



26 February 2016

Hamish Macdonald
NZX Head of Policy
By email: consultation@nzx.com

Dear Hamish

Review of corporate governance reporting requirements within NZX Main Board Listing Rules

This submission is made by the Listed Companies Association (**LCA**) in response to the NZX Discussion Document on the review of corporate governance reporting requirements within NZX Main Board Listing Rules (**Discussion Document**).

The LCA's responses to the questions in the Discussion Document are set out in table format in Appendix A.

Summary of Views

The LCA strongly supports the review of the corporate governance reporting requirements and associated Listing Rules by NZX, which have in some cases become outdated and out of alignment with international practice. The current fragmentation of corporate governance guidelines in New Zealand and the lack of clarity in the existing rules and guidelines are key issues facing issuers. We would like to see a collaborative approach by regulators, listed issuers and other key stakeholders to create a unified set of corporate governance recommendations in New Zealand that balances effective disclosure that is of value to investors and minimises the cost of compliance to issuers.

The LCA agrees with NZX's objectives for the current review, and is generally supportive of adopting a framework based on the FMA principles to address fragmentation and provide a single source of corporate governance reporting obligations for issuers. However, careful consideration should be given to whether it is appropriate that *each* FMA guideline become a recommendation to be reported against. Some of the FMA guidelines may be better formulated as commentary (where they do not sit comfortably with a 'comply or explain' reporting obligation) or not be adopted at all (where they are not appropriate to listed issuers). Where possible, we would also like to see consistency with the ASX Corporate Governance Principles and Recommendations, which we consider would benefit dual-listed issuers and investors in both markets.

We agree with adopting a tiered approach to a reporting regime, provided there is a clear distinction between recommendations (which are subject to 'comply or explain' reporting) and commentary (which are not subject to comply or explain reporting), with the commentary serving as guidance on the appropriate application of the corporate governance principles and recommendations for individual issuers.

In relation to the approach for reporting against recommendations, care needs to be taken to ensure that disclosure requirements do not give rise to boilerplate and irrelevant answers of little value to investors, further lengthening annual reports or website governance pages.

In terms of a practical reporting structure, we suggest NZX consider using an approach similar to the ASX which allows governance disclosures to be published on an issuer's website rather than including the information in the annual report. We would also support the use of a standard form key to corporate governance disclosures similar to ASX Appendix 4G. This will reduce administration and ensure the information is more accessible and easily comparable across issuers.

Our more detailed feedback on the proposed framework along with our comments on the specific areas for review are set out in the appended table.

We would be happy to meet with NZX to discuss the submissions contained in this letter and have no objection to the submissions being made publicly available on the NZX website.

About the LCA

Established in 1981 the LCA (listedcompanies.co.nz) is an independent, voluntary non-profit organisation providing a forum for discussion and exchange of views on issues of importance to New Zealand listed companies. The LCA's main purposes are to:

- Help issuers further the long-term interests of their shareholders by working for a fair, adequate, and efficient regulatory system;
- Help issuers maximise the benefits of listing and to make the requirements that come with that status appropriate and reasonable to comply with; and
- Promote confidence in, and growth of, business and capital markets in New Zealand.

The LCA's members are NZX Main Board, NXT, NZAX, NZDX and dual listed issuers.

This submission has been broadly supported by the issuers consulted and has expressly been endorsed by the issuers and organisations listed in Appendix B.

Yours sincerely



Sarah Miller

Chairperson

Listed Companies Association

Appendix A

The LCA's responses to the questions in the NZX Discussion Document

#	Question	Response
Objectives of review and proposed framework		
1	Do you agree with the above objectives for NZX's current review?	<p>Yes.</p> <p>The aim of the NZX Corporate Governance Code (Code) should be to set out, simply and clearly, the threshold minimum reporting requirements for issuers. Issuers can provide additional, more detailed information if desired.</p> <p>Compliance with detailed disclosure requirements can in certain instances have a disproportionately expensive impact on issuers, while providing little or no value to investors. Therefore, the LCA would like to see an appropriate balance struck between ensuring effective disclosure that is of value to local and institutional investors and minimising the associated compliance costs to issuers.</p> <p>We note that some of the issues raised by NZX are difficult to advance without also looking at the substantive rules, which NZX has indicated will be reviewed later in 2016.</p>

