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Ministry of Economic Development

By email: josie.campbell@med.govt.nz

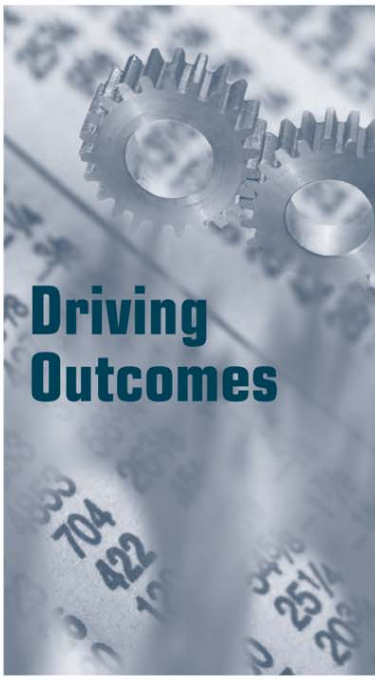
Attention: Josie Campbell

REVIEW OF DIRECTORS AND OFFICERS DISCLOSURE REGIME

Thank you for the opportunity to meet with you recently to discuss your review of the Securities Markets (Disclosure of Relevant Interests by Directors and Officers) Regulations 2003. We understand that the review is only of the Regulations. In particular you are reviewing regulation 4, which, by exclusion, narrows the scope of who is an 'officer', and you also hope to address other compliance issues associated with the regime.

By way of the background the Listed Companies Association is a voluntary organisation established primarily to represent the interests of companies which are listed on the New Zealand Exchange. The Executive of the Listed Companies Association is currently comprised of the following:

Linda Cox (Chair) – Telecom
John Blair – Air New Zealand
Peter Holdaway – SKYCITY
Takeshi Ito – Millennium & Copthorne Hotels
Grant Niccol – Fletcher Building
Paul Ridley-Smith – Infratil
Ross O'Neill – Contact Energy
Charles Spillane –Auckland International Airport
Gerald Fitzgerald – Kensington Swan
Roger Wallis/Tim Williams (alternate) – Chapman Tripp
Gavin McDonald/David Flacks (alternate) – Bell Gully



Review of regime

We note at the outset that we consider the time consuming and costly compliance issues associated with the current regime will be significantly mitigated by narrowing and clearly defining who is an 'officer', or more relevantly, 'who is not'. The broad definition has led to varied compliance with the regime, as will be seen from the information below.

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The original purposes of the regime were cited in the Discussion Paper, "Detail and Form of Disclosure of Relevant Interests by Directors and Officers" (May 2003) as being, in summary:

- To assist in the monitoring of insider trading and market manipulation;
- To act as a deterrent to insider trading;
- To provide useful information, which promotes transparency and good governance in securities dealings;
- To ensure investors have sufficient information to make accurate judgements about where to invest and hence enable the market to work more efficiently as resources are more effectively channelled into appropriate investments and funds.

These purposes are also reflected in proposed new section 19SA of the Securities Markets Act 1988, contained in the Securities Legislation Bill. We believe that the purposes of the regime are not being met due to the uncertainty surrounding the definition. This is because issuers have, in general, taken a conservative approach to the definition, and consequently the number of people disclosing under the regime is far greater than was probably originally anticipated. We do not consider that the Securities Commission Practice Note has provided sufficient certainty or comfort to companies in determining who officers are. We acknowledge the limitations that the Securities Commission had in providing guidance due to the broad statutory definition and the limited exclusions in the present Regulations.

Further, we consider the current regime does not enable effective monitoring of insider trading or provide useful information to the market due to the large number of disclosures being made. In addition, we consider that the proposed reforms of the insider trading laws in New Zealand in the Securities Legislation Bill, which are due to be passed shortly, are likely to be a more appropriate means to deter insider trading than the Directors and Officers Disclosure Regime. Nevertheless we consider it appropriate that disclosure of trading by directors and the most senior officers of the company to be information that is relevant to the market and should be subject to disclosure. In order however for this regime to serve the intended purposes we consider that the regime should be focussed on a far smaller group of people. We therefore welcome the serious consideration you are giving to a narrowed definition of 'officer'.

We are also aware of at least one major Australian company that has deferred a listing on NZX due to the current regime. We consider that this regime is detrimental to the development of New Zealand's capital markets, and that narrowing the definition of 'officer' should assist greatly in addressing the concerns of foreign companies.

