



NOVEMBER 2024

Submissions report:

Proposed guidance on references to climate statements in disclosure documents

Collation of written feedback received as part of the FMA's
public consultation on the proposed information sheet on
references to climate statements in disclosure documents

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Introduction

We would like to thank all submitters for their feedback on our consultation on the [proposed information sheet on references to climate statements in disclosure documents](#). We received written submissions from 17 stakeholders. We appreciate the points raised and the effort put into each submission.

This document contains a collation of the written submissions. We have withheld some information in accordance with the Official Information Act 1982 and the Privacy Act 2020.

Submissions

1. [Anthony Harper](#)
2. [Boutique Investment Group](#)
3. [Chapman Tripp](#)
4. [Chartered Accountants ANZ](#)
5. [Corporate Trustees Association NZ](#)
6. [Dentons](#)
7. [Financial Services Council NZ](#)
8. [Fisher Funds](#)
9. [FundRock NZ](#)
10. [Jarden](#)
11. [Milford Funds](#)
12. [Minter Ellison](#)
13. [NZ Banking Association](#)
14. [NZX](#)
15. [Responsible Investment Association Australasia](#)
16. [Russell McVeagh](#)
17. [Securities Industry Association NZ](#)

30 August 2024

Financial Markets Authority
Level 5, Ernst & Young Building
2 Takutai Square, Britomart
PO Box 106 672
Auckland 1143

By email: consultation@fma.govt.nz

Submission on Proposed References to Climate Statements in Disclosure Documents Information Sheet

Introduction

- 1 This is Anthony Harper's submission on the Financial Market Authority's consultation on its proposed *References to climate statements in disclosure documents* information sheet.
- 2 Anthony Harper is a large New Zealand law firm, with over 30 partners and around 150 people operating out of our offices in Auckland and Christchurch. Anthony Harper has recognised expertise in a large number of practice areas, including in financial services and banking law where our partners are ranked as among the best in the country.

Submission

- 3 We have serious concerns that the proposed information sheet goes beyond legal requirements, particularly by implying that references to climate statements constitute material information that must be included in a PDS, despite this not being mandated by law. Additionally, we believe certain sections of the proposed information sheet are unnecessary and could be removed for simplicity, allowing the guidance to concentrate on core issues.
- 4 We explain our concerns more in our full submission, which is **attached**.

Further information

- 5 I would be pleased to discuss any aspect of this submission. I can be contacted on [REDACTED]
[REDACTED]
- 6 Thank you for the opportunity to submit.

Yours faithfully
Anthony Harper

[REDACTED]

[REDACTED]

[REDACTED]

Feedback form

Consultation: Proposed guidance on references to climate statements in disclosure documents

Please submit this feedback form electronically in both PDF and MS Word formats and email it to us at consultation@fma.govt.nz with 'Consultation: Proposed guidance on references to climate statements in disclosure documents: [your organisation's name]' in the subject line. Thank you. **Submissions close on 30 August 2024.**

Date: **30 August 2024** Number of pages: 4 (including cover letter)

Name of submitter:

Company or entity: **Anthony Harper**

Organisation type: **Law Firm**

Contact name (if different):

Contact email and phone:

Question number	Response
1. What are your views on the proposed guidance for PDS content?	<p>In our view, guidance relating to references to climate statements in disclosure documents should be informed by both the FMA's main statutory objective of promoting and facilitating the development of fair, efficient, and transparent financial markets, and the purposes of the Climate-related Disclosure (CRD) regime itself.</p> <p>These purposes were identified at the first reading of the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Bill as being:</p> <ul style="list-style-type: none">• to ensure that the effects of climate change are routinely considered in business, investment, lending, and insurance underwriting decisions; and• to help reporting entities better demonstrate responsibility and foresight in their consideration of climate issues; and• to lead to smarter, more efficient allocation of capital, and help smooth the transition to a more sustainable, low-emissions economy. <p>Given those purposes, we agree that the introduction of the CRD regime, its effect on an issuer that is a Climate Reporting Entity (CRE), and the climate statements of a CRE are likely to be – or at least <i>should</i> be – material information within the meaning of the Financial Markets Conduct Act 2013 (Act). As the draft information sheet says, this is particularly so where material climate risks exist.</p> <p>Our starting point is to agree with the position that disclosure of these matters is likely to be required (or, at least, should be considered by issuers). However, this does not mean the disclosure needs to be contained in the PDS. Under section 57 of the Act, the PDS is required to contain (in simple terms) the information required by the Financial Markets Conduct Regulations 2014. All other information – including material information not included in the PDS – must be included on <i>Disclose</i>.</p> <p>Therefore, in our view, the proposed guidance goes beyond legal requirements by suggesting that such a disclosure must be contained in the PDS. We accept that (given the purpose of the CRD regime) there is an argument that the PDS <i>should</i> refer to climate statements for CREs. However, the guidance must make it clear that this is a purely optional matter for issuers to consider, and the way this is expressed must be carefully considered (for example, wording like "should consider" would be read by most issuers as akin to a directive that the wording <i>must</i> be included).</p> <p>If disclosure is to be made, the challenge is developing an appropriate way to do so – bearing in mind the statutory requirement for clear, concise, and effective disclosures,</p>

	<p>and the significant constraints imposed by layout and PDS length limitations (particularly for managed funds).</p> <p>In that respect, the example wording included in the proposed guidance note is helpful but we challenge the FMA to identify options to shorten the example wording, particularly for managed funds. One option would be:</p> <p>Example for a MIS manager</p> <p><i>[Name of manager] is a climate reporting entity under Part 7A of the Financial Markets Conduct Act 2013. We are required to publish annual make annual disclosures called "climate statements" for [name of scheme/fund] covering governance arrangements, strategy, risk management, and metrics and targets for mitigating and adapting to climate-related impacts. These statements can be found The annual climate statements for [name of scheme/fund] are on the Climate related Disclosures Register, which can be accessed at https://www.companiesoffice.govt.nz/all-registers/climate-related-disclosures/ [and at discloseregister.companiesoffice.govt.nz/].</i></p> <p>This represents a net reduction of around 26 words, depending on how long the scheme or fund name is. Similar changes could be made to the example wording for an equity issuer PDS.</p> <p>In addition, we suggest the disclosure would be better contained in the "Where you can find more information" section of a PDS and not the "About" section.</p> <p>We agree with the guidance regarding PDS disclosures where climate-related risk is significant. In our experience, issuers generally already turn their mind to this point. However, given the provisions cited apply regardless of whether the issuer is a CRE, we suggest the guidance could make that clear. This would avoid any inference that climate risk disclosures do not need to be considered unless the issuer is a CRE.</p> <p>Disclosure of the fact that an issuer will become a CRE on completion of a successful offer also extends beyond what is required by the Act. In our view, it would be best for these sections to be removed from the guidance. However, if they are to remain it needs to be made very clear that these are optional matters and not a legal requirement.</p>
2. What are your views on the proposed timing for updating each PDS?	<p>We generally agree with the proposed guidance on timeframes for updating a PDS and register entry, where it is required. We think this is an appropriate timeframe in most circumstances, noting that, in our experience most continuous issuers update their PDSs annually.</p> <p>However, to avoid imposing additional compliance cost (and bearing in mind our comments above about materiality, and the fact any additional statement is optional) we consider it would be appropriate to acknowledge that, if an issuer has identified no other need to update the PDS within the 12-month period, the update could be deferred.</p>
3. What are your views on the proposed guidance for OMI?	<p>In our view, the most useful element of this part of the proposed guidance is that it clearly implies that there is no expectation that CREs are required to repeat or restate information contained in their climate statements in a different form on the <i>Disclose</i> register. We believe there would be benefit in making that position more explicit in the guidance.</p> <p>We agree that the two options cited are valid options that CREs could choose from. However, there are potential liability implications associated with issuers lodging climate statements on <i>Disclose</i>. Lodging climate statements on <i>Disclose</i> will also result in unnecessary duplication. We suggest the better approach would be for the guidance to simply explain that, in the FMA's view, there is no need to separately lodge climate statements on <i>Disclose</i>.</p>
4. What are your views on the proposed guidance for SIPOs?	<p>We agree with the comments in this section regarding the potential relevance of climate-related investment policies to a SIPO. However, we believe it goes without saying such that there is no need to address this point in the information sheet. We believe the proposed information sheet would be more impactful if it was limited to the core issue of references to climate statements in disclosure statements (i.e. sections 1 and 2 of the proposed guidance).</p>

	If the FMA considers it needs to make this point clearer, we suggest it would be better addressed in a revised version of the SIPO guidance (which, we also suggest, may benefit from a broader review as part of the FMA's workplan given the existing guidance is 10 years old).
5. What are your views on the proposed information about annual reports?	We agree with the information in this section insofar as it is a correct high-level summary of the requirements of the Act and Aotearoa New Zealand Climate Standards. However, similar to our views on question 4 above, we feel that this section does not need to be included in the proposed information sheet. In our view, the information sheet would be more impactful if it was limited to the core issue of references to climate statements in disclosure statements.
6. Is there anything missing that should be included in the information sheet? Please explain.	We do not consider there to be any missing information.
7. What are your views on the examples provided in the information sheet? Are they helpful? Are there any other examples we should include?	Examples are a good way to clarify matters in a practical way and, as such, we support the inclusion of examples in the proposed information sheet. See our comments in question 1 above regarding the specific wording of the examples used.
8. Do you need any further guidance or support from the FMA in relation to disclosure requirements in relation to the CRD regime?	We do not consider any further guidance is required at this stage.
Feedback summary – if you wish to highlight anything in particular We have no further comments.	
Please note: Feedback received is subject to the Official Information Act 1982. We may make submissions available on our website, compile a summary of submissions, or draw attention to individual submissions in internal or external reports. If you want us to withhold any commercially sensitive or proprietary information in your submission, please clearly state this and note the specific section. We will consider your request in line with our obligations under the Official Information Act.	
Thank you for your feedback – we appreciate your time and input.	



Boutique Investment Group submission on “Consultation: Guidance on references to climate statements in disclosure documents – proposed information sheet”

3 September 2024

1. This is a submission by the **Boutique Investment Group (B.I.G.)**, a forum that most non-bank MIS managers participate in. No part of this submission is confidential.

Introduction and summary

2. At first glance, the issue of where and how MIS managers should refer to their climate statements would seem to be a matter of house-keeping that would not raise contentious matters. However, when we drill deeper, it does brush up against some significant points:
 - a. New Zealand MIS managers are the first in the world to be required to produce mandatory climate reports. Accordingly, we (industry, regulators and Government) are all learning as we go and are also not going to get everything right first time. We all need to approach the topic of climate reporting with this mindset and be prepared to adapt what we do or potentially even re-legislate parts of the regime as we go along. In the context of this consultation, it means that:
 - i. It is helpful that the FMA continues to communicate and share its thinking about each topic as it arises; however
 - ii. We need to all avoid trying to be too positional or too quick to set practices in stone, even for mundane topics like where references should be made. The reason for the hesitation on this matter is that we don't yet have certainty as to how valuable climate reporting will be to clients and there may be significant flaws in the first set of reports. This creates good reasons to be somewhat cautious about over emphasising them.
 - b. On the legal front, at the time the climate reporting regime was introduced into legislation, Parliament considered the topic of which documents should cross refer to climate statements (evidenced by the fact that the FMC Act requires cross referrals in annual reports). It also considered whether climate statements should be required to be lodged on the Disclose Register (BIG submitted on this

point). Given that Parliament clearly thought about and made decisions on where references should be made, it would be hard for the FMA to take a position that industry is legally required to do something that is different to Parliament's decisions.

- c. The real- estate in a MIS manager's PDS is an extremely limited resource owing to the word count limit and the fact that significant prescribed content must be included. In essence little, if anything, can be added without displacing something else that is important. The question therefore is whether and why information about the climate disclosure regime should trump other non-prescribed matters that managers consider should go into their PDS. For example, FMA holds survey results showing that the prescribed content of PDS does not cover or do justice to a number of topics that matter to customers. What therefore is the FMA's rationale for preferring coverage of this topic over managers providing better information about the key people managing a portfolio, say?
 - d. This point is implicit in the information sheet, but the appropriate level of disclosure by fund managers might also be influenced by the types of fund that they are offering or by what targets (if any) they may be trying to commit to in their climate reports.
 - e. We do not agree that the general existence of the climate disclosure regime is material information under the FMC Act, requiring disclosure. If it were true, then every other piece of legislation requiring fund managers to do things would also have to be disclosed.
3. Finally, it is also worth considering the platforms that are in play. For example, it is unclear whether either the Climate Disclosure Register or the Disclose Register are sufficiently user friendly to be the best place for directing the public to. To an extent this has been officially acknowledged. For example, MBIE's rationale for creating "Sorted Smart Investor" was at least in part a response to the fact that while the Disclose Register serves as an official repository of disclosure information, it is not easy to navigate by an ordinary consumer and not searchable in the manner envisaged by the FMC Act. This raises questions about whether:
- a. Over time MBIE/Companies Office might carry out more work on the Climate Disclosures Register to improve it and/or build in functionality to automatically add climate disclosures made on the Climate Disclosures Register to the Disclose Register and or Smart Investor; and
 - b. In the short term, customers might be better served by us if they were pointed to our own websites for climate information, if we thought that they were easier to navigate.

Need for flexible approach as climate reporting continues to evolve

4. On our side, we are conscious that we will inevitably need to evolve how we think about climate risks and produce climate reports. We appreciate the pragmatic approach that the FMA has taken to oversight of the regime so far so as to support this.
5. Applying the idea that things will need to continually evolve to the consultation before us; it is helpful for the FMA to have shared its ideas about how we might like to reference the climate reporting in our other documents. However, FMA also needs to be careful not to overly expose climate reports. There are potentially good reasons to curb our enthusiasm, especially at this point in time:
 - a. The content that we are required to provide to meet the New Zealand Climate Standards is both technical and lengthy. It has been necessary for many of us to go to quite significant lengths to describe how we have approached our scenario analysis because where we manage a portfolio of tens or even hundreds of stocks, there are no standard rules for which parts of that we should focus on, so there are lengthy accounts to fill these gaps. At this point it is unclear whether retail clients will have appetite to pick their way through lengthy descriptions of our processes or our governance arrangements.
 - b. There are significant issues emerging in relation to the quality of the data that is available at the moment and perhaps the methodologies themselves.
6. In short from the client perspective, we don't yet know how useful these reports will be. As time goes on, we will hopefully gain more confidence in our own skill in reporting and also gain a better understanding as to whether clients gain value from this reporting or not. The extent of referencing we should provide is something that may become clearer down the track.
7. Our view is that we should begin to make changes to our documents as we get this comfort. Obviously the more that climate reports prove to add genuine value, the more prominence they should receive.

