

24.02.2016

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21 Queen Street,
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Dear Hamish,

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

Thank you for the opportunity to make a submission to the NZX Review of Corporate Governance reporting requirements.

Our response to the Review Questions is set out in Table 1 and Appendix 1 New Zealand Corporate Governance Forum (Forum) Guidelines appended to this letter which also forms part of our submission. While the Forum submission reflects the broad views of the Forum, individual members may have different views and many will make individual submissions.

The Forum is committed to promoting good corporate governance in New Zealand (NZ) companies for the long-term health of the NZ capital market. The Forum's members are institutional investors with significant investment in NZ listed companies. The Forum members believe that good governance improves company performance and increases shareholder value.

In July 2015, the Forum released a set of corporate governance guidelines as a reference point for investors and companies.¹ The Forum Guidelines incorporate the NZ FMA Guidelines and extend on these in order to provide more detailed guidance for companies and investors in the listed company environment. The majority of additions come from international principles and frameworks that institutional investors globally regard as best practice.

The Forum welcomes NZX's review of the NZX Code and corporate governance reporting requirements. The quality of stock exchange rules and regulations is an important element of listed market corporate governance frameworks.

¹ For further information on the New Zealand Corporate Governance Forum, its Terms of Reference and its Guidelines please go to www.nzcgf.org.nz.

The G20/OECD [Principles of Corporate Governance](#) state that:

"The corporate governance framework should ensure the strategic guidance of the company, the effective monitoring of management by the board, and the board's accountability to the company and the shareholders."

The NZX can usefully draw on the Forum's Guidelines and *the FMA Corporate Governance in New Zealand Handbook for Directors* as the basis for an updated contemporary best practice framework. We expect the NZX review and consultation to lead to much greater consistency between corporate governance guidelines and practice in our market and internationally.

We recognise that each company is different and that aspects of corporate governance will be more relevant to some companies than others. The proposed "comply or explain" approach provides a sensible compromise between guidelines that can be ignored and formal inflexible rules.

We look forward to working with companies and regulators to promote good governance for the long-term benefit of our market.

Yours sincerely,



Anne-Maree O'Connor
Chair
New Zealand Corporate Governance Forum

Table 1. New Zealand Corporate Governance Forum Response to NZX Consultation Questions

Question	Specific Guidelines / Comments
<p>1. Do you agree with the above objectives for NZX's current review?</p>	<p>The objectives emphasise flexibility in reporting for issuers but omit the fundamental purpose of a corporate governance framework and NZX's aim to bring the NZX code into line with best practice.</p> <p>The review's objectives should also:</p> <ul style="list-style-type: none"> • support a New Zealand Corporate Governance Framework (as enshrined in the <i>G20/OECD Corporate Governance Principles</i>) as follows: <p style="padding-left: 40px;"><i>"The corporate governance framework should ensure the strategic guidance of the company, the effective monitoring of management by the board, and the board's accountability to the company and the shareholders."</i></p> <ul style="list-style-type: none"> • aim to provide shareholders with proper insight into how the companies of which they are the owners are governed. • aim to have Rules and reporting requirements that together promote shareholder value and investor confidence, contribute to the long-term health of the market and respect shareholder rights. <p>The Forum also supports the objectives stated on page 7 of the discussion document.</p>

	<p>The NZX Rules contain very few mandatory requirements on corporate governance. The NZX Code is voluntary and does not <i>require</i> companies to put in place any recommendation. In this respect the NZX Rules provide a very flexible regulatory environment for issuers.</p> <p>As the review of the Rules will follow the updating of the NZX Code, the NZX should still be prepared to consider at that time whether some good practice recommendations should actually be mandatory.</p> <p>The Forum welcomes this discussion document and commends the NZX on the thoughtful and phased approach to its Corporate Governance consultation.</p>
<p>2. Do you agree that NZX should adopt the FMA principles as the basis for an updated reporting regime?</p>	<p>Yes. The Forum adopted the FMA Principles and Guidelines as a good foundation for best practice and to promote commonality in the market.</p> <p>Attention could be given to reviewing FMA Principle 8 which omits reference to shareholder rights. The Forum added the following guideline in Section 8.2 to address this omission: "Constructive shareholder relations depends on respect for shareholder rights".</p> <p>The ASX Corporate Governance Principle 6 also emphasises respect for the rights of security holders, access to information and the exercising of those rights.</p>
<p>3. Do you agree with a tiered approach to a reporting regime?</p>	<p>Yes. We support the tiered approach with the following comment. There should be a clear basis for separating guidelines into the tiers.</p> <p><i>Mandatory requirements</i> The mandatory rules on corporate governance are vital to protect shareholder rights and ensure companies meet minimum standards in order to list. It would be useful for NZX to cross-reference to other regulation such as the Companies Act where relevant.</p> <p><i>Comply or Explain recommendations</i> We support the move to a comply-or-explain basis for non-mandatory corporate governance guidelines as this offers issuers the flexibility to deviate from recommendations as needed and provides investors with transparency around why this is appropriate.</p>

	<p><i>Best Practice guidance</i> The best practice tier should support the central principles and contain additional best practice guidelines.</p>
<p>4. Do you agree that recommendations should be reported against on the basis of an approach of “comply or explain”?</p>	<p>Yes – See Above.</p> <p>We support the move to a comply-or-explain basis for recommendations as this offers issuers flexibility to in their policies to meet individual circumstances but that deviation from comply or explain recommendations is a serious decision that requires explanation.</p> <p>The “comply or explain” objective should be to encourage well-defined communication on governance matters between Boards and Shareholders, not a tick-box compliance exercise. Shareholders would prefer a clear concise explanation for divergence from recommended practice which is set within the company’s wider statement on Corporate Governance, with good use of the website or other media so governance information can be kept up-to-date.</p> <p>We recommend that the NZX considers as part of its next consultation on a revised code how issuers can report in the most effective yet cost efficient way.</p>
<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>	<p>See Above.</p> <p>There should be an objective of simplicity and conciseness and recognition that the costs of compliance should not exceed the benefits.</p> <p>The NZX could consider the FRC guidance notes that the explanation should set out the background, provide a clear rationale for the action being taken, and describe any mitigating activities. Explanations should provide sufficient information to allow investors to assess whether they are satisfied with the company’s corporate governance arrangements.</p>
<p>6. Should any other steps be taken by NZX to address the fragmentation of corporate</p>	<p>No. The NZX Code and Forum guidelines are both based on FMA Principles.</p>