Possible revised test

We discussed a test whereby the '**excluded person**' definition would be amended to exclude any person, "*not being either the Chief Executive Officer or a person falling within the six most highly remunerated direct reports to the Chief Executive Officer".* After further consideration, and the survey outlined below, we now prefer a simpler alternative to implement and manage from a compliance perspective, which would be to simply exclude those persons "*not being the Chief Executive Officer or a person not being a direct report to the Chief Executive Officer*". We believe this would in all instances catch the most senior officers, of the company and these people would be easy to identify. It also means that where the direct report group is larger than say 6, that no distinction is drawn between the most six highly paid and others who are direct reports.

You indicated during our meeting with you that it would be useful to obtain certain information from a representative sample of Issuers to assist you in your review. Accordingly, I have asked our Issuer representatives on the Executive to answer the following questions in relation to their individual companies.

1. Annual cost of compliance (including internal management time)?

2. How many people do you currently class as an "officer" subject of the regime?
3. We proposed a definition of "excluded person" as follows:

"…not being either the Chief Executive Officer or a person falling within the six most highly remunerated direct reports to the Chief Executive Officer"

If the above definition was adopted, please advise the positions of those people who would be caught by this definition (eg CFO, General Counsel etc)?

4. Is there anyone who ought to be covered by the regime that would not be under the above definition?
5. Does the inclusion of a cap based on remuneration going to have any material effect? For example, if the definition simply included the "officers" who are direct reports to the CEO, would there be many more than 6 in any event?

The information below does not show the names of individual companies but we have indicated the size of the company by reference to the company's NZSX position. You should note that this information is provided for the purposes of the review you are undertaking and is necessarily approximate.

Company A - NZSX 10 Company

1. Information not provided.
2. 18 people currently classified as 'officers'.
3. Positions of top 6 direct reports by remuneration are - GM Australian Operations, GM NZ Operations, GM Public Policy & Corporate Strategy, GM Corporate, GM Group Finance, Group GM Regulation and Legal.
4. Definition would leave 5 direct reports off the list, one or 2 maybe considered appropriate to include from a policy perspective.
5. Would be happy with a definition including Chief Executive and direct reports.

Company B – NZSX 10 Company

1. Approximately $25,000 per annum.
2. 60 people currently classified as 'officers'.
3. CFO, General Counsel and General Managers of principal business units.
4. No.
5. 8 direct reports to CEO.

Company C – NZSX50 company

1. Approximately $3,000 per annum.
2. 7 out of a staff of 10 currently classified as 'officers'.
3. CEO, Director - Airports, Director - Energy, CFO, Director - Special Projects, Director - Treasury & Investor Relations & Director – Acquisitions.
4. No. If all direct reports to the CEO are included then this will pick up all appropriate people. As it happens this is exactly 6 people.
5. If the test was the highest 6 paid then the list would change significantly. 2 or 3 of the direct reports earn less than CEOs of subsidiary businesses (who are not direct reports and should have no need to disclose as they are too remote from the overall business). So, a remuneration based test could generate an inappropriate list when compared to the direct report list.

Company D – NZSX small cap company

1. Immaterial.
2. 12 currently classified as 'officers'.
3. Vice President Finance (CFO), Vice President Operations (COO), Director of Marketing (NZ), Director of Marketing (Australia), Vice President Engineering, General Manager HR.

4. Possibly 2 regional managers.
5. The proposed definition might reduce the number of affected persons as compared to looking at just the direct reports to the CEO.

Company E – NZSX 10 company

1. $15,000 - $20,000 pa
2. 7 currently classified as 'officers'
3. Under the proposed suggestion, the six would comprise the four heads of business units, the CFO, and the Company Secretary/General Counsel.
4. Would also want to include the HR Director who reports to the CEO.
5. Remuneration test and direct reports to CEO are currently the same number.

Company F – NZSX 10 company

1. $30,000 pa
2. 60 people currently classified as 'officers'. Reporting of a far greater number is occurring due to the ongoing obligations of people who have ceased to be 'officers'.
3. CFO, Chief Operating Officers x3, Group General Counsel, Group GM Human Resources
4. No.
5. There are 6 direct reports to the CEO so the disclosing 'officers' under either definition would be the same.

Company H – NZSX 10 company

1. $6000 pa
2. 11 people currently classified as 'officers'
3. CFO, General Managers (x4) and General Counsel and Corporate Secretary.
4. Manager Corporate Planning and Strategy and Financial Accountant.
5. There are 9 direct reports to the CEO so the disclosing 'officers' would be slightly greater under a definition which looks at direct reports to the CEO only.