Space constraints in the MIS Manager PDS

8. For the manager of a managed fund, every word in the PDS is precious. This is because we have more restrictive word counts than any other type of issuer (12 A4 Pages or 6,000 words), combined with an obligation to include significant amounts of prescribed

content. Also no allowance has been made for the fact that one PDS might cover multiple funds.

9. As a consequence of this situation, it is already difficult to include lots of content that could add value to clients. For example, in 2018 the FMA conducted customer surveys on which parts of PDS they found useful, and got specific feedback that investors wanted as much information as possible about the management of the business (which we cannot convey given current word count allowances) and information about broader social responsibility matters (many of us have ESG policies that we do not have space to outline).

<https://www.fma.govt.nz/assets/Reports/180410-PDS-Understanding-investor-information-needs.pdf>

10. Therefore it is reasonable to ask:

- a. Whether the content of the PDS should generally be relooked at due to the fact that quite a few different issues have come to the fore as being important to investors than was anticipated in 2014, when the FMC Regulations were promulgated; and/or
- b. If we have to keep our disclosures within the guard rails set in 2014, why should the particular issue of climate reporting absorb such a large part of the real estate within a MIS PDS, when other topics that customers have indicated appetite for (on the FMA's own research) are not covered?

11. What exacerbates things is that the draft disclosure the FMA considers that we should include is very lengthy. For example, it could be shortened from:

Example for a MIS manager

[Name of manager] is a climate reporting entity under Part 7A of the Financial Markets Conduct Act 2013. We are required to make annual disclosures called "climate statements" for [name of scheme/fund] covering governance arrangements, strategy, risk management, and metrics and targets for mitigating and adapting to climate-related impacts. The annual climate statements for [name of scheme/fund] are on the Climate-related Disclosures Register, which can be accessed at <https://www.companiesoffice.govt.nz/all-registers/climate-related-disclosures/> [and at disclose-register.companiesoffice.govt.nz].

To “See our website for a report on our climate change risks and opportunities” that statement could form part of the “Where can you find for information” part of the PDS .

FMA approach difficult to reconcile with Parliament’s intent

12. It is worth remembering that Parliament gave thought to which documents that climate reports should be referenced in by virtue of the fact that section 461ZJ (2) of the FMC Act requires issuers to cross refer to climate statements in their annual reports:

- (2) The climate reporting entity must include, in its annual report for the period ending on the balance date,—
- (a) a statement that the entity is a climate reporting entity for the purposes of this Act; and
 - (b) a copy of the climate statements or group climate statements prepared by the entity under any of sections 461Z to 461ZB, or the address of (or a link to) the Internet site where a copy of those statements can be accessed.

13. In light of the fact, that Parliament considered cross referencing and only required it in relation to annual reports of the CRE itself, the FMA cannot easily take a position that industry is legally required to make cross references in other places.

14. Further, in our submission to Parliament in relation to the Bill introducing the climate disclosure regime, B.I.G. proposed that MIS managers should lodge their climate statements on the Disclose Register:

Publication

The Bill does not specify where managers must publish Climate Statements (see s 461N and 461O requiring listed issuers to link Climate Statements to its annual report). We propose that fund managers be required to publish Climate Statements on the New Zealand Companies Office Disclose Register and on fund managers’ own websites, alongside other documentation relevant to investment decisions, such as the Statement of Investment Policy Objectives (SIPO) for each fund. In this way, as far as possible, documents relevant to investment decisions should be available at a “one stop” location. The Bill should be amended to create a statutory obligation to publish Climate Statements on each fund manager’s website and on the Disclose Register.

15. Given that Parliament rejected our submission that the documents should be lodged on the Disclose Register, it would be difficult for the FMA to argue that we are legally required to lodge the documents on the Disclose Register.

16. We also note that the Disclose Register is difficult for someone who is not in the industry to navigate, hence MBIE creating Smart Investor as something more appropriate for retail. Therefore it may make sense for us to reference our own website, rather than Disclose.

The individual dimension

17. Climate disclosure may be more material for some fund managers than others. For example, climate reports for funds that have been designed and marketed as “climate friendly” would intuitively be more significant. Therefore, a one size fits-all approach to disclosure and referencing climate statements may not be appropriate.

The general existence of the climate disclosure regime is not “material information”

18. Page 2 of the draft guidance asserts that:

Section 57 of the FMC Act requires the PDS and any register entry to contain all material information related to a regulated offer of financial products. The FMA considers that:

- the introduction of the CRD regime
- its effect on an issuer that is now classified as a CRE; and
- the climate statements of a CRE

are likely to be material information that may influence an investor's decision making. This would be particularly the case where climate risks are a material risk for the business.

19. We disagree and note that such an interpretation would lead to highly problematic outcomes.

20. “Material information” is defined in section 59 of the FMC Act as follows:

59 Meaning of material information in this Part

- (1) In this Part, **material information**, in relation to a regulated offer, means information that—
- (a) 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; and
 - (b) relates to the particular financial products on offer or the particular issuer, rather than to financial products generally or issuers generally.

21. The existence of the climate reporting regime and the fact that a MIS manager is required to produce a climate report (along with every other MIS manager with more than \$1Billion in retail/KiwiSaver funds), would clearly not meet the “relates to the particular financial products on offer or the particular issuer, rather than to financial products generally or issuers generally” limb of the definition.
22. If the mere existence of the regime and the fact that it carries with it certain regulatory consequences were to constitute material information, then the logical implication is that we would also need to equally disclose information about every other piece of legislation that imposes obligations on us that impacts on our overall offering e.g. AML/CFT legislation, privacy legislation, secret commissions legislation, trusts law, Overseas Investment Act obligations, FATCA requirements and takeovers legislation etc. This would be an unhelpful outcome.

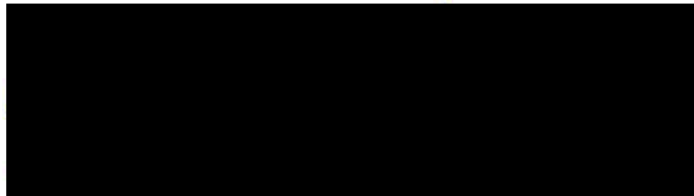
Platforms

23. We note observations in paragraph 3 as to whether the Climate Register is at its final point of evolution, or whether there are plans to improve it, which might make our climate reports more accessible and therefore change the ultimate approach to cross referencing.

Conclusion

24. Against a backdrop of uncertainty, each fund manager could have entirely legitimate reasons for why it should not be over emphasising its climate reports at this point in time. Let us each take our own approach for now and reconsider referencing down the track.

Yours sincerely

A large black rectangular redaction box covering the signature area.A small black rectangular redaction box covering the name.

Chair, Boutique Investment Group

29 August 2024

Financial Markets Authority
Level 2, 1 Grey Street
Wellington
New Zealand



CHAPMAN TRIPP SUBMISSION: GUIDANCE ON REFERENCES TO CLIMATE STATEMENTS IN DISCLOSURE DOCUMENTS – PROPOSED INFORMATION SHEET

- 1 As a leading corporate law firm, Chapman Tripp has many clients who are climate reporting entities (*CREs*) subject to the Climate-related disclosures (*CRD*) regime under Part 7A of the Financial Markets Conduct Act 2013 (*FMCA*). Our submission is based on our experience in assisting *CREs* to prepare for and comply with the *CRD* process.
- 2 We believe that the Proposed Guidance is unnecessary in the context of the current *FMCA* disclosures regime.

Response to consultation

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

- 3 We do not agree that issuers should include a reference to *CRDs* in Product Disclosure Statements (*PDS*) as this goes beyond the requirements of the *FMCA* and overstates the status of climate statements as material information in relation to an offer.
- 4 The regulated offer disclosure regime is sufficient to ensure the disclosure of all material information relating to an offer - either within the *PDS*, or as other material information (*OMI*). There is no justifiable basis to elevate the assessment of the materiality of climate statements above other information (such as financial statements).
- 5 The rationale offered in the Draft Guidance for including in a *PDS* a reference to where the *CRE's* climate statements can be found is that they "are likely to be material information that may influence an investor's decision-making". But the effect of according climate disclosures materiality status in relation to an offer would be to give rise to additional liability for issuers and directors and would trigger the application of the voidable offer provisions of sections 80 and 82 of the *FMCA* in the event that a climate disclosure is defective in that it is materially adverse and likely to mislead an investor.
- 6 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 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. 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.

- 7 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. 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 - particularly should the CRD regime be extended to apply to private entities in future.
- 8 We also note that where a climate related risk is a key risk to the investment, the issuer is required under the Financial Markets Conduct Regulations 2014 (the *Regulations*), per the applicable schedule under the Regulations for the particular security type, to disclose these risks in the relevant risk section of the PDS. We believe that climate risks that are considered key risks under the Regulations would be considered material information and would therefore be included in the PDS and register entries.
- 9 We also consider that the application of the CRD regime to an issuer is not something that falls within the section 59 of the FMCA 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. We believe that the current definition of material information under section 59 is sufficient to ensure that all material information in relation to an offer is required to be disclosed, and that the Draft Guidance goes beyond what is currently required under the FMCA.
- 10 We also believe that the inclusion CRDs in PDS would be contrary to the goal of such disclosures being clear, concise and effective.

Q2. What are your views on the proposed timing for updating each PDS?

- 11 Given that we do not consider the Draft Guidance necessary, we do not have any comments to offer on this question.

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

- 12 As noted in our response to Q1, we have concerns with the views expressed in the Draft Guidance 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.
- 13 Under the FMCA, significant liability and consequences (such as the voidable offer provisions) apply to omitting OMI from the Disclose register or 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 penalties, 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 compensation. 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 fine.

- 14 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 after a CRE's climate statements have been lodged, meaning that CREs may need to re-check that their climate statements to ensure that they are up to date and not defective, including by omission.
- 15 As a CRE's climate statements will be accessible on the CRD register, investors who wish to review them will have a suitable opportunity to do so without the inclusion of climate statements on Disclose.

Q4. What are your views on the proposed guidance for Statement of Performance Objectives (SIPOs)?

- 16 We believe that issuers are best placed to determine what policies are referred to in a SIPOs.

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

- 17 Chapman Tripp supports the Information Sheet providing CREs with a concise summary on the annual report requirements in the FMCA and the Aotearoa New Zealand Climate Standards in relation to climate statements.

Q6. Is anything missing that should be included in the information sheet? Please explain

- 18 Not in our view.

Q7. What are your views on the examples provided in the information sheet? Are they helpful? Are there any other examples we should include?

- 19 While we acknowledge that the examples provided in the Draft Guidance are useful, we refer to our above comment that such wording may compromise the extent to which the PDS can be clear, concise and effective. We also note the existing word and page limits for PDS.

Q8. Do you need any further guidance or support from the FMA in relation to disclosure requirements in relation to the CRD regime?

- 20 We do not think that further guidance is required, and we believe that the Draft Guidance is unnecessary in light of the above.
- 21 We would be happy to discuss any aspect of this submission with you further.



Feedback form

Consultation: Proposed guidance on references to climate statements in disclosure documents

Please submit this feedback form electronically in both PDF and MS Word formats and email it to us at consultation@fma.govt.nz with 'Consultation: Proposed guidance on references to climate statements in disclosure documents: [your organisation's name]' in the subject line. Thank you. **Submissions close on 30 August 2024.**

Date: 26/08/2024

Number of pages: 2

Name of submitter: [REDACTED]

Company or entity: Chartered Accountants Australia and New Zealand

Organisation type: Sector body

Contact name (if different):

Contact email and phone: [REDACTED]

Question number	Response
1. What are your views on the proposed guidance for PDS content?	CA ANZ is supportive of the information sheet and the additional guidance it provides Climate Reporting Entities. Our members have expressed that they feel the draft guidance provides adequate information on disclosure expectations, is easy to understand, and helps in ensuring transparency.
2. What are your views on the proposed timing for updating each PDS?	The proposed timing seems reasonable.
3. What are your views on the proposed guidance for OMI?	The proposed guidance for OMI seems clear and reasonable.
4. What are your views on the proposed guidance for SIPOs?	The proposed guidance for SIPOs seems clear and reasonable.
5. What are your views on the proposed information about annual reports?	This information appears consistent with previous related guidance on this matter.
6. Is anything missing that should be included in the information sheet? Please explain.	We note that page four of the information sheet covers guidance for CREs in relation to their Product Disclosure Statements. However, there may also be non-CREs issuing information covered by the scope of the guidance for which climate is a material risk. Additionally, page five applies to non CREs that may become CREs. We consider it important for the FMA to consider how this information sheet is positioned when published to ensure those who are not yet CREs are also able to benefit from its guidance.
7. What are your views on the examples provided in the information sheet? Are they helpful? Are there any other examples we should include?	In our view, the examples that have been provided are helpful.
8. Do you need any further guidance or support from the FMA in relation to disclosure requirements in relation to the CRD regime?	Nothing further

Feedback summary – if you wish to highlight anything in particular

CA ANZ is strongly supportive of the information sheet and the additional guidance it provides Climate Reporting Entities. Our members have expressed that they feel the draft guidance provides adequate information on disclosure expectations, is easy to understand, and helps in ensuring transparency.

We note that page four of the information sheet covers guidance for CREs in relation to their Product Disclosure Statements. However, there may also be non-CREs issuing information covered by the scope of the guidance for which climate is a material risk. Additionally, page five applies to non CREs who may become CREs. We consider it important for the FMA to consider how this information sheet is positioned when published to ensure those who are not yet CREs are also able to benefit from its guidance.

Please note: Feedback received is subject to the Official Information Act 1982. We may make submissions available on our website, compile a summary of submissions, or draw attention to individual submissions in internal or external reports. If you want us to withhold any commercially sensitive or proprietary information in your submission, please clearly state this and note the specific section. We will consider your request in line with our obligations under the Official Information Act.

Thank you for your feedback – we appreciate your time and input.

Appendix A

Chartered Accountants Australia and New Zealand (CA ANZ) represents more than 139,000 financial professionals, supporting them to build value and make a difference to the businesses, organisations and communities in which they work and live.

Around the world, Chartered Accountants are known for their integrity, financial skills, adaptability and the rigour of their professional education and training.

CA ANZ promotes the Chartered Accountant (CA) designation and high ethical standards, delivers world-class services and life-long education to members and advocates for the public good. We protect the reputation of the designation by ensuring members continue to comply with a code of ethics, backed by a robust discipline process. We also monitor Chartered Accountants who offer services directly to the public.

Our flagship CA Program, the pathway to becoming a Chartered Accountant, combines rigorous education with practical experience. Ongoing professional development helps members shape business decisions and remain relevant in a changing world.

We actively engage with governments, regulators and standard-setters on behalf of members and the profession to advocate in the public interest. Our thought leadership promotes prosperity in Australia and New Zealand.

