

Capital Markets Reforms Phase Two – Feedback from Guardians of NZ Superannuation

15 September 2026

This submission on the phase two capital markets reform discussion document is from the Guardians of New Zealand Superannuation (the Guardians).

Guardians of New Zealand Superannuation

The Guardians of New Zealand Superannuation is the Crown entity responsible for managing and administering the NZ Super Fund and the Elevate NZ Venture Fund.

Our mandate requires us to invest the NZ Super Fund on a long-term, commercial basis. We are a significant investor in New Zealand's listed market and have a strong interest in the health, integrity and competitiveness of New Zealand's capital markets.

Our submissions are made primarily from the perspective of a long-term institutional investor. We have not commented on whether the current settings are suitable for retail investors.

Executive summary

The Guardians supports reforms that reduce unnecessary cost, delay and complexity in New Zealand's listed capital markets. However, competitiveness and investor protection should not be treated as opposing objectives. Reliable disclosure, effective shareholder rights and market integrity are essential to attracting long-term capital and reducing its cost.

Public markets must compete with private capital as a source of funding and an exit route for business owners, while the NZX must compete with overseas exchanges, particularly the ASX. However, strong disclosure, shareholder rights and market integrity are not, in our view, obstacles to competitive capital markets. Such factors are, in fact, part of what makes markets investable.

The Guardians' overall position on capital markets reform is that the focus should be on reducing cost and complexity, where requirements are not delivering commensurate investor benefits, while preserving the foundations of a credible and trusted market.

Our key recommendations are:

- Regulatory reform alone will not restore the IPO pipeline. New Zealand has not had a meaningful equity IPO and new NZX listing for approximately five years. While regulatory adjustments are important in incentivising new listings, they are not the whole story. We flag some other ideas for policy investigation, including measures addressing market depth, liquidity, research coverage, listing costs and the pipeline of potential issuers, below.
- There is a very clear need for PDS requirements for equity IPOs to be materially simplified. We support further development of Option B(ii), under which the prescribed PDS could be reduced to a focused Key Information Summary, with

the remaining required information available through the Disclose Register and the issuer's website.

- The law should enable digital-first disclosure. Information should be structured, searchable, downloadable and capable of being analysed using modern tools, including AI.
- The same-class offer regime has been successful and should be extended to offers of products with a different series or ranking, provided the differences are clearly disclosed.
- For continuous disclosure breaches, civil liability should rest primarily with the issuer. Consideration should be given to different fault settings for regulatory enforcement and private compensation claims.
- The test for directors and others being “involved in a contravention” should be narrowed. It needs to be clearer that mere knowledge of, or peripheral involvement in, discussions touching on the relevant subject matter should not be sufficient.
- Deemed director liability under section 534 of the Financial Markets Conduct Act 2013 should be removed and replaced, where necessary, with proportionate fault-based liability.

Big-picture observations

New Zealand needs more listings, but not at any cost

The Guardians supports the Government's objective of making it easier and less costly for businesses to access public capital.

New Zealand's listed market is small and relatively concentrated. It provides limited exposure to some sectors that are increasingly important to global investment returns, including technology and AI-related businesses. Attracting a broader range of high-quality companies would improve the opportunity set for both institutional and individual investors.

At the same time, reforms should maintain appropriate discipline. Shareholder rights, reliable disclosure and fair dealing support investor confidence and reduce the cost of capital over the long term. While excessively loosening those settings could make listing appear cheaper, it could also leave the market less attractive to the capital it is seeking to attract.

The absence of IPOs points to a more complex situation

Significantly, the last meaningful conventional equity IPO and new listing on the NZX Main Board was approximately five years ago. Regulatory settings such as PDS requirements and director liability may well be a contributing factor to the lack of listings, but they are certainly not the whole explanation. Other relevant factors include:

- the depth and liquidity of the market;

- the availability of private capital;
- the cost of listing and remaining listed;
- the availability of analyst and broker coverage;
- fundraising and distribution capability;
- the scale and maturity of the potential issuer pipeline; and
- broader economic and market conditions.

