

16 April 2010

Securities Commission  
PO Box 1179  
Wellington 6011

For: Chris Holland  
chris.holland@seccom.govt.nz

Dear Chris

**REQUEST FOR COMMENT ON AMENDMENTS MADE IN APRIL 2009 TO THE  
NZX LISTING RULES**

1. The Listed Companies Association Inc. (LCA) executive welcomes the opportunity to provide comment on the April 2009 amendments (Amendments) to the NZX Listing Rules (Rules).

**Introduction**

2. The LCA is an independent and voluntary non-profit organisation established in 1981. Its members are NZSX, NZAX and NZDX listed companies. Its main purposes are:
  - 2.1 to help listed companies further the long-term interests of their shareholders by working for a fair, adequate and efficient regulatory system;
  - 2.2 to help listed companies maximise the benefits of listing and to make the requirements that come with that status appropriate and reasonable to comply with; and
  - 2.3 to promote confidence in and growth of business and capital markets in New Zealand.

**Comments on the Rule Changes**

3. The LCA notes that the Securities Commission is seeking comments on:
  - 3.1 the use of the Amendments by listed issuers; and
  - 3.2 whether the Amendments have achieved their intended purpose.

4. The LCA supported the introduction of the Amendments, and remains supportive of them. The Amendments provided valuable additional flexibility in capital raising by listed issuers, at a difficult time. The Amendments achieved this purpose by increasing listed issuers' placement ability and enabling financial support to be provided more readily by related parties.
5. The LCA believes that use of the additional flexibility by listed issuers has been prudent and in the interests of shareholders. There is no evidence of over-use of the Amendments – in fact, use to date appears to have been relatively limited. Also, there is no evidence of abuse of the additional flexibility that some commentators feared.
6. Although there is a higher degree of confidence in financial markets, there is still a good deal of uncertainty (witness the recent events in Greece affecting the Euro zone generally). Thus, the Amendments may not yet have fully served their purpose.
7. For the above reasons, the LCA is in favour of the retention of the Amendments. The Amendments have "achieved their intended purpose" but they may have more to achieve.

### ***Director and Related Party Transaction Issues***

8. One aspect of the Amendments which has attracted negative commentary is the relaxation of rules around:
  - 8.1 director and director's associates' participation in placements;
  - 8.2 related party transaction approval; and
  - 8.3 financial assistance.
9. The LCA notes that no evidence of abuses has yet emerged. It does, however, believe it would be worthwhile maintaining a watching brief in this area, to ensure that abuses do not emerge which could affect the international reputation of New Zealand's capital markets.
10. Requirements for independent directors and certification requirements for items (a) and (c) above do, however, go some way to addressing any concerns.

### ***Technical Point***

11. One Amendment which has not achieved its purpose is in Listing Rule 8.1.3. The intent of the Amendment was to remove NZX approval requirements for issue pricing decisions made in accordance with that rule, but wording was (apparently inadvertently) left in Listing Rule 8.1.4 which retains the NZX approval requirement. It would be desirable to correct this error.

### **Conclusion**

12. LCA remains supportive of the Amendments and believes they should be retained.

**Further information**

13. Please contact me if you would like to discuss any of the points raised in our submissions.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Linda Cox', with a small flourish at the end.

**Linda Cox**

Chair

Listed Company Association

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