#	Question	Response
2	Do you agree that NZX should adopt the FMA principles as the basis for an updated reporting regime?	<p>We generally support the adoption of the FMA principles as the basis for an updated reporting regime. However, careful consideration should be given to whether it is appropriate that each FMA guideline become a recommendation to be reported against. Some of the FMA guidelines may be better formulated as commentary (where they do not sit comfortably with a comply or explain reporting obligation) or not be adopted at all (where they are not appropriate to listed issuers). We look forward to the opportunity to review and comment on the detailed recommendations and commentary during the consultation period.</p> <p>The LCA endorses a model that will reduce complexity and increase consistency across reporting requirements. The current inconsistencies in the fragmented reporting regime increase costs of compliance for issuers and lead to inconsistent reporting amongst issuers, which is to the detriment of investors and other market participants. Accordingly, having the two main regulators (FMA and NZX) adopting a consistent position will assist in removing some of the inconsistencies and assist to unify the disclosure regime.</p> <p>In a similar vein, consistency with the ASX Corporate Governance Principles and Recommendations (ASX Recommendations) should also be sought, wherever possible, to ensure that there are similar reporting structures on both sides of the Tasman, which benefits both dual-listed issuers and is recognised by (and has credibility with) investors across both markets.</p>

#	Question	Response
3	Do you agree with a tiered approach to a reporting regime?	<p>Yes, as is common practice with the international governance regimes referred to in the Discussion Document. This is on the proviso a clear structure is adopted that delineates recommendations (which are subject to comply or explain reporting) from commentary (which are not subject to comply or explain reporting).</p> <p>We are concerned that without this distinction, issuers will be required (or feel obliged) to report against or comply with the commentary. It may be problematic for company secretariats to propose that "best practice" commentary isn't followed and for boards to approve such recommendations. In this regard, we would prefer NZX moved away from using the term "best practice" when referring to commentary. What is best practice will be issuer-specific as it will depend on a range of factors (including issuer size, industry, complexity of its business etc.). There is not a "one size fits all solution" to good governance, however, the use of the term "best practice" suggests there is.</p> <p>The purpose of the commentary should be to help issuers determine how to apply the corporate governance principles and recommendations in a way that is most appropriate for the size and nature of the business of the issuer.</p> <p>Accordingly, matters that should be expressly reported against should be covered in the "recommendations" section rather than the "commentary" section.</p>

#	Question	Response
4	Do you agree that recommendations should be reported against on the basis of an approach of “comply or explain”?	<p>The LCA considers that, while the recommendations should meet the reasonable expectations of most investors, the recommendations should not be mandatory or seek to prescribe the corporate governance practices that a listed entity <i>must</i> adopt.</p> <p>This recognises that there is not a “one size fits all solution” to good governance (as noted above) and preserves the right of a Board to legitimately adopt different governance practices where justified based on a range of factors, including their size and complexity. However, we agree that in such circumstances the issuer should explain why it has chosen not to adopt the recommendation on an “if not, why not” basis. Issuers are keen to ensure they have flexibility in the way they report deviations from recommendations and concerned that the recommendations are not drafted in such a way that non-compliance, for legitimate business reasons, infers a governance failure on the part of the issuer.</p> <p>The LCA considered that issuers should be required to provide sufficient detail to ensure that the market receives a sufficient level of information about its governance practices and enables investors to have a meaningful discussion with issuers about its governance practices.</p>
5	Do you have any other suggestions in relation to the proposed structure of NZX’s updated reporting regime (i.e. feedback on the proposed output of the current review process)?	<p>In general, we think it would be helpful for both issuers and investors if issuers are given flexibility as to where/how they report against the recommendations (e.g. are able to put more information on their website rather than in the annual report, prepare a separate corporate governance statement or refer to other governance documents (e.g. board charter)) noting that it would remain open to issuers to choose to disclose corporate governance matters in their annual reports should they wish. In this respect we support the approach taken in ASX LR 4.10.3.</p> <p>We would also support an initiative to develop a standard-form key to corporate governance disclosures, like the ASX Appendix 4G, and would like to see this template being made available by issuers on their websites. This will reduce administration and make the information more accessible. The reporting template would also serve a purpose as a checklist for issuers.</p>