Feedback form

Consultation: Proposed guidance on references to climate statements in disclosure documents

Please submit this feedback form electronically in both PDF and MS Word formats and email it to us at consultation@fma.govt.nz with 'Consultation: Proposed guidance on references to climate statements in disclosure documents: [your organisation's name]' in the subject line. Thank you. **Submissions close on 30 August 2024.**

Date: 30 August 2024

Number of pages: 2

Name of submitter:

[REDACTED]

Company or entity:

Corporate Trustees Association (CTA)

Organisation type:

Industry association for the licensed supervisors

Contact name (if different):

Contact email and phone:

[REDACTED]

Question number

Response

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

CTA supports the proposed guidance for PDS content. References to climate statements in PDSs should in all cases be as short and concise as possible, omitting needless words and information.

CTA recommends that the first two dot points on page 2 of the proposed information sheet be combined into a single point (and similarly on page 6). On its own, the introduction of the CRD regime is not material information. Were that the case, even non-CRD entities would by implication need to disclose the existence of the regime as material information.

CTA notes that many MIS issuers of PDSs are already finding the regulatory length and word-count restrictions challenging and the Consultation document acknowledges that this is one of the trade-offs for references to climate statements. CTA notes that the word count for the PDS disclosure "Example for a MIS manager" on page 4 of the Consultation document is 72 words, without any additional content being filled in by a MIS manager.

CTA recommends that the "Example for a MIS manager" should begin "[Name of manager] is a climate reporting entity in respect of [name of scheme] under Part 7A of the Financial Markets Conduct Act 2013." That wording is consistent with FMCA s461ZC and clarifies that the manager is a CRE only in respect of the scheme and not in its own right.

CTA notes that the wording of the "Example for a MIS manager" includes reference to the four principal sections of climate statements. Given the length/word count restrictions in PDSs we suggest that this Example should omit references to the four principal sections. Doing so would eliminate 17 words from the Example. The same elimination could be applied to all other Examples given in the Consultation document for PDSs. Readers of climate statements will themselves find out what the principal sections are.

CTA notes that the information sheet distinguishes between material information and material risks (on page 2 or, on page 4, significant risks). That distinction, and its disclosure consequences, could be made more apparent.

	It may help if the information sheet referred to FMC Regulations Schedule 4, in particular clauses 27, 28 and 29 (ideally using terminology consistent with the wording of those clauses).
2. What are your views on the proposed timing for updating each PDS?	CTA supports the suggested implementation timeframe set out on page 4.
3. What are your views on the proposed guidance for OMI?	CTA supports the proposed guidance in relation to OMI. Perhaps the information sheet could refer to FMC Regulations Schedule 4 clause 29, for example if the climate statements are also lodged on the Disclose Register.
4. What are your views on the proposed guidance for SIPOs?	CTA notes that, in relation to SIPOs, the proposed guidance deals primarily with the inclusion of climate-related investment policies in the SIPO, rather than with references to CRD (the latter being the key focus of the information sheet). CTA recommends that the former be achieved preferably by a revision to the SIPO guidance. For example, the SIPO under revised guidance could be directed to contain some statement around how or whether the MIS manager takes climate risk into account within its investment policy, processes and objectives. The proposed information sheet could be read to require a CRE to have climate-related investment policies. That is not a CRD requirement.
5. What are your views on the proposed information about annual reports?	CTA notes that the proposed guidance in relation to annual reports makes clear that it does not apply to managers of registered schemes (in line with FMCA s461ZJ). However, CTA recommends that the guidance be expanded to address the situation where a manager voluntarily mentions its climate statements (or climate-related information) in a scheme's annual report. This is already happening in recently lodged March 2024 MIS annual reports.
6. Is anything missing that should be included in the information sheet? Please explain.	The information sheet should contain (at the end) a list of links to other relevant documentation. For example, to the revised SIPO guidance.
7. What are your views on the examples provided in the information sheet? Are they helpful? Are there any other examples we should include?	Refer to Question 1 above
8. Do you need any further guidance or support from the FMA in relation to disclosure requirements in relation to the CRD regime?	No. Given the supervisors' close relationship with fund managers, it might assist if FMA and supervisors discussed any significant drafting changes before the information sheet is finalised.
Feedback summary – if you wish to highlight anything in particular	
Please note: Feedback received is subject to the Official Information Act 1982. We may make submissions available on our website, compile a summary of submissions, or draw attention to individual submissions in internal or external reports. If you want us to withhold any commercially sensitive or proprietary information in your submission, please clearly state this and note the specific section. We will consider your request in line with our obligations under the Official Information Act.	
Thank you for your feedback – we appreciate your time and input.	

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By email: consultation@fma.govt.nz

29 August 2024

Submission – Proposed *References to climate statements in disclosure documents* information sheet

1 Introduction

- 1.1 This is a submission by Dentons to the Financial Markets Authority ('FMA') regarding the FMA's consultation on its proposed *References to climate statements in disclosure documents* information sheet dated July 2024 ('**Proposed Information Sheet**').
- 1.2 Dentons has extensive experience advising a range of issuers, including banks, listed corporates, debt issuers and fund managers, many of which will be affected by the FMA's proposed guidance.

2 Submission

- 2.1 We do not agree that climate reporting entities ('CREs') need to include, as a matter of course, references to the existence of climate statements in their disclosure documents or to lodge climate statements on the Disclose offers register.
- 2.2 As the FMA notes, the Financial Markets Conduct Act 2013 ('FMC Act') and Financial Markets Conduct Regulations 2014 ('FMC Regulations') do not prescribe where references to climate statements can most appropriately be included in a product disclosure statement ('PDS'). In our view, this is because there is no need to include a reference to climate statements in a PDS in the absence of offer- or issuer-specific reasons to do so. There is also no need to lodge those statements on Disclose given a separate register exists for that purpose.

Material information

- 2.3 Material information is clearly defined in section 59 of the FMC Act for the purposes of disclosure of financial products to mean, in relation to a regulated offer, information that:
 - a 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; **and**
 - b relates to the particular financial products on offer or the particular issuer, rather than to financial products generally or issuers generally.
- 2.4 We agree that the existence of the climate reporting regime and the fact that an issuer is a CRE should be *considered* for inclusion in disclosure documents. However, we disagree that the mere existence of a regulatory regime, and an entity's status under that regime, is 'likely to be material information' in and of itself. If such matters were material by default then it follows that issuers would also need to note that they are, say, FMC reporting entities with a higher level of public accountability than other issuers or that they are AML/CFT reporting entities.

- 2.5 In our view, the fact an issuer may be a CRE and that climate statements might be available are, in general, unlikely to influence persons who commonly invest in financial products in deciding whether to acquire the particular financial product on offer. Material information, after all, has to relate to the specific financial products on offer or the particular issuer. We consider that the inclusion (or not) of these matters in disclosure documents is for the issuer to decide via proper disclosure due diligence process and consideration.
- 2.6 More fundamentally, if the preparation of climate statements highlights additional material climate-related specific risks for the offer, then these should be included in the risks section of the PDS, either by updating existing risk disclosures or adding a new risk. This has always been required irrespective of the existence of the climate-related disclosure regime and whether or not climate statements were required for the issuer.

Content of PDS

- 2.7 The FMC Act and FMC Regulations recognise that the PDS, to be clear and concise, need not contain all material information, hence the fact that material information not required to be included in the PDS can be included as 'other material information' on the Disclose register. Section 49 of the FMC Act makes this clear, by stating that the purpose of the PDS 'is to provide *certain* information that is likely to assist a prudent but non-expert person to decide whether or not to acquire the financial products' (emphasis added).
- 2.8 The FMA itself has also noted this, in its *Content and form of Disclose register information* guidance note, stating that (emphasis added):
- The new offers information regime *does not require a PDS to contain all material information relevant to an offer*. Instead, the Disclose register entry and the PDS *must together* contain all material information about an offer.
- 2.9 Other than with respect to information that is specifically required to be included in the PDS, the FMC Act and FMC Regulations treat the PDS and other material information as equivalent with respect to disclosing material information. The PDS is not prioritised as containing all material information. Issuers are able to determine the appropriate place for non-prescribed material information to be provided to investors and that includes via other material information lodged on Disclose.
- 2.10 This also means that the PDS can remain concise. Word count restrictions and page limits mean only certain information can be included in the PDS beyond that content which is prescribed. There is very little space in both existing and new PDSs to incorporate 'nice to have' suggested wording, particularly when that information is not material to the offer at hand.
- 2.11 Unfortunately, the FMA's suggested wording, such as for managed investment scheme managers, does not fully take this into consideration. At over 60 words, many managers will struggle to fit that wording into a PDS, given most are already up against it when it comes to meeting the prescribed limits.
- 2.12 In our view, the suggestion that wording of the nature set out in the Proposed Information Sheet be included in each PDS without consideration of the features of the particular financial products or issuer goes against the policy intent behind the PDS regime – that disclosure is clear, concise and effective.

Further information

- 2.13 If an issuer determines that specific reference should be made to climate statements then that could be covered under the 'Where you can find more information' section of the relevant PDS as necessary and not the 'About' section within the 'Who is involved?' section (as well as any necessary coverage of relevant climate-related risks in the risks section).
- 2.14 We also believe that it would be helpful for the FMA to express a view as to whether it considers that climate statements are *required* to be disclosed in the 'Where you can find more information' section of the PDS. For example, clause 48(3) of Schedule 4 of the FMC Regulations requires the PDS for a managed fund to include a statement 'briefly describing any information relating to the scheme or the managed investment products that is required to be, or otherwise will be, available ... to the public by any means other than on the offer register or the scheme register ... or on request to the manager.'
- 2.15 Where disclosure is necessary, we consider that a very short statement regarding the availability of climate statements is all that is required. Requiring issuers to include generic statements in the 'about' section of a PDS would also give undue and unnecessary prominence to climate-related disclosure matters. In time, such statements will simply become a standard yearly reporting requirement alongside other reporting obligations and should be treated as such.

Prescribed information?

- 2.16 We note that a specific requirement to disclose this information could have readily been implemented via the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 ('**CRD Amendment Act**') and/or the Financial Markets Conduct (Climate-related Disclosures) Amendment Regulations 2023. However, no such requirement was included.
- 2.17 In our view, this supports our submissions above that an offer- and issuer-specific assessment should be carried out on a case-by-case basis regarding whether information of this nature needs to be included in disclosure documents.

Setting a low threshold as to what is material

- 2.18 We consider that a key risk if the FMA releases the Proposed Information Sheet in its current form is that it sets a low bar as to what may constitute 'material information', particularly in respect of a PDS.
- 2.19 Unfortunately, the FMA's Proposed Information Sheet fails to elaborate on why it considers that the introduction of the CRD regime; its effect on an issuer that is now classified as a CRE; and the climate statements of a CRE are all 'likely to be material information'. Would the FMA also consider a failure to include a high level reference to CRE status and information about climate statements to be 'materially adverse' from an investor perspective, noting such information is not required to be contained in PDS by the FMC Act and FMC Regulations?

Other material information

- 2.20 A separate climate-related disclosure register has been created for the lodging of climate statements. This register is readily accessible to investors and is easily searchable. There is no need for issuers to also lodge climate statements on Disclose.
- 2.21 Of further concern is the fact that filing climate statements on the register of offers of financial products could expose issuers to the unnecessary possibility of liability under the defective

disclosure provisions of the FMC Act. We believe to do so would be inappropriate, given that the CRD Amendment Act specifically amended the FMC Act to include a separate liability regime relating to climate statements.

- 2.22 Accordingly, in our view the FMA should not insist on all issuers including climate statements on Disclose.

SIPOs and annual reports

- 2.23 The sections of the Proposed Information Sheet covering statements of investment policy and objectives ('**SIPOs**') and annual reports do not add much in the way of guidance. In fact, the annual report section simply restates existing requirements without providing any additional 'guidance'.
- 2.24 As for SIPOs, again, there is not much in the way of guidance, considering the section primarily cross-refers to the FMA's existing 2014 *Statements of Investment Policy and Objectives under the FMC Act* guidance note. Further, there is no suggestion here that climate statements be referenced in SIPOs, so it is unclear why discussion of SIPOs has been included, considering the guidance is titled (and focused on) 'references to climate statements in disclosure documents'. We also note that SIPOs are not themselves disclosure documents, and that issuers often only include them on the *schemes* Disclose register (as required by the FMC Act) and not the offers register.
- 2.25 To be clear, climate statements are not 'policies' nor do they set out investment objectives. To the extent a scheme or fund has a climate-related focus, then those matters will (and should) be covered in the SIPO, including relevant exclusions, screenings, tilts, and the like. The SIPO will also include methodologies for both investment strategy and measuring performance against the investment objectives. Such requirements have been well covered by existing FMA documents, particularly integrated financial product guidance, and need not be repeated in the Proposed Information Sheet.
- 2.26 For completeness, we also note there are a number of typographical errors in the Proposed Information Sheet regarding SIPOs (for example, referring to those documents as 'statements of investment policies and objectives' and 'statement of performance objectives'). We assume that these issues will be corrected in the final version, should the Proposed Information Sheet be proceeded with.

3 Conclusion

- 3.1 We submit that the Proposed Information Sheet is unnecessary. The statutory regime as it exists is clear, and provides the appropriate flexibility for issuers to tailor disclosures for the particular financial products on offer and for the particular issuer.



Friday 30 August 2024

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Proposed Guidance on References to Climate Statements in Disclosure Documents

This submission on the Financial Markets Authority (FMA) consultation on Proposed Guidance on References to Climate Statements in Disclosure Documents (the Guidance) is from the Financial Services Council of New Zealand Incorporated (FSC).

As the voice of the sector, the FSC is a non-profit member organisation with a vision to grow the financial confidence and wellbeing of New Zealanders. FSC members commit to delivering strong consumer outcomes from a professional and sustainable financial services sector. Our 113 members manage funds of more than \$100 billion and pay out claims of \$3.2 billion per year (life and health insurance). Members include the major insurers in life, health, disability and income insurance, fund managers, KiwiSaver, and workplace savings schemes (including restricted schemes), professional service providers, and technology providers to the financial services sector.

Our submission has been developed through consultation with FSC members and represents the views of our members and our industry. We acknowledge the time and input of our members in contributing to this submission.

We welcome the opportunity to provide feedback on the Guidance. Whilst we understand the intention behind the Guidance, we do question whether it is necessary in this instance and consider that it may overstate the materiality of climate statements in relation to an offer. Guidance should be flexible and non-prescriptive to assist the industry rather than imposing de facto disclosure obligations. We consider the market has sufficient experience to determine the extent to which information on climate related risk may need to be disclosed to investors in a Product Disclosure Statement (PDS) or Disclose Register entry. We also note the FMA has previously provided general guidance in relation to the content and form of Disclose Register information. We are concerned that the Guidance may operate more like a requirement and the impact to page and word limits that the introduction of any additional wording might have.