<p>governance guidelines and expectations applying to issuers in New Zealand?</p>	<p>The tiered approach also allows comparison with good practice. The IOD, FMA and New Zealand Corporate Governance Forum (Forum) guidelines represent a natural evolution in generally accepted good practice guidelines internationally which NZX can refer to.</p> <p>The NZX should review the NZX Rules and NZX Code against best practice standards at least every 5 years so they remain contemporary.</p>
<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>	<p>No – these should remain mandatory requirements in the listing rules.</p> <p>This question does not make it clear that incorporating these requirements into the NZX Code would make them voluntary.</p> <p>That said, for ease of reference, the NZX could usefully bring the rules and reporting regime together in one section, but with section 10.4.5 should remain mandatory.</p> <p>The NZX should also consider whether section 10.4.5 should be updated with additional requirements during its Rule review later in the year.</p>
<p>Principle 1: Ethical Standards</p>	
<p>8. Should NZX include additional recommendations within its NZX Code:⁹</p> <p>a. Explicitly stating that application of a code of ethics extends beyond just the board to senior managers and employees (this is probably implied already)</p> <p>b. For disclosure of a code of ethics and reporting of compliance with a code of ethics.</p>	<p>Yes to 8a.</p> <p>8b. Yes, We would expect disclosure of the Code of Ethics and how it is implemented. No comment on reporting on actual compliance.</p>
<p>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</p>	<p>We agree that the Code of Ethics should cover whistleblowing.</p> <p>NZX should consider if some of Section 1.3 in the current NZX code should be mandatory.</p>

<p>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?</p>	
<p>10. Should NZX address anything else in this area, including within best practice commentary?</p>	<p>Yes. NZX recommendations and best practice should be updated to include those FMA and Forum guidelines under Principle 1 not included currently.</p>
<p>Principle 2: Composition and Performance</p>	
<p>11. Should NZX introduce additional recommendations or best practice commentary covering the matters outlined in paragraphs i - iv above?</p>	<p>11. Yes</p> <p>Before addressing the subparts below, overall we believe the role of the board is determination and articulation of a clear strategy, including why the company exists and what it does; articulation of how the company plans to grow and how it plans to fund this growth; determination of the skills required to execute this strategy; and the hiring and oversight of an appropriate CEO.</p> <p><i>i) [Issuers should disclose the respective roles and responsibilities of the board and management, including any formal delegations to management]</i> Yes – as best practice commentary. Investors would be assisted in understanding how the Board operates but would not expect a granular view of delegations.</p> <p>From the Forum Guidelines "The board is responsible for employing the CEO of the company and approving the business strategy. There should be a clear understanding of the division of responsibilities between the board and the executive. No one individual should have unfettered powers of decision"</p> <p><i>(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]</i></p> <p>Yes – as a recommendation. Investors should be informed of any material information relating to director appointments as directors are appointed to protect shareholder interests.</p>

	<p><i>From the Forum Guidelines</i> "For each director, the company should disclose a detailed biography, including recent and current directorships in other <i>relevant</i> groups or enterprises" and "The company should disclose the nature of any <i>material</i> legal proceedings or investigations that the director has been, is, or is likely to be, involved in or otherwise implicated"</p> <p><i>(iii) [Issuers should enter into written agreements with each senior executive and board member establishing the terms of their appointment]</i></p> <p>Yes – as best practice commentary.</p> <p>Shareholders appoint board members - directors' terms of appointment should be in writing, with shareholders able to view these terms.</p> <p><i>(iv) [Reporting should include information about each director, including a profile of experience, length of service, independence and ownership interests]</i></p> <p>Yes – as a recommendation. This would be an appropriate place to explain how the director contributes to satisfying the company's skills matrix.</p> <p><i>From FMA principles</i> "Reporting should include information about each director, including a profile of experience, length of service, independence and ownership interests in the company. Information on the board's appointment, training and evaluation processes should also be included".</p>
<p>12. Should NZX consider introducing a recommendation in future that boards contain a majority of independent directors and/or an independent chairperson?</p>	<p>Yes – on a comply or explain basis.</p> <p>Where an independent chair or majority board independence is not achieved, boards should explain why this is a better option than that recommended. We expect that smaller, less mature businesses or majority owned firms may face constraints in meeting best practice.</p>

	<p>There should be an appropriate degree of independence on the board to offer shareholders assurance that potential principal-agent risks are managed. Skills and experience are a priority and there may be situations where there is a need to prioritise these over independence, but this should not be the norm with larger companies.</p> <p>Given the importance of the chair role, the chair should be independent. The chair of a company performs a critical role in facilitating the effective operation of the board, managing the relationship between board members, ensuring the board is provided with sufficient information, ensuring board and performance reviews are conducted and engaging with shareholders on issues of governance and strategy.</p>
<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>	<p>The current definitions could be better characterised under the Rules – with supplementary guidance in the NZX Code.</p> <p>The Forum Guidelines outline some of the circumstances which could compromise independence. (refer to Table in Forum Guidelines 2-7 page 5).</p> <p>Factors that may compromise independence should be considered by the nomination committee, included in director biographies and addressed in the Board’s decision to deem a Director independent or non-independent.</p>
<p>14. Should NZX address anything else in this area, including within best practice commentary?</p>	<p>Yes – the NZX should include the Forum Guidelines in full under section 2. Board Composition and Performance (pages 4-5) which includes the FMA guidance in this area.</p> <p><i>Two areas for inclusion in best practice commentary are (a) Skills and (b) Succession Planning.</i></p> <p>(a) Skills. Disclosure of a skills matrix would greatly assist shareholders’ in understanding how skills across the boardroom link to the oversight of company operations and strategy. As in our response to Question 11(iv), this matrix could be reported in connection with the description of each director and how this person fits into the company’s skills matrix.</p>

