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Complaint about the New Zealand Superfund

Dear Rob Everett,

Wise Response wishes to lay a complaint about the New Zealand Superfund (NZSF) making misleading claims to be a responsible investor. The justification for this rests on the following:

a) The nature of being responsible means that moral obligations concerning human-human and human-Earth relations are identified and used to assess the moral character and behaviour of companies and assets that are being considered for investment. Where these investments options fall short of the ethical standards required by these obligations, a responsible investor will either avoid investing in them, or engage with the view to changing their behaviour. These endeavours should be regularly reported on. Where engagement does not take place, a responsible investor will report that there are companies or assets in their portfolio which may not be responsible.

   The NZSF does not meet these standards and to claim that it is a responsible or ethical organisation is misleading and false.
   - It never defines what it means by responsible;
   - Its engagements are limited;
   - Its reporting is inadequate.

b) A responsible investor will only use moral standards and frameworks that are validated, namely that the standards will enable an investor, if used, to invest in companies and assets that meet the moral obligations mentioned in a).

By relying on the United Nations Principles of Responsible Investment (UNPRI) – which is not a validated standard – it is misleading and irresponsible. An example of this deception is its presentation to Foreign Affairs, Defence and Trade Select Committee [1] where it uses the UNPRI to try to justify its claim to be responsible. By using the UNPRI it has ignored its investments in companies that the Norwegian Sovereign Wealth Fund [2] has excluded because of serious breach violations of human rights; severe environmental damage; gross corruption; and other serious violations of fundamental ethical norms. Two of these companies are excluded by the Norwegian Sovereign Wealth Fund because of their involvement in nuclear weapons.

In addition, the NZSF is invested in banks, such as Citi, Wells Fargo, Barclays, Bank of China, and the major Australian banks, which, since the Paris Agreement about climate warming, have invested heavily in fossil fuel companies.

Being A Responsible Investor

Human-Human Behaviour

New Zealand strongly supported the establishment of the United Nations' Universal Declaration of Human Rights (UDHR). In 1977, New Zealand set up the Human Rights Commission, working under the Human Rights Act (1993). Its purpose is to promote and protect the human rights of all people in Aotearoa New Zealand.

New Zealand was a founding member of the International Labour Organisation (ILO), joining in 1919. It has a unique record on issues of labour and social justice. In 1893, New Zealand became the first country in the world to give women the vote. It was also the first to legislate for an eight hour working day, so paving the way for the ILO's Hours of Work (Industry) Convention in 1919. New Zealand has consistently maintained an active and visible presence in the ILO, and its representatives have attended the annual ILO conferences since 1935. The New Zealand Government served as a deputy member of the ILO Governing Body (GB) between 1990-96 and 1999-2005, and the Government and employers' organization representatives were elected as regular members of the GB for the 2014-17 term [3].

Human-Earth Behaviour

In New Zealand the moral domain includes many aspects of human-animal and human-environment relationships. It is illegal to abuse domestic and farm animals. New Zealand has a Wildlife Act, regulating behaviour towards animals, birds, and aquatic life. It is recognised that there is a need for the protection of a number of non-domestic animals, birds and plants. The Department of Conservation has active programmes to these ends. New Zealand has recognised the interests of trees, such as kauri, and other trees that we give protection from possums. There is recognition given to endangered species, such as the Maūi Dolphin. New Zealand has acknowledged the need for protection of wilderness locations, such as national parks.

On the Department of Conservation website is a list of the international and multinational Conventions and Agreements that New Zealand has signed up to. These include the

- Antarctic Treaty System,
- the Convention on Biological Diversity,
- the Convention in International Trade in Endangered Species,
- International Union for Conservation of Nature,
- The Convention on the Conservation of Migratory Species,
- Pacific Regional Environmental Programme,
- Ramsar Convention on Wetlands,
- the International Whaling Commission,
- the World Heritage Convention,
- Basel Convention,
- London Convention,
- MARPOL,
- UN Convention on the Law of the Seas,
- UNFCCC,
- Vienna Convention on the Protection of the Ozone Layer [4].

These practices and Conventions and Agreements provide the content validation for deriving the measures to be used to assess the ethical nature of the human-Earth relationship.

Checklist

Using the above information a checklist can be established to guide the assessment of investment options for a responsible investor.

1 Does a company's Code of Conduct, or the statement of its values include both human-human and human-Earth responsibilities? Are its key moral concepts adequate for generating secondary concepts and a set of obligations, to define a relationship that guides ethical behaviour?

2 In its Code or in social impact reports, does the human-human dimension include reference to the UDHR and the Conventions of the ILO? And in particular

- 2a Does the company have a policy manual or its equivalent that describes how it describes its obligations under the UDHR and ILO conventions?
- 2b Does the company pay a living wage?
- 2c Does it report on its lowest to highest employee payment ratio?
- 2d Does it have adequate health and safety policies and practices?
- 2e Does it require its contractors, suppliers and distributors to meet its own ethical standards?
- 2f Does it have adequate internal and external complaint procedures?
- 2g Does an organisation, in its lobbying, donations and gifting, avoid those organisations and activities which do not support the authority of government, and in particular the expression in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures?
- 2h Are its decision-making, its promotional, marketing and reporting activities based on the concepts of integrity and transparency? In particular does it have statements of its purpose, governance and operational policies, codes of conduct, grievance and complaint procedures, strategies, risk analysis and robust audit procedures involving financial and non-financial behaviour and impacts?

