



February 2018

# FMA Corporate Governance Handbook 2018

## – summary of submissions

---

This document summarises the key themes from the submissions to our [consultation](#) for the updated Corporate Governance Handbook, and our response to them. It also includes the individual submissions.

We received 27 formal written submissions. No submitters requested their submissions remain confidential. We have the right to withhold information under the Official Information Act 1982 and Privacy Act 1993.

This copyright work is licensed under the Creative Commons Attribution 3.0 New Zealand licence. You are free to copy, distribute and adapt the work, as long as you attribute the work to the Financial Markets Authority and abide by the licence terms. To view a copy of this licence, visit [creativecommons.org](http://creativecommons.org)

[www.fma.govt.nz](http://www.fma.govt.nz)

---

AUCKLAND OFFICE | Level 5, Ernst & Young Building | 2 Takutai Square, Britomart | PO Box 106 672 | Auckland 1143  
WELLINGTON OFFICE | Level 2 | 1 Grey Street | PO Box 1179 | Wellington 6140

# Introduction

---

We would like to thank all submitters for their feedback. We received submissions from a wide range of stakeholders, including listed issuers, registered banks, law firms, industry bodies, corporate governance groups and professional services firms. We acknowledge the points raised and the effort put into these submissions.

The main themes that emerged from the submissions were:

1. strong support for our overall approach to refocus away from listed companies
2. request for clarity on the appropriate balance of independent and non-independent directors on boards and subsidiary boards
3. to increase prominence on non-financial information in reporting and disclosures, and environmental, social and governance ('ESG') factors
4. to provide more guidance on remuneration
5. to provide more guidance on auditor independence and audit committees
6. guidance on shareholder relations and stakeholders.

# Feedback themes

---

## **1. Strong support for our overall approach to refocus away from listed companies**

We received strong support for our overall approach to move our focus away from listed issuers. Submitters felt this would avoid overlap, confusion and unnecessary duplication with the NZX's updated corporate governance code (the NZX Code).

The submissions focused mainly on minor refinements to the guidelines and commentary under each principle. However, some submitters thought a more substantial rewrite of the handbook would be useful.

While we have refreshed the 2014 version of our corporate governance handbook to incorporate the most up-to-date standards for corporate governance, our view is that its high-level nature and established presence in New Zealand (it was first published in 2004) provides the appropriate level of assistance to benefit a wide range of companies and entities. This refreshed version does not restate legal requirements nor seek to explain the full suite of technical legal requirements for companies. We have tried to strike that balance in the rewrite, while signposting to other sources of information.

## **2. Request for clarity on the appropriate balance of independent and non-independent directors**

Submitters asked for clarity on the guidelines and commentary relating to the balance of independent and non-independent directors on boards. In particular, submitters questioned the requirement for director independence in respect of subsidiary boards and if this independence standard should apply to those perceived to be publicly accountable due to their role in the financial markets. The recommendations on independence for subsidiary boards in the updated handbook remain the same as in the 2014 version, in that we encourage entities to include directors who meet the criteria for formal independence. However, to provide clarity we have removed references to 'publicly accountable' in the introduction and in Principle 2 (Board composition and performance).

For wholly-owned subsidiary boards that report against Principle 2, we recognise a 'one-size-fits-all' approach may be inappropriate for independent director recognition. We invite entities with wholly-owned subsidiary boards to explain their approach when they report against the principles.

## **3. To increase prominence on non-financial information and environmental, social and governance (ESG) factors**

For Principle 4 (Reporting and disclosure), submitters supported our updated guidelines and commentary on non-financial information. However, submitters requested we add non-financial reporting to the description of the principle.

Submitters also requested we update our commentary on non-financial reporting to include references to materiality, overall strategy, and highlight the connection between ESG factors and financial information.

We agreed with all of this feedback, and we have updated the principle's description and commentary in these areas. The commentary on ESG in Principle 6 (Risk management) has also been updated to align with Principle 4 changes.

