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CLIMATE ACTION NZ INC.

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SUBMISSIONS ON THE CLIMATE-RELATED FINANCIAL DISCLOSURES DISCUSSION DOCUMENT

Summary of submissions

I. Lawyers for Climate Action NZ Inc. (**LCANZI**) is a society comprising approximately 250 lawyers. Our goals are to:

(a) raise public awareness and understanding of the threat of climate change;

(b) advocate for legislation and policies to ensure New Zealand meets or exceeds its commitment under the Paris Agreement and achieves net zero carbon emissions as soon as possible; and

(c) facilitate free or reduced cost legal assistance to community groups working to fight climate change.

II. We strongly support the proposed introduction of climate-related financial disclosure requirements in New Zealand and, in particular, the introduction of a mandatory disclosure regime based on the TCFD framework, which we submit is the most appropriate framework for such reporting.

III. Generally, we agree with the proposals made by the government with three key exceptions:

(a) We submit that the proposed scope is too narrow and should be extended to include a wider range of entities, including privately held companies, trusts, limited partnerships and local government organisations, but with an assets/revenue-based exemption for entities with less than $20m assets/$10m revenue.

(b) We submit that the proposed rules should come into effect immediately after they are passed to ensure that climate-change risk factors are caught as quickly as possible, and climate-related opportunities seized. We propose that if the

regulations come into effect on 1 July 2021, full reports should first be required for financial years ending on or after 30 June 2022.

(c) We submit that the government should ensure that guidance is available on baseline assumptions and model scenarios for smaller companies to use in their climate-change related risk analysis and disclosure.

Chapter 1: The context

1. Is the TCFD reporting framework the most appropriate framework for New Zealand?

1.1. Yes, the TCFD is the most appropriate framework for New Zealand for the reasons cited at page 194 of the Productivity Commission's *Low Emissions Economy* final report (set out below):

- adaptable by all organisations;
- included in mainstream annual financial filings;
- designed to solicit decision-useful, forward-looking information on financial impacts;
- strong focus on risks and opportunities related to the transition to a lower-emissions economy.

1.2. These qualities make the TCFD easily adaptable to, and adoptable in, New Zealand's unique economic environment.

1.3. Additionally, the TCFD reporting standards allow international comparisons. They have been adopted by the G20, 898 organisations, and the governments of Belgium, France and the United Kingdom.[1] Adopting a climate-related financial disclosures standard that is internationally recognised will allow New Zealand businesses to operate and compete at a level commensurate to other overseas entities and will reduce compliance costs for New Zealand businesses operating in other countries where the TCFD framework has already been adopted; adopting another climate-related financial disclosure standard may require some New Zealand businesses to comply with two or more standards.

2. Do you agree with the conclusions we have drawn at the end of chapter 1?

2.1. Yes, we do agree with the conclusions drawn at the end of chapter 1.

[1] www.fsb-tcfd.org

Chapter 2: Objective and problem definition

3. Do you agree with the objectives as set out above?

3.1. Yes, we agree with the objective set out in chapter 2 to move to a position where "the effects of climate change become routinely considered in business and investment decisions in New Zealand". This will allow for more environmentally friendly business practices and investment decisions.

3.2. We agree that this can only be achieved through compliance with rigorous financial reporting requirements to allow key stakeholders, not only investors, but also suppliers, customers and employees, as well as the public in general, to make decisions surrounding their investments, and supply/purchasing behaviour and to place scrutiny on those entities that do not comply with those standards or who engage in business activity that may have implications for climate change.

3.3. Recognising this broader group of stakeholders is critical; a customer, for example has a vital interest in the risks inherent in the entities they do business with, and also the impact they are having on the environment.

4. Should other objectives also be considered?

4.1. No, we submit that the objective set out at paragraph 49 of the discussion document succinctly states the point of the TCFD and climate-related financial disclosures.

5. Do you agree with the problem definition? Are there other aspects we should consider?

5.1. We have interpreted the problem definition to consist of five principles:

- The relevant markets do not currently have the information they need;
- The status quo is not delivering information at the required pace;
- There are challenges to the status quo on disclosure;
- There are benefits of adopting TCFD early;
- There are concerns about introducing mandatory reporting.

