

1 March 2024

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[REDACTED]

The Israel Institute of New Zealand

By email: [REDACTED]

Dear [REDACTED]

Official information request regarding human rights and related issues

I refer to your official information request dated 30 January 2024, and clarified subsequently on 31 January and 1 February for:

1. *Any work done to estimate the impact of the decision to divest from Israeli banks. By impact you clarified that you mean the financial impact of the divestment; whether the banks' behaviour has changed; and the impact to the Fund's reputation and adherence to ESG practices.*
2. All correspondence since May 2021 concerning possible divestment from the following:
 - a. *any of the 39 companies the Superfund invests in, that are involved in "occupations" around the world, as identified in our report of May 2021 (attached for reference);*
 - b. *any of the 48 companies that the Superfund invests in, that are linked to the use of forced labour by Uighur Muslims, per the same May 2021 report;*
 - c. *South African banks that the Superfund invests in, which have recently been exposed as being involved in funding terror (see <https://www.msn.com/en-us/news/world/major-south-african-banks-provide-platform-to-fund-hamas/ar-BB1hc7py>).*

Where the Super Fund is no longer invested in the listed companies, you asked us to state whether this was because of ESG considerations or simply business-as-usual reasons.

- 3) *All correspondence with anti-Israel groups (Palestinian Solidarity Network Aotearoa, John Minto, Justice for Palestine, Marilyn Garson, etc) in New Zealand over the past year.*

Please find our response to your requests below.

1. *Any work done to estimate the impact of the decision to divest from Israeli banks. By impact you mean the financial impact of the divestment; whether the banks' behaviour has changed and the impact to the Fund's reputation and adherence to ESG practices.*

Financial impact: We monitor and report the impact of our ethical exclusions on the NZ Super Fund's performance in aggregate, not by individual category or company. We note, however, that at the time of exclusion the Fund's holdings in the relevant banks were extremely small in the context of the NZ Super Fund. As a result we feel confident to say that their divestment would not have a material impact on Fund performance. Looking at the ethical exclusions in aggregate (listed on our website:

<https://nzsuperfund.nz/how-we-invest/sustainable-finance/exclusions/>), since 2021 the Fund's returns have been approximately \$20 million higher than they would have been without them (measured as at 31 December 2023). We do not consider this to be a material impact.

Company behaviour. We do not undertake analysis on whether us excluding companies has influenced the behaviour of those companies. In this case, each of the excluded banks remains on the list produced by the United Nations Human Rights Office of the High Commissioner of companies involved in specified activities with implications on the rights of the Palestinian people in the Occupied Palestinian Territory, as of the latest update in June 2023. In general terms this suggests that the behaviours which moved us to make the exclusions persist.

Impact to the Fund's reputation and adherence to ESG practices: We have not undertaken any analyses on these topics. Your request is declined on the basis that the information does not exist under section 18(e) or is not held under section 18(g) of the Official Information Act. In broad terms, we understand that some members of the community do not agree with the decision to exclude these companies from the Fund. However, we also understand that others have equally strong but different views and would like to see a wider group of companies excluded.

2. All correspondence concerning possible divestment from the following:

a) any of the 39 companies the Superfund invests in, that are involved in "occupations" around the world, as identified in our report of May 2021 (attached for reference);

b) any of the 48 companies that the Superfund invests in, that are linked to the use of forced labour by Uighur Muslims, per the same May 2021 report;

c) South African banks that the Superfund invests in, which have recently been exposed as being involved in funding terror (see <https://www.msn.com/en-us/news/world/major-south-african-banks-provide-platform-to-fund-hamas/ar-BB1hc7py>).