	<p>(b) Succession Planning. Board succession planning should occur on a planned and ongoing basis – see Forum Guidelines 2-13:</p> <p>Section 2- 13. As part of the succession process:</p> <p>a) There should be sufficient overlap in director succession so that gaps in skills, experience, subject matter expertise or corporate memory do not occur, to the extent this is practicable.</p> <p>b) Any future skill gaps should be identified by following a board evaluation process.</p> <p>c) When considering a director who holds, or has held, other directorships, past performance of the director and those companies should be considered.</p> <p>d) Directors should communicate their intentions to retire from the board as soon as possible to assist succession.</p>
<p>Principle 3: Board Committees</p>	
<p>15. Should NZX introduce additional recommendations or best practice commentary in relation to publication of committee charters, committee membership and meeting attendances?</p>	<p>Yes.</p> <p>Generally board committees should be majority independent and the chairperson of each committee should be independent. Size may be an explanation where this is not the case. The guidelines should include managing conflicts as an important aspect of committee structure.</p> <p>The Audit Committee should be comprised of non-executive directors, be majority independent with an independent chair.</p> <p>Include the Forum guidelines:</p> <ul style="list-style-type: none"> • Every board committee should have a clear, formal charter that sets out its role and delegated responsibilities while safeguarding the ultimate decision-making authority of the entire board. • Where boards have board committees, the charter and membership of each should be published on their website and be easily accessible. • Attendance of both Board and Committee meetings should be reported annually.
<p>16. Should the existing recommendations within NZX's Code in relation to nomination and remuneration committees continue to be</p>	<p>No. As with other recommendations, it would not be mandatory for companies to meet these recommendations. However, companies would need to explain why a departure is appropriate for them. Size constraints could be one explanatory factor. If the Board performs the role of</p>

<p>subject to the “unless constrained by size” exception? a. Should NZX continue to recommend issuers have a remuneration committee?</p>	<p>the remuneration or nomination committee, executive directors should not be members and there should still be a committee charter.</p> <p>16. a. Yes. See above.</p>
<p>17. Should NZX address anything else in this area, including within best practice commentary?</p>	<p>Yes – the NZX recommendations/best practice should be updated to include the FMA and Forum Guidelines - see Forum Guidelines section 3. Board Committees (page 6). including: General</p> <ul style="list-style-type: none"> • Board committees should contain or have access to the necessary expertise and training to execute their charters effectively. • Boards should have a nomination committee and disclose the processes it employs to nominate candidates to the Board and the process for shareholders to nominate candidates. <p>Takeover Committees</p> <ul style="list-style-type: none"> • The board should establish appropriate protocols that set out the procedure to be followed if there is a takeover offer for the company including any communication between insiders and the bidder. It should disclose the scope of independent advisory reports to shareholders. These protocols should include the option of establishing an independent takeover committee, and the likely composition and implementation of an independent takeovers committee. <p>The current NZX Rule requirements and NZX Code should continue to apply to the Audit Committee charter and composition.</p>
<p>Principle 4: Reporting and disclosure</p>	
<p>18. Should NZX introduce additional recommendations or best practice commentary that:</p>	<p>Information provided to shareholders should be accurate, adequate, relevant and comparable over time. It should form a fair and accurate representation of the company. Changes should be explained. The interaction between Boards and investors should be based on quality information and quality analysis.</p>

<p>a. Issuers should have a written policy for complying with their continuous disclosure obligations. If so, should issuers be required to publish these policies?</p>	<p>18a. Yes. The policy is useful for directors and employees, and for shareholders and stakeholders to ensure there is a common understanding about continuous disclosure obligations and how these are managed.</p>
<p>b. All boards should maintain an effective system for internal control for reliable financial reporting and accounting records .</p>	<p>18b. Yes.</p>
<p>19. Should NZX introduce any additional recommendations or best practice commentary in relation to non-financial reporting matters, including ESG disclosures?</p> <p>a. If so, which issues (and metrics) should be reported?</p>	<p>Yes. The company should report its strategy and strategic objectives, and it should report on its risk management.</p> <p>The Board should report on analysis of the environmental, social and governance considerations material to the company so that shareholders understand how the company manages those issues.</p> <p>The FMA guideline on risk reporting states that “ Boards of issuers should report at least annually to investors and stakeholders on risk identification, risk management and relevant internal controls”.</p> <p>19.a The issues and metrics vary by industry and company. Rather than specific metrics, the NZX should recommend that companies use well developed and generally accepted reporting frameworks on non-financial reporting including on ESG disclosure. These frameworks provide guidance to companies (and shareholders and other stakeholders) on relevant metrics.</p> <p>A number of stock exchanges around the world are offering guidance to their issuers on ESG reporting frameworks including the LSE, NYSE, NASDAQ and SSE.</p> <p>The UK Financial Reporting Council provides guidance on strategy and risk reporting.</p>
<p>20. Should NZX include anything else in this area, including within best practice commentary?</p>	<p>Yes – the Forum Guidelines under Principle 4: Reporting and disclosure on page 7 (including the FMA Guidelines).</p>

	<p>In summary, the board communications should present a balanced and understandable assessment of the company's position in order for shareholders to be able to assess the company's performance, business model, strategy and prospects.</p>
<p>Principle 5: Remuneration</p>	
<p>21. Should NZX introduce recommendations as follows:</p> <p>a. Issuers must publish a remuneration policy dealing with remuneration of directors and senior executives?</p> <p>b. Senior executive remuneration (including CEO remuneration) should include an element that is dependent on entity and individual performance?</p>	<p>21 a. Yes. The policy should describe the structure of the executive remuneration plan, how incentives are set and performance measured including hurdles for performance-base pay. The policy should describe how this aligns with long-term shareholder value.</p> <p>Director remuneration policy should be published and non-executive directors should not receive performance-based pay such as share options.</p> <p>21 b. Yes – where this is appropriate. Remuneration should be reasonable and aligned.</p> <p>The Forum guideline (5.6) states that the remuneration committee should judge where to position their company relative to other companies. But they should use such comparisons with caution, in view of the risk of an upward ratchet of remuneration levels with no corresponding improvement in corporate and individual performance, and should avoid paying more than is necessary.</p>
<p>22. Should NZX introduce additional recommendations or best practice commentary for reporting of CEO and senior executive remuneration? If so, what should be introduced?</p>	<p>Yes.</p> <p>Transparency on remuneration is important including on where there is Board discretion and where it is automatic.</p> <p>From the Forum Guidelines Section 5. Remuneration, the following are particularly pertinent to Executive remuneration:</p> <ul style="list-style-type: none"> • The board should describe how the remuneration policy is aligned with the company's long-term strategic objectives.