#	Question	Response
6	Should any other steps be taken by NZX to address the fragmentation of corporate governance guidelines and expectations applying to issuers in New Zealand?	<p>We believe that the NZX Corporate Governance Code and the mandatory requirements in the Listing Rules should be the sole set of corporate governance requirements with which NZX listed issuers must comply. The current fragmentation of governance recommendations in New Zealand has created confusion and served to increase an issuer's compliance burden.</p> <p>To achieve this outcome, a Council, similar to the ASX Corporate Governance Council, with broad membership could provide a platform for achieving unity. Irrespective of this, third parties should be actively encouraged by NZX to submit to the NZX as part of this review, rather than creating their own sets of governance requirements.</p> <p>Another useful step would be for the FMA principles and guidelines to focus on non-listed issuers and to include an express statement in the FMA guidance that so long as NZX listed issuers comply with the NZX Corporate Governance Code, they have also met the FMA's expectations in relation to corporate governance.</p>
7	Should the other corporate governance reporting requirements currently covered in section 10.4.5 of the Listing Rules be incorporated into an updated NZX Code?	<p>Yes. The NZX Code should be the single source of corporate governance reporting obligations for issuers, so requirements such as the diversity statement should be moved to the NZX Code (with scope for certain aspects to be mandatory, rather than the entire Code operating on a comply or explain basis).</p> <p>We would hope that this review, along with the broader review of the Listing Rules, will result in a more user friendly structure within (and between) the Listing Rules and the NZX Code, allowing issuers to more readily identify the requirements that apply in any given context.</p>
Principle 1: Ethical Standards		
8(a)	Should NZX include additional recommendations within its NZX Code: Explicitly stating that application of a code of ethics extends beyond just the board to senior managers and employees (this is probably implied already)	Yes. It is sensible to explicitly state that a code of ethics applies to all of the Board, senior managers and employees. However, there should be some flexibility in how this is actually delivered – for example, some issuers may decide to have one code of ethics for the Board and a separate one for employees, so that each can be targeted to only cover applicable areas. We also note that some issuers may call their "code of ethics" by a different name, for example "code of conduct" and this should be acceptable.

#	Question	Response
8(b)	Should NZX include additional recommendations within its NZX Code: For disclosure of a code of ethics and reporting of compliance with a code of ethics	We support the disclosure of the code (or codes) of ethics on an issuer's website. However, we are not in favour of reporting against compliance with the code of ethics. This may involve commercially sensitive information, may breach the law (e.g. if there is an ongoing investigation in relation to the matter), or, without a level of materiality, may be very minor technical breaches that do not warrant disclosure. There is also a risk that a requirement to report instances of non-compliance may affect employees' willingness to internally report or otherwise deal openly with such issues. A better alternative would be for issuers to disclose the process by which it deals with non-compliance with the code of ethics, rather than details of the non-compliances themselves.
9	In addition to the matters outlined in section 1.3 of the NZX Code which NZX currently suggests should be considered for inclusion in a code of ethics, NZX considers it appropriate to suggest that a code of ethics cover procedures for dealing with whistle blowing. What additional matters, if any, should NZX suggest (through best practice commentary) be included within a code of ethics?	We agree there should be procedures in place for whistle blowing. However, we suggest that these are not necessarily required to be included in a code of ethics (e.g. they could be included in a stand-alone whistle blowing policy).
10	Should NZX address anything else in this area, including within best practice commentary?	We would actively support the recommendation for an employee share trading policy. The ASX Recommendations provide a suitable framework.
Principle 2: Composition and Performance		
11	Should NZX introduce additional recommendations or best practice commentary covering the matters outlined in paragraphs i - iv?	
11(i)	Issuers should disclose the respective roles and responsibilities of the board and management, including any formal delegations to management	Director and management roles and responsibilities will generally be covered in the Board charter. We support commentary suggesting reporting on general, but not specific, delegations.
11(ii)	Issuers should conduct appropriate checks before appointing, or proposing for election, a director, and should provide all material information in relation to proposed appointments	In our view, this should be commentary. This should be limited to where the director is being appointed or proposed for election by the Board, rather than shareholders, and the "checks" should not apply to directors that are standing for re-election following resignation by rotation at the annual meeting.
11 (iii)	Issuers should enter into written agreements with each senior executive and board member establishing the terms of their appointment	Again, we consider this should be confined to commentary.