#### **4. To provide more guidance on remuneration**

For Principle 5 (Remuneration), submitters asked for more guidelines and commentary about remuneration. However, we think this needs to be balanced with the high-level nature of the handbook. Therefore, we have made minor updates to Principle 5, for example to ensure the linkages to strategy and performance are clear, and have also sign-posted where to find other industry guidance on this topic.

The current trend is towards greater transparency on all aspects of remuneration and incentives for directors and executives. The handbook encourages companies to consider how to meet stakeholder expectations in this area.

#### **5. To provide more guidance on auditor independence and audit committees**

For Principle 7 (Auditors), we received feedback that our guidance should be extended to cover all assurance providers, and that we should update the information on fees.

Related to this, for Principle 3 (Board committees), we received feedback suggesting an appropriate timeframe for our guideline relating to the chairperson of the audit committee not have a longstanding association with the external audit firm.

Based on these submissions, we have refreshed our commentary on non-assurance work and our guideline relating to the chairperson of the audit committee. We have also referenced our director's guide to audit quality, published in November 2017.

#### **6. Guidance on shareholder relations and stakeholders**

To align with the NZX Code, and as signalled in our consultation, Principle 9 has been removed. Stakeholder considerations are vitally important, so they have been incorporated into all eight principles (in particular Principle 4 on reporting and disclosure, and Principle 8 on shareholder relations and stakeholder interests).

# Submissions

---

- [Accident Compensation Corporation](#)
- [ANZ Bank New Zealand Limited](#)
- [BDO New Zealand Ltd](#)
- [Bell Gully](#)
- [Booster Investment Management Limited](#)
- [Chapman Tripp](#)
- [Cygnus Law](#)
- [D'Souza Associates](#)
- [Governance New Zealand Incorporated](#)
- [Institute of Directors](#)
- [International Integrated Reporting Council](#)
- [Kensington Swan](#)
- [Medical Assurance Society New Zealand Limited](#)
- [Milford Asset Management Limited](#)
- [MinterEllisonRuddWatts](#)
- [New Zealand Bankers Association](#)
- [New Zealand Guardian Trust trading as Perpetual Guardian](#)
- [NZ Superannuation Fund](#)
- [Oyster Management Limited](#)
- [Proxima Consulting](#)
- [Public Trust](#)
- [PwC](#)
- [Risk Management Ltd](#)
- [Spark New Zealand Limited](#)
- [Trustees Executors](#)
- [University of Otago](#)
- [Personal submission](#)

## Feedback - FMA Corporate Governance handbook

7/12/17

Accident Compensation Corporation

Questions	
Question 1	Do you agree with our overall approach to move our focus away from listed issuers?
Question 2	Is more guidance needed for companies seeking to grow and possibly raise capital and/or list in the future - if yes, in what areas would guidance be useful (please give examples of the additional guidance you think should be added)?
Question 3	Do you have any feedback on the structure or presentation of the document? Is there anything we could improve about the way it has been written, or communicated, to better assist directors and executives to apply the corporate governance principles?
Question 4	In most areas we have made very few changes to the substantive guidance. Are there any specific areas where we should include more guidance or commentary?
Question 5	Are there any areas where we are out of step with guidelines that your Company/Board follows, or any other areas of ambiguity in the handbook?
Question 6	Are there any cost implications or other barriers to adopting the revised guidelines?

Q1 We understand the objective to minimize the number of guidelines applicable to listed companies. Given we accept the NZX Listing Rules and Governance Code as the primary guidance, we do not strongly disagree with the move the focus of the FMA handbook away from listed issuers.

That said, in our view it remains critical that the FMA's role in ensuring the governance regime in NZ is "fit for purpose" remains and that the FMA remains open to the views of investors with respect to governance settings. We are pleased to see the commitment in the About section (Pg 1, para 4) but would like to see that commitment extend to engagement with shareholders of listed companies as well as NZX and Listed Companies.