In the interests of accuracy, of the 90 companies you named, the Fund no longer holds 53 (as at 31 December 2023):

- | | |
|---|---|
| 1) Air France-KLM SA | 27) Bombardier Inc |
| 2) Aurubis AG | 28) Bosch Ltd |
| 3) Bombardier Inc | 29) Chongqing Changan Automobile Co Ltd |
| 4) Caterpillar Inc | 30) CRRC Corp Ltd |
| 5) Engie SA | 31) Electrolux AB |
| 6) FedEx Corp | 32) Fila SpA |
| 7) FLSmidth & Co A/S | 33) Gap Inc/The |
| 8) Ford Motor Co | 34) Geely Automobile Holdings Ltd |
| 9) Italmobiliare SpA | 35) General Motors Co |
| 10) LafargeHolcim Ltd | 36) Haier Electronics Group Co Ltd |
| 11) LafargeMorocco | 37) Hitachi Ltd |
| 12) Peugeot SA | 38) Iflytek Co Ltd |
| 13) RE/MAX Holdings Inc | 39) Japan Display Inc |
| 14) Renault SA | 40) Lenovo Group Ltd |
| 15) Siemens Gamesa Renewable Energy SA | 41) LG Corp |
| 16) Thyssenkrupp AG | 42) Marks & Spencer Group PLC |
| 17) Trelleborg AB | 43) MinebeaMitsumi Inc |
| 18) TripAdvisor Inc | 44) Puma SE |
| 19) Tupras Turkiye Petrol Rafinerileri AS | 45) SAIC Motor Corp Ltd |
| 20) Veolia Environment SA | 46) Sharp Corp/Japan |
| 21) Western Union Co/The | 47) Skechers USA Inc |
| 22) Electrics Co Ltd | 48) TDK Corp |
| 23) Abercrombie & Fitch Co | 49) Toshiba Corp |
| 24) Acer Inc | 50) Xiaomi Corp |
| 25) Asustek Computer Inc | 51) Standard Bank |
| 26) BAIC Motor Corp Ltd | 52) Nedbank |

53) Absa

A list of the companies the Fund is invested in as at 31 December 2023 is available on our website; as is a list of excluded companies as at that date.

Our monitoring and analysis of companies' behaviour, and our engagements with companies, are conducted on a confidential basis. This confidentiality extends to whether a particular company has or is being considered for divestment. Our practice is keep this information confidential until after a decision has been made and, if divestment is to occur, our holding has been sold. At that point, our practice has been to announce the decision and the reasons for it. Releasing information about whether or not we are considering divesting from a particular company before such a process has been completed, a decision has been made and the stock actually sold could:

- disclose sensitive information pertaining to the company;
- unfairly tarnish the commercial standing and reputation of the company concerned, in turn undermining our own reputation as a credible investor;
- prejudice our ability to engage with the company concerned and the flow of information between us;
- leave us open to accusations of breaches of laws relating to listed securities (e.g. tipping, market manipulation);
- have a chilling effect on our ability to conduct sensitive engagements with listed entities, and contribute towards improved company behaviours and ESG outcomes;
- in so doing, compromise our commercial interests and effectiveness as an institutional investor and unreasonably prejudice the commercial position of any party who supplied or was the subject of information pertaining to any engagement or exclusion decision.

For engagements to be successful, we need to have a relationship of trust with the investee company in order to gain access to information and to develop influence. The companies we wish to engage with will not work with us if we cannot uphold the confidentiality of both the fact of the engagements and the information supplied as part of the engagement process. This creates a very real risk that the supply of information from the companies concerned would be jeopardised and would put future engagements on responsible investment issues at risk. This would also jeopardise the willingness of other investors/organisations to work with us in engagement collaborations, which is an essential part of our responsible investment framework.