	<ul style="list-style-type: none"> • The company should disclose annually how awards granted to senior management and the CEO were determined and deemed appropriate when reconciled to key performance indicators and in the context of the company’s underlying performance. • Share-based remuneration schemes should be subject to shareholder approval before being implemented. • A clear rationale should be provided for any material increase in fixed remuneration of executives. • The board should disclose the company policy concerning ownership of shares by the CEO and senior management. This should include the company policy as to how share ownership requirements are to be achieved and for how long they are to be retained. The use of derivatives or other structures that enable the hedging of an individual’s exposure to the company’s shares should be discouraged.
<p>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?</p>	<p>The Forum supports committees having access to the necessary expertise to discharge their duties (Section 3. 3.2) and processes to manage conflicts of interest.</p> <p>This specific issue is not covered in the guidelines. However, approval by, and reporting to, the Board is an appropriate way to manage potential conflicts of interest with executives on remuneration issues.</p>
<p>24. Should NZX address anything else in this area, including within best practice commentary?</p>	<p>We agree with NZX’s proposal to remove the recommendation at section 2.7 of the NZX code which recommends non-executive directors take a portion of their remuneration under performance based equity security compensation plan.</p> <p>The NZX should include other Forum Guidelines (including FMA) on Principle 5 Remuneration (see page 8).</p>

Principle 6: Risk Management	
<p>25. Should NZX introduce recommendations or best practice commentary covering the following matters:</p> <p>a. Issuers should have appropriate policies and procedures in place to identify and manage the key risks facing their businesses.</p> <p>b. Issuers should disclose details of their internal audit function, where applicable, or to provide explanation of the alternative measures in place.</p> <p>c. Issuers should have a staff share dealing policy and disclose details of this.</p>	<p>We agree with NZX that risk management is a gap in the NZX Code and should adopt the FMA guidelines in this area..</p> <p>25 a. Yes.</p> <p>25 b. The Forum does not have a specific guidelines on this but does request that the company report on the work of the audit committee.</p> <p>25c could instead be in the Code of Ethics and must in any case address regulatory requirements. .</p>
<p>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>	<p>Whilst this is not a specific Forum guideline, the recent strengthening of the health and safety regime in New Zealand has considerably increased Board level responsibilities in this area. Safety should form part of the company's enterprise risk management. See response to Q.27 below.</p> <p>The company itself should determine the appropriate metrics based on good practice reporting frameworks, including those particularly pertinent to the company's industry.</p>
<p>27. Should NZX recommend/suggest that issuers specifically report on economic, environmental and social sustainability (or ESG) risks?</p>	<p>Yes – as per 25a.</p> <p>The Forum's guideline 6.3 recommends that : "The board should adopt a comprehensive enterprise risk management approach, including financial, strategic and environmental, social and governance risks.</p> <p>Social risks include health and safety.</p>
<p>28. Should NZX address anything else in this area, including within best practice commentary?</p>	<p>Yes.</p> <p>Additional Forum guidelines:</p>

	<p>6-1. The board is responsible for determining the nature and extent of the principal risks it is willing to take in achieving its objectives.</p> <p>6-2. The board should lead by example and foster an effective risk culture that encourages openness and constructive challenge of judgements and assumptions.</p>
<p>Principle 7: Auditors</p>	
<p>29. Should NZX include recommendations or best practice commentary that:</p> <p>a. The external auditor should attend the AGM to answer questions from shareholders in relation to the audit</p> <p>b. Issuers should report to shareholders annually in relation to audit and non-audit fees paid to the audit firm</p>	<p>29a: Yes – as a recommendation. This is consistent with the FMAs guideline “The board should facilitate questioning of external auditors by shareholders during the annual meeting.”</p> <p>29b. Yes – this is a mandatory requirement under the Companies Act</p>
<p>30. Should NZX consider amending its current auditor rotation requirements in future?</p>	<p>Audit Partner Rotation</p> <p>No. For listed companies we support the NZX rule of audit partners to be rotated after five years.</p> <p>Audit Firm Rotation</p> <p>The NZX should introduce a “comply or explain” recommendation that after 10 years with the same audit firm, the Board should <i>actively consider</i> rotation of the audit firm itself.</p> <p>The benefits Boards should consider in rotating an audit firm are the additional protection this can offer shareholders, the fresh perspectives it can bring to the organisation and the opportunity to conduct a fuller review of fees in the market place. This is balanced against the effort to on-board a new audit firm and issues relating to specialist expertise.</p>

31. Should NZX address anything else in this area, including within best practice commentary?	Yes – Section 7. Auditors of the Forum Guidelines (including the FMA guidance) on page 10.
Principle 8: Shareholder relations	
32. Do you agree with the proposed best practice commentary in these areas?	<p>This Principle is central to the respect for shareholder rights and should form a central part of the comply or explain tier, rather than best practice commentary.</p> <p>ASX Principle 6 provides useful guidance for companies to meet the NZX 10.4.3 rule to publish a statement of the company’s corporate governance policies, practices and processes.</p>
33. Should NZX address anything else in this area, including within best practice commentary?	<p>The FMA Principle should be updated to include respect for shareholder rights. The Forum’s guideline in Section 8.1 states: “Constructive shareholder relations depends on respect for shareholder rights”.</p> <p>We agree that ASX Principle 6 similarly emphasises shareholder rights.</p> <p>Forum guidelines 8.2 and 8.3.</p> <p><i>Dilution</i> “Listed companies should not be able to materially dilute shareholders without their approval.”</p> <p><i>The NZX should review its rule in this area as its current threshold for dilution without approval is too high.</i></p> <p><i>Capital allocation</i> “Boards should provide a clear explanation to shareholders of major capital allocation decisions, the scope of any related independent report and the process for the selection of the advisor”. <i>This guideline should be under a comply or explain recommendation.</i></p> <p>The NZX Rules should be reviewed to give shareholder more time to consider the company’s annual shareholders notice of meeting, preferably at least 28 days prior to the meeting.</p>

	The remainder of the Forum Guidelines in Section 8. (which includes the FMA guidelines) should be included in the NZX Code recommendations or best practice.
Principle 9: Stakeholder interests	
34. Do you consider it appropriate to adopt FMA's principle 9 (potentially amended)?	Yes - adapted to apply to listed companies.
35. What best practice commentary is appropriate for listed issuers in this area?	See Section 9. of the Forum Guidelines including FMA.

