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The AML/CFT Act consultation team
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**CONSULTATION ON CHANGES TO AML/CFT ACT REGULATIONS – SUBMISSION BY
GUARDIANS OF NEW ZEALAND SUPERANNUATION FUND**

We thank you for the opportunity to make this submission in relation to the proposed changes to the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 ("**Act**") regulations. This submission is made by Guardians of New Zealand Superannuation (**Guardians**).

Guardians

By way of background:

1. Guardians is a statutory entity whose functions are defined and limited by the New Zealand Superannuation and Retirement Income Act 2001 ("**NZSRIA**"), the Venture Capital Fund Act 2019 ("**VCFA**") and the Crown Entities Act 2004 ("**CEA**").
2. Guardians invests the New Zealand Superannuation Fund (the "**NZSF**") and the Venture Capital Fund known as the Elevate NZ Venture Fund (the "**VCF**" and, together with the NZSF, the "**Funds**") (which are both the property of the Crown) pursuant to statutory mandates. Guardians is responsible for administering and managing the Funds. Importantly, Guardians can only invest the Funds. Guardians cannot invest other funds, as it has no statutory authority to do so (as a statutory entity, it derives all of its powers from statutes).
3. Guardians currently benefits from a full Ministerial exemption from all of the provisions of the Act, granted pursuant to Section 157 of the Act. This exemption came into force on 23 July 2018 and expires on 30 June 2023 (the "**Current Ministerial Exemption**"). Guardians has made an application for renewal of the Current Ministerial Exemption for a further five years from 30 June 2023 to 30 June 2028 on the same terms.
4. Guardians may, but for the Current Ministerial Exemption, be classified under the Act as a "financial institution" and, accordingly, a "reporting entity". This is because, in the ordinary course of its business, Guardians could be seen to:
 - (a) trade for the account of its customer (the Crown) in derivatives, transferable securities and futures;
 - (b) invest, administer or manage funds or money on behalf of other persons (the Crown); and
 - (c) undertake safe keeping or administering of cash or liquid securities on behalf of other persons (the Crown).

Submission

The **Guardians supports the proposed regulation 24AG in its current form**, noting it provides greater regulatory certainty and enables cost-savings and efficiencies. We note that:

1. there is negligible, if any, risk of money laundering or terrorism financing associated with Guardians due to:
 - (a) the statutory framework in which Guardians operates;
 - (b) the fact that Guardians' does not have any "customers" in the traditional sense and instead manages the Funds pursuant to statutory mandates;
 - (c) Guardians' activities are limited to investing the Funds (which contains only the Crown's money and investment returns on this money); and
 - (d) the extensive systems and controls which are already in place, including public accountability mechanisms.
2. the current regime is not designed to regulate the unique financial activities of Guardians, which means that Guardians incurs the cost of making an exemption application every five (5) years. With the removal of this requirement, the new proposed regulation would result in cost savings and efficiencies to Guardians, which would be welcomed.
3. the effect of the Crown entity exemption and regulation 18 of the Anti-Money Laundering and Countering Financing of Terrorism (Definitions) Regulations 2011 is that Crown entities to which regulation 24AG applies are not "reporting entities" under the Act. We consider this to be the correct and appropriate outcome. While this is also our understanding of the position under the current Ministerial exemption, the proposed regulatory exemption is clearer and more robust over time in that it does not depend on the particular way in which the exemption is framed at each renewal period (noting that this currently changes over time, so requires some analysis at each renewal to ensure there are no unintended consequences such as a loss of regulation 18 protection).

If you have any queries in relation to this submission or require any further information, please do not hesitate to contact Craig Douglas, General Counsel, DDI 09 366 4926 or Adrien Hunter, Senior Legal Counsel, DDI 09 366 5496.

Guardians of New Zealand Superannuation