We therefore consider this information to be of the utmost sensitivity and confidentiality and refuse this request under the following sections of the Official Information Act:

- 9(2)(b)(ii): *would be likely unreasonably to prejudice the commercial position of the person who supplied or who is the subject of the information*
- 9(2)(ba): *protect information which is subject to an obligation of confidence or which any person has been or could be compelled to provide under the authority of any enactment, where the making available of the information would be likely to (i) prejudice the supply of similar information, or information from the same source, and it is in the public interest that such information should continue to be supplied or (ii) otherwise damage the public interest*
- 9(g)(i): *maintain the effective conduct of public affairs through the free and frank expression of opinions by or between or to Ministers of the Crown or members of an organisation or officers and employees of any public service agency or organisation in the course of their duty.*

We considered whether the public interest in favour of disclosure outweighs our reasons for withholding such information and concluded that it does not. We note there is a strong public interest in ensuring that we are able to continue to operate an effective engage/exclude programme as part of our Sustainable Investment Framework.

To address your broader point (which we understand to be around consistency of our approach to human rights issues relative to the exclusion of the banks you have referred to): where a breach of human rights standards occurs in a company we invest in, our preference is to engage with the company to encourage it to change its practices and policies. Exclusion is generally a last resort.

In the example of the Occupied Palestinian Territories we concluded engagement was unlikely to be effective or an efficient use of resources as regards the banks concerned, including because those banks had continued their involvement in the face of international criticism over a long period and had reported that they believe their activity is legal. This is why a number of these companies have proceeded to exclusion rather than being included in an engagement initiative. It doesn't mean, however, that we have a disproportionate focus on this issue in the context of our overall engage/exclude programme, or that we are neglecting other important issues. For example, we are involved in a number of engagement programmes focused on human rights and labour rights globally, including in China. Human rights is a priority in our company engagement programme and we are active on it in relation to a range of companies around the world. If these engagements ultimately prove fruitless then we may consider exclusion as a last resort.

d) Where the Super Fund is no longer invested in the listed companies, you asked us to state whether this was because of ESG considerations or simply business-as-usual reasons.

We are not able to provide this information on a company-by-company basis as doing so would require us to undertake bespoke research to create new information (which is not a requirement under the Official Information Act). To that extent, we therefore decline your request on the basis that the information does not exist under section 18(e) or is not held under section 18(g) of the Official Information Act.

However, we can provide some explanatory information.

None of the companies you have noted have been excluded from our portfolio by way of an exclusion under our Responsible Investment Framework. Nevertheless, their removal from our portfolio may in some cases be a result of poor performance on environmental, social or governance metrics.

To explain, in 2022 we shifted about 40% of the Fund's total investment portfolio to reflect new market indices which are aligned with the Paris agreement and which also have stronger requirements for environmental, social and governance standards. These criteria are set by the index provider. We undertook a similar exercise in 2023 with a further 19% of the Fund's portfolio. As a result, the number of equities held by the Fund has progressively been significantly reduced, from more than 6,500 before the initial 2022 shift to approximately 1,500 as at 31 December 2023.

We expect the majority of the companies you have named have been removed from our portfolio as result of these index changes (e.g. for the more concentrated nature of the indices, and the climate-related, environmental, social or governance performance); however, other reasons may include corporate actions (e.g. mergers and acquisitions) and share price changes (e.g. resulting in a company dropping out of an index based on a fall in its market capitalisation). With respect to the 2023 changes, decisions by external investment managers, independent of us, in the pursuit of their investment strategies, may also have affected what stocks are in the portfolio. Some companies may also have been removed from the relevant indices that we track for regulatory reasons, such as a result of sanctions issued by the United States.

3) All correspondence with anti-Israel groups (Palestinian Solidarity Network Aotearoa, John Minto, Justice for Palestine, Marilyn Garson, etc) in New Zealand over the past year.

Please refer to Appendix I.

You have the right to seek an investigation and review by the Ombudsman of this decision. Information about how to make a complaint is available at www.ombudsman.parliament.nz or freephone 0800 802 602.

Please note that it is our policy to proactively release our responses to official information requests where we consider the request to be a material one. Our response to your request will be published shortly at <https://www.nzsuperfund.nz/publications/disclosures/oia/>, with your personal information removed.

Yours sincerely

A handwritten signature in cursive script that reads "Paula Steed".

Paula Steed

Acting Chief Executive Officer

Encl Appendix 1