Appendix 1

Guidelines

Introduction

The New Zealand Corporate Governance Forum Guidelines (Guidelines) are intended to be used by both companies and institutional investors. They are designed as a contemporary governance reference for shareholders, chairpersons, directors and senior executives of listed companies.

The New Zealand Corporate Governance Forum (Forum) is committed to promoting good corporate governance in NZ companies for the long-term health of the capital market. The Forum's members are institutional investors with significant investment in NZ listed companies. The Forum members believe that good governance improves company performance and increases shareholder value.

The Forum supports the principles and guidelines developed by the Financial Markets Authority (FMA), published in its *FMA Corporate Governance in New Zealand Handbook for Directors*. The FMA principles apply to a wide range of entities including unlisted, listed, governmental and not-for-profit organisations. The FMA guidelines form the basis for the Forum's Guidelines.

In several areas the Forum has extended the FMA guidelines in order to provide more detailed guidance for companies and investors in the listed company environment. The Guidelines reinforce that boards and management teams are accountable to the owners. The majority of additions come from international principles and frameworks

that institutional investors globally regard as best practice. These include the guidelines of the International Corporate Governance Network (ICGN), the Australian Council of Superannuation Investors (ACSI) and the UK's Financial Reporting Council (FRC). The Guidelines will be reviewed periodically to take into account the evolving regulatory and governance landscape.

The Forum recognises that each company is different and deviations from the Guidelines are sometimes appropriate. However, transparency with owners is important and Boards should explain the reasons why a particular Guideline is not being followed. This enables shareholders to take account of a company's individual circumstances including its size and stage of development. Companies can enhance their communications with shareholders by referring to these Guidelines when presenting their annual corporate governance report.

Note: The New Zealand Corporate Governance Forum Guidelines should not be used as a reference document for determining an issuer's legal obligations. However, companies should note that some guidelines may also cover areas which are subject to separate legal requirements (either within legislation or NZX's Listing Rules).

Principles for Corporate Governance

The FMA Principles for Corporate Governance contribute to high standards of corporate governance in NZ and are supported by the Forum.

- 1 Ethical Standards**

Directors should set high standards of ethical behaviour, model this behaviour and hold management accountable for delivering these standards throughout the organisation.
- 2 Board composition and performance**

To ensure an effective board, there should be a balance of independence, skills, knowledge, experience and perspectives.
- 3 Board committees**

The board should use committees where this will enhance its effectiveness in key areas, while still retaining board responsibility.
- 4 Reporting and disclosure**

The board should demand integrity in financial reporting and in the timeliness and balance of corporate disclosures.
- 5 Remuneration**

The remuneration of directors and executives should be transparent, fair and reasonable.
- 6 Risk management**

Directors should have a sound understanding of the key risks faced by the business. The Board should regularly verify that the entity has appropriate processes to identify and manage potential and relevant risks.
- 7 Auditors**

The board should ensure the quality and independence of the external audit process.
- 8 Shareholder relations**

The board should foster constructive relationships with shareholders that encourage them to engage with the entity.
- 9 Stakeholder interests**

The board should respect the interests of stakeholders, taking into account the entity's ownership type and its fundamental purpose.

01 Ethical Standards

Directors should set high standards of ethical behaviour, model this behaviour and hold management accountable for delivering these standards throughout the organisation.

FMA Guidelines

- The board of every entity should adopt a written code of ethics that is a meaningful statement of its core values. The code should set out explicit expectations for ethical decision making and personal behaviour in respect of:
 - acting honestly and with high standards of personal and professional integrity
 - conflicts of interest, including any circumstances where a director may participate in board discussion, and voting on matters in which he or she has a personal interest
 - proper use of an entity's property and/or information, including not taking advantage of the entity's property or information for personal gain, except as permitted by law
 - not participating in any illegal or unethical activity, including safeguards against insider trading in the entity's securities
 - fair dealing with customers, shareholders, clients, employees, suppliers, competitors and other stakeholders
 - giving and receiving gifts, koha, facilitation payments and bribes
 - compliance with laws and regulations that apply to the entity and its operations
 - reporting of unethical decision-making and/or behaviour
 - conduct expected of management and the board in responding to and supporting instances of whistleblowing.
- Every code of ethics should include processes for recording and evaluating compliance with the code and measures for dealing with breaches of the code.
- Every entity should communicate its code of ethics to its employees and provide employee training and procedures to clearly set out these expectations. For example, the board should establish its expectations on management's response to instances of whistleblowing and ensure that whistleblowing procedures and appropriate training are provided. It should also clearly document its expectations and procedures for giving and receiving gifts and donations. Boards should be clear on their policy regarding giving and receiving koha where cultural practices and approaches can vary and the perception of undue influence is high.
- Every board should have a system to implement and review the entity's code of ethics. The board should monitor adherence to the code and hold directors, executives, and other personnel accountable for acting ethically at all times.
- Every entity should publish its code of ethics. Reporting should include information about the steps taken to implement the code and monitor compliance, including any serious instances of unethical behaviour and the action taken.