If the FMA do wish to issue guidance in this area, instead of requiring Climate Related Disclosure (CRD) information in the PDS and OMI sections of disclosure, we suggest a focus on guiding issuers as to what they could consider when determining whether CRDs are material to an offer (and subsequently be disclosed on the Disclose Register).

We welcome continued discussions and engagement. [REDACTED]

Yours sincerely

[REDACTED]
[REDACTED]
Financial Services Council of New Zealand Incorporated

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

We do not consider the Guidance is necessary or appropriate as it is proposed. As CREs are not required to include references to the existence of climate statements in PDS or lodge climate statements on the Disclose Register, this Guidance may cause confusion. In its current form the Guidance goes beyond what relevant legislation requires, and risks operating like additional requirements for content that issuers must include in their PDS which could lead to challenges in relevant information disclosure in PDS'. It should be up to issuers to determine what information is material, and this determination should be based on the specific circumstances of each offer. We are also concerned that the Guidance may divert attention from more significant risks that are relevant to the offer and we also note that investors are able to access CRDs publicly.

The Financial Markets Conduct Act 2013 (FMCA) does not require a PDS to contain all material information relevant to an offer. Instead, the Disclose Register entry and PDS must together contain all material information about an offer. "Material information", in the context of a PDS and Disclose Register entry, is defined in Section 59 of FMCA. To be material, the information must be expected to influence an investor's decision to invest and relate to the particular products on offer rather than to financial products generally. The fact that a MIS manager is "large" and, as a result, is a CRE is not something that relates to the particular products on offer but instead is something that relates to all large managers generally. Consequently, we consider implementing guidance that asks organisations to include a reference to CRDs in PDS goes beyond what the FMCA requires, and that the current disclosure requirements are sufficient to ensure that all material information in relation to an offer is required to be disclosed.

The climate statements themselves may or may not be material information, depending on whether or not they disclose any particular climate related risks or opportunities that are specific to the fund or scheme in question, and that the existing test should be applied. CRDs, while potentially material, are not universally material information for every PDS for all CREs.

If the Guidance is adopted, 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. They will then need to determine whether there are any statements in the climate statement that is materially adverse that could mislead an investor, or whether there is additional information that needs to be included to ensure that climate statements are not misleading due to a material omission. We do not consider this to align with the current move away from regulatory overload, particularly where robust legislative requirements for offer documents are already in place.

The expectations expressed by the FMA in the Guidance that climate statements are likely to be material information that would influence an investor's decision making is likely to act as an impediment to issuers undertaking regulated offers to raise capital, particularly if the CRD regime is expanded in future to apply to private entities. 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.

In the case where climate risk is considered a key risk affecting the investment, the Financial Markets Conduct Regulations 2014 (the FMC Regulations), as per the applicable schedule for security type, already require these relevant climate risks to be explicitly stated in the PDS. Therefore, if climate related risks are likely to be material to a regulated offer of financial products, then the risk should be disclosed irrespective of whether the issuer is a CRE and irrespective of any guidance. However, variation in climate risk disclosure may emerge between CREs and non-CREs due to the analysis required by CREs to comply with the regime.

Although useful to understand the FMA's view of what information in respect of the CRD regime it considers to be material in influencing an investor's decision making, and its expectations on how this should be treated within the existing FMC disclosure regime, we encourage the FMA to consider greater flexibility if the Guidance is to proceed. This would enable MIS Managers to make their own determination of what it considers to be material CRD information in influencing an investor's decision to invest in the scheme. Then, based on this determination, the appropriate location for CRD disclosure to be made, if at all, for example, whether it should be in the PDS or the OMI. If a MIS Manager determines that the CRD information is not material to an investor's decision, they should be able to omit a reference to CRD disclosure in their PDS or OMI.

For MIS managers, references to CRDs could be included in the 'About' section of the Key Information Summary, consistent with clause 43, schedule 4 of the FMC Regulations, if the MIS Manager assesses that it being a CRE is material information for investors. However, there are already requirements that provide for the assessment and disclosure of what is material information and for it then to be placed in the relevant section of the PDS, OMI or SIPO as appropriate. For example, if it is a material risk, it will be disclosed in the risk section. We disagree with the Guidance's suggestion to include references to CRDs in the 'About' section of the Key Information Summary (KIS) for equity and debt managers. This section should present the most critical information about the financial product to assist investors in making informed decisions. The FMC Regulations require that the KIS must only include required or permitted information, including information that may help provide context, and must not be misleading. Although there are exceptions under regulation 29(3) of the FMC Regulations allowing for additional context, these do not justify including CRDs in the KIS. In addition, the strict word and page limits imposed by the FMC Regulations make it challenging to include CRD references in the KIS. Given these restrictions, it will be difficult for issuers to generally incorporate CRD references in a way that aligns with FMC Regulations.

2. What are your views on the proposed timing for updating each PDS?

Whilst we do not consider this Guidance necessary, if it is to proceed, the earliest of 12 months from the next scheduled PDS update and 12 months of publication of the finalised information sheet would allow sufficient time to make the updates suggested by the Guidance. This would be the most helpful approach given the long lead in and processes involved in updating offer documents.

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

As noted in our response to Question 1 we do not consider Guidance to be necessary. We have significant concerns with the views expressed in the Guidance 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 referred to in the PDS or included on the Disclose Register as material information in relation to the offer.

A separate climate-related disclosure register has been created for lodging of CRDs which is publicly available to investors, therefore there should be no need for issuers to lodge CRDs on the Disclose register, particularly as this is not a requirement under the FMCA.

Under the FMCA significant liability and consequences (such as the voidable offer provisions) apply to material information in relation to an offer. It is not appropriate for these settings to apply to climate statements unless under the existing tests an issuer determines them to be material information in relation to the offer. The consequences of the Guidance expressing a view that climate statements should in effect be deemed to be material information, will cause significant hurdles to an issuer raising capital from investors through a regulated offer. These include the significant due diligence that would need to be applied

to reviewing climate statements to determine whether they are materially misleading (including by omission) and need to be updated, noting in particular that an offer may be conducted at a significantly later date than the date of a CRE's climate statements, and the infancy of the CRD regime.

If the FMA does proceed with the Guidance, we consider it important that issuers are able to make their own determination as to what information is material to their offer and what needs to be contained under OMI in the Disclose register. The Guidance should not go beyond what the legislation requires. In addition, filing climate statements on the Disclose register as OMI may give rise to potential liability for defective disclosure under the FMCA. It is not appropriate for these settings to apply to CRDs given that they are subject to a separate liability regime under the FMCA.

4. What are your views on the proposed guidance for SIPOs?

We do not consider this Guidance necessary, as it reiterates and references a significant amount of current guidance, the Statements of Investment Policy and Objectives under the FMC Act guidance note 2014. In addition, CRDs are not 'policies' nor do they set out investment objectives.

For exclusion policies or specific design decisions for certain types of funds, for example, an impact fund, it may be helpful to describe the process for the selection of asset classes and assets. However, where there is an existing investment strategy, it may be difficult to have meaningful details in the SIPO about how climate risk is integrated in the decision making process, except to mention that climate risk is considered along with other material risks.

We support leaving it to issuers to determine what policies are referred to in a SIPO. Issuers are experts in this area and hold the necessary experience to make these types of decisions. They are therefore best placed to manage this content.

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

We do not consider this Guidance is necessary as an outline of existing legislative requirements with no further assistance for industry on compliance.

6. Is anything missing that should be included in the information sheet? Please explain.

We do not consider the guidance necessary.

7. What are your views on the examples provided in the information sheet? Are they helpful?

Are there any other examples we should include?

We do not consider the examples provided are appropriate. The examples are not only too long but the proposed wording is restricted to the "About" section of the KIS. For all PDS', Regulation 34 of the FMC Regulations prescribe the extent to which additional information may be included. The information may only be included after a relevant section of the PDS, namely section 6 for managed funds, unless the additional information does not detract from the prominence of the information that is required to be included.

If the FMA does wish to proceed with issuing the Guidance the proposed example wording could be further abbreviated. For example, a summary of the key parts of climate statements does not appear

necessary, nor does the inclusion of two links to access the climate statements (noting that the main location will be the CRD register). It could be useful if the example wording for a PDS (although not mandatory) was revised in the final guidance to align with the current overarching principles in the FMC Regulations so that it is current clear, concise and effective. Proposed alternative wording could include:

[Name of manager] is a climate reporting entity. We are required to make annual disclosures called “climate statements” for [name of scheme/fund] which are available on the Climate-related Disclosures Register at <https://www.companiesoffice.govt.nz/all-registers/climate-related-disclosures/>

As noted above, the Guidance should be clear that the examples provided are only suggestions and should only be used if issuers determine that the information should be included in their PDS. We consider the proposal for this wording to be set out in the Proposed Information Sheet be included in each PDS without consideration of the features of the particular financial products or issuer goes against the policy intent behind the PDS regime.

If including example wording, it may be helpful if the Guidance included a couple of different examples to cover other aspects of what a manager may deem to be the material information to be disclosed. For example, this disclosure may instead be in the “4. What are the risks of investing” section of the PDS/OMI and look more like:

More information on [our] approach to managing climate-related risks (and opportunities) for the [funds] is available on [x].

A couple of examples for the SIPO may be helpful as this could show the expectations about how explicit climate risk is considered as part of the investment decision process, especially in light of other risks considered, namely market, credit and liquidity risks.

8. Do you need any further guidance or support from the FMA in relation to disclosure requirements in relation to the CRD regime?

We do not consider further guidance is required at this stage.

Other feedback

For all PDS, Regulation 34 of the FMC Regulations prescribes the relevant section after which information in addition to the required or permitted information must appear. In relation to a PDS for an offer of managed investment products in a managed fund, it must appear after section 6 of the PDS (“What taxes will you pay?”). If the Guidance is to proceed, we suggest that the most appropriate section for references to a MIS manager’s climate statements would be in Section 9, “Where you can find more information”. This is the section of the PDS that the inclusion of a statement to the effect that further information relating to the scheme and the managed investment products is available on the offer register and the scheme register, for example, financial statements. It also requires the inclusion of a statement briefly describing any information relating to the scheme that will otherwise be made available to the public by means other than the offer or scheme registers. We suggest that this could include a short reference to the climate statements on the climate statement register, noting clause 48 of Schedule 4 of the FMC Regulations.

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Sent via email to: consultation@fma.govt.nz

21 August 2024

Submission - Consultation: Guidance on references to climate statements in disclosure documents

1. Introduction

- 1.1. Fisher Funds Management Limited (Fisher Funds, we, us) is supportive of the climate related disclosures regime and the role that climate statements play in ensuring investors and potential investors in our Managed Investment Schemes (MIS) are informed of the impact climate change is having on our MIS and our approach to managing those risks.
- 1.2. Fisher Funds' view is that the fact that climate statements are part of the climate reporting regime and are contained in their own bespoke Companies Office register does not necessarily mean that climate statements are any more material to an investor's decision making process than other material information relevant to the offer.
- 1.3. Based on the above Fisher Funds does not believe climate statements should be considered differently to other material information relevant to an MIS and accordingly climate statements should not be required to be referenced in a prescribed manner in offer documents.

2. Responses to questions

Question 1: What are your views on the proposed guidance for PDS content?

For MIS, particularly KiwiSaver, PDS word counts must be managed carefully to ensure the combination of prescribed content and material information remains within prescribed limits. The addition of any new prescribed wording risks the removal of other information from the PDS that investors may find difficult to locate elsewhere.

Inclusion of information for only a subset of MIS managers i.e. those who are also climate reporting entities, risks causing investor confusion when comparing schemes. An investor may not understand why there is a difference and what the difference means for them, if any.

Notwithstanding our view that the proposed guidance on references to climate statements in PDS does not materially contribute to FMA's objective of 'promoting the confident and informed participation of ...investors', if the FMA proceeds with the guidance, we recommend it should require only a short disclosure which focusses on the FMA's concern.

We understand the FMA is concerned investors are unaware of the existence and/or availability of climate related disclosures.

To address the FMA's concerns, we suggest expanding the information in "Where can you find more information" section of the PDS to include a short statement and a hyperlink directing investors to the climate related disclosures register for more information.

Question 2: What are your views on the proposed timing for updating each PDS?

Fisher Funds agrees that 12 months from the date of publication of the finalised information sheet is not unreasonable.

Question 3: What are your views on the proposed guidance for OMI?

It would not be onerous for MIS managers to upload climate statements to the Other material information section on the Disclose register at the same time they are uploaded to the CRD register.

We note that the financial statements for a MIS are uploaded to the Scheme section of the Disclose register, while the climate statements would be uploaded to the Offer section. We therefore do not see any benefit in a requirement that the two to be filed at the same time. If it is determined that the climate statement is material information then it must be uploaded as soon as it is available in any case.

Question 4: What are your views on the proposed guidance for SIPOs?

Fisher Funds believes that it is reasonable to include a link in the SIPO to any climate related policies that have an impact on the investment decisions relevant to achieving the objectives of the funds.

We suggest updating the current SIPO guidance to reflect the FMA's expectation as it is relevant to all MIS managers, not just those who are climate reporting entities.

Question 5: What are your views on the proposed information about annual reports?

The information relating to Annual reports in the proposed guidance appears to re-state the existing requirements. We have no issue with the inclusion of this information.

Question 6: Is anything missing that should be included in the information sheet? Please explain.

The information sheet contains all the relevant information.

Question 7: What are your views on the examples provided in the information sheet? Are they helpful? Are there any other examples we should include?

As above, Fisher Funds recommends the proposed content for inclusion in a PDS be shorter in length. A simple reference to the climate statements in the “Where can you find more information” section, in the same way that managers currently refer to material information such as the SIPO is sufficient in our view.

In any case, the proposed wording to be included in a PDS is too long and repetitive. For example, if we did determine a reference in section 9 was required, we would add a reference to the existing content as follows:

Further information on Fisher Funds KiwiSaver, like financial statements, the Governing Document, the SIPO, fund updates, information related to fund performance and assets, Other Material Information and **climate statements**, is available on:

- Our website fisherfunds.co.nz
- The offer register and the scheme register at companiesoffice.govt.nz/disclose

It is not necessary to reference the particular legislation governing climate reporting entities as the prescribed statement at the beginning of each MIS PDS states, amongst other things:

This document gives you important information about this investment to help you decide whether you want to invest. There is other useful information about this offer on companiesoffice.govt.nz/disclose. Fisher Funds Management Limited has prepared this document in accordance with the Financial Markets Conduct Act 2013. You can also seek advice from a financial advice provider to help you to make an investment decision.