Q2 At the end of Page 4 we suggest also referring IPO directors to the NZX Rules and Code as well as the FMA doc (or is this so obvious to be unnecessary?). The important message (to notify directors of the additional commitments which a listing requires) is clearly communicated so additional guidance does not seem a necessary part of the Handbook

Q3 Our general comment is to consider the numbering of guidelines as opposed to bullet-pointing them – enabling easy referral and emphasising the importance of adherence to all the guidelines.

P02 (page 2, 10) – placing independence in front of the other director qualities mis-prioritises the relative importance of the attributes – we suggest placing "independence" at the end

P04 (page 2, 18) - we suggest the reporting P4 should refer to non-financial reporting also – particularly the clear communication of strategy and execution against strategy - perhaps

“the Board should provide information (both numbers and words) to stakeholders which is timely, accurate, comparable and enables a meaningful understanding and analysis of strategy and execution against the strategy”

P5 (Page 2) Analogous to the comment above re P2, the regulatory requirement comes before the economic – we suggest the order be reversed i.e. fair and responsible should be before transparency. We suggest “appropriately aligned” be added.

#### Q4 Major Changes

<p><b>Principle 3: Board committees</b></p> <p>External audit firms and association with the chairperson.</p> <p><b>Principle 4: Reporting and disclosure</b></p> <p>Non-financial reporting.</p> <p><b>Principle 5: Remuneration</b></p> <p>Transparency of long and short-term incentives.</p> <p><b>Principle 6: Risk Management</b></p> <p>Risk management and environmental, social and governance (ESG) matters.</p> <p><b>Principle 7: Auditors</b></p> <p>Standards of best practice for appointing auditors, non-audit work and independence.</p> <p><b>Principle 9: Stakeholder interests</b></p> <p>To maintain alignment with the NZX Code, we have <i>removed</i> Principle 9 (Stakeholder interests). Stakeholder considerations are important, so they have been incorporated into all eight principles (in particular Principle 4 on reporting and disclosure, and Principle 8 on shareholder relations). We have also updated our commentary.</p>
--

- Committee (P3) – agreed - no comments
- Reporting (P4, pg 18) – We suggest the guidelines on reporting include the requirement for a clear description of the strategy of the business and the reporting of results against that strategy. Stakeholders need to be clearly informed re this critical area and be able to hold boards to account.

Clear reporting re the 1st Guideline of P2 (Directors skills, matrixes) should be provided i.e.

- Directors should be selected and appointed through rigorous, formal processes designed to give the board a range of relevant skills and experience.

This is well covered in the Commentary of P2 (page 12) but we suggest it should be promoted to a Guideline in P4. This should include the linkage of strategy to the intellectual capital required at the board and management and a discussion of how board and management meets those requirements.

- Remuneration (P5, pg 22). As above we suggest reference to appropriately aligned be added to the last guideline.
- Risk Management (P6, pg 24) – We suggest direct reference to ESG issues in the guidelines (perhaps tie into the last guideline which references the multiple stakeholders)
- Auditors ( P7) – No comment
- Shareholder Relations and stakeholder interest (P8,31).
  - Shareholder relations means “communications with shareholders” we suggest this principle refers to “shareholder relationships”.
  - The 1<sup>st</sup> paragraph of the commentary is critical and we suggest it be framed as the first of the guidelines with the 2<sup>nd</sup> sentence referring to shareholder accountability

Shareholders are the ultimate owners of entities. In general, company shareholders have a right to vote on certain issues affecting the control and direction of their company. In this document we have used the term ‘shareholders’ broadly to include people with an ownership interest in non-company entities where they have similar voting rights. The rationale for good shareholder relations applies equally, whatever the legal form of the entity.

We suggest the following guideline be added (as guideline 1)

Directors recognize that shareholders (or those stakeholders with ownership interest) are the ultimate owners of entities, and directors are accountable to shareholders for governance decisions and performance.