Additional Forum Guidelines for NZ listed companies

1. The audit committee should review arrangements by which staff of the company may, in confidence, raise concerns about possible improprieties in financial reporting or other matters.
2. The board should have a policy on political engagement, covering lobbying and donations and disclose political donations made by the company.
3. The board should develop clear rules regarding any trading by directors and employees in the company's own securities.
4. The board should disclose its policy and process for managing related-party transactions and may need to form a related party committee as necessary.

02 Board composition and performance

To ensure an effective board, there should be a balance of independence, skills, knowledge, experience and perspectives.

FMA Guidelines

- Every issuer's board should have an appropriate balance of executive and non-executive directors, and should include directors who meet formal criteria for 'independent directors'.
- All directors should, except as permitted by law and disclosed to shareholders, act in the best interests of the entity.
- Every board should have a formal charter that sets out the responsibilities and roles of the board and directors, including any formal delegations to management.
- The chairperson should be formally responsible for fostering a constructive governance culture and applying appropriate governance principles among directors and with management.
- The chairperson of a publicly owned entity should be independent. No director of a publicly owned entity should simultaneously hold the roles of board chairperson and chief executive (or equivalent). Only in exceptional circumstances should the chief executive go on to become the chairperson.
- Directors should be selected and appointed through rigorous, formal processes designed to give the board a range of relevant skills and experience.
- The board should be satisfied a director will commit the time needed to be fully effective in their role.
- The board should set out in writing its specific expectations of non-executive directors (including those who are independent).
- The board should allocate time and resources to encouraging directors to acquire and retain a sound understanding of their responsibilities, and this should include appropriate induction training for new appointees and on-going training for all directors.
- The board should have rigorous, formal processes for evaluating its performance, along with that of board committees and individual directors, including the chairperson. This could extend to formally reviewing the position of chairperson on a regular basis.
- Reporting should include information about each director, including a profile of experience, length of service, independence and ownership interests in the company. Information on the board's appointment, training and evaluation processes should also be included.

Additional Forum Guidelines for NZ listed companies

General

1. The board should act in good faith in the best interests of the company and be accountable to shareholders.
2. The board is responsible for the long-term success of a company and supervision of the company's management and business affairs.
3. The board is responsible for employing the CEO of the company and approving the business strategy. There should be a clear understanding of the division of responsibilities between the board and the executive. No one individual should have unfettered powers of decision.

Independence

4. Directors should ensure that they are independently familiar with the company's operations and do not rely exclusively on information provided by executives or external advisers.
5. A board should be comprised of a majority of independent non-executive directors who are sufficiently motivated and equipped to fulfil the function of independent scrutiny of the company's activities.
6. Explanation should be given to shareholders for the presence of executives on the Board other than the CEO.

7. As a guide, the following table outlines some of the circumstances where directors could be deemed non-independent.

A non-executive director should be independent	Factors that may compromise independence
... of executive and advisers	Employment in the past 3 years
	Senior employment by a significant professional adviser in the past 3 years
... of substantial shareholders	Ownership of over 10% of the voting rights in the company's shares
	An officer, director, representative or employee of such a shareholder
... of the company's investments	A director or employee of another company in which the main company has invested more than 10% of the share capital
... of customers, suppliers and other service providers	A major supplier or customer to the company (or their representative or executive)
	A material contractual relationship with the company
	Receiving fees for services to the company at a level indicative of either significant involvement in a company's affairs, or are significant in relation to the salaries received by directors.
... of relationships which may impact decision making	Relationships (including other directorships or with related parties) that could be (or be perceived to be) capable of materially interfering with acting in the company's best interests.
	Benefiting from a related party transaction
... of incentive pay	Participation in performance incentive schemes, including options that are also granted to executives
... in a takeover bid	Participating in a bid for the counterparty (either as a buyer or seller)
... due to an appropriate length of board tenure	Non-executive directors who have served longer than nine years should be subject to annual re-election. The Board should have a succession plan in place to address long-tenure of directors.

Nomination

8. The board should set out to shareholders in the papers accompanying a resolution to elect a director why they believe an individual should be elected.
9. The board should ensure that shareholders are able to nominate candidates for board appointment. Such candidacies should be proposed to the board nomination committee.
10. All directors should be subject to election by shareholders at the first annual general meeting after their appointment, and to re-election thereafter at intervals of no more than three years. Non-executive directors who have served longer than nine years should be subject to annual re-election.
11. For each director, the company should disclose a detailed biography, including recent and current directorships in other relevant groups or enterprises. .
12. The company should disclose the nature of any material legal proceedings or investigations that the director has been, is, or is likely to be, involved in or otherwise implicated.

Board succession should occur on a planned and ongoing basis.

13. As part of the succession process:
 - a) There should be sufficient overlap in director succession so that gaps in skills, experience, subject matter expertise or corporate memory do not occur, to the extent this is practicable.
 - b) Any future skill gaps should be identified by following a board evaluation process.
 - c) When considering a director who holds, or has held, other directorships, past performance of the director and those companies should be considered.
 - d) Directors should communicate their intentions to retire from the board as soon as possible to assist succession.
14. A skills matrix is one effective tool to demonstrate to shareholders how skills across the boardroom link to the oversight of company operations and strategy.

Diversity

15. The board should disclose the company's policy on diversity which should include measurable objectives for achieving appropriate diversity within its senior management and board and report on progress made in achieving such objectives.

03 Board committees

The board should use committees where this will enhance its effectiveness in key areas, while still retaining board responsibility.

FMA Guidelines

- Every board committee should have a clear, formal charter that sets out its role and delegated responsibilities while safeguarding the ultimate decision-making authority of the entire board.
- Where boards have board committees, the charter and membership of each should be published on their website and be easily accessible.
- Proceedings of committees should be reported back to the board to allow other directors to question committee members.
- Each publicly owned company should establish an audit committee of the board with responsibilities to recommend the appointment of external auditors; oversee all aspects of the entity-audit firm relationship; and to promote integrity and transparency in financial reporting.
- Audit committees should comprise:
 - all non-executive directors, a majority of whom are independent;
 - at least one director who is a qualified accountant or has another recognised form of financial expertise; and
 - a chairperson who is independent and who is not the chairperson of the board.

