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**Submission on review of corporate governance reporting requirements  
within the NZX Main Board Listing Rules**

Governance New Zealand Incorporated (formerly Chartered Secretaries New Zealand Incorporated), is New Zealand's leading independent professional body with a sole focus on the practice of governance and is dedicated to providing leadership in the areas of governance, compliance and risk management.

Governance New Zealand welcomes the opportunity to comment on the proposed review of corporate governance reporting requirements within the NZX Main Board Listing Rules. Good corporate governance is important for listed issuers and we believe that regulation has an important role to play in maintaining and improving corporate governance standards.

Practitioners such as our members who are Chartered Secretaries and who have primary carriage in implementing the corporate governance reporting requirements have served New Zealand well in lifting and maintaining its standing as a country with a high-performing corporate governance environment.

Our members hold primary responsibility within listed entities for developing governance policies, ensuring compliance with the New Zealand Exchange (NZX) listing rules and supporting the board on all governance matters. Their familiarity with the practical aspects of how to implement best practice governance frameworks and ensure sound reporting to shareholders has formed the responses in this submission.

**General Comments**

Overall Governance New Zealand supports the objectives that NZX is seeking to achieve with the review of current corporate governance reporting requirements within its main board listing rules. This includes using current FMA guidelines as the basis for an improved reporting structure; a tiered approach to reporting; and a "comply or explain" approach to reporting for main board listing rules.

Any specific recommendations from Governance New Zealand, or areas of concern that Governance New Zealand wishes to raise are addressed in the response that is included with this letter.

Yours sincerely



Linda Noble  
Chief Executive

**Questions for submitters to consider on objectives and proposed framework:**

1. Do you agree with the above objectives for NZX's current review?

*Response*

In principle, we agree with the objectives as outlined in the Review and Proposed Frameworks and recommend that such a review be conducted on a regular basis say every five years.

2. Do you agree that NZX should adopt the FMA principles as the basis for an updated reporting regime?

*Response*

In principle, we agree that the NZX should adopt the FMA principles. However, we support amending Principle 4 regarding reporting and disclosure to clarify that integrity of corporate reporting is not limited to financial reporting but also includes non-financial reporting. Specific non-financial information that could be reported is:

- Reporting relevant and material non-financial risks and how they are managed or minimised (i.e. insurance coverage)
- Work place safety
- Fuller executive pay disclosures
- Material economic, environment and social sustainability risks

3. Do you agree with a tiered approach to a reporting regime?

*Response*

In principle, we agree with tiered approach to a reporting regime.

4. Do you agree that recommendations should be reported against on the basis of an approach of "comply or explain"?

*Response*

In principle, we agree with the approach of "comply or explain" which allows flexibility but also creates greater accountability for issuers.

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)?

*Response*

Governance New Zealand actively supports and promotes best practice in governance, risk and compliance. For this reason, we support the proposed structure that sets minimum standards, as well as encouraging best practice. Recognising increased globalisation, and the fact that many New Zealand issuers conduct business in Australia, NZX rules should be consistent with ASX Listing Rules.

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?

*Response*

Governance New Zealand supports recognition of the position of a company secretary of a listed entity. A company secretary plays an important role in supporting the effectiveness of a board and its committees.

The role of the company secretary should include:

- advising the board and its committees on governance matters;
- monitoring that board and committee policy and procedures are followed;
- coordinating the timely completion and despatch of board and committee papers;
- ensuring that the business at board and committee meetings is accurately captured in the minutes; and
- helping to organise and facilitate the induction and professional development of directors.

Each director should be able to communicate directly with the company secretary and vice versa.

The decision to appoint or remove a company secretary should be made or approved by the board.

Governance New Zealand also supports the recommendation that a company secretary be a qualified chartered secretary or a chartered governance professional who is a member of Governance New Zealand.

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?

*Response*

Agree with this. In terms of 10.4.5 (k), (page 141 of NZX Listing Rules), we support organisations having a policy on diversity and reporting against this.

## **Principle 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.”

8. Should NZX include additional recommendations within its NZX Code
- 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)
  - b. For disclosure of a code of ethics and reporting of compliance with a code of ethics as part of the annual report process.

*Response*

Agree with both a. & b. above.

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?

*Response*

Best practice commentary could include the use of an ethics committee as this type of committee can be useful for organisations when dealing with issues such as whistle blowing. All employees of issuers should have suitable training in the issuer's code of ethics, say every 5 years, and this should be a requirement in the code of ethics.

