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Deepika Patwardhan  
Director  
Climate & Energy Division, Australian Treasury  
Canberra

From: Roger Wallis  
Direct: +64 9 357 9077  
Mobile: +64 27 478 3192  
Email: roger.wallis@chapmantripp.com  
Ref: 100612631/3436-1691-8315.1

## By Email

Dear Deepika

### CLIMATE-RELATED DISCLOSURE: SUBMISSIONS ON EXPOSURE DRAFT

- 1 Thank you for the opportunity to make submissions on the draft *Climate-related financial disclosure: exposure draft legislation* released for consultation on 12 January 2024 (**draft legislation**).
- 2 Chapman Tripp has considerable expertise in helping our clients implement the climate-related disclosure regime contained in Part 7A of the New Zealand Financial Markets Conduct Act 2013 (**FMCA**).
- 3 A number of our listed issuer clients also have material subsidiaries that would be required by the draft legislation to prepare climate-related financial disclosure reports for their very large Australian subsidiaries, and in time their large subsidiaries.
- 4 Our submission is directed towards seeking to remove that duplication, given that activity is also governed by the Part 7A FMCA requirement to report on climate-related disclosure of a group (including subsidiaries incorporated or formed outside New Zealand).

#### Submission

##### ***Language used to scope requirements***

- 5 Chapter 2M of the Corporations Act 2001 (**Act**) as it currently stands, applies financial reporting obligations on "companies, registered schemes, registrable superannuation entities and disclosing entities".
- 6 By contrast, the draft legislation applies climate-related disclosure obligations on "entities". It is not clear to us whether a distinction is intended, given s 285 of the Act seems to otherwise limit application of Chapter 2M to companies, registered schemes, registrable superannuation entities and disclosing entities. If the term "entity" is retained we suggest s 64A of the Act is also amended to limit the meaning of "entity" in Chapter 2M to "companies, registered schemes, registrable superannuation entities and disclosing entities".
- 7 Importantly for our client base, s 285(2) of the Act limits the application of Chapter 2M to disclosing entities incorporated or formed in Australia. That limitation is important, as it means that New Zealand incorporated listed issuers would not be required to report under the modified Chapter 2M as well as Part 7A of the FMCA.



***Subsidiaries of Part 7A FMCA reporters***

- 8 However, a number of our New Zealand listed clients have material Australian subsidiaries. At least some of them would satisfy the *group 1* test, and in time others would fall into *group 2* and *group 3*.
- 9 Under Part 7A of the FMCA, a New Zealand listed issuer parent is required to prepare group climate statements for the listed parent and all subsidiaries whether incorporated or formed in New Zealand or elsewhere.
- 10 Part 7A FMCA group financial statements need to comply with climate standards made by the New Zealand External Reporting Board (**XRB**) under the New Zealand Financial Reporting Act 2013. The climate standards made by XRB to date are substantially similar to those proposed by the Australian Auditing and Assurance Standards Board (**AUASB**).
- 11 S 292A(2) of the draft legislation effectively provides for group climate statements in Chapter 2M if:
- (a) the accounting standards require an entity (the **group head**) to prepare financial statements in relation to a consolidated entity for the financial year; and
  - (b) the group head elects to prepare a sustainability report for the consolidated entity for the financial year.
- 12 In that event then:
- (c) the group head is the only entity in the consolidated entity that must prepare a sustainability report for the financial year; and
  - (d) the sustainability report must be prepared as if the consolidated entity is a single entity.
- 13 However, because of s 285(2) of the Act, for New Zealand listed issuers incorporated or formed in New Zealand, Australian accounting standards will not require financial statements to be prepared in relation to a consolidated entity, and so the relief in s 292A(2) for material subsidiaries having to separately prepare climate statements will not be available.
- 14 Accordingly, to remove the duplication and significant additional costs imposed on New Zealand listed issuers with material subsidiaries in Australia, we submit that s 292A be expanded to recognise that where New Zealand law (and, perhaps, other prescribed jurisdictions), requires comparable climate statements to be prepared and publicly filed, their Australian subsidiary entities are relieved from the Chapter 2M Climate-related disclosure obligations. This exemption could be achieved by providing for a legislative instrument to specify the parameters of the exemption, to enable flexibility in the way it is framed over time.



#### **Audit standards**

- 15 S 1705D of the draft legislation requires the AUASB to make auditing standards under section 336 that provide standards for reviews under subsection 301B(1) before 1 July 2024.
- 16 We query whether this time limit is necessary, or realistic, given the first periods requiring review will not end until 30 June 2025, and in the absence of any draft review standard at this stage.
- 17 We have followed development of assurance standards under the New Zealand regime; in our experience they have taken longer than expected to develop. The XRB has adopted a transitional standard to facilitate assurance of Greenhouse Gas metric disclosures and is awaiting further progress with the IAASB's *Proposed International Standard on Sustainability Assurance 5000*, which is not due to be finalised until near the end of 2024.
- 18 Accordingly, we submit the date for finalisation of a review standard could be changed to 31 December 2024, to enable AUASB to take account of further work internationally.

#### **Further information**

- 19 Please contact the writer if you would like us to clarify any aspect of this submission.

Yours sincerely

  
Roger Wallis  
Partner