8 December 2017



Financial Markets Authority  
1 Grey Street  
Wellington 6012

By email: [consultation@fma.govt.nz](mailto:consultation@fma.govt.nz)

To whom it may concern

**ANZ submission on the Consultation Paper: FMA Corporate Governance Handbook**

Thank you for the opportunity to respond to the Financial Markets Authority (**FMA**) on the consultation on FMA's proposed updated Corporate Governance handbook (**Handbook**).

**Key Messages**

We support FMA's approach of refreshing the Handbook by shifting the focus away from listed companies, and so avoiding overlap and potential confusion with the NZX's updated corporate governance code.

In general we consider the principles and guidelines in the handbook to be appropriate and a useful guide for Directors and Executives. However, in our view, the proposed application of the Handbook should be narrowed to cover only those entities which are involved in New Zealand's financial markets and are recognised by the Financial Markets Conduct Act as having a higher degree of public accountability. As currently drafted, some sections of the Handbook suggest that the principles could apply to all companies operating in New Zealand, regardless of whether those companies are widely held or otherwise subject to a higher degree of public accountability. We consider that an expectation that all companies will consider and report on compliance with the principles would impose an additional compliance burden for little corresponding benefit.

Secondly, we consider that the commentary and guidelines in respect of Board composition and performance should be refined. In our view, the Handbook should include greater recognition that formal Director independence may not be necessary where a company has in place appropriate processes and procedures to ensure that Directors approach their role with the requisite independence of mind.

We comment further on these points in the Appendix, which includes our responses to the questions posed in the consultation paper.

**About ANZ**

ANZ Bank New Zealand Limited (**ANZ Bank NZ**) is the largest financial institution in New Zealand. ANZ Bank NZ has a large number of wholly owned New Zealand subsidiaries, including a number of operational subsidiaries which have no involvement in New Zealand's financial markets.

**Contact for submission**

Please contact [REDACTED] if you have any questions or wish to discuss this submission further.

Once again, we thank FMA for the opportunity to provide feedback on the consultation.

Yours sincerely

[REDACTED]  
[REDACTED]

## Appendix

### **Question 1: Do you agree with our overall approach to move our focus away from listed issuers?**

We generally agree with the FMA's approach to move the focus of the Handbook away from listed issuers. However, it will be important to ensure that where guidelines between the FMA and NZX Handbooks do overlap, FMA continues to liaise with NZX to ensure that the FMA and NZX Handbooks remain consistent.

### **Question 2: Is more guidance needed for companies seeking to grow and possibly raise capital and/or list in the future – if yes, in what areas would guidance be useful (please give examples of the additional guidance you think should be added)?**

We have no comments on this question.

### **Question 3: Do you have any feedback on the structure or presentation of the document? Is there anything we could improve about the way it has been written, or communicated, to better assist directors and executives to apply to corporate governance principles?**

In general, we consider the structure and presentation of the document to be appropriate.

However, page 4 of the Handbook states that "... we [FMA] ask Boards to explain how they comply with each principle."

In our view, it would be helpful for further detail to be provided on how this 'explanation' approach will be effected. Specifically, will it be sufficient for non-listed entities to provide this detail through online content (i.e. by ensuring company websites have easily accessible corporate governance sections, as described at page 6 of the Handbook), or will this involve more comprehensive analysis by FMA?

We also consider that the type of reporting set out on page 6 of the Handbook is unnecessary for closely held companies, particularly those which do not have public accountability (see our response to Question 5 below in that regard). For these companies, corporate governance information is readily obtainable by shareholders, and will be of limited relevance to other stakeholders. We therefore consider that requiring corporate governance reporting by these companies is unlikely to result in any substantial benefit.

### **Question 4: In most areas we have made very few changes to the substantive guidance. Are there any specific areas where we should include more guidance or commentary?**

We do not think there are any specific areas where more guidance or commentary should be incorporated.