5.2. We make the following comments based on the above statements.

The markets do not currently have the information they need

5.3. We agree with this statement and the comments made about it at paragraphs 50 to 53 of the discussion document. The status quo does not allow investors and other stakeholders such as suppliers, customers and employees to make informed decisions about how investments might align with their values or risk appetite on climate-related issues. By making it a requirement to disclose climate-related financial information, the government is creating an additional incentive for companies to meet climate-related goals to ensure that they do not face public/consumer criticism or loss of confidence from investors.

But the relevant markets are not limited to the capital markets. They also include the markets for the supply of goods and services and for employment, and these need to be considered too.

The status quo is not delivering information at the required pace

5.4. We agree with this statement and the comments made about it at paragraphs 54 and 55 of the discussion document. Climate change requires swift action and the status quo is slow moving as it relies on voluntary, ad hoc disclosures, rather than an organised or uniform approach.

There are challenges of the status quo on disclosure

5.5. We agree with this statement and the comments made about it at paragraph 56 of the discussion document. Additionally, we submit that the status quo is ineffective because:

- it provides limited official information or guidance on what kind of reporting entities should or could undertake, scenarios they should consider when undertaking reporting or modelling that is available;
- it requires entities to be proactive and forward-thinking and incur additional expenses with no ‘guarantee’ of any long or short-term benefit;
- it may have an unintended consequence of giving an advantage to those entities who have the resources to voluntarily consider and release climate-related financial information or, conversely, it may give an advantage to the entities which are most exposed to climate-risk but which fail to give disclosure, with the result that the market is unable to accurately price that risk.

The benefits of adopting TCFD early

5.6. We agree that early adoption of TCFD is in the interests of individual entities and the markets (for investment, the supply of goods and services, and employment) and economy as a whole.

Concerns about introducing mandatory reporting

5.7. We disagree with the concerns outlined at paragraphs 58 to 60, including the reported suggestion at paragraph 58 by CA ANZ that there was no need for regulatory changes because the effects of the recently introduced NZX Corporate Governance Code and related ESG guidance note were yet to be seen.

5.8. We submit that regulatory changes are necessary to ensure that directors' minds are turned directly to climate-related risks; the NZX Corporate Governance Code and the related ESG guidance note do not go far enough in that they only concern NZX-listed companies and not other targeted entities such as non-listed fund managers and insurance companies. Additionally, a climate specific report should not be folded into the ESG guidance note, given its critical importance as an intersectional issue that impacts all aspects of decision-making.

Chapter 3: Climate-related reporting obligations in New Zealand

6. What are the implications of section 211 of the Companies Act 1993 for the disclosure of material climate-related information in annual reports?

6.1. As a preliminary point, we do not think the disclosure should be limited to the annual report. As pointed out below it should be stand alone as it will be relevant to suppliers and employees as well as investors.

6.2. Section 211 of the Companies Act sets out the minimum mandatory contents of each annual report of a company. The section does not explicitly contain any reference to climate-related financial disclosures, but requires disclosure of any change in the nature of the business or businesses in which the company has an interest, where the Board believes the information is material for shareholders to have an appreciation of the state of the company's affairs (provided it would not be harmful to the business of the company to disclose the information). This requirement is capable of requiring climate-related disclosure in certain circumstances but is of limited scope.

6.3. The most significant potential implication of section 211 for climate-related disclosure is section 211(3) which provides that a company is not required to comply with most of the annual report requirements if 95% of shareholders agree

that it is not required to do so. We submit that this option should <u>not</u> be available in relation to climate-related financial disclosure, as the disclosure is not solely for the benefit of shareholders (as discussed further below).

6.4. Section 211 does not limit the contents of annual reports or preclude separate reporting requirements being imposed on companies. Accordingly, it does not prevent additional rules from being made for climate-related financial disclosure, either within annual reports or in some other form. We submit that these should be introduced in manner that does not make them subject to section 211(3).

7. What are the implications of the NZX Listing Rules for the disclosure of material climate-related information by (a) equity issuers, and (b) debt issuers?

