

# Submission template

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## Adjustments to the climate-related disclosures regime

This is the submission template for the discussion document, *Adjustments to the climate-related disclosures regime*. The Ministry of Business, Innovation and Employment (MBIE) seeks written submissions on the issues raised in the discussion document by **5pm on 14 February 2025**.

Please make your submission as follows:

1. Fill out your name, organisation and contact details in the table: “Your name and organisation”.
2. Fill out your responses to the consultation document questions in the table. Your submission may respond to any or all of the questions in the discussion document, as appropriate.
3. When sending your submission:
  - a. Delete this page of instructions.
  - b. Please clearly indicate in template if you do not wish for your name, or any other personal information, to be disclosed in any summary of submissions or external disclosures.
  - c. Note that submissions are subject to the Official Information Act 1982 and may, therefore, be released in part or full. The Privacy Act 2020 also applies.
  - d. Note that, except for material that may be defamatory, MBIE intends to upload PDF copies of submissions received to MBIE’s website. MBIE will consider you to have consented to uploading by making a submission, unless you clearly specify otherwise in your submission. If your submission contains any confidential information:
    - i. Please state this in the template, and set out clearly which parts you consider should be withheld and the grounds under the Official Information Act 1982 that you believe apply. MBIE will take such objections into account and will consult with submitters when responding to requests under the Official Information Act 1982.
    - ii. Indicate this on the front of your submission (e.g. the first page header may state “In Confidence”). Any confidential information should be clearly marked within the text of your submission (preferably as Microsoft Word comments).
4. Please send your submission (or any further questions):
  - as a Microsoft Word document to [climaterelateddisclosures@mbie.govt.nz](mailto:climaterelateddisclosures@mbie.govt.nz) (preferred), or
  - by mailing your submission to:

*Corporate Governance and Intellectual Property Policy  
Business, Resources and Markets  
Ministry of Business, Innovation & Employment  
PO Box 1473  
Wellington 6140  
New Zealand*

# Submission on discussion document: Adjustments to the climate-related disclosures regime

## Your name and organisation

Name	S9(2)(a)
Date	14 February 2025
Organisation (if applicable)	Smartshares Limited
Contact details	S9(2)(a)

## Privacy and publication of responses

[To tick a box below, double click on check boxes, then select 'checked'.]

☒ The Privacy Act 2020 applies to submissions. Please check this box if you do not wish your name or other personal information to be included in any information about submissions that MBIE may publish.

☐ MBIE intends to upload submissions received to MBIE's website at [www.mbie.govt.nz](http://www.mbie.govt.nz). If you do not want your submission to be placed on our website, please check the box and provide an explanation in the box below.

## Please check if your submission contains confidential information

☐ I would like my submission (or identified parts of my submission) to be kept confidential, and **have stated below** my reasons and grounds under the Official Information Act that I believe apply, for consideration by MBIE.

## Responses to discussion document questions

### About Smartshares Limited

Smartshares Limited (**Smart**) is providing this submission in response to the consultation proposals contained in the Discussion Document, *Adjustments to the climate-related disclosures regime*.

Smart is a licensed managed investment scheme manager under the Financial Markets Conduct Act 2013 (**FMC Act**) and is a “large manager”. Smart manages and produces separate climate statements for ten registered managed investment schemes, as follows:

- SuperLife Invest SCH10765
- Smart Exchange Traded Funds SCH10752
- SuperLife Workplace Savings Scheme SCH10769
- SuperLife Superannuation Master Trust SCH10688
- NZ Core Equity Trust SCH10764
- SuperLife UK Pension Transfer Scheme SCH10767
- QuayStreet Funds SCH10414
- SuperLife KiwiSaver Scheme SCH10768
- QuayStreet KiwiSaver Scheme SCH10663
- JMI Wealth KiwiSaver Scheme SCH13004

Smart is a wholly owned subsidiary of NZX Limited (**NZX**). NZX is a licensed market operator under the FMC Act and is New Zealand’s primary securities exchange. Smart Exchange Traded Funds (**Smart ETFs**) are listed on the NZX Main Board. The market capitalization of Smart ETFs is approximately NZ\$6 billion. NZX endorses Smart’s submission on the Discussion Document.

### Smart’s role in CRD reform

Along with NZX, Smart strongly supports the climate-related disclosures (**CRD**) regime. Smart is committed to supporting the development of capital markets in a manner that contributes to a climate-resilient future for New Zealand.

Without derogating from Smart’s and NZX’s support for the CRD regime, Smart believes the disclosure requirements should be proportionate, including in relation to thresholds at which an entity becomes a climate reporting entity (**CRE**), and in relation to director liability for climate statements.