Additional Forum Guidelines for NZ listed companies

General

1. Generally, board committees should be majority independent and the chairperson of each committee should be independent.
2. Board committees should contain or have access to the necessary expertise and training to execute their charters effectively.
3. Boards should have a nomination committee (where the company is of sufficient size) and disclose the processes it employs to nominate candidates to the Board and the process for shareholders to nominate candidates.

Takeover Committees

4. The board should establish appropriate protocols that set out the procedure to be followed if there is a takeover offer for the company including any communication between insiders and the bidder. It should disclose the scope of independent advisory reports to shareholders. These protocols should include the option of establishing an independent takeover committee, and the likely composition and implementation of an independent takeovers committee.

04 Reporting and disclosure

The board should demand integrity in financial reporting and in the timeliness and balance of corporate disclosures.

FMA Guidelines

- All boards should have a rigorous process for ensuring the quality and integrity of financial statements including their relevance, faithful representation, verifiability, comparability and timeliness.
- Financial reporting and annual reports of all entities should, in addition to all information required by law, include sufficient, meaningful information to enable investors and stakeholders to be well informed. Financial statements are complex and can be challenging for readers. We encourage boards to aim for financial reports that are clear, concise and effective, while meeting the requirements of financial reporting standards.
- All boards must maintain an effective system of internal control for reliable financial reporting and accounting records.
- The directors should explain in the annual report their responsibility for preparing the annual report, including the financial statements that comply with generally accepted accounting practice.
- Each listed entity should have a clear and robust written internal process for compliance with the continuous disclosure regime. This process should include board examination, at each meeting at least, of continuous disclosure issues and should be published on the issuer's website.
- Every entity should make its code of ethics, board committee charters, and other governance documents readily available to interested investors and stakeholders. This information should be available on the entity's corporate website.

Additional Forum Guidelines for NZ listed companies

1. All board communications should present a balanced and understandable assessment of the company's position in order for shareholders to be able to assess the company's performance, business model, strategy and prospects.
2. The board should provide an integrated report that puts historical performance into context and helps shareholders understand a company's strategic objectives and its progress towards meeting them. Such disclosures should:
 - a) be linked to the company's business model;
 - b) be genuinely informative and include forward-looking elements where this will enhance understanding;
 - c) describe the company's strategy, and associated risks and opportunities, and explain the board's role in assessing and overseeing strategy and the management of risks and opportunities;
 - d) be accessible and appropriately integrated with other information that enables shareholders to obtain a picture of the whole company;
 - e) use key performance indicators that are linked to strategy and facilitate comparisons;
 - f) use objective metrics where they apply and evidence-based estimates where they do not.
3. Boards should be able to explain to shareholders their procedures for ensuring the company understands, and is able to respond in a timely manner, to its continuous disclosure obligations and all other relevant market rules.
4. The board should report on an analysis of the environmental, social and governance considerations specific to the company so that shareholders understand how the company manages those issues.

05 Remuneration

The remuneration of directors and executives should be transparent, fair and reasonable.

FMA Guidelines

- The board should have a clear policy for setting remuneration of executives (including executive directors) and non-executive directors at levels that are fair and reasonable in a competitive market for the skills, knowledge and experience required.
- Publicly owned entities should publish their remuneration policies on their websites. Executive (including executive director) remuneration should be clearly differentiated from non-executive director remuneration.
- Executive (including executive director) remuneration packages should include an element that is dependent on entity and individual performance.
- No non-executive director should receive a retirement payment unless eligibility for such payment has been agreed by shareholders and publicly disclosed during his or her term of board service.

Additional Forum Guidelines for NZ listed companies

Remuneration Policy

1. The board should describe how the remuneration policy is aligned with the company's long-term strategic objectives.
2. The company should disclose annually how awards granted to senior management and the CEO were determined and deemed appropriate when reconciled to key performance indicators and in the context of the company's underlying performance.
3. Share-based remuneration schemes should be subject to shareholder approval before being implemented.

Executive Remuneration

4. A clear rationale should be provided for any material increase in fixed remuneration of executives.
5. All performance-based remuneration schemes must be underpinned by appropriately aligned and relevant performance hurdles.
6. The remuneration committee should judge where to position their company relative to other companies. But they should use such comparisons with caution, in view of the risk of an upward ratchet of remuneration levels with no corresponding improvement in corporate and individual performance, and should avoid paying more than is necessary.
7. Performance measurement should integrate risk considerations so that there are no rewards for taking inappropriate risks at the expense of the company and its shareholders. Performance related elements should be rigorous and measured over timescales, and with methodologies, which help ensure that performance pay is directly correlated with sustained value creation. Companies should include provisions in their incentive plans that enable the company to with-hold the payment of any sum, or recover sums paid ('clawback'), in the event of serious misconduct or a material misstatement in the company's financial statements.
8. The board should disclose the company policy concerning ownership of shares by the CEO and senior management. This should include the company policy as to how share ownership requirements are to be achieved and for how long they are to be retained. The use of derivatives or other structures that enable the hedging of an individual's exposure to the company's shares should be discouraged.

Termination of contract

9. Termination payments should not exceed 12 months' fixed pay. Termination payments should not be paid where an executive retires from office, has resigned, or has been terminated for poor performance.

Board remuneration

10. Performance-based pay should not be granted to non-executive directors.
11. If shares are included as part of remuneration to non-executive directors, these should be fully vested on the grant date, subject to applicable multi-year holding periods and disclosed.

06 Risk management

Directors should have a sound understanding of the key risks faced by the business. The Board should regularly verify that the entity has appropriate processes to identify and manage potential and relevant risks.

FMA Guidelines

- The board should require the entity to have rigorous processes for risk management and internal controls.
- The board should receive and review regular reports on the operation of the risk management framework and internal control processes, including any developments in relation to key risks. Reports should include oversight of the company's risk register and highlight the main risks to the company's performance and the steps being taken to manage these.
- Boards of issuers should report at least annually to investors and stakeholders on risk identification, risk management and relevant internal controls.