3 Does the human-Earth dimension include reporting on its ecological footprint, and efforts to reduce it?

4 Does the human-Earth dimension include abuse of animals? Does it recognise the moral arguments for vegan and vegetarian diets, and give investors choices for the exclusion of companies associated with the killing and production of animal based food?

5 Does the company adhere to CITES, and the Convention on Biological Diversity?

6 Does the company adhere to the Forestry Stewardship Council's

- Principle 3 (Indigenous People's Rights);
- Principle 4 (Community Relations);
- Principle 5 (Benefits from the forest); and
- Principle 6 (Environmental Values and Impacts)?

Does it protect individual trees and tree types on grounds that incorporate cultural and historical factors and where preference is given to indigenous species? Does it protect rivers, lakes and oceans from any discharge from its forests?

7 Does it measure and report on its ecological impact on land use, rivers, lakes and oceans, and waste that it puts into them, using the best available regional standards available based on modern science, and taking into account international reports, such as those based on the Convention of Biodiversity.

8 Does it account for any production and use of chemicals, to ensure that they are not harmful. When appropriate, does it follow the precautionary principle?

9 Does it adhere to the World Health Organisation's most up to date *Air Quality Guidelines?*

10 Does it report on its Greenhouse Gas Emissions, and its plans to reduce them?

Is the NZSF Definition of 'Responsible', Valid?

Establishing the validity of a measure means showing the measure actually measures what it claims to measure. There are two steps to take to establish the validity of a measure: content and construct. To be a valid measure, both tests need to be passed. Content validity requires consideration at a conceptual level: does the measure make sense? Is the standard or framework comprehensive (does it include all the dimensions of human-human and human-Earth behaviour and is it rich enough to generate the secondary concepts and set of obligations to be able to define a relationship that guides behaviour. An example of the richness required is the use of the notion of harm by the Simplicity Fund to provide content validation [5].

Construct validity requires empirical considerations: is the application of the measure consistent with other empirical evidence?

The NZSF states

> *Responsible investment has become the predominant framework for what was known as "ethical investment" at the time the Act was passed. Responsible investment is understood internationally to involve considering and giving effect to environmental, social and governance (ESG) factors in investment management. When we refer to the term "Responsible Investment" we see it as encompassing ethical investment.*

The Reporting Exchange stated that in 2019 there were more than 1700 different frameworks [6]. Until the NZSF defines the moral concepts of what it means by 'responsible' then just referring to it does not pass the content validation test. In particular, it should show that its definition and use of the term 'responsible' fits with the understanding in the section **Being A Responsible Investor,** above.

<u>UNPRI</u>
The NZSF uses the United Nations Principles of Responsible Investment (UNPRI) and the United Nations Global Compact (UNGC). There are six principles for the UNPRI [7].

- Principle 1: We will incorporate ESG issues into investment analysis and decision-making processes.
- Principle 2: We will be active owners and incorporate ESG issues into our ownership policies and practices.
- Principle 3: We will seek appropriate disclosure on ESG issues by the entities in which we invest.
- Principle 4: We will promote acceptance and implementation of the Principles within the investment industry.
- Principle 5: We will work together to enhance our effectiveness in implementing the Principles.
- Principle 6: We will each report on our activities and progress towards implementing the Principles.

The problem with this approach is that these are not moral terms and measures. What social behaviour, environmental impact or governance behaviour is morally right or wrong?

To pass the test of construct validation, the NZSF needs to show that it conforms with other empirical evidence. If we compare the Norwegian Sovereign Wealth Fund's exclusions and see if the NZ Superfund is invested in these companies that the Norwegians exclude, then some examples show that the NZ Superfund does not pass the construct validation test because it invests in companies that breach serious violations of human rights; severe

environmental damage; gross corruption; and other serious violations of fundamental ethical norms [8].

Examples of Norwegian Fund Exclusions (NZSF Inclusions) 2018

- Serious violations of Human Rights:
  - Walmart (human and labour rights)
- Severe Environmental Damage :
  - Bharat Heavy Electricals (building coal plant near forests in Bangladesh)
  - Duke Energy (discharges from coal-fired plants)
  - IJM Corp (palm oil plantations)
- Gross Corruption
  - ZTE Corp (bribery and corruption in 18 countries)
- Other Serious Violations of Fundamental Ethical Norms
  - Potash Corp Saskatchewan (phosphate from Sahara)

While some of these companies are not in the NZSF December 2020 list, none of them were included in the NZSF exclusion list on ethical grounds.

Examples of Norwegian Fund Exclusions (NZSF Inclusions) Dec 2020

Nuclear Weapons
- Aerojet Rocketdyne
- Airbus SE

Coal/coal based energy
- AGL Energy

Severe Environmental Damage
- ELSewdy Electric - (hydropower project in Tanzania)
- Genting Bhd (Palm oil)

Serious Violation of Individual Rights in Situations of War or Conflict
- Shapir Engineering

Human rights
- Page - (textile production in India)

The full analysis of these breaches is available on the Norwegian Council of Ethics and Norges Bank websites.

