EXTERNAL REPORTING BOARD
Te Kāwai Ārahi Pūrongo Mōwaho

17 December 2015

Hamish MacDonald
Head of Policy
NZX Limited
PO Box 2959
Wellington
New Zealand

Submitted to: consultation @nzx.com

Dear Hamish

Review of Corporate Governance Reporting Requirements within NZX Main Board Listing Rules

The External Reporting Board (XRB) is pleased to have the opportunity to comment on the NZX's Discussion Document *Review of Corporate Governance Reporting Requirements within NZX Main Board Listing Rules* (Discussion Document).

The XRB is an independent Crown Entity responsible for financial reporting strategy and the development and issue of accounting and auditing & assurance standards in New Zealand. The XRB also has an interest in the wider corporate reporting area, including the reporting of non-financial information in corporate financial reports, where these meet the needs of users of general purpose financial reports (GPFR).

General Comment

We commend the NZX's efforts to review Appendix 16 to the Listing Rules Corporate Governance Best Practice Code (NZX Code). We consider it important for the NZX Code to be updated and be broadly aligned with expected best practice, including where appropriate, international best practice.

We understand some listed companies that are also listed on the Australian Securities Exchange (ASX) may be subject to four different corporate governance regimes, those from the NZX, the ASX Corporate Governance Council, the Financial Markets Authority (FMA) and the New Zealand Corporate Governance Forum. We consider this to be undesirable. It is important, in a small country like New Zealand for requirements across the different regimes to be as consistent as possible to reduce fragmentation, duplication and inconsistencies. It is also desirable, in the context of the different ways New Zealand entities may be listed on the ASX, for the NZX Code to be of equivalent quality to the ASX Corporate Governance Council's *Corporate Governance Principles and Recommendations*.

Specific Comment

We have not commented on every aspect of the NZX's proposals in the Discussion Paper. In general, we agree with most of the proposals, in particular the proposal to base the core principles of the NZX Code on the FMA's *Corporate Governance in New Zealand Principles and Guidelines*. Other than the specific comments set out below, we have no additional comment to make on other aspects of the Discussion Paper.

Our comments focus on the NZX's request for feedback on the *Objectives and Proposed Framework*, Principle 4 *Reporting and Disclosure* and Principle 7 *Auditors*.

Objectives and Proposed Framework

We agree the proposed reporting regime should:

- be flexible;
- be appropriate for the size and structure of the New Zealand market;
- take a holistic approach;
- deliver value for shareholders and stakeholders;
- enhance investor decision making; and
- strike an appropriate balance between effective disclosure and the cost to issuers.

In addition, we consider the reporting regime should aim to reduce duplication in reporting requirements and to ensure, as far as possible, the consistency of requirements across the different reporting regimes in New Zealand and internationally.

We note the NZX's intention to deliver an updated reporting regime:

- based on the FMA's principles as a basis for reporting;
- which has common features with other existing regimes;
- that is structured as a tiered framework with:
    - Principles - overarching theme or concept;
    - Recommendations - "comply or explain" reporting; and
    - Best practice commentary – voluntary disclosures.

We agree with the proposed updated reporting regime as it brings the NZX regime up-to-date and broadly aligns the NZX regime with that of the FMA and international regimes. Basing the proposed regime on the FMA's principles and imposing additional requirements on listed entities will ensure a basic level of consistency in the requirements between listed and other entities. Aligning the requirements with the ASX requirements will assist dual listed entities by reducing duplication in reporting by these entities.

The NZX notes the varied existing reporting practices, lack of clarity in the NZX's existing reporting expectations and the fragmentation of the different reporting regimes currently in operation in New Zealand. The NZX has asked if any other steps should be taken to address fragmentation of corporate governance guidelines and expectations applying to issuers in New Zealand.

We consider it may be difficult to eliminate all fragmentation given the difference in scope and/or target and relative standings of the regimes:

- the NZX's regime applies only to listed issuers and are "mandatory" for listed issuers;
- the FMA's regime applies to a broader range of entities including issuers of securities, entities providing financial services, state-owned enterprises, community trusts, public sector entities and non-listed entities and represents a regulator's expectations of best practice;
- the New Zealand Corporate Governance Forum's guidelines are targeted at listed companies and represent expectations by a private group of institutional investors largely of their investee companies.

However, we recommend the NZX works closely with the FMA and the Corporate Governance Forum to reduce any fragmentation.

We agree the requirements relating to corporate governance, directors and diversity in section 10.4.5 be incorporated into an updated NZX Code to ensure all the wider corporate governance reporting requirements are in one place.

Principle 4: Reporting and Disclosure

The NZX has asked whether any additional recommendations or best practice commentary should be introduced in relation to non-financial reporting matters, including environmental, social and corporate governance (ESG) disclosures and strategy, and if so, which issues (and metrics) should be reported.

We recommend the NZX includes additional best practice commentary for the disclosure of non-financial reporting matters on ESG matters and strategy, including reporting on economic, environmental, social sustainability and ESG risks (under Principle 6 *Risk Management*). We recommend the NZX strongly encourages these disclosures. However, other than corporate governance matters (which are already set out under a number of the other Principles), we recommend the NZX not be prescriptive on the particular aspects of such matters, or the particular metrics, that an issuer should disclose. Each issuer has unique requirements in this regard and such reporting needs to be relevant to each entity. We consider the disclosures are important given the increased focus on such matters internationally but we also note the evolving nature of reporting in these areas.

In terms of metrics, we recommend the NZX not specify particular metrics except to require an entity to disclose and determine which key performance indicator is the most relevant metric to use, for the indicator to be clear and be capable of being measured and assured (audited or reviewed).

We note the NZX Code currently recommends Board committees to have written charters and for the performance of the committees to be reviewed regularly in accordance with their written charters. We consider the NZX Code should also recommend, where the written charter of any of the committees requires the charter to be reviewed within a particular timeframe, for the Board to certify, and disclose, as part of their governance disclosures that such a review has been carried out within those timeframes.

Principle 7: Auditors

The NZX has requested feedback on whether its existing mandatory requirement for auditor rotation every five years remains appropriate. The NZX notes the ASX Corporate Council recommends rotation every 7 years and the FMA's guidelines also expect that an issuer's audit should not be led by the same audit partner for more than 7 consecutive years.

We recommend the NZX amends the mandatory lead auditor rotation timeframe to be no more than 7 years (from the current 5 years) and monitors international developments where the auditor rotation rules are currently being discussed by the International Ethics Standards Board for Accountants (IESBA). We recommend the NZX keeps under review the timeframes for auditor rotation so that they can be aligned with international requirements when those are finalised.

If you have any queries or require clarification of any matters in this submission, please contact Lay Wee Ng (laywee.ng@xrb.govt.nz) or me.

Yours sincerely

Graeme R Mitchell
Chairman
External Reporting Board