

# Submission

to the

## Financial Markets Authority

on the

### Proposed guidance and expectations for keeping proper climate-related disclosure records

4 August 2023



## 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
  - 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

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## Introduction

4. NZBA welcomes the opportunity to submit to the Financial Markets Authority (**FMA**) on its proposed guidance and expectations for keeping proper climate-related disclosure records released in June 2023 (**the Guidance**).
5. NZBA members continue to support the development of New Zealand's incoming climate-related disclosure (**CRD**) regime, both as reporting entities and primary users of these disclosures. NZBA supports the FMA's overall approach to the Guidance, which is to provide clear examples and guidance in relation to CRD record keeping to support Climate Reporting Entities (**CREs**) in making high-quality disclosures. NZBA proposes a number of constructive suggestions to support NZBA members and their banking clients in maintaining accurate and complete CRD records in a commercial setting, and to avoid the Guidance being viewed as too prescriptive in the context of a new regime.
6. We have structured our comments below by the associated heading in the Guidance.

### **“Our expectations”<sup>1</sup>**

#### *Clear and consistent expectations*

7. NZBA wishes to ensure that there is no mismatch between the FMA's statement it will focus only on “*serious misconduct*” in the early years of the regime and its more detailed areas of focus later in the Guidance and in its 2023 to 2026 monitoring approach and plan.<sup>2</sup>
8. The FMA's draft record-keeping guidance says that “*serious misconduct*” could include situations where CREs fail to produce or retain records, or where records are materially incomplete. These are both useful examples of serious misconduct and reassure CREs that the FMA will not be seeking provision of detailed records in the early years of reporting. However, the NZBA would appreciate clarification that the FMA is not initially intending to investigate the retention of records by CREs to support all of the areas of CRD focus in its 2023 – 2026 Plan, which are much more detailed. Specifically, the Plan outlines that where disclosures have been omitted or are non-compliant, the FMA will consider whether the CRE made “*best efforts*” to comply, including factors such as:
  - 8.1. how early the CRE started preparing their climate statements;
  - 8.2. whether climate statements define and explain terminology;
  - 8.3. whether climate statements provide “broader context”; and
  - 8.4. the importance of disclosures as to the quality of underlying data and assumptions, models, uncertainties and judgements.
9. While NZBA agrees that these factors are all important criteria for review of CRD, and should be supported by CRD records, there is a concern that the FMA has an expectation that detailed records will be available in respect of all of these factors in

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<sup>1</sup> Page 8.

<sup>2</sup> See the FMA's June 2023 'Climate-related Disclosures Monitoring Plan 2023-2026' (<https://www.fma.govt.nz/assets/Guidance/Crd-monitoring-plan-2023-2026.pdf>) at Page 5.



the early years of the regime, which suggests a higher level of expectation than the reference to “*serious misconduct*” in the Guidance. As NZBA members are developing internal capability to support the record-keeping requirements, it would be useful for the Guidance to explain that, for the early years of the regime, the FMA will focus on assisting CREs that are making serious efforts to maintain CRD records to identify where they can improve CRD record-keeping, as opposed to taking a strict compliance approach.

### *2023 voluntary reporting*

10. Many CREs are engaging in voluntary reporting and/or have made decisions in relation to climate risk management and CRD in FY23, i.e. prior to their first reporting year. NZBA would appreciate some recognition in the Guidance that CRD records related to these early voluntary reports may be less detailed and more difficult to collate because the records will have been created *prior* to publication of both the record-keeping draft regulations and the Guidance. That does not excuse a lack of records entirely, but some recognition that records may not be as clearly presented as later years would be useful.