10. Should NZX address anything else in this area, including within best practice commentary?

*Response*

In terms of best practice commentary, we support a process that reports on how an organisation communicates its code of ethics to employees, and how it's enacted within the organisation. Also the Ethics Committee should give an annual report on their activities which is included in the issuer's Annual Report to shareholders.

## **Principle 2: Composition and Performance**

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

11. Should NZX introduce additional recommendations or best practice commentary covering the matters outlined in paragraphs i - iv above?

*Response*

Agree that paragraphs i - iv should be introduced as additional information. However this should be as recommendations rather than best practice commentary.

12. Should NZX consider introducing a recommendation in future that boards contain a majority of independent directors and/or an independent chairperson?

*Response*

Agree with having an independent chairperson as a recommendation in the situation where NZX adopts a "comply or explain" policy. (If the chair is not independent the reasons why will need to be explained). Having a majority of independent directors may be ideal, however this may not be practical due to New Zealand's relatively small size.

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?

*Response*

We do not have a set view on this consideration.

14. Should NZX address anything else in this area, including within best practice commentary?

*Response*

It would be beneficial to include the ASX rule that “the company secretary should be accountable to the board in relation to board functions”. Having the company secretary reporting to the board rather than the CEO is sound. However we see this as a recommendation rather than best practice commentary. For example, the NZ Shareholders Association view of what a company secretary should be:

<https://www.nzshareholders.co.nz/shareholders-best-practiceDetail.cfm?bestpracticeid=26>

We also note that the Australian Corporations Act legislates that the position of company secretary in a publicly listed corporation is a statutory role and recommend that NZX should lobby government for a similar statutory position for company secretaries of NZX listed companies.

Additionally, appreciating that NZX does not support quotas, we support appointments based on best skilled combined with a proactive policy to develop gender diversity and recommend that an organisation has a diversity policy. This includes requirements for the board or a relevant committee of the board to set measurable objectives for achieving gender diversity, and to assess annually both the objectives and the entity’s progress in achieving them.

### **Principle 3: Board Committees**

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

15. Should NZX introduce additional recommendations or best practice commentary in relation to publication of committee charters, committee membership and meeting attendances?

*Response*

Agree with this, as it provides transparency for investors and other stakeholders.

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?

*Response*

Agree, although if the "comply or explain" rationale is used, this may be unnecessary as an organisation can explain that they do not comply due to their size.

- a. Should NZX continue to recommend issuers have a remuneration committee?

*Response*

Agree, taking into account the comment above.

17. Should NZX address anything else in this area, including within best practice commentary?

*Response*

We do not have a comment to make on this.

#### **Principle 4: Reporting and disclosure**

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

18. Should NZX introduce additional recommendations or best practice commentary that:
- a. Issuers should have a written policy for complying with their continuous disclosure obligations. If so, should issuers be required to publish these policies?

*Response*

Agree that a policy should be published, and needs to be readily available to investors, and other stakeholders. Continuous disclosure policies could also be included in an organisation's code of ethics, as it is felt that continuous disclosure is as much to do with ethics as being part of compliance.

- b. All boards should maintain an effective system for internal control for reliable financial reporting and accounting records

*Response*

Agree, this is fundamental to an effective organisation. This should not be a "comply or explain, it is a must do.

19. Should NZX introduce any additional recommendations or best practice commentary in relation to non financial reporting matters, including ESG disclosures?

*Response*

Agree with this, any metrics would depend on what type of business the organisation is in. This might be best as best practice commentary.

If so, which issues (and metrics) should be reported?

*Response*

It is felt that further discussions with stakeholders are needed to determine whether there are any prescribed metrics or issues that should be reported.

20. Should NZX include anything else in this area, including within best practice commentary?

*Response*

All codes of ethics, committee charters, and other relevant documents should be readily available to investors/stakeholders. The FMA Handbook details this on page 22.

## **Principle 5: Remuneration**

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

21. Should NZX introduce recommendations as follows:
- a. Issuers must publish a remuneration policy dealing with remuneration of directors and senior executives?

*Response*

Agree with this, this is part of having good disclosure practices.

- b. Senior executive remuneration (including CEO remuneration) should include an element that is dependent on entity and individual performance?