#	Question	Response
11 (iv)	Reporting should include information about each director, including a profile of experience, length of service, independence and ownership interests	<p>We are happy for this to be a recommendation. This seems to have been adopted by most issuers already.</p> <p>We also support a recommendation that issuers disclose a collective skills matrix for the board. We consider this to be useful for issuers to consider effective board composition and for investors to consider the level of risk to which the issuer is subject.</p>
12	Should NZX consider introducing a recommendation in future that boards contain a majority of independent directors and/or an independent chairperson?	<p>The LCA is of the view that at this point of time, the New Zealand market is unlikely to have a sufficiently deep pool of independent directors to support a recommendation that boards contain a majority of independent directors. It does, however, support a recommendation that a majority of the directors be Non-Executive Directors. There is mixed support for a recommendation that the chair be independent, but on the whole the LCA considers that an independent chair strengthens the governance of a Board. There is a view, however, that an exception should be created where a shareholder holds majority control of an issuer.</p>
13	Do you consider the current definitions within the Listing Rules of "Independent Director", "Disqualifying Relationship" and "Associated Person" are appropriate? If not, what amendments should NZX consider in future?	<p>The definition of disqualifying relationship should be amended to place more focus on relationships that <i>may</i> compromise the independent thought of the director rather than the specific revenue tests. Additional commentary around the factors that are likely to make someone non-independent (e.g. length of time on the board and other relationships with the issuer, board or providers of professional services to the issuer) could then be included in the commentary to bolster the general test under the definition of disqualifying relationship, as per the less prescriptive approach adopted in the ASX Best Practice Recommendations.</p> <p>Given the small size of the director pool within New Zealand, we do not support a change to any of these definitions that could result in a director of a listed issuer being deemed to be non-independent solely as a result of being a director of another listed issuer that supplies services to the first listed issuer in the absence of a genuine conflict.</p>
14	Should NZX address anything else in this area, including within best practice commentary?	No.
Principle 3: Board Committees		
15	Should NZX introduce additional recommendations or best practice commentary in relation to publication of committee charters, committee membership and meeting attendances?	We generally support the implementation of these recommendations.

#	Question	Response
16	Should the existing recommendations within NZX's Code in relation to nomination and remuneration committees continue to be subject to the "unless constrained by size" exception?	Yes. The establishment of these committees for issuers with small boards serves little practical purpose.
16(a)	Should NZX continue to recommend issuers have a remuneration committee?	Yes but this recommendation should be subject to the above size proviso and the current position under the NZX Corporate Governance Code should be carried forward to enable the remuneration and nomination committees to be combined.
17	Should NZX address anything else in this area, including within best practice commentary?	No.
Principle 4: Reporting and disclosure		
18(a)	Should NZX introduce additional recommendations or best practice commentary that issuers should have a written policy for complying with their continuous disclosure obligations. If so, should issuers be required to publish these policies?	Yes. It is appropriate for issuers to have a written policy for complying with continuous disclosure and the policy should be available to investors (i.e. on an issuer's website). This should be a recommendation and is already widely adopted by issuers given the importance of compliance with these obligations for the integrity of the capital markets.
18(b)	Should NZX introduce additional recommendations or best practice commentary that all boards should maintain an effective system for internal control for reliable financial reporting and accounting records	<p>Yes. However we do not believe it is necessary to impose any recommendations in relation to financial reporting and accounting records, as issuers are already subject to these obligations under Part 7 of the Financial Markets Conduct Act 2013 and the Companies Act 1993. In addition, the auditors will require such systems to be in place in order to provide their audit report. Accordingly, if anything, this should be limited to a mention in the commentary.</p> <p>We also note that matters like specific financial controls should be left as internal matters for the issuer to decide and manage itself within an appropriate risk management framework, rather than there being any suggestion that these should be externally disclosed.</p>