7.1. Under the NZX Listing Rules, as they currently stand, there is no requirement for equity or debt issuers to consider and release climate-related information to the market unless it is "material information" that a reasonable person would expect to have a material impact on the price of the issuer's securities, and that relates to that particular issuer, rather than to issuers generally (NZX Rules 3.1.1.).

7.2. All NZX main board listed entities must also report in accordance with the NZX Corporate Governance Code, or, if not, explain why not.

7.3. The NZX Corporate Governance Code states that issuers should provide non-financial reporting on material environmental, social and governance (ESG) factors and practices but does not set out any specific principles or requirements. NZX has also published an ESG Guidance Note dated 1 January 2019 but the guidance offered is very limited and is not specific to climate-related disclosure.

7.4. The effect of this is that climate change is not explicitly required to be considered and is often not at the forefront of companies' operations and risk-management and investment behaviour but is rather an afterthought.

7.5. The upshot is that the NZX Listing Rules (and NZX Corporate Governance Code) do not sufficiently address climate change related financial disclosures and risks in a way that ensures adequate disclosure or allows stakeholders, investors, suppliers, customers and employees, and the public to scrutinise businesses and make informed investment decisions.

7.6. In our view, the introduction of a mandatory climate related financial disclosure regime is necessary to close this gap. Consequential amendments may be required to the NZX Listing Rules and Corporate Governance Code to recognise the new disclosure requirements and ensure compatibility of the Rules. However, the proposed regime would be consistent with the existing objectives of the NZX

Rules and Corporate Governance Code and adapting these to achieve consistency with a new disclosure regime should be straightforward.

8. How should proposed adaptation reporting under the Climate Change Response (Zero-Carbon) Amendment Bill and the climate-related financial reporting disclosures proposed in this discussion document best work together?

8.1. We propose that the organisations subject to adaptation reporting requirements in section 5ZW of the Climate Change Response (Zero – Carbon) Act should also be subject to reporting requirements under the TCFD framework. Aligning these two regulatory requirements by requiring the adaptation reporting to also meet the TCFD framework, albeit with minor modifications on a case-by-case basis, will provide ease of access to information and consistency across the board.

8.2. The information that can be requested under section 5ZW of the Zero-Carbon Act includes:

- a description of the organisation's governance in relation to the risks of, and opportunities arising from, climate change;
- a description of the actual and potential effects of the risks and opportunities on the organisation's business, strategy and financial planning

8.3. This directly aligns with the TCFD Framework, as set out in Figure 4 of the Discussion Document.

8.4. Aligning the adaptation reporting with the TCFD will provide a structured model for organisations to use to collect and prepare the information required, and reduces the potential for 'double-up' or increased work, especially if entities are subject to both reporting frameworks.

8.5. There is also a strong benefit for the Climate Change Commission with regard to producing national risk assessments if adaptation reporting information is provided in the TCFD format. This would streamline and better facilitate the development of the national risk assessment, as all information, including information from private companies and other entities subject to the TCFD reporting requirements (see below at 21-23), would be available in the same format. This would allow for direct comparison and conclusions to be drawn easily.

Chapter 4: Directors' legal obligations and climate change

9. Do directors' legal obligations in New Zealand result in consideration, identification, management and disclosure of climate-related risks?

9.1. Directors' existing legal obligations require them to consider, identify and manage climate-related risks if those risks are matters which a reasonable director exercising appropriate care, diligence and skill would consider, identify or manage. Given the current state of knowledge about climate change, and the foreseeable risk of harm to many aspects of our environment and economy, our view is that all directors have, at a minimum, a present obligation to consider whether climate-related risks are potentially material to their company, and to take appropriate steps to manage any such risks which are identified as a result. (Although we doubt whether the majority of directors are doing so.)

9.2. We therefore agree with the legal opinion prepared for the Aotearoa Circle that climate change requires consideration and disclosure in the same way as any other business or financial risk. However, disclosure of climate-related risks is not required at present, unless and until those risks become financially material to the company.

