adopt a *reduced disclosure reporting* (i.e. differential reporting) approach for small listed issuers. This works well in the financial reporting context. As an alternative, application of the Metrics and Targets paragraphs to smaller listed issuers could be deferred for a few years but we think that would be an inferior approach.

***Proposed enhanced reporting for larger listed climate reporting entities***

7 We propose that NZ CS 1 adopt an additional definition of “**enhanced reporting entity**”, being a climate reporting entity that is not a small listed issuer. In particular, we submit that paragraphs 8, 9 and 10 of the proposed Metrics and Targets section of NZ CS 1 (on publication of GHG emissions and a GHG emissions report), only be mandatory for enhanced reporting entities.

8 Accordingly, only enhanced reporting entities would be required to arrange for assurance of greenhouse gas emission disclosures. It is clear that the Act contemplates that not all aspects of climate statements may be subject to assurance, and that where GHG disclosures are not required, assurance is not required. This is confirmed by s 461ZH (our emphasis):

**461ZH Assurance engagement required for parts of climate statements relating to greenhouse gas emissions**

Every climate reporting entity must ensure that the climate statements or group climate statements that are required to be prepared under any of sections 461Z to 461ZC are, *to the extent that those statements are required to disclose greenhouse gas emissions*, the subject of an assurance engagement. (our emphasis added)

***Definition of small listed issuer (and therefore enhanced reporting entity)***

9 We offer two approaches to define a small listed issuer (and therefore not an enhanced reporting entity):

9.1 as a listed issuer that is not, at balance state, a constituent of the S&P NZX50 headline index; or

9.2 as a listed issuer that had market capitalisation below a specified dollar amount (calculated using similar methodology as provided for in section 461P of the FMCA, as to be inserted by Part 1 of the Act).

10 Set out in Appendix 1 are the constituents of the S&P NZX50 as at the most recent quarterly rebalance for 31 March 2022. The smallest constituent had market capitalisation of \$307 million. Set out in Appendix 2 is the market capitalisation on NZX listed climate reporting entities as at 31 March 2022.

11 On balance, we think the approach in paragraph 9.1 is simpler, but if the XRB prefers paragraph 9.2, we suggest adopting a market capitalisation threshold of \$300 million, which is broadly the same level as the lowest current S&P NZX50 index constituent.



### **Rationale**

- 12 Our submission is informed by the Bill's Regulatory Impact Statement (*RIS*), discussions with our clients about the time and costs needed to comply with the regime, and the approach taken internationally. For example:
- 12.1 the recently announced SEC rule would exempt small US registrant entities from having to report, at least, Scope 3 emissions and there would be no mandatory assurance<sup>1</sup>
- 12.2 the regime proposed for the UK by the Financial Conduct Authority (FCA) was initially limited to 'premium listed issuers' rather than all 'standard' issuers (being generally those with higher market capitalisation)<sup>2</sup> and draft statutory rules would only apply to an issuer with more than 500 employees.<sup>3</sup> Although the FCA has since extended its regime to 'standard' issuers, it is a 'comply or explain' regime, which means smaller listed issuers can elect not to undertake metric and target reporting
- 12.3 the experience of our clients undertaking voluntary reporting that several FTE staff equivalents are dedicated to preparation of climate statements
- 12.4 pages 10-11 and 33 of the *RIS* estimating the costs of compliance for first time adoption of climate statement reporting, and for on-going reporting
- 12.5 page 33 of the *RIS* stating that a listed emissions intensive company with over \$1 billion of revenue, and a global accounting firm, had provided a wide range of estimated compliance costs, the top end of which was several hundred thousand dollars. It is clear from the *RIS* description of the estimate breakdown that much of the cost was in formulating inputs to GHG emissions disclosure
- 12.6 page 10 of the *RIS* outlining that the estimated costs of a first time 'medium sized issuer' would be in the order of NZ\$720,000, with ongoing costs thereafter of NZ\$200,000 per annum
- 12.7 Recommendation 1.5 of the ASX Corporate Governance Council *Corporate Governance Principles and Recommendations* (4<sup>th</sup> Edition) (*ASC Governance Code*), which applies a more onerous gender board composition disclosure requirements on those listed issuers in the S&P/ASX300 index. Similar enhanced reporting is required elsewhere in the *ASX Governance Code*.