#	Question	Response
19	Should NZX introduce any additional recommendations or best practice commentary in relation to non-financial reporting matters, including ESG disclosures?	<p>NZX could include some commentary that issuers should consider reporting on non-financial matters <i>that are relevant to their business</i>, but we do not support including prescriptive recommendations. To be useful, reporting on these non-financial matters needs to be relevant to the business, taking into account its nature and size.</p> <p>We note that some issuers choose to report against internationally recognised ESG/sustainability reporting frameworks (e.g. the Global Reporting Initiative (GRI) reporting guidelines). This should be encouraged, but the LCA considers that NZX should not impose its own requirements in the NZX Code for particular issues or metrics to be disclosed (which may be inconsistent with the ESG/sustainability framework that the issuer has chosen to report against or irrelevant to the issuer's business).</p>
19(a)	If so, which issues (and metrics) should be reported?	See above.
20	Should NZX include anything else in this area, including within best practice commentary?	No.
Principle 5: Remuneration		
21(a)	Should NZX introduce recommendations as follows: Issuers must publish a remuneration policy dealing with remuneration of directors and senior executives?	There are divergent views among members about whether this should be addressed as a recommendation or included in commentary. The feedback suggested, however, that information included should be relatively high-level and principle-based, should be of relevance to investors, and should avoid disclosure of commercially-sensitive or confidential information.
21(b)	Should NZX introduce recommendations as follows: Senior executive remuneration (including CEO remuneration) should include an element that is dependent on entity and individual performance?	We agree that it would be useful to include commentary that senior executive remuneration should include an element that is dependent on entity and individual performance.
22	Should NZX introduce additional recommendations or best practice commentary for reporting of CEO and senior executive remuneration? If so, what should be introduced?	Commentary could assist with reporting in this area. Such commentary could cover policy-level reporting of the composition of senior executive remuneration packages (e.g. base remuneration versus at-risk remuneration). We do not believe at this stage that any recommendations regarding the disclosure of CEO and senior executive remuneration should be included in the NZX Code.

#	Question	Response
23	NZX seeks feedback on whether remuneration consultants are widely used in New Zealand. If so, should NZX recommend or suggest via best practice commentary that such consultants be approved by, and report directly to, the board or remuneration committee?	Generally, we understand issuers review benchmark industry data when setting directors' fees or assessing employee remuneration. In our view, boards are savvy enough to insist upon consultants being approved by, and reporting directly to, the board or remuneration committee if they wish and, therefore, these matters do not need to be addressed by way of the NZX Corporate Governance Code.
24	Should NZX address anything else in this area, including within best practice commentary?	No.
Principle 6: Risk Management		
25(a)	Should NZX introduce recommendations or best practice commentary covering the following matters: Issuers should have appropriate policies and procedures in place to identify and manage the key risks facing their businesses.	We support this being a general recommendation, although note that these recommendations should include an express recognition that these matters will be dependent on the nature and size of the business.
25(b)	Should NZX introduce recommendations or best practice commentary covering the following matters: Issuers should disclose details of their internal audit function, where applicable, or to provide explanation of the alternative measures in place.	Many smaller issuers will, appropriately, not have an internal audit function or may have only relatively simple risk management procedures. Accordingly, this is not supported as a recommendation.
25(c)	Should NZX introduce recommendations or best practice commentary covering the following matters: Issuers should have a staff share dealing policy and disclose details of this	We consider it is appropriate for this to be a recommendation. It should be clear that publication of the policy on the issuer's website is sufficient to satisfy the disclosure obligation. As stated earlier, we consider this should be dealt with under principle 1.