*Response*

Agree with this as long as the entity performance element is suitably long term. The recommendation should state that the basis for calculation of the entity and individual performance components be disclosed in the annual report.

22. Should NZX introduce additional recommendations or best practice commentary for reporting of CEO and senior executive remuneration? If so, what should be introduced?

*Response*

Information on CEO and senior executive remuneration should be reported, and be available to investors and stakeholders as a recommendation.

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?

*Response*

We support a best practice commentary that remuneration consultants are used, are appointed by the board or remuneration committee, and report to the board or remuneration committee as determined by the board.

24. Should NZX address anything else in this area, including within best practice commentary?

*Response*

Nothing to add at this point.

## **Principle 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 that identify and manage potential and relevant risks."

25. Should NZX introduce recommendations or best practice commentary covering the following matters:
- a. Issuers should have appropriate policies and procedures in place to identify and manage the key risks facing their businesses.

*Response*

In our view, policies and procedures regarding key risks should be mandatory. Risk management is critical to any organisation. Risks include, but are not limited to, risks such as loss of a major client, disaster recovery, bank facility coming up for renewal/renegotiation, material new investments, loss of key staff etc. Material risks will vary between organisations and change over time. The board should have a pro-active risk identification and management policy and report against this.

Directors have duties in terms of not trading recklessly and creating substantial risk of loss to the company's creditors. There must be a sound risk management framework to ensure this does not occur.

We support the recommendation that a summary of matters covered by the risk management policy and procedure should be reported in the annual report.

- b. Issuers should disclose details of their internal audit function, where applicable, or to provide explanation of the alternative measures in place.

*Response*

Agree, this falls into the "comply or explain" category.

- c. Issuers should have a staff share dealing policy and disclose details of this.

*Response*

Agree, this forms part of sound ethics, reporting and disclosure.

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?



*Response*

Agree with the inclusion of specific recommendations. The new Health and Safety at Work Act 2015 places specific duties on officers of an organisation in terms of health and safety and this includes directors. Worksafe is developing general risk and workplace management regulations that will be released after the new Health and Safety at Work Act 2015 in comes into force in April 2016. So in terms of what metrics are appropriate, it is too early to comment on this.

<http://www.business.govt.nz/worksafe/hswa/legislation>

27. Should NZX recommend/suggest that issuers specifically report on economic, environmental and social sustainability (or ESG) risks?

*Response*

Agree with this, this is part of reporting and disclosure, as per Question 19.

28. Should NZX address anything else in this area, including within best practice commentary?

*Response*

We support guidance on appropriate risk management frameworks, and/or standards for example AS/NZS ISO 31000:2009. This standard is referenced by ASX as a guideline to be used when implementing a risk management framework.

## **Principle 7: Auditors**

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

29. 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.

*Response*

Agree, we support this recommendation.

- Issuers should report to shareholders annually in relation to audit and non audit fees paid to the audit firm

*Response*

Agree, this is part of disclosure on the relative independence of the auditor.

30. Should NZX consider amending its current auditor rotation requirements in future?

*Response*

We support retaining five years rotation.

31. Should NZX address anything else in this area, including within best practice commentary?

*Response*

Nothing to add at this point.

**Principle 8: Shareholder relations**

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

32. Do you agree with the proposed best practice commentary in these areas?

*Response*

Agree with the proposed best practice commentary, although some of this could be part of "comply or explain" rather than best practice commentary. However, bullet points 1, 3 & 4 under the ASX requirements (that the NZX is proposing to adopt) should be recommendations. CEO's attendance at annual meetings should be a recommendation however we propose that this would not extend to senior managers.

33. Should NZX address anything else in this area, including within best practice commentary?

*Response*

Nothing to add at this point.

**Principle 9: Stakeholder interests**

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

34. Do you consider it appropriate to adopt FMA's principle 9 (potentially amended)?

*Response*

Agree with this, although the definition of stakeholder is somewhat limited if NZX take this to mean "The relevant stakeholders in this context would be employees of issuers, suppliers, regulators and government." We support it also including customers/consumers of the organisation's products/services.

Additionally, stakeholders could include relevant communities of interest. For example an issuer that is a generator that operates and owns flow of river hydro power plants should consider other users of that river as stakeholders.

35. What best practice commentary is appropriate for listed issuers in this area?

*Response*

We support the use of a guidance note/s, or an appropriate standards (e.g. AS/NZ or ISO standards) recommended by NZX.