Question 9: Do you need any further guidance or support from the FMA in relation to disclosure requirements in relation to the CRD regime?

Fisher Funds does not consider further guidance or support from the FMA in relation to disclosure requirements is required.

3. Conclusion

3.1. Fisher Funds supports the intent of the guidance being to ensure a consistent approach to the treatment of climate statements is taken by the industry.

3.2. Having said this, Fisher Funds does not consider that climate statements should be treated differently to other forms of material information and MIS managers should be able to form their own views in terms of how to disclose the existence of climate statements.

We appreciate the opportunity to respond to the consultation and would welcome any further engagement that the FMA may wish to enter into on the subject.

Yours sincerely,

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Feedback form

Consultation: Proposed guidance on references to climate statements in disclosure documents

Please submit this feedback form electronically in both PDF and MS Word formats and email it to us at consultation@fma.govt.nz with 'Consultation: Proposed guidance on references to climate statements in disclosure documents: [your organisation's name]' in the subject line. Thank you. **Submissions close on 30 August 2024.**

Date: 23.08.2024

Number of pages: 2

Name of submitter: [REDACTED]

Company or entity: FundRock NZ Limited

Organisation type: MIS Manager

Contact name (if different):

Contact email and phone: [REDACTED]

Question number	Response
1	<p>(A) The PDS is a heavily prescribed document which purpose is to provide certain information that is likely to assist a prudent but non-expert person to decide whether to acquire a financial product. Climate Statements are complex, difficult to understand for nearly all investors, and likely to have significant forecasting errors. FundRock NZ Limited ("FundRock") is not convinced that providing, in the PDS, information on whether an MIS manager is a Climate Reporting Entity ("CRE") and where to find its Climate Statements is likely to assist a prudent but non-expert person to decide whether to acquire a financial product. Additionally, if MIS managers who are CREs are mandated to include any such statement in their PDSs, MIS managers who are not CREs (i) and do not publish Climate Statements or (ii) publish Climate Statements voluntarily, should add equivalent statements to their PDSs. (B) Climate risks, if deemed by the MIS manager to (i) be likely to assist a prudent but non-expert person to decide whether to acquire a financial product and (ii) significantly increase the risk to returns for investors other than circumstances already reflected in the risk indicator, should be addressed in the Other Specific Risks section of the PDS. (C) Should an MIS manager consider the fact that it is a CRE and where to find its Climate Statements material information, it could also include a note to that effect in the Who is involved section. (D) FundRock is generally sceptical about Climate Statements being considered material information: if they were, all MIS managers should be required to prepare them. (E) Finally, it is FundRock's view that any prescriptions about the PDS's content (including those regarding when it should be changed) should be introduced through an amendment to the Financial Markets Conduct Regulations ("Regulations").</p>
2	<p>FundRock does not oppose the proposed timeline per se, but our comments on the need for changes to be effect via amendments to the Regulations applies.</p>
3	<p>(A) As per our answer to Question No 1, should an MIS manager consider the fact that it is a CRE and where to find its Climate Statements material information, it could include a note to that effect in the Who is involved section at the PDS. Alternatively, if this information is considered material but not "information that is likely to assist a prudent but non-expert person to decide whether to acquire a financial product" (and FundRock believes it is not, for the reasons in our answer to Question No 1), it does not belong in the PDS and should (if deemed material by the MIS manager) be included in an OMI – but never both in the PDS and OMI, as they complement (and do not duplicate) each other. (B) The Climate-Related Disclosures Register is the legally prescribed repository for Climate Statements. FundRock believes that lodging</p>

	<i>Climate Statements both in there and in the Disclose Register would create unnecessary duplication.</i>
7	<i>Regarding the Example for a MIS Manager in p 4, we believe that it is somewhat verbose and could be reduced to "[Name of manager] is a climate reporting entity under Part 7A of the Financial Markets Conduct Act 2013. The annual climate statements for [name of scheme/fund] are on the Climate-related Disclosures Register".</i>
Feedback summary – <i>if you wish to highlight anything in particular</i>	
<p>Please note: Feedback received is subject to the Official Information Act 1982. We may make submissions available on our website, compile a summary of submissions, or draw attention to individual submissions in internal or external reports. If you want us to withhold any commercially sensitive or proprietary information in your submission, please clearly state this and note the specific section. We will consider your request in line with our obligations under the Official Information Act.</p>	
<p>Thank you for your feedback – we appreciate your time and input.</p>	



30 August 2024

Financial Markets Authority
Level 2, 1 Grey Street
Wellington, New Zealand
by email only: consultation@fma.govt.nz

Jarden Limited
Level 32, PwC Tower
15 Customs Street West
Commercial Bay
Auckland 1010, New Zealand

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

This feedback is provided by Jarden in respect of the guidance consultation on its proposed information sheet that provides guidance for climate reporting entities on references to climate statements in certain disclosure documents.

Jarden is one of New Zealand's leading investment and advisory groups. Jarden's Investment Banking team has extensive IPO experience (equity and debt) and is one of the largest participants on the NZX.

Overall, we view that the information sheet for guidance for CREs and the additional disclosures required is unnecessary and goes against the development of a New Zealand financial markets by potentially creating additional hurdles (in respect of due diligence processes, costs and liability concerns) for potential issuers. More importantly, the continual piling on of disclosures can also be unhelpful to investors as it becomes more challenging for non-expert investors to determine what is key information in their investment decision.

Response to consultation

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

We believe that the suggested guidance overstates the status of climate statements as material information in relation to an offer and some of the suggested disclosures could be misconstrued by a non-expert investor as a positive for investing when the disclosure does not actually provide any key information but purely the fact of compliance.

Yours sincerely,



Jarden Limited

Feedback form

Consultation: Proposed guidance on references to climate statements in disclosure documents

Please submit this feedback form electronically in both PDF and MS Word formats and email it to us at consultation@fma.govt.nz with 'Consultation: Proposed guidance on references to climate statements in disclosure documents: [your organisation's name]' in the subject line. Thank you. **Submissions close on 30 August 2024.**

Date: 26 August 2024

Number of pages: 3

Name of submitter: Milford Funds Limited

Company or entity: Milford KiwiSaver Plan and Milford Investment Funds

Organisation type: MIS provider

Contact name (if different):

Contact email and phone:

Question number	Response
1. What are your views on the proposed guidance for PDS content?	<p>We view the proposed guidance as helpful in the context of MIS managers' consideration of their legal disclosure obligations. We do however consider caution needs to be applied in assessing the degree of prominence to be given to disclosure of the implementation of the CRD regime, its effect on the CRE and the climate statements themselves.</p> <ol style="list-style-type: none">1. Noting that the legislation takes a different approach to climate statements relating to registered schemes than it does for equity issuers, we wonder whether the guidance may have been prepared primarily for equity issuers. For example, the first paragraph under the section entitled <i>Product Disclosure Statement content</i> states that the FMA considers that each of (i) the introduction of the CRD regime or (ii) its effect on an issuer that is now classified as a CRE, is likely to be material information that may influence an investor's decision making. We can see how the introduction of the CRD regime may have a material impact on an equity issuer, however the fact that there is a CRD regime is unlikely to be material information to a fund investor.2. As the investment style and objectives of different types of MIS schemes vary, we believe a nuanced approach to disclosure of climate statements in disclosure documents is appropriate. For example, we do not consider climate-related risk to be likely to be a significant risk for an MIS Manager with an active management approach. For such a manager, it will be one of many of the risks and opportunities being managed to deliver a return, and exposure to climate-related risk will be actively adjusted as long-dated risks materialise. <p>We note that several CREs already portray climate-related risk as being one of several risks impacting the scheme that require management, with disclosure typically being found in the either the PDS itself or expanded risks section of a scheme's OMI document</p> <p>Accordingly, for many MIS managers:</p> <ul style="list-style-type: none">• We do not believe the climate-related disclosure as expressed in the example (and as proposed for inclusion in the 'About [name of issuer]' section) warrants a stand-alone disclosure; and

	<ul style="list-style-type: none"> The climate-related risks applying to the manager's funds may not meet the elevated threshold of being a "significant risk for the issuer" thereby warranting stand-alone disclosure. <p>We comment further on the matter of PDS reference to climate statements in our response to Question 7 below.</p>
2. What are your views on the proposed timing for updating each PDS?	The proposed timing for updating each PDS appears appropriate should the finalised guidance recommend explicit disclosure of fund climate statements. Note however, our comments in this regard in question 7 below.
3. What are your views on the proposed guidance for OMI?	<p>Please refer to our response to question 6 below.</p> <p>MIS managers may wish to include climate risk among the catalogue of risks involved in investment in the manager's scheme and many managers are likely to be already referring to this risk in their OMIs. However, we consider it arguable whether climate statements warrant separate filing on the offer register as a stand-alone OMI document. If a fund is sold as a "green" fund then we understand the consideration for a separate filing. However, in the absence of that, a separate filing may cause investors to believe a fund is a green fund when it is not.</p> <p>Further, the "principle of coherence" as discussed in section 2 of the Information sheet appears to assume that having climate statements that primary users can relate to the CRE's financial statements will be a relevant consideration in an investor's decision-making process. In terms of the financial statements of an MIS scheme, however, the extent to which prospective investors factor such statements into their decision-making process is highly debatable. The financial statements only show the historic position of the scheme or a relevant fund at a particular point in time and do not provide any guide to the likely future prospects of an investment in that scheme or fund.</p>
4. What are your views on the proposed guidance for SIPOs?	We think the guidance for SIPOs is sensible, enabling MIS managers to form their own view as to whether their climate-related investment policies "are directly relevant to achieving the investment objectives and strategies of the MIS". We expect there will be a range of approaches that managers may take in this area with specific disclosure of policies being especially relevant for funds that are designated as integrated financial products.
5. What are your views on the proposed information about annual reports?	While section 4 of the Information sheet expressly excludes managers of registered schemes, the FMA could consider whether it would be appropriate for MIS scheme annual reports to include reference to lodgment of the scheme's climate statements. We think this could be a useful addition to such reports.
6. Is anything missing that should be included in the information sheet? Please explain.	We consider it inefficient and potentially confusing to have climate statements lodged on two separate registers (the CRD Register plus Disclose). However, should it be deemed necessary to replicate the statements on Disclose, then the precise location for their filing warrants further consideration. We think uploading should be made to the Disclose scheme register rather than the offer register. This is because, in common with scheme financial statements and the scheme annual report, information provided in climate statements is time-bound, relatively static and not subject to updating intra-period. By contrast, an MIS scheme's PDS and its supporting OMI documents, together with fund details, and related documents, are regularly being refreshed on the offer register – such register being a more dynamic environment and a "first port of call" for information likely to be sought by a prospective investor.

<p>7. What are your views on the examples provided in the information sheet? Are they helpful? Are there any other examples we should include?</p>	<p>In terms of the MIS example, for many MIS offers, we consider reference to climate statements should be limited to inclusion in section 9 of the PDS alongside reference to fund financial statements. Disclosure could therefore take the following form:</p> <p><i>Where you can find more information</i></p> <p><i>Further information relating to [scheme or funds], including financial statements and climate statements, is available on the Disclose register at www.disclose-register.companiesoffice.govt.nz.</i></p> <p>If lodgment of climate statements remains within the province of the CRD register then section 9 above could simply refer to the location of climate statements on that particular register.</p>
<p>8. Do you need any further guidance or support from the FMA in relation to disclosure requirements in relation to the CRD regime?</p>	<p>As a general comment, we consider that the CRD regime as implemented in NZ (along with all published guidance) should better recognise the unique circumstances of managers of MIS schemes.</p> <p>In particular, we believe it would be helpful to provide more guidance on the GHG emissions reported by MIS Managers by specifying the standard that MIS Managers should measure their GHG emissions in accordance with. This will ensure GHG emissions are comparable and not misleading to end users given the significance of the scope 3, category 10 accounting. If investee company scope 3 emissions are not included, this will significantly reduce the GHG emissions and GHG emission intensity reported.</p> <p>Further, MIS Managers are typically required to report metrics, including GHG emissions subject to assurance, collected and estimated by third party vendors. FMA guidance on the ability of MIS Managers to rely on third party data providers, and the associated management of the risk of data inaccuracies in third party data, would be helpful.</p>
<p>Feedback summary – if you wish to highlight anything in particular</p>	
<p>Please note: Feedback received is subject to the Official Information Act 1982. We may make submissions available on our website, compile a summary of submissions, or draw attention to individual submissions in internal or external reports. If you want us to withhold any commercially sensitive or proprietary information in your submission, please clearly state this and note the specific section. We will consider your request in line with our obligations under the Official Information Act.</p>	
<p>Thank you for your feedback – we appreciate your time and input.</p>	

By Email: consultation@fma.govt.nz

Financial Markets Authority
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PO Box 106 672
Auckland 1143

Response to Proposed Guidance on References to Climate Statements in Disclosure Documents

1. Introduction and general feedback

- 1.1 This submission on the Financial Markets Authority (**FMA**) consultation on Proposed guidance on references to climate statements in disclosure documents (**Guidance**) is from MinterEllisonRuddWatts.
- 1.2 Overall, we are supportive of the FMA's encouragement of consistency across disclosure documents where possible.
- 1.3 However, our view is that the statement in the guidance that climate reporting entity (**CRE**) status and the climate statements of a CRE are likely to be material information that may influence an investor's decision making is too strong as a general proposition, and may be misinterpreted as pre-judging a key decision which issuers should make having regard to the specific circumstances of their business and the financial products which they issue.
- 1.4 Therefore, our key submission is that the final Guidance should contain greater flexibility, to encourage CREs to make their own determination of materiality in their own specific circumstances. In this respect, there also needs to be recognition that there already exists a medium by which disclosure of the climate statements is required to be made.
- 1.5 The circumstances of each CRE will be very different, and the extent to which their activities may be affected by climate-related risks and climate-related opportunities will vary enormously as a result. This needs to be considered on a case by case basis, not presumed.
- 1.6 Further the concept of materiality in relation to climate statements as described by the XRB in NZ CS 3, has a different meaning from:
 - (a) materiality in relation to financial statements, for example as explained by the XRB in their Staff Guidance for Climate-related matters in financial statements (November 2023), and
 - (b) the concept of material information as that expression is used in section 57 of the Financial Markets Conduct Act 2013 (**FMCA**) in relation to offers of financial products.

Care needs to be taken not to conflate those thresholds, and it would indeed be useful for the FMA to draw attention to the fact that each threshold requires careful, and separate, consideration as to whether it is met.
- 1.7 As a general proposition, we consider that it would be more useful for the FMA to promote to the investing public directly the purpose of and where to find climate statements, than to seek to mandate how individual CREs might refer to them in other prescribed disclosure.
- 1.8 We do consider that there are various technical matters that should be addressed in the Guidance, which we set out further below in response to the FMA's specific consultation questions.

