



Listed Companies Association
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27 February 2012

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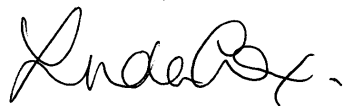
Dear Kristin

Draft Guidance Note – Approval of Persons to Provide Appraisal Reports

1. Thank you for forwarding to us for comment your draft Guidance Note on the Approval of Persons to Provide Appraisal Reports (**Guidance Note**).
2. We are concerned that the Guidance Note, as currently drafted, is at odds with market practice in New Zealand, and may make it difficult for listed companies to secure the services of appropriate independent appraisers. We elaborate on this point below.
3. The fundamental concern we have with the Guidance Note is that it only allows approval of "the individual person or persons that propose to provide the Appraisal Report and not the firm or organisation that employs the individual(s)". Further, "NZXMS will no longer approve firms to act as appraisers, rather approval will be specific to each candidate".
4. We believe this restriction places the position of NZX at odds with the market for appraisal services.
5. Many of the best appraisers are in firms, which are either partnerships or limited liability companies. In our experience, appraisals are undertaken in the name of the relevant firm, even though reports may be signed on behalf of the firm by the individual undertaking the appraisal work. Reports are usually issued in the name (and on the letterhead) of the relevant firm. This is very important from two perspectives:
 - (a) the issuer's ability to rely upon the reputation of the firm undertaking the appraisal (i.e. the appraisal report is backed by the brand of the firm and all of its partners or principals); and

- (b) from the perspective of the appraiser himself or herself, having either the protection of limited liability (in the case of a company) or the backing of his or her partners (in the case of a partnership).
6. If appraisers were forced to undertake appraisal work personally, rather than in the name of their firm, they may be unwilling to act (because of the liability exposure this entails) or may not be prepared to act for an appropriate fee (i.e. fees may be set to reflect the increased risk profile which the individual appraiser would be faced with).
7. We appreciate, however, NZX's desire to ensure that appraisers are appropriately qualified. We suggest that the better approach to this is the one that is adopted by the Takeovers Panel, which allows firms to be approved as appraisers, but subject to commitments around the persons within the firm who will be undertaking the appraisal, and their relevant experience and qualifications. A description of the Takeovers Panel's policy in this regard is available at the following web page:
- <http://www.takeovers.govt.nz/about/policy-advisers.php>
8. The focus on individual/employee appraisers, as opposed to the firms themselves, raises further issues in the Guidance Note. On page 1 of the Guidance Note, it is stated that "the information in the application should refer to the candidate's specific qualifications and relationship with the Issuer". This suggests that the questions around the relationship with the issuer, and conflicts of interest, are asked only in relation to the individual person or persons conducting the appraisal, rather than the firm they represent.
9. We do not think this is appropriate, as conflicts of interest will need to be tested against the activities of the relevant firm undertaking the appraisal. Certainly from a market perspective, there will be concerns over a perception of conflict if an individual within a firm is writing an appraisal report at the same time as another individual within that firm is providing strategic advice to the issuer. Again, we recommend that questions surrounding conflicts of interest and independence should be asked of the appraiser's firm, as well as in relation to the appraiser himself or herself.
10. We trust these comments are of assistance, and would be happy to discuss any aspect.

Yours sincerely



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