9.3. There is a developing international discussion about whether the fiduciary duties owed by directors encompass obligations to investors, and also other stakeholders such as suppliers, customers and employees other than shareholders, such as employees, customers, suppliers and the general public. If so, the obligation of directors to consider, identify and manage climate-related risks, or to disclose climate-related information, might extend beyond simply addressing those risks which are potentially financially material.

10. Do you agree with the legal opinion prepared for the Aotearoa Circle?

10.1. Yes. However, as noted in the opinion, it is focused on the existing law as conventionally understood and applied and does not take into account the scope for this to be altered by either legislative change or a shift in judicial interpretation of the law. For example, it is possible that future judgments may recognise that directors' duties encompass duties to stakeholders (such as investors, suppliers, customers and employees) whose interests are not purely financial.

10.2. We also note the Australian Hutley SC opinions and Mr Haynes QC's recent comments (see 16 below) which further describe the level of risk for directors and trustees.

Chapter 5: Designing a comply-or-explain disclosure system for New Zealand

11. Do you favour the status quo or new mandatory disclosure requirements?

11.1. We favour mandatory disclosure requirements. The status quo does not place any requirements on companies operating in New Zealand to consider climate-related risks and disclose those risks (and their impacts) to its shareholders and the general public. This means that the opportunity to make timely and prudent investment decisions about preventive or adaptive measures may be lost.

12. If a mandatory approach is adopted, do you agree with the Productivity Commission that a mandatory (comply-or-explain) principles-based disclosure system should be adopted?

12.1. Yes, we do agree that a mandatory (comply-or-explain) principles-based disclosure system should be adopted. We should allow for the possibility that some entities will be able to explain why disclosure is not applicable to them, although we foresee that there will be only limited situations where an entity will not need to comply.

12.2. We submit that there may need to be sanctions on those entities who do not comply (or adequately explain) to ensure enforcement.

13. If the status quo is retained, how can government and investors be confident that risks would be routinely considered in business and investment decisions?

13.1. It is not currently possible for the government and investors (or other stakeholders) to be confident that risks would be routinely considered in business and investment decisions. The status quo is an ad hoc process which can negatively impact business by:

- giving those companies that do disclose a sort of ‘moral high ground’ over those who do not, including smaller companies who may not have the financial resources to currently disclose;

- disincentivising companies from addressing these issues if they consider that public backlash will be strong;

- creating situations where companies do not adequately address issues or benefits that climate change may have on their business;

- not requiring companies to maintain a standard procedure to provide information, resulting in inconsistent reporting; and

- giving those companies who elect to provide climate-related information a competitive advantage by appealing to those consumers who are focussed on climate-change friendly businesses.

14. Do you consider the TCFD framework to be best practice in relation to climate-related financial disclosures?

14.1. Yes. The TCFD framework was purposefully developed to "consider the physical, liability and transition risks associated with climate change" and its "work and recommendations… help companies understand what financial markets want from disclosure in order to measure and respond to climate change risks, and encourage firms to align their disclosures with investors' needs."[2]

14.2. It is an internationally-recognised system for climate change disclosure, which will allow New Zealand entities operating overseas to be understood by, and comparable to, overseas stakeholders (such as investors, suppliers and customers) who may wish to evaluate the risks and impact of their New Zealand counterparties or investment opportunities. Likewise, it will enable overseas entities carrying on business in New Zealand to apply a consistent standard across different countries. This is important because climate change is a global issue.

14.3. We agree with the statements made at paragraph 101 of the discussion document that there are currently no viable alternatives to the TCFD and it is not appropriate to create a New Zealand-based standard given New Zealand's position in the global market, nor is it necessary given the TCFD framework's adaptable qualities.

15. What are your views about whether the TCFD's recommended disclosures will provide useful information to institutional investors and other users?

15.1. The disclosure regime will be important and valuable to institutional investors, as well as to other stakeholders including consumers, suppliers and employees. The data produced by the disclosure regime will enable institutional investors to make informed decisions about their business counterparts, understanding both the risks those counterparts face, as well as any larger scale impacts they may be having.

15.2. Consumers, in particular, are emerging as a powerful force for market driven change, and the TCFD disclosures provide a useful framework to ensure that those decisions are made on an informed basis, and that readily comparable information is available.