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

- 2.1 Our key submission, as referenced above, is that there should not be a presumption of materiality (as to CRE status or climate statement content) in PDS content as it should be up to the CRE to determine in its own circumstances, whether any information disclosed in its climate statements in particular is material information that should be included in its PDS, or should be disclosed on the Disclose Register.
- 2.2 To the extent that there is material information under the FMCA test (referred to above) the current regulated offer disclosure regime under Part 3 appropriately provides for how and where that should be disclosed. As the FMA will be aware, the core requirements are:

- (a) for the PDS to contain the information that it is required to contain by the regulations (i.e. specifically prescribed information); and
- (b) for the Disclose Register to contain all material information that is not contained in the PDS.

This distinction was deliberately included when the FMCA was enacted, as a reaction to the problems that had arisen under the prior Securities Act 1978 where investment statements had lost sight of their original purpose of providing key information, and became "kitchen sink" repositories for every risk the issuer and its advisers could imagine to protect themselves by over disclosure.

- 2.3 Therefore, to separately implement guidance which proposes that CREs must either summarise or cross refer to climate statements in their PDS goes beyond what that disclosure regime actually requires, and what is desirable.
- 2.4 However, we would support FMA issuing guidance saying that CREs and other issuers should consider very carefully whether any of the specific climate related risks to the business that they might have identified (while preparing their climate statements or otherwise) should be included if material in the prescribed disclosure.
- 2.5 It may also be something that an entity may not actually be able to implement because of word and page limits, or because of the strict prescription of the types of risk that are to be disclosed in a the PDS. This will be particularly an issue for managed funds.
- 2.6 In terms of the proposal that a short reference to the climate statements in relation to a climate risk be expressed in a PDS, in our view, that is best left as a matter for the issuer to determine. Given the different purposes, and more importantly method of preparation, of the climate statements by the comparison to a PDS, climate related risks will be expressed differently. Further, not all or potentially any climate related risks expressed in a climate statement, may be material information.
- 2.7 Additionally, the broader implication of the inclusion of such cross references in the PDS, is the application of section 82 of the FMCA to the climate statements. This would mean that CREs (and their directors) would need to conduct due diligence for the climate statements of the kind applicable to a PDS / Disclose entry, specifically for the purpose of assessing whether any of the triggers under section 82 apply.
- 2.8 We also consider that the above matters would be concerning for entities which prepare a PDS, but are not yet a CRE. If there is a default proposition that a climate statement is likely material information, and there are differences between a climate statement and a PDS / Disclose entry previously prepared, it would not be of comfort to directors and issuers to cast doubt on compliant PDS / Disclose entry disclosures in this manner.
- 2.9 Finally, we would also note that the presumption of materiality is also problematic as it relates to capital raisings conducted under a cleansing notice. Given the definition of excluded information under clause 20 of Schedule 8 of the Financial Markets Conduct Regulations 2014, the Guidance would give rise to the same concerns as noted above for disclosures occurring in that respect.

3. What are your views on the proposed timing for updating each PDS?

- 3.1 Following on from our comments above, we do not consider this to be necessary. If it is to proceed, the earliest of 12 months from the next scheduled PDS update and 12 months of publication of the finalised information sheet would allow sufficient time to make the updates suggested by the Guidance.

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

- 4.1 As noted in paragraph 2.1 above, we consider that there should not be a presumption of materiality in the final Guidance, and we have the same concerns expressed above with respect to the PDS.
- 4.2 Essentially, it should be a matter for the issuer to determine the materiality of information and consequently the need for its disclosure as OMI and filing on the Disclose Register. As noted previously, this determination carries with it significant weight, including for the purposes of section 82 of the FMCA and associated due diligence.
- 4.3 More generally, given that a climate-related disclosure register already exists, we consider that this is the appropriate place for climate statements to be filed.

5. What are your views on the proposed guidance for SIPOs?

- 5.1 We do not support the guidance in relation to SIPOs, and believe that it conflates the different purposes of climate statements and SIPOs. If SIPOs are to be referred to, the guidance should simply say that MIS managers should consider whether or not to update SIPOs.
- 5.2 As the FMA's 2014 Guidance Note on Statements of Investment Policy and Objectives under the FMCA says, a SIPO is a document that sets out the investment governance and management framework, philosophy, strategies and objectives of a managed investment scheme and its investment funds or portfolios. Climate statements are not in themselves investment policies nor do they set out investment objectives. Instead, they are disclosures within a consistent framework to enable primary users to assess the merits of how CREs consider the climate-related risks and climate related opportunities that climate change presents for their activities over the short, medium and long term.
- 5.3 Accordingly, we support leaving it to CREs to determine what changes, if any, are required to be made to their SIPOs, to reflect their strategy decisions made after considering the climate-related risks and opportunities identified by them in their climate statements or otherwise. MIS managers are experts in this area and hold the necessary experience to make these types of decisions. They are therefore best placed to manage this content.

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

- 6.1 We refer to our comments above in relation to the differences between the materiality thresholds for the climate statements and the financial statements as recognised by the XRB. Further we note that Part 7A of the FMCA already requires CREs to either include in their annual report either the climate statements themselves or a cross-reference to where they can be located.
- 6.2 We therefore have no substantive comments on this section, but consider that it is helpful to outline in a concise manner the various requirements relating to annual reports in this respect.

7. Is anything missing that should be included in the information sheet? Please explain.

- 7.1 The Guidance should, if it is to be issued, refer to the need for listed issuers to consider their continuous disclosure obligations. However, as above, each listed issuer should make its own decision as to the materiality of relevant information in relation to its own business. The Guidance should not pre-judge that.
- 7.2 If guidance is to be issued, it is appropriate to state for the benefit of NZX listed issuers that the guidance, and the information contained in a climate statement (if they are required to issue one), does not alter the obligations on listed issuers with respect to their continuous disclosure obligations, and

that it remains for the issuer to assess whether there is any price sensitive information therein, including in relation to climate-related risks and climate related opportunities, as those are identified.

7.3 In that regard, a key issue to consider will be, given the time spans contemplated by a climate statement, whether the medium and longer term information they contain is price-sensitive today.

8. What are your views on the examples provided in the information sheet? Are they helpful? Are there any other examples we should include?

8.1 The expectation to include a cross-reference to a CRE's climate statements in the PDS and other relevant documents would be challenging to certain CREs, such as MIS managers, that are already finding the mandatory word limit tight (e.g. if they manage a number of funds within a scheme).

8.2 The original intention behind section 57 of the FMCA was that the PDS, especially for managed funds, would be a short, concise document with largely prescribed information. The PDS would then be supported by the register entry where investors could find all other material information. Therefore, the examples (especially in light of the presumption of materiality), would not be supportive of the original intention of section 57.

8.3 Therefore, we would suggest that the examples are removed in line with the above points. However, if the examples are retained, we would suggest that these are shortened and included in the "Where you can find more information" section of the PDS. We propose the following example wording:

[Name] under Part 7A of the FMCA is required to prepare "climate statements" which are available on the Climate-Related Disclosures Register at <https://www.companiesoffice.govt.nz/all-registers/climate-related-disclosures/>.

9. Do you need any further guidance or support from the FMA in relation to disclosure requirements in relation to the CRD regime?

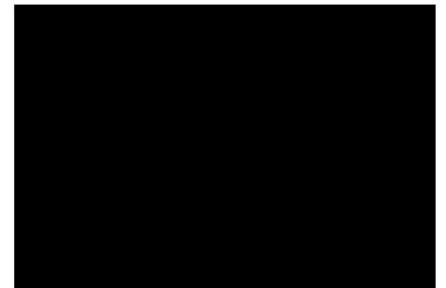
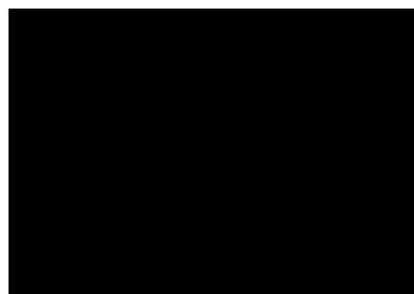
9.1 We have had feedback from our managed investment scheme (MIS) clients that the Guidance is drafted for CREs generally, and therefore does not acknowledge the differences amongst different types of CREs.

9.2 The fact that the climate statements of an MIS report on its funds, not its own business mean that its disclosures, and the practical application of the materiality threshold, result in significant differences to the climate statements of these CREs that do so (e.g., listed issuers). As a result, the Guidance may be sending conflicting expectations to MIS managers.

CREs.

9.3 It would, therefore, be a clearer approach to separate the Guidance for MIS and other

Yours faithfully
MinterEllisonRuddWatts



Submission

to the

Financial Markets Authority

on the

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

30 August 2024

About NZBA

1. The New Zealand Banking Association – Te Rangapū Pēke (**NZBA**) is the voice of the banking industry. We work with our member banks on non-competitive issues to tell the industry's story and develop and promote policy outcomes that deliver for New Zealanders.
2. The following eighteen registered banks in New Zealand are members of NZBA:
 - ANZ Bank New Zealand Limited
 - ASB Bank Limited
 - Bank of China (NZ) Limited
 - Bank of New Zealand
 - China Construction Bank (New Zealand) Limited
 - Citibank N.A.
 - The Co-operative Bank Limited
 - Heartland Bank Limited
 - The Hongkong and Shanghai Banking Corporation Limited
 - Industrial and Commercial Bank of China (New Zealand) Limited
 - JPMorgan Chase Bank N.A.
 - KB Kookmin Bank Auckland Branch
 - Kiwibank Limited
 - MUFG Bank, Ltd
 - Rabobank New Zealand Limited
 - SBS Bank
 - TSB Bank Limited
 - Westpac New Zealand Limited

Contact details

3. If you would like to discuss any aspect of this submission, please contact:

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

Introduction

4. NZBA welcomes the opportunity to provide feedback to the Financial Markets Authority (**FMA**) on the Consultation: *Guidance on references to climate statements in disclosure documents – proposed information sheet (Guidance)*.
5. Overall, while the sector understands the intention behind the Guidance, we do not consider that it is necessary. We consider the market has sufficient experience to determine the extent to which information on climate change or climate-related risk may need to be disclosed to investors in a PDS¹ or Disclose register entry. We are also concerned that the introduction of the Guidance could pose compliance problems for issuers. However, if the FMA goes ahead with the Guidance, NZBA suggests it should be amended to provide guidance for issuers to consider whether to treat climate-related disclosures (**CRDs**) as material information or to otherwise include a reference to the CRDs in the PDS, rather than creating a de-facto disclosure requirement.

Question 1: What are your views on the proposed guidance for PDS content?

6. NZBA does not consider that the Guidance is necessary, or appropriate in its current form, for the reasons set out below:
 - 6.1. there is no regulatory gap or compliance uncertainty that needs to be addressed – to the extent any information in a CRD does constitute material information, then an issuer already would be required to include that information in a PDS in accordance with the requirements of the FMC Act and FMC Regulations in any case;
 - 6.2. whether information constitutes material information requires an assessment of the particular circumstances of each offer and the issuer making the offer – it does not automatically follow that the mere status of an issuer as a climate-reporting entity (**CRE**) that prepares CRDs should constitute material information;
 - 6.3. if an issuer determines that CRDs should be referenced in a PDS, it should be up to the issuer to determine where in the PDS that reference should be included, having regard to the requirements of the FMC Regulations;
 - 6.4. the Guidance would create a de-facto disclosure requirement beyond what the FMC Act and the FMC Regulations require because CRDs may not be material information for all CREs; and

¹ In this submission a reference to PDS includes a reference to LDD.

- 6.5. having regard to the restrictions in the FMC Regulations, including a reference to CRDs in the Key Information Summary (**KIS**) is likely to be particularly challenging and would pose compliance risks for CRE issuers.

Material information

7. NZBA disagrees with the Guidance's suggestion that the introduction of the CRD regime, the effect of the CRD regime on an issuer that is a CRE, and the CRDs prepared by an issuer, are likely to be material information for **all** CRE issuers. The FMC Act provides that material information in the context of a regulated offer is information that a reasonable person would expect to, or be likely to, influence persons who commonly invest in financial products in deciding whether to acquire the financial products on offer. Importantly, material information must relate to the particular financial products on offer or the particular issuer, rather than to financial products generally or issuers generally.²
8. CRDs contain a wide range of information across four thematic areas. They can be lengthy and quite technical documents. It is not at all clear that a reasonable person would consider that the contents of CRDs would be likely to provide a person that commonly invests in financial products with information that is relevant to their investment decisions. It is possible that the CRDs of a **particular** CRE issuer may constitute material information, but it is not correct or appropriate to treat CRDs of **all** issuers as material information.
9. If any of the information in a CRD would constitute material information, then an issuer already is required to include that information in a PDS or Disclose register entry. The FMA will be aware that the potential impacts of climate change already appear in PDSs, e.g. in risk factors where the particular impacts of climate change for issuers are described. We consider that this is appropriate, targeted and effective disclosure for investors. Issuers have included these types of disclosures without being prompted to do so by specific guidance. There is no obvious regulatory gap or compliance uncertainty that needs to be addressed.
10. Nor do we consider the mere fact that an issuer is classified as a CRE, or has prepared CRDs, to be material information. Those factors do not relate to a particular financial product or a particular offer. Instead they are factors that are relevant to CRE issuers generally. It is difficult therefore to reconcile those factors with the definition of material information in the FMC Act.
11. The lack of a reference in a PDS to CRDs will not mean that those investors who are particularly interested in reading CRDs cannot do so. CRDs are publicly available and those investors who consider CRDs to be an important part of their investment decision making process are free to access and read those CRDs. Other investors may take a different approach. The risk of automatically treating CRDs as material information is that investors may focus on the CRDs instead of focussing on the

² FMC Act, s 59(1).

specific disclosures made by an issuer relating to the particular offer. It is important that any guidance from the FMA does not have the effect of detracting from the prominence of the required disclosures in the PDS.