### *Appropriate role for the FMA when reviewing records*

11. As the regime becomes more established, the FMA will be making requests of CREs to view certain CRD records as part of its mandate to ensure CREs are complying with the CRD framework (i.e. Climate Standards NZ CS 1, 2 and 3). The Guidance notes that the FMA “*expects to request records in a standardised, regular format once our monitoring approach has settled into a ‘steady state’ of proactive risk-based sampling and more detailed review procedures*”. NZBA notes that each request will create cost and distraction for a CRE trying to comply with the new regime and we encourage the FMA to defer from risk-based sampling and detailed review until later years of reporting.
12. In addition, it might be appropriate for the FMA to note in its Guidance that different CREs will have different resourcing constraints in preparing to comply with the new framework, and this will inevitably lead to varying levels of quality in disclosures. As above, for the first 1 – 2 years of reporting, it would be useful for the FMA to record that it will be educating CREs with examples of good quality record-keeping, rather than taking more formal compliance or enforcement steps.

## **“Key principles and considerations for proper records”**

### ***CRD records must be readily identifiable and comprehensible (draft reg 252A)<sup>3</sup> (p 7–8)***

#### *Presentation of records to the FMA*

13. The NZBA wishes to underscore its concern that CRD records are likely to be extensive and some may not be in a ready format to be shared with the FMA. There should be some understanding by the FMA that technical records (e.g. GHG records or data feeding into published metrics) may need further explanation or reformatting before they will be ready for review by the FMA. Given the demands of the new regime already, it is unlikely to be economic to prepare all records so that they could be provided without some review or edit for a third party to understand.

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<sup>3</sup> Pages 7 to 8.



### *Centralised record keeping*

14. NZBA has practical concerns about the FMA's suggestion that CRD records should be centralised.<sup>4</sup> Centralised record keeping might work well for some documents (e.g. executive team papers and minutes) and for some entities, but it is unlikely to be appropriate for larger NZBA members and those with group entities overseas. In particular:
  - 14.1. Board papers and minutes are often held securely internally and may not be available on a central register or without some review and redaction.
  - 14.2. Some decisions (e.g. decisions as to board training, or decisions as to a risk prioritisation approach) may be taken in internal meetings, discussions or on email. It is unlikely to be practical to require CREs to keep extensive email correspondence or file notes of all internal meetings. Where the outputs of these internal communications are then reflected in a board or executive team paper, NZBA suggests that this should be sufficient for the FMA's purposes, at least for the first year or two of reporting.
  - 14.3. CREs with overseas groups are unlikely to be able to store all relevant documents centrally: documents may be held by different entities across the group with differing layers of sensitivity.
15. Ultimately, NZBA submits that the focus should be on ensuring that documents are stored in a way that allows the CRE to meet its Financial Market Conduct Act obligations, rather than focusing on a specific method of storage (i.e. centralisation) that will be unachievable for many CREs.

### *Linking documents*

16. The FMA's proposed requirement that CREs must ensure that external/internal links, formulas, references and hyperlinks within a document must always work may be practically challenging. Many internal hyperlinks (e.g. to the CRE's SharePoint site) are unlikely to work when transferred to an external party, and so CREs may need to provide the underlying documents separately if requested (which will take time/resource).

### ***CRD records must be made available in accordance with request (draft reg 252C)<sup>5</sup>***

#### *Appropriate amount of time*

17. NZBA suggests that the Guidance includes factors that might be relevant to assessing the appropriate amount of time to respond to a request for CRD records (e.g. nature and extent of records requested, the relevant time periods, number of individuals engaged on the topic within the CRE, whether a final paper was prepared on the topic or not, etc.)

### ***CRD records kept by another person (draft reg 252D)<sup>6</sup>***

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<sup>4</sup> Page 7.

<sup>5</sup> Page 8.

<sup>6</sup> Page 8.



### *Third-party records*

18. The Guidance could usefully reflect that some third parties advising CREs will be accessing third party data to generate outputs for a CRE client that could be inappropriate to expect the CRE itself to have access to (e.g. transition risk modelling across an investment portfolio, IPCC reporting, NIWA data, or industry surveys) and it should therefore be maintained by the third party instead. It would also be useful to link the separate information sheet on the use of third-party CRD providers in the Guidance.<sup>7</sup>

### ***CRD records must provide evidence of materiality considerations***<sup>8</sup>

#### *Educative approach*

19. Materiality is particularly complex when applied to the CRD regime and many CREs are still developing how they will approach this topic in their climate statements (including, for example, between members of a multi-national group). CREs will be still developing processes for determining their approach to materiality and the application of this approach across their CRD. For this reason, NZBA encourages the FMA to focus on support and education concerning appropriate record-keeping regarding materiality for CRD, rather than criticism.
20. In addition, once a CRE has determined that a potential disclosure is not material, and recorded this decision and the reasoning for it, the Guidance could usefully provide that no further records need to be kept in relation to this topic.