[2] TCFD Mission Statement: https://www.fsb-tcfd.org/about/

16. Do you think the proposed disclosure system will encourage disclosing entities to make better business decisions?

16.1. Yes, the proposed disclosure system will encourage and enable disclosing entities to make better business decisions.

16.2. As set out in the Australian Hutley SC opinions and confirmed in the recently published Aotearoa Circle legal opinion, the governors of many types of entity, be they company directors, trustees or others, have duties to exercise reasonable care, diligence and skill, which include considering the impact of climate change on their entities' activities.

16.3. Recently, Kenneth Hayne QC, at the Centre for Policy Development's Business Roundtable on Climate and Sustainability on November 21, highlighted the TCFD framework as a mechanism for directors in Australia to address, and be seen to address, those duties, and pointed out that the TCFD framework provides a very useful tool and methodology for demonstrating how those governors can disclose their responsibilities in relation to climate change.

16.4. We endorse those sentiments, which we consider are equally applicable in New Zealand. The proposed disclosure system will encourage, and facilitate, disclosing entities to make better business decisions, and the regime should be given wide application.

17. Is the definition of materiality in the IASB Conceptual Framework for Financial Reporting appropriate for this purpose?

17.1. The IASB definition provides that information is material if omitting, misstating or obscuring it could reasonably be expected to influence the decisions that the primary users of general purpose financial statements make on the basis of those financial statements, which provide financial information about a specific reporting entity.

17.2. We believe that this definition is useful, but it may not be adequate on its own in this context because it is subject to an implicit assumption that the primary users of financial statements will base their decisions on financial criteria. We propose that consideration be given to amending this definition to make it clear that it includes information that could reasonably be expected to influence the decisions of a broad range of stakeholders, including suppliers, customers and employees, and is not limited solely to information which is financially material, as, for

example, required under the European Commission non-financial reporting Directive (2014/95/EU).[3]

18. What comments do you have on our proposal that non-disclosure would only be allowable on the basis of the entity's analysed and reported conclusion that they see themselves as not being materially affected by climate change, with an explanation as to why?

18.1. While we accept this in principle, we think there will be limited situations where an entity would not be affected by climate change. For that reason, we submit that non-disclosure should only be permitted where an entity is not *affected* by climate change (rather than not *materially* affected by climate change). This captures a broader range of scenarios and ensures that the investor base is aware of all climate change risks (including those that may have a larger impact on the environment, rather than the entity), not only those that are considered by officeholders to be material to the particular entity. We acknowledge however that the threshold for materiality may differ depending on the entity.

19. What are your views about providing a transition period where incomplete disclosures would be permissible?

19.1. Subject to compelling evidence that it would not be practical to fully implement the new rules immediately, we are opposed to the idea of allowing a transition period with incomplete disclosures. A transition period may delay comprehensive and accurate reporting years because entities may view reporting as non-essential during the transition period, rather than acting with due haste.

19.2. In our view, the period of consultation during the legislative process combined with a likely time gap between Royal Assent and the legislation coming into effect, will allow entities sufficient time to prepare for the inclusion of the TCFD framework in their annual reports.

19.3. The current proposal outlined in the discussion document is for full and complete reporting to be required in FY23/24, if the regulations come into effect on 1 July 2021. We submit that this is not soon enough. The IPCC Report sets out that in order to avoid further impacts from climate change, we must take action to limit emissions as soon as possible. Waiting until FY23/24 for the proposed full-scale regulatory framework to come into effect is too long.

19.4. We know that many of New Zealand's major companies have already committed to publicly reporting on their greenhouse gas emissions as seen through the Climate Leaders Coalition. Introducing this framework quickly would encourage

[3] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014L0095

entities to proceed to a more comprehensive and useful form of reporting of climate-related risk that would be accessible to investors.

19.5. We also know there is strong global institutional investment support for government and regulatory action on climate change. More than 600 institutional investors, managing a combined total for $56.45 trillion in client assets, directed countries at the COP25 Conference in Madrid to facilitate greater meaningful action on climate change. This statement included a direct reference to climate-related reporting, and the investors stated in Madrid that mandatory reporting on climate-related risk was fundamental to countries achieving their obligations under the Paris Agreement. There is clear opportunity here for New Zealand entities to act quickly to capitalise on investors' desires to support 'green' companies, and address market concern about the impacts of climate change.