De-facto disclosure requirement

12. NZBA considers it is not the role of guidance to impose de-facto disclosure obligations on issuers. FMA guidance can be valuable to the extent that it assists issuers with their compliance obligations. However, the Guidance goes beyond this by suggesting that all CRE issuers should reference CRDs in their PDSs. It is likely that issuers will feel compelled to follow the Guidance, meaning it will create a de-facto disclosure requirement. This is an inappropriate 'one-size-fits-all' approach to disclosure that is not required by the FMC Act or FMC Regulations. Nor is this approach consistent with effective disclosure in a PDS, which should be focussed on the circumstances particular to the relevant offer and issuer of the financial product.
13. The FMC Act provides that the issuer must ensure that the PDS and register entry contain all material information.³ It also requires an issuer to balance what to include in the PDS with the requirement that a PDS must not contain any information in addition to the required or permitted information unless the additional information does not detract from the prominence of the information that is required to be included in the PDS.⁴
14. The FMA's previous guidance regarding the content and form of Disclose register entry information provides that it is not possible to produce a definitive list of factors that will always be material to an offer.⁵ It suggests that issuers should use a due diligence process to help them identify all the information material to their offer.⁶ Once the due diligence process has identified all material information, issuers should decide what to put in the PDS and what to put in the Disclose register entry.⁷
15. We agree with this approach and consider that it should apply to CRDs as well as to any other information because CRDs may not be material information for all CREs. However, the Guidance takes a different approach. First, it suggests that material information needs to be included in the PDS. This is not what section 57 of the FMC Act provides – the PDS and Disclose register entry together must include all material information. Second, the Guidance would result in the FMA's assessment of what is material information supplanting the assessment of the issuer. We do not consider this is the correct approach.

³ FMC Act, s 57.

⁴ FMC Regulations, reg 34.

⁵ Financial Markets Authority, *Guidance note: Content and form of Disclose register information* (2015), at 6.

⁶ At 6.

⁷ At 6.

Making a disclosure in the KIS

16. NZBA does not agree with the Guidance's suggestion that references to CRDs should be made in the "About" section of the KIS. The purpose of a KIS is to provide the issuer's assessment of the most significant aspects of the offer of the financial products that are relevant to a prudent but non-expert person's decision as to whether or not to acquire the financial products.⁸ The FMC Regulations provide that the KIS must contain no information other than the required or permitted information.⁹
17. It is difficult to see how a reference to CRDs could be included in the KIS with the issuer still complying with the strict requirements of clause 29(1)(c) of the FMC Regulations. Clause 29(3) provides that a KIS does not fail to comply with clause 29(1)(c) merely because it contains additional information that is necessary to clarify required or permitted information or to put required or permitted information in context to ensure that the information disclosed is not false or misleading. However, we do not consider that these exceptions provide a sound basis for including references to CRDs in the KIS. The strict word and page limits imposed by the FMC Regulations are also relevant for issuers considering what information to include in a KIS.¹⁰
18. Having regard to the restrictions in the FMC Regulations, NZBA considers that it would be very challenging to include references to CRDs in the KIS in a way that is compliant with the FMC Regulations.

Disclosure where the issuer is not a CRE but will become one if the offer is successful

19. It does not make sense to us for a PDS for an issuer that is not a CRE to refer to CRDs. A PDS speaks only as at the time of the offer and is not a continuous disclosure document. What happens after the offer period has closed is not relevant to disclosures in a PDS, and does not need to be included.¹¹

Question 2: What are your views on the proposed timing for updating each PDS?

20. NZBA consider this should be up to the issuer, if the issuer determines that it is necessary to update the PDS.

Question 3: What are your views on the proposed guidance for OMI?

21. NZBA consider this should be up to the issuer, if the issuer determines that it is necessary to update the PDS.

⁸ FMC Regulations, reg 27.

⁹ FMC Regulations, reg 29(1)(c).

¹⁰ FMC Regulations, reg 29(2).

¹¹ The offer period for a continuous issue obviously remains open, but there is no need to provide updates to previous investors.

Question 4: What are your views on the proposed guidance for SIPOs?

22. NZBA does not consider this guidance is necessary. It should be up to issuers to determine what policies are referred to in a SIPO. If an issuer determines that climate related policies are relevant to achieving the investment objective and strategies of a MIS, then there is already a requirement to include an explanation or a link to them in the SIPO.

Question 5: What are your views on the proposed information about annual reports?

23. NZBA does not consider this section is necessary as it only summarises the law.

Question 6: Is there anything missing that should be included in the information sheet? Please explain.

24. If the FMA goes ahead with the Guidance, NZBA suggests it should be amended to provide guidance for issuers to consider whether or not to treat CRDs as material information or to otherwise include a reference to the CRDs in the PDS, rather than creating a de-facto requirement.
25. NZBA also suggests that, if an issuer determines it is appropriate to refer to CRDs, a more appropriate location to include references to CRDs in a PDS may be the "Where you can find more information" section. This would ensure that the disclosure comes after the KIS and the other prescribed disclosures. This would reduce the risk that a reference to CRDs may detract from the prominence of other information.
26. We note for completeness that while the Guidance appears to apply to material information that is required to be included in all types of PDSs, the list of disclosure locations on page 3 does not include the "About" section that is required to be included in a PDS for derivatives. We assume this means that the Guidance does not apply to financial products that have not been specifically included such as derivatives, however, it would be helpful if the FMA could clarify this point.

Question 7: What are your views on the examples provided in the information sheet? Are they helpful? Are there any other examples we should include?

27. The examples only contemplate wording being added to the "About" section of a KIS. As we have said, we do not think this is appropriate. However, if issuers get comfortable adding a reference to CRDs in that section then the proposed examples could be further abbreviated given the page and word limits in the FMC Regulations. One way to achieve this could be to remove the summary of the key parts of climate statements and avoid providing multiple links to where CRDs can be found.
28. For example, alternative wording could be: *[Name of manager] is a climate reporting entity under Part 7A of the Financial Markets Conduct Act 2013. We are required to make annual disclosures called "climate statements" for [name of scheme/fund] which*

*are available on the Climate-related Disclosures Register at
<https://www.companiesoffice.govt.nz/all-registers/climate-related-disclosures/>.*

Question 8: Do you need any further guidance or support from the FMA in relation to disclosure requirements in relation to the CRD regime?

29. No, thank you.



NEW ZEALAND'S EXCHANGE
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30 August 2024

Financial Markets Authority

Level 2, 1 Grey Street

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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?

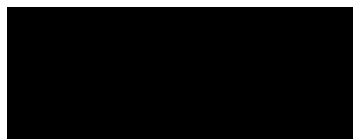
11. As noted in our response to Q1, we have concerns with the views expressed in the Draft Information Sheet that as a matter of course, climate statements are likely to be material to an investor's decision making in relation to an offer and should be lodged on Disclose as OMI in relation to an offer.

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,



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.

Feedback form

Consultation: Proposed guidance on references to climate statements in disclosure documents

Please submit this feedback form electronically in both PDF and MS Word formats and email it to us at consultation@fma.govt.nz with 'Consultation: Proposed guidance on references to climate statements in disclosure documents: [your organisation's name]' in the subject line. Thank you. **Submissions close on 30 August 2024.**

Date: 30 August 2024

Number of pages: 3

Name of submitter: [REDACTED]

Company or entity: Responsible Investment Association Australasia (RIAA)

Organisation type: NGO industry association

Contact name (if different):

Contact email and phone: [REDACTED]

Question number	Response
1. What are your views on the proposed guidance for PDS content?	<p>RIAA thanks the Financial Markets Authority (FMA) for the opportunity to provide feedback on the proposed information sheet on references to climate statements in disclosure documents (proposed guidance).</p> <p>RIAA's response centres around its mission to promote, advocate for, and support approaches to responsible investment that align capital with achieving a healthy and sustainable society, environment, and economy. With over 550 members managing more than NZ\$40 trillion in assets globally, and with a membership base covering over 73% of the professionally managed assets in NZ, RIAA is the largest and most active network of people and organisations engaged in responsible, ethical and impact investing in our region.</p> <p>RIAA welcomes the proposed guidance. In particular, RIAA agrees with the FMA that</p> <ul style="list-style-type: none">• <i>the introduction of the CRD regime</i>• <i>its effect on an issuer that is now classified as a CRE; and</i>• <i>the climate statements of a CRE,</i> <p><i>are likely to be material information that may influence an investor's decision making. This would be particularly the case where climate risks are a material risk for the business.</i></p> <p>RIAA submits that this materiality could be better reflected in the proposed guidance. For example, under 'PDS for an Initial Public Offer', the FMA has provided that an issuer "should consider" including a brief statement in its PDS that it will become a climate-reporting entity (CRE) following the successful offer of securities. Where the initial public offering is for an amount that will bring the issuer into the climate-related disclosures (CRD) regime, RIAA recommends the FMA <u>requires</u> the issuer to provide this disclosure, not merely suggesting that it "should consider" doing so.</p> <p>In addition, having regard to the content requirements of the CRD regime, RIAA submits there is value in additional information</p>

	<p>from climate statements being provided in a PDS, in particular those aspects which overlap with the PDS content requirements (in addition to any climate risk that is already being disclosed as part of the key risks section). This upholds the materiality of climate-related disclosure on an investor's decision making, particularly under an initial public offer.</p> <p>For example, the CRD regime requires disclosure of:</p> <ul style="list-style-type: none"> • Governance: "the role an entity's governance body plays in overseeing climate-related risks and climate-related opportunities, and the role management plays in assessing and managing those climate-related risks and opportunities"; and • Risk management: "how an entity's climate-related risks are identified, assessed, and managed and how those processes are integrated into existing risk management processes." <p>These aspects in particular are relevant to retail investors under a PDS as they go directly to understanding the organisation offering the financial product and the leadership looking after an investor's money. Providing this information not just lodged in a climate statement but also in a PDS can mitigate the risk of the quality of disclosure in climate statements varying widely between entities at the early stages of this regime.</p> <p>The impact of omitting this type of material information in a PDS is exacerbated under initial public offerings where the PDS contains the first information provided to the market and often will remain the primary source of disclosure for a period of time. The market and investors would expect that an issuer raising funds from the public that is, or will soon be, a CRE will have the relevant information regarding how it will manage both its climate risk and comply with the CRD regime. An entity's approach to governance and risk management regarding climate should address the materiality of climate activities on investors' decision making, without placing an insurmountable regulatory burden on the issuer. That an issuer has a climate governance & risk strategy in and of itself should constitute material information for an investor.</p> <p>RIAA understands the constraints of PDS page and word count limitations, and the issues that may arise through the addition of further disclosure obligations: see answer to question 3 below.</p>
2. What are your views on the proposed timing for updating each PDS?	N/A
3. What are your views on the proposed guidance for OMI?	<p>RIAA acknowledges that there is likely to be a broad variance to the quality of disclosure in the climate statements in the early stages of the regime, outside of any question of compliance. This will be the case whether the climate statements are lodged on the OMI as well as the CRD register or are linked within a PDS.</p> <p>RIAA's recommendation in question 1 for specific information from the climate statement to be provided in a PDS seeks to address this directly. As the OMI is not constrained by word and page limits as in PDS, the OMI register could be a suitable location for providing this specific information.</p>

4. What are your views on the proposed guidance for SIPOs?	<p>RIAA supports the proposed guidance for Statements of Performance Objectives (SIPO) to include an explanation of, or a link to, a CRE's climate-related investment policies these policies if they are directly relevant to achieving the investment objectives and strategies of the managed investment scheme.</p> <p>This is consistent with the expectation of New Zealanders: RIAA's consumer report Voices of Aotearoa: Demand for Ethical Investment in New Zealand 2024 identified that 77% of Kiwis expect their funds to be invested ethically or responsibly. This trend suggests consumer demand will drive MIS managers to implement climate-related investment policies more often, to address consumer demand. RIAA looks forward to seeing greater inclusion of climate-related investment policies in SIPOs in conjunction with changing consumer attitudes, and as regulated by the FMA.</p>
5. What are your views on the proposed information about annual reports?	N/A
6. Is anything missing that should be included in the information sheet? Please explain.	N/A
7. What are your views on the examples provided in the information sheet? Are they helpful? Are there any other examples we should include?	<p>The objective of NZ CS 1 is to provide a framework for CREs to "consider...climate-related opportunities" and with that, defining 'climate-related opportunities' as including (but not limited to) 'strategies of climate mitigation or adaptation'.</p> <p>Therefore, RIAA suggests the following amendments (in bold) in the example under 'PDS disclosure' of the proposed guidance:</p> <div style="border: 1px solid black; padding: 10px; margin: 10px 0;"> <p><i>[Name of manager] is a climate reporting entity under Part 7A of the Financial Markets Conduct Act 2013. We are required to make annual disclosures called "climate statements" for [name of scheme/fund] covering governance arrangements, strategy, risk management, and any metrics and targets for mitigating and adapting to climate-related impacts we may have. The annual climate statements for [name of scheme/fund] are on the Climate-related Disclosures Register, which can be accessed at https://www.companiesoffice.govt.nz/all-registers/climate-related-disclosures/ [and at disclose- register.companiesoffice.govt.nz].</i></p> </div> <p>This properly reflects that a CRE may not have 'strategies of climate mitigation or adaptation' under the CRD regime.</p>
8. Do you need any further guidance or support from the FMA in relation to disclosure requirements in relation to the CRD regime?	N/A
Feedback summary – if you wish to highlight anything in particular	
<p>Please note: Feedback received is subject to the Official Information Act 1982. We may make submissions available on our website, compile a summary of submissions, or draw attention to individual submissions in internal or external reports. If you want us to withhold any commercially sensitive or proprietary information in your submission, please clearly state this and note the specific section. We will consider your request in line with our obligations under the Official Information Act.</p>	
Thank you for your feedback – we appreciate your time and input.	

30 August 2024

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**SUBMISSION ON THE CONSULTATION: PROPOSED GUIDANCE ON
REFERENCES TO CLIMATE STATEMENTS IN DISCLOSURE DOCUMENTS**

Question 1: What are your views on the proposed guidance for PDS content?

1. We do not consider that the Guidance is necessary for the reasons set out below:
 - (a) it should be up to issuers to determine what constitutes material information;
 - (b) we are not aware of any uncertainty in this area that calls for guidance. The Financial Markets Conduct Act 2013 ("**FMC Act**") has been in force for many years, and issuers and their advisors typically have the skills and experience to determine what is material information;
 - (c) we are concerned that the Guidance would create a de-facto disclosure requirement beyond what the FMC Act and the Financial Markets Conduct Regulations 2014 ("**FMC Regulations**") require, because climate-related disclosures ("**CRDs**") may not be material information for all climate reporting entities ("**CREs**"); and
 - (d) we are concerned that the Guidance may create compliance risks for CRE issuers.
2. If the Guidance is to be released, we think it should be amended so that it only contains information to assist issuers to determine whether their CRDs constitute material information.

Material information
3. The FMC Act requires issuers to assess what is material information. The FMC Act provides that material information in the context of a regulated offer is information that a reasonable person would expect to, or be likely to, influence

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persons who commonly invest in financial products in deciding whether to acquire the financial products on offer. Importantly, material information must relate to the particular financial products on offer or the particular issuer, rather than to financial products generally or issuers generally.¹

4. The Guidance proceeds on the basis that CRDs are likely to be material information for all issuers. We do not consider that is the correct approach. Issuers that are CREs should turn their minds to the statutory test and assess their CRDs against that test. While it is possible that the CRDs of a particular CRE issuer may constitute material information, it is not correct to treat CRDs of all issuers as material information. If any of the information in a CRD would constitute material information, then an issuer already is required to include that information in a PDS² or Disclose register entry. Issuers have included these types of disclosures in their PDSs without being prompted to do so by specific guidance.