### **Appendices**

21. The NZBA provides comments on the opening paragraph for the Appendices and also the below highlighted table for each of the Appendices.

### ***General comments***<sup>9</sup>

#### *Status of examples*

22. NZBA would like to see a clearer statement regarding the status of the examples provided in the Appendices. While there is a statement that the examples “*are intended to be illustrative in nature*”, they are also described as “*not exhaustive*”. This suggests the examples may be being treated as a minimum requirement.
23. NZBA considers the explanatory introduction to the examples should clearly state that: (a) the examples are not requirements and do not demonstrate any minimum standard of record-keeping, (b) the examples simply describe possible record-keeping options available to CREs, and (c) other record-keeping options that a CRE might choose can also be used to demonstrate compliance (i.e. the examples do not limit the ways in which CREs can demonstrate compliance).

#### *CRD record guidance broader than accounting equivalent*

24. The FMA published its guidance for keeping proper accounting records this year in February. Recognising that the CRD regime is a much less mature regime than

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<sup>8</sup> Page 9.

<sup>9</sup> Page 10.



financial reporting, some members are of the view that some of the examples appear to go beyond what would be expected in an equivalent accounting context. For example, emails and internal comments are referenced as examples of appropriate CRD records, while these are not referenced in the accounting records guidance published earlier this year,<sup>10</sup> and would not be expected to constitute accounting records in practice. NZBA appreciates the use of examples for CRD records so long as the records expected are equivalent to the FMA’s expectations for accounting records.

*Appendices should cover all CRD record rules*

25. The Guidance specifies that the “*appendices do not contain all disclosures that have first-time adoption relief in NZ CS 2. We expect to update the document to include guidance on those disclosures as soon as practicable.*” Similar statements are made in Appendix 2 specifically, where the Guidance notes that further guidance will be issued in Q4 of 2023.
26. NZBA encourages the FMA to consult and publish guidance as early as possible for these missing examples, because CREs may be publishing some disclosures ahead of requirements (i.e. without taking up the transitional provisions in NZ CS 2). The earlier the guidance is published, the more time CREs will have to ensure the processes they have in place are robust enough to capture the kinds of records the FMA has in mind.

**Appendix 1: Governance**

Description of how possible records could substantiate disclosure requirements	Example(s)	NZBA comments
Describe the processes of the governance body being informed (e.g., meetings, <b>emails</b> , reports) and verify the frequency.	<b>Internal correspondence</b> indicating how reports highlighting climate-related risks and opportunities affecting the CRE’s products, key markets or assets were used as part of the CRE’s strategic decision-making process.	The highlighted example references the retention of internal correspondence (e.g. internal emails), which may be overly burdensome and also unrealistic to store in a central repository.  The focus of the examples here should be on retention of any final paper/report rather than on email correspondence leading to it.
Substantiate any disclosed actions taken to ensure those skills and competencies are available.	<b>Engagement letter and/or contract</b> for a third-party provider to provide expertise and training on an as-needed basis to the governance body.  Certification or documented confirmation of climate-related training completed by the governance body.	Training materials and a board schedule of training would be more helpful than a letter of engagement in illustrating what kind of training was undertaken by an CRE. Training may also be internal.

<sup>10</sup> <https://www.fma.govt.nz/assets/Guidance/Guidance-and-expectations-for-keeping-proper-accounting-records.pdf>.