Additional Forum Guidelines for NZ listed companies

1. The board is responsible for determining the nature and extent of the principal risks it is willing to take in achieving its strategic objectives.
2. The board should lead by example and foster an effective risk culture that encourages openness and constructive challenge of judgements and assumptions.
3. The board should adopt a comprehensive enterprise risk management approach, including financial, strategic and environmental, social and governance risks.

07 Auditors

The board should ensure the quality and independence of the external audit process.

FMA Guidelines

- The board should inform itself fully on the responsibilities of external auditors and be rigorous in its selection of auditors on professional merit.
- The board should satisfy itself there is no relationship between the auditor and the entity, or any related person that could compromise the auditor's independence. The board should require confirmation of this from the auditor.
- The board should facilitate regular and full dialogue among its audit committee, the external auditors and management.
- No issuer's audit should be led by the same audit partner for more than seven consecutive years. For listed issuers, NZX rules require most listed entities' audit partners to be rotated from the engagement after a maximum of five years.
- Boards of issuers and entities that are obliged to prepare and file financial reports under the FMA Act should report annually to shareholders and stakeholders on the fees paid to auditors, and should differentiate between audit fees and fees for individually identified non-audit work (for example, separating each category of non-audit work undertaken by the auditors, and disclosing the fees for this).
- Boards of issuers should explain in the annual report what non-audit work was undertaken and why this did not compromise auditor objectivity and independence. They should also explain the following:
 - how they satisfy themselves on auditor quality and effectiveness
 - the boards' approach to tenure and reappointment of auditors
 - any identified threats to auditor independence
 - how the threat has been mitigated.

Additional Forum Guidelines for NZ listed companies

1. There should be active consideration of audit firm rotation every 10 years.
2. The annual report should describe the work of the audit committee in discharging its responsibilities. The report should include:
 - the significant issues that the committee considered in relation to the financial statements, and how these issues were addressed;
 - an explanation of how it has assessed the effectiveness of the external audit process.

08 Shareholder relations

The board should foster constructive relationships with shareholders that encourage them to engage with the entity.

FMA Guidelines

We encourage widely-held entities to:

- Have clear published policies for shareholder relations and regularly review practices, aiming to clearly communicate the goals, strategies and performance of the entity.
- Maintain an up-to-date website, providing:
 - a comprehensive description of its business and structure
 - a commentary on goals, strategies and performance
 - key corporate governance documents and, if not included in its annual report, a separate section which reports against the entity's adherence to these principles
 - all information released to the stock exchange (for listed entities), including reports to shareholders.
- Encourage shareholders to take part in annual and special meetings by holding these in locations, and at times, that are convenient to shareholders and by providing clear and meaningful information about the business to be conducted at these meetings.
- The board should facilitate questioning of external auditors by shareholders during the annual meeting.

Additional Forum Guidelines for NZ listed companies

1. Constructive shareholder relations depends on respect for shareholder rights.

Dilution

2. Listed companies should not be able to materially dilute shareholders without their approval. As such shareholder approval should be sought for share issuance above 5% of total shares on issue and the board should provide a full explanation of share issuance regardless of the level.

Capital allocation

3. Boards should provide a clear explanation to shareholders of major capital allocation decisions, the scope of any related independent report and the selection of the advisor.

Shareholder meetings

4. Shareholders should not have to meet unduly difficult thresholds to call general meetings, propose resolutions or otherwise exercise shareholder rights
5. Mechanisms should be in place to encourage participation, particularly through electronic communications and voting processes including postal voting and the company should ensure votes are properly counted and recorded.
6. The board should ensure that shareholders have the right to place items on the agenda of general meetings, and to propose resolutions subject to reasonable limitations.
7. Shareholders should have the right to vote on corporate governance decisions such as director election/re-election, executive and director remuneration policy, appointment of external auditor and all constitutional changes.
8. Shareholder approval should be required for granting securities to a director, unless it is under a bona fide salary sacrifice arrangement from a director's fixed remuneration.
9. Boards should support the principle of one share/one vote in the voting process and as such count votes according to poll rather than a show of hands, should not bundle resolutions and only allow voting on resolutions that have been included in the Notice of Meetings.
10. The board should ensure that the annual shareholders notice of meeting is posted on the company's website as soon as possible and preferably at least 28 days prior to the meeting taking place.

11. The Board should publish the voting results for each resolution at a meeting on its website in particular results by poll.
12. When, in the opinion of the board, a significant proportion of votes have been cast against a resolution at any general meeting, the company should explain when announcing the results of voting what actions it intends to take to understand the reasons behind the vote result.
13. Where possible, all directors on the board, senior executives and the external auditor should attend annual shareholders' meetings and be available, when requested by the chairperson, to answer shareholder questions.

Other Communications

14. The chair and board should discuss governance and strategy with shareholders. Non-executive directors should be offered the opportunity to attend scheduled meetings with shareholders and should expect to attend meetings if requested by shareholders, where appropriate. Boards should clearly explain meeting procedures including guidance relating to compliance with disclosure and other relevant market rules.
15. The independent chair should attend sufficient meetings with a range of shareholders to listen to their views in order to help develop a balanced understanding of the issues and their concerns.
16. The board should state in the annual report the steps they have taken to ensure that the members of the board, and in particular the non-executive directors, develop an understanding of the views of shareholders about the company, for example through direct face-to-face contact, analysts' or brokers' briefings and surveys of shareholder opinion.

09 Stakeholder interests

The board should respect the interests of stakeholders, taking into account the entity's ownership type and its fundamental purpose.

FMA Guidelines

- The board should have clear policies for the entity's relationships with significant stakeholders, bearing in mind distinctions between public, private and Crown ownership.
- The board should regularly assess compliance with these policies to ensure that conduct towards stakeholders complies with the code of ethics and the law and is within broadly accepted social, environmental, and ethical norms – generally subject to the interests of shareholders.
- Public sector entities should report at least annually to inform the public of their activities and performance, including on how they have served the interests of their stakeholders.

Additional Forum Guidelines for NZ listed companies

Communication

1. The board should make available communication channels for periodic dialogue and reporting on environmental, social or governance matters with stakeholders (including shareholders) as appropriate. Boards should clearly explain such procedures to stakeholders including guidance relating to compliance with disclosure and other relevant market rules.