#	Question	Response
26	Should NZX include specific recommendations or best practice commentary in relation to managing (and reporting of) health and safety risks? If so, which metrics should be reported?	<p>Threshold legal obligations will be met by issuers meeting their obligations under the Health and Safety at Work Act 2015.</p> <p>Except possibly in commentary relating to high risk industries, we do not believe that additional disclosure regarding issuers' managing (and reporting of) health and safety risks should be singled out from other risks and included in the NZX Code. The reason being that, we do not believe that this information is of value to the vast majority of investors or market participants, other than in certain high-risk industries, and would simply add time and costs to issuers' reporting processes.</p> <p>Instead, issuers can choose to report relevant information in a way that takes into account the materiality of the risk for the issuer's business and the issuer's framework for managing such risks.</p>
27	Should NZX recommend/suggest that issuers specifically report on economic, environmental and social sustainability (or ESG) risks?	See Q19 above.
28	Should NZX address anything else in this area, including within best practice commentary?	No.
Principle 7: Auditors		
29(a)	Should NZX include recommendations or best practice commentary that: The external auditor should attend the AGM to answer questions from shareholders in relation to the audit	We would support such a recommendation.
29(b)	Should NZX include recommendations or best practice commentary that: Issuers should report to shareholders annually in relation to audit and non audit fees paid to the audit firm	Unnecessary as this is already required to be included in the financial statements under IFRS.
30	Should NZX consider amending its current auditor rotation requirements in future?	We do not consider the current five-year term is problematic, however, alignment with the Australian requirements (audit partner rotation every seven-years) could make sense. We do not consider NZX should make any mandatory recommendation given the concentration of auditors in New Zealand and the risk of conflicts of interest and issues of specific sector expertise.
31	Should NZX address anything else in this area, including within best practice commentary?	No.

#	Question	Response
Principle 8: Shareholder Relations		
32	Do you agree with the proposed best practice commentary in these areas? I.e:	
	<ul style="list-style-type: none"> A listed entity should provide information about itself and its governance to investors via its website 	This is appropriate provided that it only applies to core, material information already provided by most issuers such as board details, committee details and governance policies.
	<ul style="list-style-type: none"> A listed entity should design and implement an investor relations program to facilitate effective two-way communication with investors 	We support this in principle to the extent such a program is able to be appropriately tailored to the size and nature of the issuer.
	<ul style="list-style-type: none"> A listed entity should disclose the policies and processes it has in place to encourage participation at meetings of shareholders 	We consider this is unnecessary as issuers allow shareholder participation as a matter of course in accordance with the Companies Act 1993. The Companies Act requirements for calling and holding meetings and the low threshold for shareholder activism in New Zealand provide sufficient safeguards for shareholders.
	<ul style="list-style-type: none"> A listed entity should give security holders the option to receive communications from, and send communications to, the entity and its security registry electronically 	Yes. Under the Companies Act, issuers that are companies are already required to utilise electronic communications where the shareholder requests that they do so and this is current practice by most issuers.
33	Should NZX address anything else in this area, including within best practice commentary?	No.
Principle 9: Stakeholder interests		
34	Do you consider it appropriate to adopt FMA's principle 9 (potentially amended)? (i.e. "The board should respect the interests of stakeholders taking into account the entity's ownership type and its fundamental purpose.")	In our view, it would be more appropriate for the interests of security holders to be taken into account. We consider ASX Principle 6 (respecting rights of security holders by providing them with information) provides a better basis for engagement than FMA principle 9.
35	What best practice commentary is appropriate for listed issuers in this area?	ASX Principle 6 could be used as a guide.
Other suggestions		
	None	

Appendix B

List of LCA members and associated organisations who have expressly consented to being named in support of this submission:

- Air New Zealand Limited
- Arvida Group Limited
- Chorus Limited
- Contact Energy Limited
- Fisher & Paykel Healthcare Limited
- Fletcher Building Limited
- Genesis Energy Limited*
- Gentrack Group Limited
- Heartland Bank Limited*
- Infratil Limited*
- Kathmandu Holdings Limited
- Mighty River Power Limited
- Millennium & Copthorne Hotels New Zealand Limited
- Orion Health Group Limited
- Property For Industry Limited
- SKYCITY Entertainment Group Limited*
- Spark New Zealand Limited*
- TOWER Limited
- Xero Limited
- Bell Gully*
- Black Letter Consulting
- Chapman Tripp*
- Kensington Swan
- Russell McVeagh*
- Simpson Grierson*

** Refer to own submission for detailed comments*