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<sup>1</sup> See <https://www.sec.gov/news/press-release/2022-46>, <https://www.sec.gov/files/33-11042-fact-sheet.pdf> and <https://www.sec.gov/rules/proposed/2022/33-11042.pdf>

<sup>2</sup> See <https://www.fca.org.uk/publication/policy/ps20-17.pdf>

<sup>3</sup> See <https://www.legislation.gov.uk/ukdsi/2021/9780348228519/contents>, and <https://www.icas.com/landing/sustainability/non-financial-reporting/climate-change-reporting-to-be-mandatory-for-largest-uk-entities>

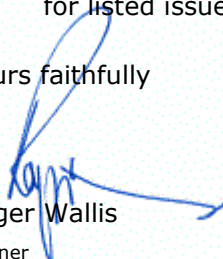


- 13 A focus on larger corporates is also consistent with the approach taken in Europe where the Non-Financial Reporting Directive (2014/95/EU) initially required environmental and GHG reporting for “large” listed companies and financial institutions (determined by factors including balance sheet (€20M), turnover (€40M) and employee numbers (500)). The European Commission has since proposed extending such reporting to capture smaller entities (via the proposed Corporate Sustainability Reporting Directive) but that transition is occurring after five years of compliance by “large” organisations.
- 14 A specific focus on “enhanced reporting entities” as proposed would ensure that the resource demands of producing good quality climate statements are justified by, and proportional to, the size of entity. Disproportionate reporting obligations may be counter-productive both in terms of the quality of climate statements and positive adoption of climate-related disclosures.

**Materiality**

- 15 We broadly support the direction of XRB’s proposed materiality definition.
- 16 However we think XRB should focus more on qualitative disclosure, and less on quantitative materiality, whether framed by reference to “enterprise value” or otherwise.
- 17 We consider the better test would be to adapt section 59 of the FMCA which provides that material information is information that “*a reasonable person would expect to, or to be likely to, influence persons who [commonly invest in financial products] in deciding whether to [acquire the financial products on offer]*”.
- 18 Importantly, section 59 of the FMCA only requires disclosure that relates to the particular financial products on offer or the particular issuer, rather than to financial products generally or issuers generally. Again, we think it important that the materiality adopted in NZ CS 1 only relate to matters affecting the particular climate reporting entity rather than climate reporting entities generally.
- 19 The views reflected in this submission are those of Chapman Tripp lawyers that act for listed issuers, and do not represent any particular client view,

Yours faithfully



Roger Wallis  
Partner



## Appendix 1: S&P NZX 50 as at 31 March 2022

Code	Company	Capitalisation
AIA	Auckland International Airport Limited	9,419M
AIR	Air New Zealand Limited (NS)	1,415M
ARG	Argosy Property Limited	1,120M
ARV	Arvida Group Limited	1,174M
ATM	The a2 Milk Company Limited	3,577M
CEN	Contact Energy Limited	6,350M
CNU	Chorus Limited (NS)	3,251M
EBO	Ebos Group Limited	6,554M
ERD	EROAD Limited	297M
FBU	Fletcher Building Limited	5,001M
FPH	Fisher & Paykel Healthcare Corporation Limited	12,322M
FRE	Freightways Limited	1,986M
GMT	Goodman Property Trust (NS)	2,337M
GNE	Genesis Energy Limited (NS)	1,452M
IFT	Infratil Limited	6,042M
IPL	Investore Property Limited (NS)	489M
KMD	KMD Brands Limited	897M
KPG	Kiwi Property Group Limited	1,656M
MCY	Mercury NZ Limited (NS)	3,798M
MEL	Meridian Energy Limited (NS)	5,701M
MFT	Mainfreight Limited	6,955M
NZX	NZX Limited	396M
OCA	Oceania Healthcare Limited	710M
PCT	Precinct Properties New Zealand Limited	1,918M
PEB	Pacific Edge Limited	729M
PFI	Property for Industry Limited	1,357M
POT	Port of Tauranga Limited	2,018M
PPH	Pushpay Holdings Limited	1,235M
RBD	Restaurant Brands New Zealand Limited	393M
RYM	Ryman Healthcare Limited	3,805M
SAN	Sanford Limited (NS)	370M
SCL	Scales Corporation Limited	587M
SKC	SkyCity Entertainment Group Limited (NS)	2,159M
SKL	Skellerup Holdings Limited	1,011M
SKO	Serko Limited	483M
SKT	Sky Network Television Limited	458M
SML	Synlait Milk Limited (NS)	344M
SPG	Stride Property Group (NS)	1,026M
SPK	Spark New Zealand Limited	9,179M
SUM	Summerset Group Holdings Limited	2,677M
THL	Tourism Holdings Limited	369M
TPW	Trustpower Limited	475M
VCT	Vector Limited	1,093M
VGL	Vista Group International Limited	432M
WHS	The Warehouse Group Limited	371M



