15 December 2016

Mr Hamish Macdonald
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Dear Hamish

SUBMISSION ON CONSULTATION PAPER:
Correcting Consensus Guidance

This submission is made by the Listed Companies Association (LCA) in response to the Consultation Paper.

The LCA has circulated the Consultation Paper to all of its members comprising a full range of NZX listed companies from the largest companies to the smallest. The Paper has been discussed at the full Executive Committee and we have consolidated inputs from members.

Following our consultation, we consider that the submission is well-supported. We have however included in the attached, a diversity of views on some points and some particular suggestions. We consider it will be helpful to NZX to understand the different views of members in reaching your own conclusions and want to avoid representing as impliedly "unanimous", comments where there is reasoned and reasonable disagreement. Many members have also offered their own submissions direct to NZX and where those have been made available to LCA, we have taken those into account.

Thank you for the opportunity to provide these comments, and for the extension of time allowed.

As always, we are happy to discuss these matters further with you if you think that would be helpful in reaching your own views.

Yours faithfully,

John Blair
Chairman
Listed Companies Association Inc.

Appendix: Response to Consultation Questions

#	Question	Responsive Submissions	Other Submissions & Comments
1	Do you agree that an expected material deviation between forecasts and expectations published by analysts or third parties when compared against actual results could be Material Information? Why/why not?	The clear consenus is that, if there is a substantial deviation that, if it were generally known to the market, would have a material effect on the price of the issuer's quoted securities, that deviation should be considered "Material Information".	The key issue is not necessarily disclosing more information but identifying the cause of the discrepancy. This may arise for legitimate reasons or may need to be addressed by further informing the market or clarifying information in the market. There should not necessarily be an expectation that more, or more specific information must be released. It needs to be recognised too that in volatile circumstances, an issuer's own expectations have insufficient certainty to justify releasing them to the market.

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2	Please comment on NZX's expectation that issuers should: a) Manage market expectations via education and monitoring and clarifying third party analysis; and	For issuers covered by analysts, it is good practice to explore why forecasts may be materially different to the issuer's and to correct any factual or computational mistakes causing such difference, clarifying information as required. Analysts' earnings forecasts reflect professional judgement, individual views and assumptions, and often the "institutional view" on many variables that can affect earnings at a particular time. These can quickly become out of date, often involving variables that are in the public domain (interest rates, foreign exchange rates etc). The NZX guidance in final form, should acknowledge this and clarify that there is no prima facie obligation for an issuer to correct the earnings forecasts of an individual analyst or the consensus estimate to bring them into alignment with its own internal earnings forecast. NZX Guidance should clarify how issuers should deal with an analyst forecast that is an outlier. Inclusion will affect the consensus forecast and with the small number of analysts covering NZX issuers, the difference can be significant. A percentage variance from all other analysts could be useful, perhaps with a clarification that an outlier forecast has been excluded if the issuer is unable to address the discrepancy with the analyst.	Care obviously has to be taken not to release any information to analysts to allow them correct their forecasts, which is not generally available to the market. The NZX Guidance needs to be clear, perhaps with examples of the type of "corrections" it considers appropriate. We note that the ASX Guidance contains a detailed section on this subject and on publishing analyst forecast and consensus estimates generally which we think could be helpful to issuers. Many issuers prefer not to provide specific market guidance, particularly early in a reporting period. Alternatively an issuer may be confident with its guidance currently in the market. There needs to be sufficient discretion in responding to analysts' forecasts to limit the ability of analysts, or even the financial press to engage in "kite flying" to force a forecast from an issuer as a corrective response. The ASX approach of using as a default, the earnings from the prior equivalent reporting period (plus or minus a percentage margin) should be incorporated into the Guidance as at least a starting point for issuers to consider when assessing whether a discrepancy is "Material Information".

#	Question	Responsive Submissions	Other Submissions & Comments
2	Please comment on NZX's expectation that issuers should: b) Where necessary, promptly, and without delay, disclose that the issuer's performance is expected to materially differ from expectations.	LCA members had mixed views on this issue but the key point appeared to be that it turns on whether the discrepancy meets the test of Material Information. There should first be consideration of whether the discrepancy arises from an error or misunderstanding that can appropriately be addressed with a particular analyst or analysts. In such circumstances "promptly and without delay" should be viewed as the response to analysts, rather than interpreted as mandating immediate disclosure of a forecast or more information.	It should be noted that an issuer's forecast may materially differ from an analyst or analyst consensus, but the issuer is comfortable with its forecast. In such a situation the issuer has relevant and appropriate information available to the market – the issuer should not be required to re-state or reinforce its views.
3	Do you agree that this obligation is more likely to arise later in an issuer's reporting period, once information about actual performance has crystallised?	There was general agreement among LCA members that this is correct, however it begs the obvious questions of how much the obligation increases over time and what the consequences are for that? These are questions of degree and attempts to apply any metric are more likely to confuse that assist. In practice this will come down to an assessment of the certainty of the issuer's forecast and the degree of variance from analysts' views and any known rationale for their views in deciding whether further market guidance is required.	Some issuers close to a reporting date opt for a communication blackout to avoid information reaching the market either selectively or in part only, creating an un-informed or ill-informed market. The Guidance could usefully comment on this approach and in particular whether in close proximity prior to a reporting date, the test of "Material" might be at a higher threshold?

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4	Do you have any other comments regarding the proposed amendments to the Guidance Note?	Much of the guidance focuses on issuers who have not published their own forecasts. It may be clearer if the Guidance distinguishes elements of the Guidance that apply to issuers who have published their own forecasts and those that apply where the issuer has not provided a forecast, possibly extending to the "default forecast" of the prior equivalent period. This would support the position that correction of analyst expectations does not necessarily require an issuer to provide its own forecast. There is an assumption in the Guidance that all investors have access to a "market expectation" built largely on a consensus of analyst forecasts. Practically, that is not the case. Retail investors have limited if any access to that information and institutional investors or even the subject issuer, may elect not to purchase or review all of the analysts research covering a particular issuer.	Clarification of what constitutes "market expectations" would assist. These appear to be assumed in the Guidance to equate to analyst consensus, possibly incorporating any guidance from the issuer, but neither position is express. The Guidance needs to be clear that it addresses "earnings" and what definition of "earnings" should be applied. References currently include "financial results" and "financial performance" which are ambiguous. Clarity is needed about "analysts". How are they distinguished from (for example) financial advisors communicating with their clients expressing views on earnings, unknown to the issuer? The ASX approach to guidance allows for material deviation from an issuer's own forecast within a reporting period to remain uncorrected provided the outcome at the end of the reporting period is expected to be close to the forecast. This approach should be incorporated in the NZX Guidance.