In terms of advancing the objectives of these reforms, therefore, the issues covered in the discussion document need to be seen as being useful but not sufficient.

Listed markets are an important part of the equity ladder

Over successive governments, public policy in this area has had a significant focus on supporting early-stage capital, innovation and high-growth businesses that can help lift New Zealand's productivity. Unquestionably, that is important, but a successful equity ladder also needs credible pathways for mature businesses to access public capital.

Listed markets can:

- provide founders and early investors with an exit;
- give businesses access to further growth capital;
- facilitate wider public participation in successful New Zealand companies;
- create liquidity and transparent market pricing; and
- allow capital to be recycled into the next generation of businesses.

If effective interventions and policy are to be developed, therefore, our listed market should be considered as part of the same policy framework as early-stage venture capital and growth capital, as opposed to a separate or legacy market.

Private-market developments create an opportunity

Globally, private market participants are holding assets for longer and increasingly private equity sponsors are transferring assets into continuation vehicles, rather than selling them to third parties or listing them.

Private ownership and continuation funds have a legitimate role. However, some mature, well-governed and cash-generative businesses currently retained in private structures may be suitable for public ownership. The reform programme, therefore, needs to consider what would make the NZX a credible exit route for those assets.

Regulatory reform should assist, but valuation, liquidity, research coverage, and access to a sufficiently broad pool of investors are equally important.

Non-regulatory measures should be part of the package

Accompanying the focus on regulatory tools, we recommend that policy development also includes consideration of a wider range of initiatives, such as:

- whether reasonable IPO and initial listing expenditure should be deductible for tax purposes;
- measures to support independent research coverage of smaller listed companies;
- active engagement with private equity owners and growth businesses on barriers to using the NZX as an exit or capital-raising venue.

Issue 1: Product disclosure statements

Overall position

The Guardians supports a material reset of the PDS requirements for listed equity IPOs.

The current regime prescribes content, headings and, in some cases, wording. It is intended to make information clear and comparable, with a Key Information Summary appearing first. The discussion document refers to concerns that PDSs are often too long and complex, duplicate information available elsewhere and do not reflect the way investors increasingly consume information. We agree with these concerns. In fact, from a clarity perspective, the current approach is arguably working against what it is intended to achieve.

From an institutional investor perspective, the key requirement is not that all information appears in one prescribed document and in a precise order and format. It is that material information:

- is available;
- is reliable;
- is provided at the right time;
- can be readily found and analysed; and
- is subject to appropriate accountability (see question 2 below).

Responses to questions 1.1 to 1.4: problem definition

The Guardians agrees that the PDS requirements need to be reset.

In making this case, our perspective is limited, obviously, to that of an institutional investor. Institutional investors typically assess an IPO using a range of materials, including:

- the formal offer document;
- financial statements;
- management presentations and engagement with management;
- available analyst research;

- industry and market data;
- due diligence and expert reports where available; and
- their own legal, financial and investment analysis.

In this context, while the PDS is important, it is only one part of the necessary information set.

For equity IPOs, the benefits of rigid comparability are limited. An IPO is an investment in a particular business, strategy, management team and risk profile. It is not readily comparable with another IPO in the way that one standardised managed investment product may be compared with another.

We also note that there has been insufficient recent IPO volume in New Zealand for prescribed ordering to actually deliver meaningful transaction-to-transaction comparability.

In our view, the most pressing issues are:

- duplication between the PDS, register material and other public information;
- excessive prescription of structure and presentation;
- a framework designed around static documents rather than digital information and modern analysis.

We cannot provide direct evidence that a particular issuer decided against listing solely because of the PDS requirements, and we agree that listing decisions are complex and multifactorial. The lack of IPOs, nevertheless, does suggest that a close examination of any requirement that adds material cost or delay without a clear investor benefit is needed.