19.6. We propose that if the regulations come into effect on 1 July 2021, full reports should be required for the financial year ending on 30 June 2022. This recognises the benefits of reporting for businesses and the markets, the severity of the risk climate change poses to New Zealand, and New Zealand's ambition to meet its Paris Agreement obligations.

20. If there is to be a transition period, what are your views on it being for one financial year?

20.1. Our answer to question 19 above explains why we reject the possibility of a transition period. We would instead suggest a 'grace period' for the financial year ending on 31 March 2022, where entities are required to create full reports in alignment with TCFD, but these are viewed as developing rather than finalised. There would be no sanctions imposed on entities in this 'grace period' to acknowledge that they require an opportunity to learn the process.

21. Should all of the following classes of entity be subject to mandatory (comply-or-explain) climate-related financial disclosures: listed issuers, registered banks, licensed insurers, asset owners and asset managers?

21.1. The disclosure regime should apply to all entity types, subject to a broad exemption for smaller entities (see 22 and 23 below).

21.2. It would be arbitrary for the regime to apply to certain entity types and not others, as the structure an organisation chooses to adopt can be based on a whole range of factors which become irrelevant in the context of climate change.

21.3. It is important for New Zealand businesses and consumers to be able to access the climate impact (and risk) of the counterparties they deal with, and they can only properly do so if disclosure is required by all entity types.

21.4. Broad coverage will allow for comparisons of performance across all sectors, incentivising the rapid adoption of good practice and innovative solutions, across the private, not for profit, and public sectors.

22. Should any other classes of entity be required to disclose?

22.1. Yes. Subject to an exclusion for smaller entities, discussed below, the TCFD framework should apply to all persons (including entities) who engage in any profession, trade or undertaking, whether or not carried on with the intention of making a profit. Definitions can be modelled on those in a range of legislation, including the Financial Service Providers (Registration and Dispute Resolution) Act 2008.

22.2. In addition to the entity classes described at 21 above, the following types of entities should also be captured by the disclosure regime:

- privately held companies and the New Zealand subsidiaries of overseas companies (whether incorporated in New Zealand or registered as overseas companies under the Companies Act 1993);
- trusts carrying on activities in New Zealand;
- limited partnerships registered in New Zealand;
- charities;
- Managed Investment Schemes or Discretionary Investment Management Services, whether offered to retail or wholesale investors;
- all central government agencies, as well as crown entities; and
- local authorities and entities wholly-owned by local authorities.

22.3. Central and local government agencies and controlled entities play a key role in leading disclosure, as role models for the private sector. Public sector entities are equally likely to have a climate impact and are equally at risk. They also represent a significant part of the economy in New Zealand; to leave them out would potentially lead to distortions where customers favour those entities not undertaking TCFD disclosure (which may in fact be more exposed to climate change or which may have a higher climate impact). For example, if there are two

port companies (one owned by a local authority and one listed on NZX), shipping and logistics companies will wish to know which of them to deal with, in reporting their own climate exposure/risks. But if only one of those entities is disclosing, they cannot make the comparison.

22.4. Further, within New Zealand's private sector, a very high proportion of activity is undertaken by non-listed entities. To only require listed companies to disclose may lead to unintended and potentially detrimental consequences. For example, if one petrol distribution company is NZX listed, and another is owned by a multinational group, to require only the NZX listed entity to provide TCFD disclosure is effectively to advantage the multinational entity over the NZX entity because:

- it may not incur the cost of complying with the regime; and
- consumers may choose not to deal with the NZX entity because its climate impact is public, even though the multinational subsidiary may actually have a higher impact (but it is not published); or
- conversely, the company that is complying with TCFD may be more appealing to investors who want to invest in environmentally responsible companies.

22.5. Such limitation to listed entities or licensed entities may also have other unintended consequences, such as disincentivising listing and creating distortions in the economy.