Smart considers adjustments need to be made to the CRD regime to ensure it is practical, workable, and right-sized for New Zealand. In Smart’s submission, current CRD reporting pressures need to be relieved to allow CREs to focus more time, effort, and resources on climate change mitigation and adaption – rather than on lawyers, consultants and assurance for CRD.

NZX (on behalf of itself and Smart) has engaged closely with the Government, the Ministry of Business, Innovation & Employment (**MBIE**), the Financial Markets Authority (**FMA**) and the External Reporting Board (**XRB**), throughout the design and implementation of the CRD regime, including appearing at Select Committee when the legislation giving effect to the CRD regime was introduced.

In 2024, NZX (again on behalf of itself and Smart) continued that engagement in relation to the proposals that are contained in the Discussion Document. Smart joins with NZX in acknowledging the effort involved in undertaking the regulatory reform process and would like to thank the

Government and relevant agencies for engaging with us on these matters and listening to our concerns.

#### Financial Services Council NZ Submission

Smart has fortunately had the opportunity to view and consider a final from of the Financial Services Council NZ's submission on the CRD Discussion Document. Except to the extent Smart's submissions on the Discussion Document specifically differ from those of that Council, on a particular aspect of the Discussion Document, Smart concurs with the Council's submissions.

Please enter your responses in the space provided below each question.

Chapter 2: Reporting Thresholds	
1	Do you have any information about the cost of reporting for listed issuers?
	<p>Anecdotally, and as a CRE itself, Smart is aware that the costs of reporting for issuers are significant, as reflected in the Discussion Document. This feedback is consistent with the results of the Australasian Investor Relations Authority survey referred to in the Discussion Document which concluded that the median cost of reporting for survey respondents was between \$200-\$300k (without including the costs of internal time and resources, or assurance).</p> <p>Smart is a wholly owned subsidiary of NZX, which is a "large listed issuer" and also a climate reporting entity. Smart's corporate climate-related disclosures are included in NZX's group climate statements. Please refer to NZX's submission for information about the internal and external costs involved in the preparation of its climate statements.</p>
2	Do you consider that the listed issuer thresholds (and director liability settings) are a barrier to listing in New Zealand?
	<p>Yes. As New Zealand's market operator, Smart's parent company NZX is aware of a number of listing candidates who have elected not to pursue a listing as a direct consequence of the CRD framework. Smart considers that the existing thresholds and liability settings are a disincentive for entities to list on the NZX Main Board.</p> <p>As noted in the CRD Discussion Document, this issue is exacerbated by the lack of alignment between New Zealand's and Australia's climate reporting frameworks, making ASX – all else being equal – a more attractive alternative listing venue for New Zealand companies.</p> <p>Smart considers the current CRD reporting thresholds and liability settings are acting as a barrier to doing business in New Zealand, inhibiting the efficient allocation of capital for the New Zealand economy, and are reducing investors' access to investible product and participation in New Zealand's capital markets.</p> <p>Smart's views on this issue are reflective of the Discussion Document and the separate submission made by NZX.</p>
3	When considering the listed issuer reporting threshold, which of the three options do you prefer, and why?
	Please refer to NZX' submission which is supported by Smart.
4	If the XRB introduced differential reporting, would this impact on your choice of preferred option?

	Please refer to NZX's submission which is supported by Smart.
5	<p>Do you think that a different reporting threshold for listed issuers should be considered (i.e., not one of the options above) and, if so, why?</p> <p>Please refer to NZX's submission which is supported by Smart.</p>
6	<p>If Option 2 or 3 was preferred do you think that some listed issuers would still choose to voluntarily report (even if not required to do so by law)? And, if so, why?</p> <p>Please refer to NZX's submission which is supported by Smart.</p>
7	<p>What are the advantages and disadvantages of a listed issuer being in a regulated climate reporting regime?</p> <p>Please refer to NZX's submission which is supported by Smart.</p>
8	<p>Do you have information about the cost of reporting for investment scheme managers?</p> <p>Smart incurred significant internal costs in the preparation of its first climate statements for each of its ten registered managed investment schemes, including significant amounts of senior management (legal, product and investment) and director time. Smart also incurred external costs as part of its due diligence assurance process.</p> <p>Going forward, the procurement of external data regarding emissions of investments held in Smart's funds will continue to be particularly costly. Given the wide-ranging number of investments made by Smart in its funds (across both jurisdictions and entity types) data can be prohibitively expensive to procure and audit (as well as being inaccurate and of poor quality). This cost is prohibitive when Smart, which primarily manages passive funds that have an investment objective to track an index, has very limited leverage to influence the GHG emissions in companies that comprise the index and that are ultimately responsible for those emissions.</p> <p>In addition to the cost of external data providers, the greatest cost burden of climate reporting for Smart comes from external audit, external consultants, and internal resources.</p>
9	<p>Do you have information about consumers being charged increased fees due to the cost of climate reporting?</p> <p>Smart does not have information about increased fees being charged to consumers due to the cost of climate reporting.</p> <p>Smart has not increased the fees in any of its registered managed investment schemes as a result of climate-reporting obligations or otherwise. To date, these additional compliance and time costs have been absorbed within the existing management fees charged in Smart's funds.</p>
10	<p>When considering the reporting threshold for investment scheme managers, which of the three options do you prefer, and why?</p> <p>Investment scheme CRD reporting is not for the fund manager itself, but of course relates to the investments held in the relevant scheme/fund. For this reason, there is an illogicality about the current threshold, under which all funds under the management of the relevant manager (regardless of the size of the funds in respect of which the manager is required to report) are aggregated, with the manager being required to report if that aggregate amount is over NZ\$ 1 billion i.e., the existing threshold is manager-centric, not scheme/fund vehicle-centric.</p>