In addition, in the five years since the Paris Agreement, banks in which the NZSF is invested have invested significantly in fossil fuel companies. These include Citi ($238 b); Wells Fargo ($223 b); Morgan Stanley ($111 b); Barclays ($145 b); HSBC ($110 b); Bank of China ($101 b); Agricultural Bank of China ($49 b) [9].

The Australian banks, including Westpac, ANZ, CBA, Macquarie, and NAB have also been major transgressors. Market Forces state:

> *On 5 November 2015, NAB promised to support the Paris Agreement, most recently stating the bank "will seek to manage our portfolio to align with the Paris Agreement goal….striving for 1.5 degrees Celsius above pre-industrial levels". … Yet since 1 January 2016, NAB has loaned more than **$1 billion** to projects that expand the scale of the polluting gas industry. These projects will enable the release of over **2.2 billion tonnes of CO2**, equivalent to more than four times Australia's total greenhouse gas emissions for the year to September 2020 [10].*

Market Forces stated the following about Macquarie Bank [11] :

> *Macquarie has loaned $5026M to fossil fuels globally since 2016. Macquarie (via Macquarie Investment Management and other subsidiaries) also holds more than $2.5 billion of shares in numerous coal, oil and gas companies, including Peabody*

Energy Corp, BP, Chevron and Shell (shareholdings current as of latest filing date reported by financial data provider Refinitiv Eikon in June 2020).

UNGC
There are ten principles [12].

Human Rights
Principle 1: Businesses should support and respect the protection of internationally proclaimed human rights; and
Principle 2: make sure that they are not complicit in human rights abuses.
Labour
Principle 3: Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining;
Principle 4: the elimination of all forms of forced and compulsory labour;
Principle 5: the effective abolition of child labour; and
Principle 6: the elimination of discrimination in respect of employment and occupation.
Environment
Principle 7: Businesses should support a precautionary approach to environmental challenges;
Principle 8: undertake initiatives to promote greater environmental responsibility; and
Principle 9: encourage the development and diffusion of environmentally friendly technologies.
Anti-Corruption
Principle 10: Businesses should work against corruption in all its forms, including extortion and bribery.

The Labour Principles (3-6) do not include paying a living wage. In the environmental category, Principle 7 is worth adopting because it is a prudent response to unknown risks. Principles 8 and 9 however, are weak and are not able to provide adequate environmental protection and meet the environmental obligations in **Being A Responsible Investor,** above.

The UNGC is not a valid set of principles because it cannot pass the content test of validation.

The UNPRI and UNGC are not valid measures of a responsible or ethical company: they fail the content and construct tests. Using them does not mean that investments will be responsible. For NZSF to claim that it is responsible because it has signed up to these standards is false and hence misleading and dishonest.

Exclusions, Reporting and Transparency

The NZSF states that exclusions are based on these categories:

- the manufacture of cluster munitions;
- the manufacture or testing of nuclear explosive devices;
- the manufacture of anti-personnel mines;
- the manufacture of tobacco;
- the processing of whale meat;
- recreational cannabis.

In addition there is a category *Poor ESG Practices* which listed 16 companies in the NZSF report June 2021.

Soon after the NZSF was established it commissioned a review of whether its investments in smoking conflicted with its legal mandate to avoid prejudice to New Zealand's reputation as a responsible member of the world community. The advice said there was no conflict. However, the principle of public embarrassment meant that it could not hold this position. It also was the reason for the exclusion of Freeport-McMoran. The decision to exclude fossil fuel companies was made on the grounds of long-term risk, rather than ethical grounds. The requirement to avoid prejudice to New Zealand's reputation as a responsible member of the world community is an inadequate moral compass. Combined with the absence of an adequate definition of responsibility, its exclusion and engagement activities tend to lack a comprehensive and prioritised approach.
The 2020 NZSF Annual Report states that BMO conducted in-depth engagement with 580 companies, in 41 countries, on a range of issues over the year ending 30 June 2020. There are quarterly reports from BMO that is contracted to do their engagement. The last quarterly report stated engagement with 185 companies, and there is a summary of its engagement with Goldman Sachs about climate finance. The last four quarterly reports engaged with 748 companies which are not identified. There was a summary report of nine: Canadian Rail; Compass Group; Haier, Johnson and Johnson; Tyson Foods; General Motors; Wolters Kluwer; Samsung and Goldman Sachs. The total companies invested in by the NZSF is around 6730. There are a number of international organisations that the NZSF is involved with to push for reform on various matters such as climate finance. But the lack of information about the companies engaged with, and the lack of a definition of what the NZSF considers to be responsible, means that the reporting and the transparency of its engagements is inadequate. The NZSF Board, according to its last Annual Report, have accounting; finance; funds management; business experience; and investment experience. Its lack of anyone with science, social sciences, environmental, engineering and philosophical/ethical skills and knowledge limits its ability to exercise appropriate policy setting in this area.

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