Other points to note:

1. In practice the disclosure obligation is being managed by the Company, not the individual even though the legal obligation rests with the individual. The costs of compliance arising from the broad application of the regime are in our view outweighing the benefits the market of the information being disclosed. The complex nature of the current disclosure requirement is primarily why the obligation is being managed on behalf of the individual by the Company. We believe that the disclosure obligation could be considerably simplified, and therefore be less costly to comply with. In addition, the general view is that the disclosure form is too prescriptive and not helpful to readers who wish to view information on the NZX website. We consider analysts, observers and regulators could be as well informed if:

    a. A different form was prescribed for initial disclosure (given the limited application of section 19T(1)) and for subsequent disclosure. The forms should contain a note explaining when each form should be used (ie initial disclosure, for new listings and new director/officer appointments; subsequent disclosure for acquisitions/dispositions by director/officers).
    b. Disclosure comprised just the number and class of securities bought/sold, a brief description of the nature of relevant interest, the nature and value of the transaction, the date of the transaction, and the number now held.

    We note that Directors are also required to disclose these details by section 148 of the Companies Act 1993 (other than the nature of transaction and number now held). However the Companies Act does not require disclosure of the registered holder, or number of transactions, or number of securities held prior, or date of previous disclosure.

c. Acquisitions and dispositions were able to be aggregated in the same disclosure form, eg an exercise of options and sale of shares, or an order completed on-market over a period to up to 5 trading days. It should also be possible to disclose in one form more than one type of transaction.
d. Passive transactions (where the director/officer does not make a decision ahead of each transaction) were exempted from disclosure, eg issues of shares under dividend reinvestment plans, issues of shares under employee incentive schemes, and transactions where all shareholders have the same opportunity, e.g. pro rata entitlements under rights issues, $5,000 per shareholder share purchase plans, shares issued on amalgamations, or shares cancelled in schemes of arrangement.

2. We are aware of a number of situations where a misleading impression has been given by disclosure of non-beneficial relevant interests (ie where the director/officer, does not derive any personal benefit from the holding), most commonly where the directors/officers are trustees of an employee share scheme and are currently required to make disclosures in relation to all shares held as part of the employee scheme. We consider that only executives' beneficial ownership relevant interests are of importance to market observers. Accordingly the disclosure obligation should be limited to the obligation of the director/officer beneficial owner to make disclosure, rather than the trustees with a non-beneficial relevant interest only. Accordingly we recommend regulation 20 be amended to provide a complete exemption for disclosure by employee share schemes.

3. We suggest that the requirement for the form to be signed by the 'officer' be removed and that allowance be made for the form to be prepared and submitted by the company without the individual signing the form is sufficient. This approach is contemplated by clause 14(3) of the Securities Markets Act (Disclosure of Relevant Interests by Directors and Officers) Exemption Notice 2004, in the context of a limited range of transactions; we suggest the clause 14(3) exemption by made available for all disclosures. We also note that the ASX permits filing by notices by authorised persons of the company.

4. The requirement to also make disclosure in relation to related bodies corporate means there is duplication of disclosure where the related body corporate is also a public issuer. We consider the regulations should provide an exemption for having to make disclosure in relation to a related body corporate that is itself a public issuer, where disclosure has already been given to a registered exchange and the other public issuer. For example, if a senior officer of Fletcher Building Limited holds Fletcher Building Finance Limited (a wholly-owned subsidiary of Fletcher Building Limited) capital notes, his or her disclosure obligations should be discharged in respect of both companies upon giving a disclosure notice to the registered exchange and to Fletcher Building Finance Limited.

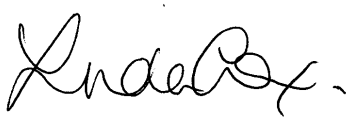
5. It should be permissible for NZX to approve an alternative format for all disclosures, ie by expanding the exemption given in clause 14(1)(c) of the Securities Markets Act (Disclosure of Relevant Interests by Directors and Officers) Exemption Notice 2004, to all disclosures. This would facilitate use of an online reporting facility, or bulk submission of disclosures, for example in an excel worksheet format.

In summary, we suggest that regulations 6A(b), 7(b), 12(2), 13 and 14 be revoked, and regulation 12(1) be amended to remove the restriction preventing disclosure of both acquisitions and dispositions in the same form, and allow disclosure of more than one type of

transaction. We also refer you to the simpler format of the ASX disclosures forms, ASX Appendix 3Y.

We would be very happy to discuss any aspect of the review with you further and to assist in review of drafting or further consideration of potential issues. Please do not hesitate to call me in this regard.

Yours sincerely



Linda Cox
Chair