## Appendix 2: NZX listed issuer market capitalisation as at 31 March 2022

Code	Company	Capitalisation
FPH	Fisher & Paykel Healthcare Corporation Limited	\$14,056,490,313
MEL	Meridian Energy Limited (NS)	\$13,004,234,234
AIA	Auckland International Airport Limited	\$11,531,130,182
SPK	Spark New Zealand Limited	\$8,561,959,447
MFT	Mainfreight Limited	\$8,433,503,395
MCY	Mercury NZ Limited (NS)	\$8,105,690,551
EBO	Ebos Group Limited	\$7,824,636,361
CEN	Contact Energy Limited	\$6,362,202,169
IFT	Infratil Limited	\$5,972,864,552
FBU	Fletcher Building Limited	\$5,084,185,755
RYM	Ryman Healthcare Limited	\$4,690,000,000
POT	Port of Tauranga Limited	\$4,204,343,944
ATM	The a2 Milk Company Limited	\$4,194,222,818
VCT	Vector Limited	\$4,040,000,000
CNU	Chorus Limited (NS)	\$3,303,435,576
GMT	Goodman Property Trust (NS)	\$3,297,635,878
GNE	Genesis Energy Limited (NS)	\$3,005,477,715
SUM	Summerset Group Holdings Limited	\$2,715,385,262
PCT	Precinct Properties New Zealand Limited	\$2,489,046,792
TPW	Trustpower Limited	\$2,206,459,650
SKC	SkyCity Entertainment Group Limited (NS)	\$2,181,788,950
FRE	Freightways Limited	\$2,047,672,558
ZEL	Z Energy Limited	\$1,943,660,258
KPG	Kiwi Property Group Limited	\$1,727,104,388
RBD	Restaurant Brands New Zealand Limited	\$1,726,657,958
AIR	Air New Zealand Limited (NS)	\$1,448,424,957
PFI	Property for Industry Limited	\$1,408,110,571
DGL	Delegat Group Limited	\$1,334,918,534
HGH	Heartland Group Holdings Limited	\$1,334,033,595
PPH	Pushpay Holdings Limited	\$1,300,554,931
BGP	Briscoe Group Limited	\$1,280,212,120
ARV	Arvida Group Limited	\$1,238,504,760
ARG	Argosy Property Limited	\$1,168,239,845
SKL	Skellerup Holdings Limited	\$1,165,800,001
WHS	The Warehouse Group Limited	\$1,151,519,158
WIN	Winton Land Limited (NS)	\$978,825,329
KMD	KMD Brands Limited	\$964,241,882
PEB	Pacific Edge Limited	\$777,683,744
OCA	Oceania Healthcare Limited	\$745,714,725
SCL	Scales Corporation Limited	\$731,909,462
SML	Synlait Milk Limited (NS)	\$723,505,298
IPL	Investore Property Limited (NS)	\$633,192,257
NPH	Napier Port Holdings Limited	\$599,878,191
SKO	Serko Limited	\$558,829,982
SKT	Sky Network Television Limited	\$506,596,137
ERD	EROAD Limited	\$483,283,887
NZX	NZX Limited	\$445,982,444
SAN	Sanford Limited (NS)	\$439,478,844
THL	Tourism Holdings Limited	\$434,835,621
VGL	Vista Group International Limited	\$432,925,197
HLG	Hallenstein Glasson Holdings Limited	\$387,122,406
CHI	Channel Infrastructure NZ Limited	\$387,112,416
RAK	Rakon Limited	\$387,103,410
AFT	AFT Pharmaceuticals Limited	\$377,957,109
TGG	T&G Global Limited	\$361,502,452
TRA	Turners Automotive Group Limited	\$348,580,454
CMO	The Colonial Motor Company Limited	\$340,024,173