22.6. To the extent managed investment schemes are included in the regime, they will be reliant on the disclosure provided by the entities into which they invest in order to undertake their own disclosure. This reinforces the need for wide coverage of the entities in the regime but also indicates that the regime should apply to all entities at the same time.

23. Should there be an exemption for smaller entities?

23.1. Yes. During the first phase of the disclosure regime's implementation, it should be limited to the abovementioned types of entities that meet a certain financial threshold (described below at 24). In order to maximise the prospects of the regime's success, the entities subject to it must have sufficient resources for compliance. This exemption may be reviewed at a later point in time, once clear precedents have been set by larger entities and more established support and guidance is available. If the regime is too broad at the outset, it may result in large scale non-compliance, and in turn, unravel confidence in the regime.

24. If there were to be an exemption: (a) what criterion or criteria should be used: annual revenue, total assets, a combination of the two, or some other measure or measures? (b) Which dollar amount or amounts would be appropriate? (c) Should there be a requirement to adjust for inflation from time-to-time?

24.1. We propose that the following exemption criteria be adopted:

24.2. A person will be exempt from the disclosure regime in respect of an accounting period if at least 1 of the following paragraphs applies:

- as at the balance date of each of the 2 preceding accounting periods, the total assets of the entity and its subsidiaries (if any) is equal to or less than $20 million; or

- in each of the 2 preceding accounting periods, the total revenue of the entity and its subsidiaries (if any) is equal to or less than $10 million.

24.3. "Person" includes any entities captured by question 21.

24.4. The above threshold for exemptions is based on the test for "large" overseas company for the purposes of financial reporting under the Companies Act 1993 and Financial Reporting Act 2013. This threshold is lower than the financial reporting threshold for New Zealand-based companies (being $60m assets/$30m revenue). Because climate change is a global issue, it would not be appropriate to set a threshold for New Zealand entities which is too high.

24.5. We propose this threshold for the exemption be reviewed five years from the regime's commencement.

25. What are your views about our proposal to have a stand-alone climate-related financial disclosure report within the entity's annual report?

25.1. We believe a stand-alone climate-related disclosure report is appropriate. We do not support it being within the entity's annual report. Given the wide range of entities that we consider should be adopting the disclosure regime and the fact that some of them are not subject to annual reporting obligations, it will be confusing if certain entities are required to produce stand-alone reports while others are required to include the disclosures in annual reports. In addition, embedding climate-related disclosures within annual reports (which often contain a large volume of financial details) risks such disclosures not being easily accessible to broader audiences.

25.2. This stand-alone report should be published on an independent register operated by the Climate Change Commission, as well as being disclosed on the register to

which the entity's annual report is published (such as the Companies Register, Disclose Register or Register of Charities), where applicable.

26. What are your views about providing for disclosing entities to include cross-references or mappings within that report to assist users to find relevant information?

26.1. We think this is a good idea and would allow users to better visualise and comprehend the information.

27. What are your views about requiring explanations for non-compliance to be included in the annual report?

27.1. Entities must comply or explain under the proposed model, and we firmly expect explanations for non-compliance to be published in the report anticipated by question 25 above.

27.2. The NZX Corporate Governance Code establishes that an explanation ensures:

- investors and other stakeholders such as suppliers, customers and employees can have a meaningful dialogue with the Board and management on corporate governance matters;
- investors can use such information to help make decisions on how to vote on particular resolutions;
- investors can factor that information into their decision on whether or not to invest in the issuer.

27.3. We think these explanations should:

- include a reference to climate change's significance and its impacts on our society;
- include a rigorous, extended explanation for non-compliance, referring to the modelling and scenario analysis provided by the Government to clearly set out why climate change does not affect the entity;
- be published as a standalone document we refer to at 25 above;
- include an explanation of when they will carry out TCFD analysis in the future, an important tool to ensure that those entities that are currently not affected by climate change are still considering whether they will be affected in the future.

28. Should there be mandatory assurance in relation to climate-related financial disclosures?

28.1. We recommend this be considered in a second phase in approximately five years, because at present there is not a sufficient level of expertise to audit all of the disclosure statements and reports of all the entities that will be subject to the regime. Typically, undertaking audits is a very expensive exercise – many of the entities we recommend be covered will not be subject to an obligation to produce audited financial statements.

