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External Reporting Board
By email: climate@xrb.govt.nz

Submission on Aotearoa New Zealand Climate Standard 1 – Strategy, and Metrics and Targets Consultation Document – Climate-related Disclosures

1 This is a submission by Dentons Kensington Swan on the External Reporting Board's – Te Kāwai Ārahi Pūrongo Mōwaho ('**XRB**') *Proposed Aotearoa New Zealand Climate Standard 1 – Climate-related Disclosures* ('**Climate Standard**') Strategy, and Metrics and Targets of March 2022 ('**Consultation Document**').

About Dentons Kensington Swan

2 Dentons Kensington Swan is one of New Zealand's premier law firms with a legal team comprising over 100 lawyers acting on government, commercial, and financial markets projects from our offices in Wellington and Auckland. We are part of Dentons, the world's largest law firm, we have unparalleled access to the legal expertise of over 12,000 lawyers in more than 80 jurisdictions.

3 We act for a wide range of financial markets participants, including a number of providers of KiwiSaver schemes and other managed funds. We frequently assist managers, trustees, supervisors, and custodians of schemes in meeting their regulatory compliance obligations under the Financial Markets Conduct Act 2013, including their financial market licensee obligations.

General comments

4 We strongly agree that climate change is an important issue and that climate change considerations must be at the forefront of any future-thinking governance body. However, in the context of climate-related disclosures, climate reporting entities ('**CREs'**) need to be able to take into account how climate change affects them and tailor their disclosures appropriately.

5 We reiterate a key concern raised in our previous submission, that in our view the Climate Standard does not adequately provide for differential reporting and does not provide sufficient flexibility to allow the various types of CREs to tailor their climate-related disclosures to the climate risks that they face. Differential reporting would allow CREs to develop processes that are right-sized for their operations and the climate-related risks they face, as well as providing disclosures which are fit for purpose and operate as more than mere 'tick the box' exercises.

6 The proposition that different CREs will have different reporting requirements in relation to climate related issues is also supported by the Task Force on Climate-related Financial Disclosures ('**TCFD**')

who stated in its *Fundamental Principles for Disclosure* that '*Disclosures should be eliminated if they are immaterial or redundant to avoid obscuring relevant information*' and '*Organizations should avoid generic or boilerplate disclosures that do not add value to users' understanding of issues*'.

7 We believe there will be practical challenges for schemes and funds to meaningfully comply. At present the Climate Standard solely references 'entities' and is premised on the basis that such entities will have planning horizons and capital deployment plans, amongst other things. Schemes and funds do not, themselves, have such plans. The managing entity may well do, but schemes and funds simply function in accordance with their governance documents and statements of investment policy and objectives, i.e. investor money is pooled and invested for the benefit of investors in various ways (such as in cash, bonds, and shares) or in underlying funds which subsequently invest in various financial products. Either way, the structure and operation of funds are clearly set out for investors in product disclosure statements and other publicly available material information.

8 XRB states that managers of registered investment schemes, as CREs, will be required to make disclosures on a fund-by-fund basis. Further, XRB has confirmed that the legislation does not prevent climate statements in relation to funds of a registered scheme from being combined in a single document. It seems clear that it is the fund that is being reported on by the manager CRE, and these can be bundled up to the scheme level. However, in our view the Climate Standard fails to adequately take into account the manner in which schemes and funds operate, unless the idea is for a fund to be artificially conceptualised as a standalone business for climate reporting purposes. Even then it is a tricky fit. A 'one size fits all' approach is unlikely to provide for meaningful disclosure. Ideally, a fund or scheme should disclose information only if relevant, rather than work through a checklist of required material that ignores the particular context.

9 Of course, an alternative is that managers simply respond to these 'must answer' questions broadly at the entity level, and then replicate the response in each fund (or scheme) statement with minor adjustments to reflect the nature of the fund and its underlying investments. That may be the only practical response managers have available to them if the Climate Standard proceeds to be finalised in its current form. We are not convinced this is the optimal outcome.

10 Ultimately, under such a one size fits all approach, it will be left for the FMA to adopt a flexible monitoring and enforcement approach with respect to large managers and their reporting on funds and schemes, recognising the challenges we have identified. Incorporating some direction for the FMA in the Climate Standard to ensure it exercises its mandate to promote a pragmatic outcome involving meaningful and useful disclosure would be desirable.

Strategy section

11 There is a need for greater flexibility to be built into the Climate Standard for structures other than standalone entities. As has been mentioned, large managers have dual channels of operation, at the company level and at the investment level. The regime for large managers focuses on the investment level. With this in mind, we suggest a number of the 'must' requirements be amended to 'may' or 'if relevant' requirements in order for managers to more readily tailor fund or scheme statements.

12 We believe the Climate Standard as currently drafted is overly prescriptive. It will likely be a struggle, in respect of funds, to provide answers to some matters such as business models and plans which are more applicable at the company rather than the fund investment level. Further, matters such as business strategy and opportunities are, in many cases, commercially sensitive beyond disclosure

information that is already publicly available. Large managers need to be able to exclude sensitive information, particularly where that information is not already required to be disclosed.

13 The explanatory paragraph provided in this section of the draft Climate Standard does not readily aid compliance. It simply provides that an entity should not say too much but also not say too little. More usefully, the explanatory paragraph could provide some detail about the particulars being asked and how best to approach those questions. We suggest deleting the explanatory paragraph and instead providing for useful commentary, such as acceptable ways in which different entities might respond to the various requirements.

Metrics and Targets section

14 The applicability to funds of the various metrics provided is awkward. There are unlikely to be gross scope 1 emissions by a fund itself. Are gross scope 1 emissions meant to be the direct emissions of the manager in respect of the specific fund, i.e. proportionate to the fund based on assets under management and the type of investments held, or simply those of the fund itself (if any)? The same question arises in relation to scope 2 emissions given these are likely to be incurred at the manager level rather than at the individual fund level.

15 The extent to which a large manager, in respect of its various funds, can readily and usefully answer questions in relation to a fund's scope 3 value chain will depend on the quality of the information that can be obtained for direct investments and investments in any underlying funds (i.e. the fund of funds scenario). For a large manager to be able to accurately obtain or record the full picture of a fund's scope 3 emissions, onerous resourcing would be required at great cost and time to managers. Regardless, this requirement will be difficult to meet with any degree of accuracy. Such disclosure should be on a 'reasonable endeavours' basis, with 'estimations' for portfolio emissions permitted over a transitional phase, noting that underlying information may not be readily available or in a useable form, at least initially and particularly for offshore investments.

16 Again, in our view the explanatory paragraph provided does not readily aid compliance. As above, we suggest deleting the explanatory paragraph and instead providing useful commentary, such as how different entities might respond to the various requirements.

Further information

17 We thank the XRB for the opportunity to submit of the draft Climate Standard through the Consultation Document.

Yours faithfully

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