<b>Code</b>	<b>Company</b>	<b>Capitalisation</b>
CDI	CDL Investments New Zealand Limited	\$339,265,367
NZM	NZME Limited	\$337,844,804
PGW	PGG Wrightson Limited	\$334,394,488
TWR	Tower Limited	\$265,638,791
MCK	Millennium & Copthorne Hotels New Zealand Limited	\$263,696,858
STU	Steel & Tube Holdings Limited	\$260,616,138
SCT	Scott Technology Limited	\$253,519,437
MMH	Marsden Maritime Holdings Limited (NS)	\$249,868,939
CVT	Comvita Limited	\$243,343,183
SPN	South Port New Zealand Limited	\$229,817,706
MFB	My Food Bag Group Limited	\$225,466,897
SEK	Seeka Limited	\$211,620,941
GXH	Green Cross Health Limited	\$190,393,169
GTK	Gentrack Group Limited	\$176,935,508
SPY	Smartpay Holdings Limited	\$167,990,899
TWL	Trade Window Holdings Limited	\$163,651,193
MOV	Move Logistics Group Limited	\$138,443,710
NZK	New Zealand King Salmon Investments Limited	\$129,386,687
IKE	ikeGPS Group Limited	\$121,065,521
ARB	ArborGen Holdings Limited	\$120,356,822
NZL	New Zealand Rural Land Company Limited (NS)	\$116,474,405
EVO	Evolve Education Group Limited	\$114,875,628
PX1	Plexure Group Limited	\$107,842,626
RAD	Radius Residential Care Limited	\$102,312,374
FWL	Foley Wines Limited	\$98,604,222
APL	Asset Plus Limited	\$96,120,217
NZO	New Zealand Oil & Gas Limited	\$86,326,127
JLG	Just Life Group Limited	\$75,889,113
WDT	Wellington Drive Technologies Limited	\$74,289,315
AGL	Accordant Group Limited	\$68,292,671
MWE	Marlborough Wine Estates Group Limited	\$66,814,676
NWF	NZ Windfarms Limited	\$60,493,353
RUA	Rua Bioscience Limited	\$59,951,707
MPG	Metro Performance Glass Limited	\$55,613,426
BLT	Blis Technologies Limited	\$52,225,866
SMW	SMW Group Limited	\$51,416,740
CBD	Cannasouth Limited	\$50,777,701
GFL	Geneva Finance Limited	\$45,219,871
MEE	Me Today Limited	\$44,152,992
MHM	MHM Automation Limited	\$43,964,775
PHL	Promisia Healthcare Limited	\$42,569,950
NZA	NZ Automotive Investments Limited	\$40,087,960
SDL	Solution Dynamics Limited	\$39,567,987
PYS	PaySauce Limited	\$38,803,469
BRW	Bremworth Limited	\$35,973,131
TAH	Third Age Health Services Limited	\$28,258,000
SVR	Savor Limited	\$27,052,154
TRU	TruScreen Group Limited	\$25,763,504
CCC	Cooks Coffee Company Limited	\$22,759,469
ALF	Allied Farmers Limited	\$22,757,083
ENS	Enprise Group Limited	\$19,389,239
BFG	Burger Fuel Group Limited	\$16,611,165
QEX	QEX Logistics Limited	\$16,142,586
GEO	Geo Limited	\$13,593,661
GFI	Greenfern Industries Limited	\$13,168,860
VTL	Vital Limited	\$11,841,271
GEN	General Capital Limited	\$10,420,217
NTL	New Talisman Gold Mines Limited	\$9,567,916
SCY	Smiths City Group Limited	\$7,376,341

\$300m cut-off



<b>Code</b>	<b>Company</b>	<b>Capitalisation</b>
GSH	Good Spirits Hospitality Limited	\$4,330,084
SNC	Southern Charter Financial Group Limited	\$4,119,156
AFC	AFC Group Holdings Limited	\$3,664,216
BGI	Blackwell Global Holdings Limited	\$2,295,036
GWC	Goodwood Capital Limited	\$1,269,573
ACE	Ascension Capital Limited	\$1,148,930