As the Discussion Document highlights, “There is a significant lack of alignment between the reporting required in New Zealand and that required in Australia for investment scheme managers”, with the Australian threshold being AU\$ 5 billion per scheme.

The Discussion Document also correctly highlights that this disparity with Australia, and the significantly lower manager-based threshold in New Zealand, imposes higher costs of New Zealand fund managers, costs which will inevitably be passed onto investors through higher fees and expenses.

Option 3 would therefore provide desirable augmented consistency with Australia, end the disproportionate regulatory burden on New Zealand fund managers and relieve small-scale fund managers of the high absolute costs of CRD reporting, which are ultimately often borne by investors.

Smart’s registered managed investment schemes are currently structured so that:

- Investment options within SuperLife KiwiSaver scheme, SuperLife Workplace Savings Scheme and SuperLife UK Pension Transfer scheme are all invested into equivalent and identical investment options in the SuperLife Invest scheme.
- SuperLife Invest then largely invests into equivalent funds in the Smart Exchange Traded Funds scheme.
- Investment options within QuayStreet KiwiSaver scheme are all invested into equivalent and identical investment options in QuayStreet Funds.

The current manager level assessment of reporting thresholds has resulted in unnecessary and, for investors, unhelpful duplication of climate-related reporting across Smart’s schemes. Smart does not consider that this has given investors understandable information on which to make investment decisions. In addition, it has imposed unnecessary compliance costs on Smart.

If a scheme-level assessment is adopted (as proposed in Option 3) then Smart expects that it would continue to be required to provide climate statements for the SuperLife Invest and Smart Exchange Traded Funds schemes. This would result in reduced compliance costs for Smart (going from ten to two separate climate statements) and more meaningful reporting for investors in those two schemes and also for investors in the Smart schemes that feed into them.

Smart considers it highly unlikely that a licensed managed investment scheme manager would use scheme creation as an anti-avoidance measure, given the high barriers to entry that are involved in New Zealand scheme creation (e.g. appointment of a supervisor, product disclosure statement, bespoke financial statements etc). Any restructuring of an existing scheme (for example, to take it out of scope of climate-reporting obligations) would likely require supervisor approval and the manager would need to be able to clearly demonstrate that doing so was in the best interests of all investors and a proper exercise of the manager’s functions and duties.

	If the XRB introduced differential reporting, would this impact on your choice of preferred option?
11	Any differential CRD reporting standards for investment scheme managers would not impact Smart’s preference for Option 3.
12	Do you think that a different reporting threshold for investment scheme managers should be considered (i.e., not one of the options above) and, if so, why?

	For the reasons set out above, no.
	When considering the location of the thresholds, which Option do you prefer and why?
13	<p>Smart considers it is appropriate for the thresholds to be embedded in primary legislation, given the significance of the reporting burden and liability settings for climate reporting entities.</p> <p>The time and cost involved in preparing climate statements is significant, and it is important for fund managers to have as much certainty as possible on whether and when they will fall within the regime, and confidence that the thresholds cannot be easily changed (as would be the case if changes were contained in secondary legislation).</p>
	For Option 2 (move thresholds to secondary legislation) what statutory criteria do you think should be met before a change may be made, e.g., a statutory obligation to consult. What should the Minister consider or do before making a change?
14	If the reporting thresholds were moved to secondary legislation, Smart considers there should be a statutory obligation to consult on the changes, and a requirement that the thresholds are not set at a level that is lower than necessary to achieve the purposes of the legislation.
<b>Chapter 3: Climate reporting entity and director liability settings</b>	
	When considering the director liability settings, which of the four options do you prefer, and why?
15	<p>Smart supports Option 3 - disapply section 534 which creates deemed director liability for climate statements that do not comply with the climate standards, together with section 23 which creates potential liability for unsubstantiated representations irrespective of whether the statement is false or misleading.</p> <p>Smart considers Option 3 would help address the concerns articulated in paragraph 102 of the Discussion Document which broadly reflect Smart's concerns in relation to the current director liability settings.</p> <p>Smart considers Option 3 to be appropriate given the intricate nature of the climate statements' requirements and inherent uncertainty in relation to forward-looking information that is required to be reported, noting that director liability would remain under section 461ZG (which creates liability for a director who knowingly allows climate statements to fail to comply with the climate standards at the time of lodgement).</p>
16	<p>Do you have another proposal to amend the director liability settings? If so, please provide details.</p> <p>Smart does not have an alternative proposal relating to the director liability settings.</p>
17	If the director liability settings are amended do you think that will impact on investor trust in the climate statements?