Responses to questions 1.5 to 1.7: PDS content

Support Option B(ii) for equity IPOs

The Guardians supports further development of Option B(ii), reducing the prescribed PDS for a listed equity IPO to a focused Key Information Summary, with the remaining required information continuing to be publicly available through:

- the Disclose Register;
- the issuer's website; and
- clearly identified links from the Key Information Summary.

Consistent with such an approach the discussion document states that the Key Information Summary and financial information were identified as the most useful parts of the PDS in stakeholder engagement. The document also recognises that the Disclose Register has a poor user experience.

In our view, legislative provisions should focus on material information and decision-usefulness, rather than treating compliance with prescribed headings as an end in itself.

Avoid replacing one long document with several hard-to-find documents

While simplification is needed, care will need to be taken to ensure that it does not result in material information becoming fragmented or difficult to locate, as this would be counter-productive.

If information is moved out of the PDS, the following safeguards should apply:

- Key Information Summary provides a clear index and links;
- full information package is available from a stable and obvious location;
- materials are downloadable.

Extend the same-class offer approach

The same-class offer exclusion has been successful in reducing the cost of follow-on capital raising by listed issuers, recognising that investors already have access to information through continuous disclosure and periodic reporting.

The Guardians supports extending a similar approach to offers of debt or equity products that:

- are issued by an existing listed issuer;
- differ in series, terms or ranking from quoted products;
- are otherwise supported by the issuer's existing market disclosure; and
- are accompanied by clear, prominent disclosure of the differences and their practical consequences.

In such cases, a short term sheet and cleansing notice should generally be sufficient.

The fact that a new security ranks differently does not, by itself, justify requiring a full or simplified PDS. What an investor needs is a clear and accurate understanding of the differences and their effect.

The discussion document identifies a potential issue for offshore debt offers because the zero-rated Approved Issuer Levy (AIL) treatment depends on the offer being a regulated offer. That tax consequence should not, in our view, drive the design of the disclosure regime. The issue of AIL availability could be addressed by:

- amending the AIL eligibility requirements;
- deeming a qualifying offer to be a regulated offer for the relevant tax purpose (such that zero-rated AIL continued to be available); or
- creating a separate eligibility pathway based on the substantive disclosure and market requirements applying to the offer.

Responses to questions 1.8 to 1.10: digital-first disclosure

The Guardians supports digital-first disclosure, but does not support the continuous editing of the authoritative offer information.

While the Disclose Register should remain the official repository, investors should not be expected to rely on a register that has been identified as being difficult to use. It is our submission, therefore, that issuers should also be required to publish the offer documents on their own websites.

Digital disclosure should be designed on the basis that investors and intermediaries will increasingly use AI and other analytical tools to ingest, compare and test offer information.

Issue 2: Civil liabilities for directors and issuers

Overall position

Appropriate liability settings are important to investor confidence, but more liability does not automatically produce better governance or better disclosure.

A regime that personalises civil liability without proof of meaningful fault can:

- increase D&O insurance and advisory costs;
- encourage defensive disclosure;
- lead to excessive due diligence and verification;
- distract boards from strategic governance;
- discourage capable people from serving as directors; and
- ultimately pass costs back to the company and its shareholders.

These concerns are consistent with the Guardians' submission on the climate-related disclosure regime (available here:

<https://nzsuperfund.nz/assets/Dislosures/Submissions/NZSF-Submission-adjustments-to-CRD-regime.pdf>).

Responses to questions 2.1 and 2.2: problem definition and significance

The Guardians broadly agrees with the problem statement set out in the discussion document, but again notes that decisions around whether to list (or to remain listed or consider overseas markets) are multi-factorial and unlikely to be driven by a single issue such as director liability.