De-facto disclosure requirement

5. We are concerned that the Guidance will become a de-facto disclosure obligation for issuers. The Guidance suggests that all CRE issuers should reference CRDs in their PDSs. It is likely that issuers will feel compelled to follow the Guidance, meaning it will create a de-facto disclosure requirement on all issuers that are classified as a CRE. We do not consider that this approach is consistent with effective disclosure in a PDS. In our view, effective disclosure occurs when the information disclosed reflects the particular circumstances of the offer and issuer of the financial product.
6. The FMA has previously released guidance on the content and form of Disclose register entry information.³ That guidance provided that it is not possible to produce a definitive list of factors that will always be material to an offer.⁴ It suggested that issuers should use a due diligence process to help them identify all the information material to their offer. Once the due diligence process has identified all material information, issuers should decide what to put in the PDS and what to put in the Disclose register entry.⁵
7. We agree with this approach and consider that it should apply to CRDs as well as to any other information because CRDs may not be material information for all CRE issuers.

Making a disclosure in the KIS

8. The Guidance proposes that references to CRDs should be made in the "About" section of the KIS. We do not agree with this. The purpose of a KIS is to provide the issuer's assessment of the most significant aspects of the offer of the financial products that are relevant to a prudent but non-expert person's decision

¹ FMC Act, s 59(1).

² In this submission, references to a PDS include a reference to an LDD.

³ Financial Markets Authority, *Guidance note: Content and form of Disclose register information* (2015), at 6

⁴ At 6.

⁵ At 6.

as to whether or not to acquire the financial products.⁶ The FMC Regulations provide that the KIS must contain no information other than the required or permitted information.⁷

9. It may be difficult for a CRE issuer to comply with the strict requirements of clause 29(1)(c) of the FMC Regulations and still include a reference to CRDs in the KIS. Clause 29(3) provides that a KIS does not fail to comply with clause 29(1)(c) merely because it contains additional information that is necessary to clarify required or permitted information or to put required or permitted information in context to ensure that the information disclosed is not false or misleading. However, this exception is narrowly framed and may not provide a sound basis for including references to CRDs in the KIS.

Disclosure where the issuer is not a CRE but will become one if the offer is successful

10. We do not think that a PDS for an issuer that is not a CRE should refer to CRDs. A PDS is relevant only as at the time of the offer. What happens after the offer period has closed does not need to be included.

Question 2: What are your views on the proposed timing for updating each PDS?

11. We consider this should be up to the issuer, if the issuer determines that it is necessary to update the PDS.

Question 3: What are your views on the proposed guidance for OMI?

12. We consider this should be up to the issuer, if the issuer determines that it is necessary to update the PDS.

Question 4: What are your views on the proposed guidance for SIPOs

13. We do not consider this guidance is necessary. It should be up to issuers to determine what policies are referred to in a SIPO.

Question 5: What are your views on the proposed information about annual reports?

14. We do not consider this section is necessary as it only summarises the law.

Question 6: Is there anything missing that should be included in the information sheet? Please explain.

15. We suggest that, if the Guidance is released, it should be amended so that it merely provides assistance for issuers to determine whether their CRDs constitute material information.
16. We also suggest that a more appropriate location for issuers to make a disclosure would be the "Where you can find more information" section. We think

⁶ FMC Regulations, reg 27.

⁷ At reg 29(1)(c).

this is a better location than the KIS, in terms of relative prominence with the information prescribed by the FMC Regulations. It would also avoid the risk of an issuer not complying with the requirements of what can be included in the KIS and other prescribed disclosure sections of a PDS.

Question 7: What are your views on the examples provided in the information sheet? Are they helpful? Are there any other examples we should include?

17. If issuers choose to make a disclosure, we think it can be simplified. For example : [●] is a climate reporting entity under Part 7A of the Financial Markets Conduct Act 2013. We are required to make annual disclosures called "climate statements" for [●] which are available on the Climate-related Disclosures Register at <https://www.companiesoffice.govt.nz/all-registers/climate-related-disclosures/>.

Question 8: Do you need any further guidance or support from the FMA in relation to disclosure requirements in relation to the CRD regime?

18. No, thank you.
19. Please let us know if you have any questions or would like to discuss any aspect of our submission in greater detail.

Yours faithfully
RUSSELL McVEAGH

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[Redacted text block]	[Redacted text block]

30 August 2024

Financial Markets Authority - Te Mana Tatai Hokohoko
Level 2, 1 Grey Street,
PO Box 1179, Wellington 6140

By email: consultation@fma.govt.nz

Tēnā koe Financial Markets Authority - Te Mana Tatai Hokohoko,

Securities Industry Association submission in response to FMA consultation paper: Guidance on references to climate statements in disclosure documents – proposed information sheet (July 2024)

Please find attached the submission prepared by the Securities Industry Association (**SIA**) in response to the Consultation paper: *Guidance on references to climate statements in disclosure documents – proposed information sheet* (July 2024). We thank the Financial Markets Authority - Te Mana Tatai Hokohoko (**FMA**) for the opportunity to present our comments on this consultation paper.

About SIA

SIA represents the shared interests of sharebroking, wealth management and investment banking firms that are accredited NZX Market Participants. SIA members employ more than 500 accredited NZX, NZDX, and NZX Derivatives Advisers and more than 400 Financial Advisers nationwide. Our members' combined businesses work with over 300,000 New Zealand retail investors, with total investment assets exceeding \$90 billion, including \$45 billion held in custodial accounts. Members also work with local and global institutions that invest in New Zealand.

Key points

The Securities Industry Association (**SIA**) welcomes the intent of the FMA to publish guidance to provide clarity to climate related entities (**CREs**) about its expectations for climate-related disclosures in disclosure documents. Feedback from industry members is that the guidance is a good starting point but that more work needs to be done to understand the consequences of treating climate statements as “material information”. The current disclosure-based regime for securities issues requires initial and ongoing disclosure of material information, with strong penalties imposed on issuers and directors who do not disclose that information correctly. For this reason, thorough due diligence processes are required before signing off on a Product Disclosure Statement (**PDS**) and register entries, often with consequent high issue costs.

Because of this, careful consideration needs to be given to how climate statements are incorporated into the disclosure regime for securities issues. SIA accepts that there is a place for this kind of disclosure. However, the FMA might usefully consider issuing guidance regarding its expectations around the timing and level of due diligence applicable to climate statements. For example, is there a requirement to keep climate statements up to date in the event of material changes as per s82 of the Financial Markets Conduct Act 2013 (**FMC Act**)? Or, as with financial statements, can climate statements be treated as “point in time” documents that require careful consideration at the time of

lodgement, but apart from that they stand on their own as true and correct as at the applicable lodgement date?

SIA supports regulation that creates a framework for New Zealand's capital markets to thrive and contribute positively to the New Zealand economy. The regulatory environment should provide a pathway to attract new listings and encourage listed companies to raise capital and grow while providing the necessary safeguards for investors and investor confidence.

Another key concern relates to the guidance, in effect, broadening the scope of disclosure requirements further than the current FMC Act obligations. In particular, the guidance broadly states that "climate statements of a CRE are likely to be material information that may influence an investor's decision making." Yet, it is our understanding that material climate-related risk can already be included in a PDS, i.e., if a climate-related risk was material, it should and could be included in the PDS and that the disclosure would be subject to appropriate assessment and due diligence. A CRE or potential CRE should be able to make that assessment in the course of their general disclosure obligations.

We are highly concerned that the guidance as it is currently written to include all climate statements in a PDS or Disclose register, will impose a barrier to new listings and act as a deterrent to the growth of companies on the NZX due to the potential additional due diligence obligations on climate reporting entities.

Further discussion welcomed

Some SIA member firms may make individual submissions based on issues specific to their business. Those issues and views may not be reflected in this submission. No part of this submission is required to be kept confidential.

Please get in touch should you have any questions about this submission or require further information.

Nāku noa, na

[REDACTED]

[REDACTED]

[REDACTED]

SECURITIES INDUSTRY ASSOCIATION

[REDACTED]

Feedback form

Consultation: Proposed guidance on references to climate statements in disclosure documents

Date: 30 August 2024 Number of pages: 7 (cover letter 1-2; submission 3-6)

Name of submitter: [REDACTED]

Company or entity: Securities Industry Association

Organisation type: Industry Association

Contact name (if different):

Contact email and phone: [REDACTED]

Question number	Response
1. What are your views on the proposed guidance for PDS content?	<p>The Securities Industry Association (SIA) welcomes the intent of publishing guidance that provides clarity about the Financial Markets Authority's - Te Mana Tatai Hokohoko (FMA) expectations for Product Disclosure Document (PDS) content.</p> <p>However, the SIA is concerned that, as currently drafted, the guidance suggests that an issuer's status as a climate reporting entity is, in and of itself, material information that ought to be included in a PDS.</p> <p>Outside of the prescribed content requirements for a PDS (as per the schedules to the Financial Markets Conduct Regulations 2014), the responsibility for making an assessment of materiality, and how that information ought to be presented in a PDS, rightfully sits with the issuer. SIA cautions against an approach where the FMA seeks to extend "prescribed content" through guidance – particularly given the length restrictions already imposed under the Financial Markets Conduct 2013 (FMC Act).</p> <p>We appreciate that the guidance notes that the proposed disclosure is just "one way for climate related entities (CREs) to comply with the statutory requirements to disclose all material information". However, SIA submits that it is important for the guidance to also make clear that the initial assessment regarding materiality is a matter for the issuer to determine. Only then, once an assessment regarding materiality has been made, might the issuer consider adopting the suggested disclosure from the guidance.</p>

Further, given the existing disclosure regime already requires that all material information relating to the regulated offer is disclosed within a PDS or on the register entry, we expect that climate-related risk would be included in a PDS if it was material. A CRE, potential CRE or non-CRE should be able to make that assessment preparing for an Initial Public Offering (**IPO**) or capital raising, and in the course of their general disclosure obligations, the disclosure is then subject to appropriate assessment and due diligence.

We are concerned that in taking a position where climate related disclosures and the statements themselves are material information, the guidance will have significant consequences for issuers and the directors of those entities by way of liability for the information disclosed. Given the pecuniary penalties for lodging a defective disclosure, we expect extended due diligence will be required to test all information contained within climate statements to mitigate any risk of this occurring. We note that not all information in a climate statement may, in fact, be material.

The potential additional due diligence obligations on those entities will come at a cost, ultimately imposing a barrier to new listings and acting as a deterrent to the growth of listed companies on the NZX (as well as a potential barrier to other issuers that may be unable to absorb the additional ongoing disclosure obligations relating to climate statements).

We appreciate that the guidance seeks to bring clarity to the disclosure process, for example, stating that you are a climate reporting entity because that is considered material information. However, we believe that the guidance takes this further than necessary and beyond the requirement of the Act.

It is also unclear what the expectation for this looks like, i.e., are directors required to undertake a full due diligence assessment in relation to climate-related statements at the time of offer? And we note that a new issuer is different to an existing issuer given an existing issuer is already required to disclose anything that is considered material. There is also a difference between CRE and non-CREs and the ways they qualitatively and quantitatively assess those risks and disclose the risks in a PDS. We note that non-climate reporting entities would disclose climate-related risks differently, given they haven't gone through the mandatory reporting cycle.

	<p>It is noted that the FMC Act and Regulations don't specify where references to climate statements are appropriately included in the PDS nor how much information or what type of information must be included. The imposed way of reporting climate related disclosure (CRD) within the PDS appears limited and prescriptive – we believe entities should have discretion in how they report material information for the benefit of investors. We are also not confident that having a prescribed limit to the word count is beneficial to ensuring investors have the necessary information.</p> <p>It is our view that additional due diligence requirements will have a significant chilling effect on potential IPOs without delivering any meaningful benefit to investors. Regulatory settings should encourage new listings and growth of capital markets, not act as a deterrent to listing on the NZX and introduce barriers to listing. It would be highly concerning to see companies choose not to list or private equity as a preferred pathway, or to list in another market, for example, the ASX.</p>
2. What are your views on the proposed timing for updating each PDS?	<p>The time frame pre-supposes that PDSs or register entries must be updated. Where a PDS or register entry needs to be updated then we support the suggested educative and constructive approach.</p>
3. What are your views on the proposed guidance for OMI?	<p>The guidance note acknowledges that there is no mandatory requirement for a CRE's climate statements to be uploaded to the Disclose register as OMI in addition to filing on the new Climate-related Disclosures register (CRD register). We agree with this approach.</p> <p>SIA also agrees that it is possible (although not necessarily "likely") that the climate statements of a CRE could be information that might influence someone when deciding whether to invest in a particular financial product (i.e., those statements may be considered "material information" in relation to a regulated offer).</p> <p>In these circumstances, however, SIA considers that careful consideration ought to be given to how climate statements are disclosed for the purposes of section 57 of the FMC Act and to what extent continuous disclosure obligations apply to those statements.</p> <p>Of the two options suggested in the guidance note, SIA considers that the better approach is for the climate statements to be filed only on the CRD</p>

	<p>register and for a reference to be included in the OMI to where those statements may be found (noting that section 13(4) of the FMC Act only allows information to be incorporated by reference into a PDS or register entry if expressly authorised by the FMC Regulations).</p> <p>In doing so, the climate statements will not sit on the register entry and there will be a clear delineation between documents (like the PDS, OMI etc) that are subject to a requirement to be updated in the event of a material change, and static documents that are created annually and filed as at a particular date (like with scheme financial statements, which are lodged on the scheme register). This distinction is not simply academic – a clear delineation between the two becomes important when considering an issuer’s continuous disclosure obligations. For example, the annual confirmation notice required for managed investment schemes, requires directors to actively consider whether the PDS and register entry contain any false or misleading statements or omit any material information that ought to be in there. If climate statements are required to sit on the register entry, then absent clear guidance from the FMA, continuous issuers might feel compelled to undertake an extensive (and expensive) due diligence exercise on their climate statements to confirm that everything was disclosed correctly before lodging their annual confirmation notice. Because climate statements are prepared as at a particular date, there ought to be no expectation that they are reviewed and updated for the purposes of ongoing disclosure obligations.</p> <p>Similar concerns apply in respect of new issues from existing CREs.</p>
<p>4. What are your views on the proposed guidance for SIPOs?</p>	<p>A manager being a CRE in and of itself is not relevant to the investment policies and objectives of a fund or scheme. It solely comes down to whether or not a particular product is an “integrated financial product”, which is already covered by a number of FMA publications.</p>