29. Which classes of information should be subject to assurance if it were to be mandatory?

29.1. See 28 above.

30. Do you consider that assurance should be required in relation to GHG emissions disclosures?

30.1. We submit that this should be considered in a second phase as submitted in relation to 28 above.

31. If limited assurance the only practicable approach in relation to TCFD disclosures, or is reasonable assurance also feasible?

31.1. We do not intend to make submissions on this point.

32. If we do not introduce mandatory assurance when a disclosure system comes into effect, should it be reconsidered in the future?

32.1. We do not intend to make submissions on this point, save for noting that we submit assurance should be considered in a second phase in five years' time.

33. What comments do you have on the proposal to bring the disclosure system into effect for financial years commencing six months on or after the date that the regulation is introduced?

33.1. We believe we have answered this in relation to question 20 above.

34. Do you consider that smaller entities should be provided with a longer transition if there were to be no exemption for them? If so, how long should that period be?

34.1. We think it essential that there be an exemption and so do not make submissions on a transition period for smaller entities.

35. Do you have any views about the legislative means for implementing new mandatory (comply-or-explain) disclosure requirements?

35.1. We agree with the proposal that the regime operate under stand-alone new legislation, rather than an order in council under the Financial Reporting Act 2013. This is because the nature of the disclosures that will be required will be quite different from those for which the XRB is currently responsible, and as indicated above at 21, we think that it should be applicable to a much broader range of entities.

36. Do you consider that there is a role for government in relation to guidance, education, monitoring and reporting?

36.1. Yes. The role of government to guide, educate, monitor and report will be critical. We believe these are appropriate roles for the Climate Change Commission, given its deep subject-matter expertise.

37. Are there other activities that a government agency could usefully carry out?

37.1. In addition to its obligations noted at 36 above, we submit that the government should be responsible for ensuring that comprehensive guidance is available on baseline assumptions and modelling scenarios, based on the best scientific information and emissions forecasts currently available (e.g. the IPCC AR5 representative concentration pathways RCP 4.5 and RCP 8.5, or more recent equivalents).

37.2. Existing climate models generally project changes over long timeframes, such as 30 years, 50 years or 100 years, whereas financial projections are usually based on much shorter timeframes of 1, 2 or 5 years. This mismatch of timeframes means that new or different models may be required to support compliance with climate related disclosure requirements. Equally, the disclosure requirements to be introduced will need to clearly specify the timeframes within which risks should be considered and disclosed, e.g. 5 years, 10 years, 50 years. We note that the TCFD Report proposes that this is left to the discretion of reporting entities, but we submit that standardised time frames would be preferable to ensure comparability of reporting.

37.3. These model scenarios could be used by smaller entities who do not, or who will struggle to, have financial resources to create their own scenarios. This would reduce compliance costs and also create more uniform and easier to understand reporting for consumers.

38. Which government agency or agencies will be best able to carry out these functions?

38.1. We submit that this should be a joint undertaking between the XRB, MFE and the Climate Change Commission for standards setting and guidance, as they are best placed to have the relevant knowledge and expertise on climate-change risks and impacts, and the regulatory agencies (FMA, RBNZ, NZX) for enforcement and compliance.

39. What would you need to assist you with a full set of TCFD disclosures?

39.1. We do not propose to make submissions on this point, other than to refer to our comments in relation to question 37 above.

40. What information do you have about the cost implications relating to these proposals?

40.1. We are not in a position to comment on this issue, but whatever the costs of compliance, the costs of not addressing climate change will be far greater. However, we acknowledge the need to avoid imposing higher compliance costs than are necessary to achieve the objective of the disclosure regime and refer to our comments above on the importance of providing guidance on baseline assumptions and model scenarios to assist with compliance.

41. What information do you have about costs for specific types of reporting entities?

41.1. We do not have relevant information on this question and do not intend to make submissions on this point, other than to refer again to our comments above on the importance of government guidance on baseline assumptions and model scenarios to assist with compliance.

42. Do you have any other comments?

42.1. We do not.

Lawyers for Climate Action NZ Inc.