Liability settings, in our experience, impact well beyond simply the prospect of a successful claim. They shape behaviour before any breach occurs by influencing:

- governance processes;
- board paper and disclosure practices;
- external legal and accounting review;

- the scope of due diligence;
- insurance premiums and coverage;
- willingness to make useful forward-looking disclosure; and
- directors' willingness to accept appointments.

Those impacts arise even where no contravention occurs.

Responses to questions 2.3 to 2.5: director involvement in continuous disclosure contraventions

Support Option B(i)

The Guardians supports Option B(i) - narrowing what it means for a director or other person to be “involved in” a continuous disclosure contravention.

Under the current regime, a director is not automatically liable, but may be liable if involved in the contravention under section 533 of the Financial Markets Conduct Act 2013. Section 272 then requires the person to establish that they took all reasonable steps to ensure compliance and, after doing so, believed on reasonable grounds that the issuer was complying.

The difficulty is that “involved in a contravention” is potentially broad and uncertain.

Section 533 includes a person who:

- aids, abets, counsels or procures the contravention;
- induces the contravention; or
- is in any way, directly or indirectly, knowingly concerned in, or party to, the contravention.

The first two limbs identify clear forms of affirmative participation. The third is significantly less clear, particularly in a governance context. For example, a director may:

- receive information relating to the underlying subject;
- participate in a preliminary discussion;
- ask questions;
- receive an incomplete paper;
- rely on management processes; or
- be aware that a disclosure question exists,

without assisting, encouraging or causing a failure to disclose.

We recommend removing paragraph (c) of the section 533 “involved in a contravention” definition (i.e. the third limb noted above) so that the boundaries are clear.

Responses to questions 2.6 to 2.8: issuer liability

The Guardians supports retaining meaningful entity-level liability for continuous disclosure contraventions. Entity liability, in our view, should ordinarily be sufficient to incentivise effective disclosure systems and compensate affected investors.

While we do not express a firm preference between strict issuer liability and a fault-based standard for all purposes, there is a legitimate distinction between:

- FMA enforcement aimed at market discipline; and
- private compensation claims, including class actions.

Australia's approach in this area is relevant. As the discussion document notes, Australia introduced a fault element in 2021 (requiring knowledge, recklessness or negligence for civil liability), and subsequently proposed removing the fault element for regulator enforcement while retaining it for private compensation claims.

In our view, the Australian model warrants consideration. Alignment would also reduce the risk of New Zealand becoming a comparatively more attractive jurisdiction for shareholder class actions where equivalent claims face a higher threshold elsewhere.

Any change must, however, preserve effective FMA enforcement and strong incentives for timely disclosure.

Responses to questions 2.9 to 2.12: deemed director liability

The Guardians supports Option G(iii) - removal of deemed director liability for both defective disclosure and financial reporting contraventions, with fault-based liability retained where a director has personally engaged in sufficiently serious wrongdoing.

Section 534 currently treats every director as having contravened specified provisions when the issuer has contravened them, unless the director establishes a statutory defence. The current Act therefore attributes liability before personal fault has been proven. That is not, in our view, an appropriate starting point for a liability regime. Directors should not be treated as having personally contravened the law merely because they held office when the entity was in contravention.

In relation to deemed director liability, it is our view that:

- Entity liability is generally sufficient.
- A fairer and more appropriate approach for personalising liability is for the claimant or regulator to establish the director's personal fault or involvement.
- Deemed liability creates a regulatory incentive for excessive due diligence, verification, assurance, legal advice and insurance costs.
- Presumptive personal civil exposure can incentivise unnecessarily long, more technical, and heavily qualified disclosure practices.
- If capable directors perceive listed-company appointments as carrying disproportionate personal exposure, the pool of available directors is likely to narrow. That would weaken, rather than strengthen, governance.
- Removing deemed civil liability will not encourage non-compliance. Existing provisions, including issuer liability, fault-based accessory liability, directors'

duties under the Companies Act, criminal liability for serious misconduct or reputational and market consequences, will remain in place, and create an effective and material non-compliance deterrent.

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