Description of how possible records could substantiate disclosure requirements	Example(s)	NZBA comments
<p>Describe how the governance body considers climate-related risks and opportunities in the development of the CRE’s strategy.</p>	<p>Third-party provider report describing climate risks and opportunities most relevant to the CRE <b>with review comments from the governance body members to consider for the development of a revised strategy.</b></p>	<p>NZBA is concerned that this example seems overly burdensome – the retention of review comments from board members is too onerous as these documents may be in draft form and not retained. Significant underlying work may be involved in retaining documents of this nature.</p> <p>An alternative example is to include minutes recording the governance body considering climate risks and opportunities tied to the CRE’s strategy.</p>
<p>Substantiate how performance metrics for managing climate-related risks and opportunities are incorporated into remuneration policies.</p>	<p>The CRE’s remuneration policy that describes the performance metrics relevant to managing climate-related risks.</p> <p><b>Employment contracts</b> that describe the performance metrics relevant to individual employees in managing climate-related risks and opportunities.</p> <p><b>Performance review reports</b> that substantiate an employee’s performance against their prescribed climate-related risks and opportunities.</p>	<p>Employment contracts and performance review reports likely sensitive and unnecessary to retain in central repository.</p> <p>As an alternative example, the NZBA suggests a summary document explaining how performance metrics are incorporated into remuneration policies.</p> <p>Another alternative might be evidence at an organisational level, such as HR policies or KPI scorecards.</p>
<p>Substantiate that the disclosed organisational structure(s) is correct.</p>	<p>Meeting minutes describing the decisions made around formation, structure, and climate-related responsibilities of disclosed committees.</p> <p><b>Contracts of the individuals in the management-level positions</b> to which the climate-related responsibilities have been assigned.</p>	<p>NZBA is concerned that this example asks for information that is more detailed or sensitive than needed. Minutes or internal organisational charts should be sufficient to satisfy this requirement: requiring evidence of individual contracts is likely to be overly burdensome.</p>





## Appendix 2: Strategy

Description of how possible records could substantiate disclosure requirements	Example(s)	NZBA comments
Documents that substantiate that the current physical and transition impacts disclosed have occurred.	A <b>legal judgment</b> that provides a new interpretation of environmental legislation or regulations the CRE operates under.	NZBA proposes that a more appropriate example would be of legal advice provided to the CRE. It would also be useful for the FMA to note that some materials will be subject to legal advice privilege and should be treated appropriately in record-keeping.
Documents that substantiate how the current physical and transition impacts disclosed have impacted the CRE.	An internal report <b>detailing suggested changes to a MIS Manager’s Statement of Investment Policies and Objectives (SIPO) as a result of investors’ increasing preference for low-carbon investments.</b>	The example provided for here appears to be a draft document with comments – this may be appropriate in this case, but a general requirement to keep all internal drafts will be too burdensome.
Scenario analysis		<p>NZBA wishes to highlight that some caution is required to ensure the FMA’s expectations are not too high in relation to scenario analysis.</p> <p>The level of detail provided for in the scenario analysis examples may not be realistic for smaller CREs. For example: <i>“A scenario analysis methodology document that includes a conceptual model detailing how the driving forces interact with each other, the CRE’s business model and strategy, and the degree of impact within each quadrant on the scenario matrix.”</i></p>



#### Appendix 4: Metrics and targets

Description of how possible records could substantiate disclosure requirements	Example(s)	NZBA comments
Substantiate and explain the CRE's complete legal structure (e.g. funds, subsidiaries, associates, joint ventures).	<p>An organisational chart that describes the legal structure of the CRE including joint ventures, subsidiaries, and associates.</p> <p>Listing(s) of all registered schemes and associated funds related to a MIS manager.</p> <p><b>Joint venture agreements</b>, company constitution, governing document (e.g. trust deed), and/or operating licence documents that verify the CRE's legal structure.</p>	NZBA agrees that it is appropriate to give the example of an organisational chart. However, it may be inappropriate/unnecessary to provide all documents referenced where their content is not relevant, e.g. joint venture agreements. If an organisational chart includes a depiction of the joint venture, this should be sufficient.

#### Conclusion

27. NZBA is happy to provide further detail on any of the above submissions if useful.