	<p>Smart does not consider the proposed amendments will negatively affect investor trust when relying on climate statements. The proposed amendments to the director liability settings will not remove the broader liability framework which retains director liability where a director knowingly allows climate statements to be lodged which do not comply with the climate standards, and broader liability for climate reporting entities.</p> <p>Smart considers that investors will continue to take confidence that the FMA is monitoring climate statements for compliance with the climate standards. Smart considers that the modified liability settings will continue to be sufficient to incentivise reporting entities to ensure their climate statements comply with the climate standards.</p> <p>In addition, Smart considers that regulatory settings are only one avenue that investors and other stakeholders rely upon to help ensure they receive robust information from fund managers. Smart provides avenues for investors to express their views to Smart on important issues and encourages their input.</p>
18	<p>If you support Option 3, should this be extended so that section 23 is disapplied for both climate reporting entities and directors? If so, why?</p> <p>Smart supports section 23 being disapplied for climate reporting entities as well as directors in relation to climate statements. Smart considers this would be appropriate given the future-looking and uncertain nature of the information that is required to be included in climate statements.</p>
19	<p>If you support Option 4 (introduce a modified liability framework, similar to Australia) what representations should be covered by the modified liability, i.e., should it cover statements about scope 3 emissions, scenario analysis or a transition plan, and/or other things?</p> <p>Smart does not support Option 4. Smart considers Option 3 is preferable to a modified liability period as applies in Australia, noting that the class action culture in Australia differs from New Zealand, and the broader CRD liability framework differs from the framework in Australia, including that under Option 3 liability will remain for climate reporting entities and directors where there is an element of knowledge.</p>
20	<p>If you support the introduction of a modified liability framework, how long should the modified liability last for? And who should be covered, i.e., should it prevent actions by just private litigants, or should the framework cover the FMA as well? (Criminal actions would be excluded)</p> <p>Smart does not support Option 4. However, if it were to be adopted, Smart would support it being framed broadly in relation to regulatory action from the FMA, given the complexity of the climate-related disclosure framework, and the forward-looking nature of the information required to be reported.</p>
<b>Chapter 4: Encouraging reporting by subsidiaries of multinational companies</b>	
21	<p>Do you think that there would be value in encouraging New Zealand subsidiaries of multinational companies to file their parent company climate statements in New Zealand?</p> <p>Smart does not have strong views on this issue, given Smart (and its parent company, NZX) are not subsidiaries of multinationals.</p>
22	<p>Do you think that, alternatively, there would be value in MBIE creating a webpage where subsidiaries of multinational companies could provide links to their parent company climate statements?</p>



Please refer to our response to question 21.

#### Final comments

23

Please use this question to provide any further information you would like that has not been covered in the other questions.

As a CRE, Smart sees the benefits for investors in transparency of investment funds' climate-related risks and exposures. Such transparency will help promote more informed decision making – including for investment decisions – that will facilitate the transition to more sustainable, low-carbon economies. More generally, transparency may help investors to appropriately price climate-related risks and opportunities, value assets and allocate capital efficiently.

However, it is important these potential benefits are weighed against the current design of the New Zealand regime, which imposes burdensome and disproportionate costs for fund managers, especially small and mid-sized fund managers.

Smart strongly supports the initiatives set out in the Discussion Document that would right-size the climate-reporting entity thresholds and reduce the director liability settings. Smart considers its views are well articulated in the Discussion Document, and reflect NZX's and Smart's engagement with the Government, MBIE, the FMA and XRB in 2024.

It is important these changes are made to ensure the legislative settings enable the CRD framework to deliver on its purpose of supporting more efficient allocation of capital to smooth the transition to a more sustainable, low-emissions New Zealand economy.

Smart supports right-sized liability and reporting thresholds to help ensure New Zealand businesses appropriately allocate their human and financial resources to climate risk management and adaption. While Smart endorses the objectives of the CRD framework and considers that such reporting encourages entities to consider climate risks and opportunities as part of their business practices, the current settings result in over-emphasis being placed on costly compliance reporting and assurance activities.