### **Question 5: Are there any areas where we are out of step with guidelines that your Company/Board follows, or any other areas of ambiguity in the handbook?**

We consider that the following areas of the guidelines are out of step with our practices, and could raise issues for companies more generally:

#### Principle 2 'Board composition and performance'

We note the change from the 2014 version of the Handbook, which included a recommendation that the Chairperson of the Board of a publicly owned entity should be independent. In the proposed revised Handbook, that recommendation now seems to apply in respect of the Board of any entity.

We also note the recommendation that every issuer's Board should have an appropriate balance of executive and non-executive Directors, and include Directors who meet formal criteria for independence, which has been strengthened in the FMA commentary to the revised Handbook.

These recommendations are out of step with our practices in respect of subsidiary Boards. Except where required by legislation (as is the case for our life insurer subsidiary) we do not have independent Directors and / or Chairs.

For most wholly owned subsidiaries we consider these recommendations to be unnecessary. These subsidiaries are generally permitted by their constitutions to act in the best interests of their holding company, and an independent Chair accordingly is not necessary to ensure that Directors act in accordance with their duties.

We acknowledge that certain issuers of unlisted securities (notably, managers of registered managed investment schemes under the Financial Markets Conduct Act) owe duties to act in the best interests of investors, and are not permitted to act in the best interests of their holding company. However, we consider that including formally independent Directors on these Boards is not necessary in every case, provided that an issuer is able to demonstrate that Directors have sufficient independence of mind to be able to perform their role appropriately. In our view, there are a number of ways in which an issuer could demonstrate this, short of appointing formally independent Directors. Examples include:

- Ensuring newly appointed Directors receive appropriate training on their role and the importance of acting independently and in the best interests of the company; and
- Ensuring Director representation from a range of functions across the wider organisation - for example, the Board could include Directors from an independent risk function, as well as other Directors with a separate reporting line from those with profit and loss accountability for the relevant issuer.

We submit this part of the Handbook should be revised to reflect these comments. If requirements for Director independence are to be introduced, we consider that this should be achieved via legislation or the licensing requirements under the Financial Markets Conduct Act, rather than via FMA guidance.

Finally, the FMA commentary on this section refers to companies that are “perceived to be publicly accountable due to their role in the financial markets”, and suggests that all such entities should be building towards a majority of non-executive Directors, and a minimum of one third of independent Directors. The introduction to the Handbook also suggests that all companies providing financial services should be treated as being accountable to the New Zealand public. We note that these formulations differ quite significantly from section 461K of the Financial Markets Conduct Act, which specifies a more limited list of financial service providers as having a higher level of public accountability for financial reporting purposes, and consider that the Handbook should align to the legislation in this respect.

#### Principle 5 ‘Remuneration’

As currently drafted, the FMA commentary to this principle could be read as suggesting that disclosure in respect of remuneration policies, and total remuneration and its components, is required for all entities. In the current version of the Handbook, it is clearer that this recommendation is limited to publicly owned companies.

We believe that this section should be amended to reflect the different considerations applicable to wholly owned subsidiaries and other closely held companies. In these instances, the entity will not have a wide number of shareholders, and shareholders in any event will usually have direct access to the relevant information. Requiring disclosure for closely-held companies may unnecessarily impinge on Directors’ rights to privacy in circumstances where there is little or no public benefit in having access to that information.

#### Principle 8 ‘Shareholder relations and stakeholder interests’

In the current version of the Handbook, the Guidelines to this principle make it clear that the principle is relevant only to widely held entities. We consider that this emphasis should be retained for the revised Handbook. In our view recommendation such as maintaining a shareholder relations type website and encouraging shareholders to take part in annual and special meetings are irrelevant for closely held companies. Shareholders in closely held companies will have other options for obtaining information, for example the company may appoint Directors, or the CEO/CFO could be contacted.

**Question 6: Are there any cost implications or other barriers to adopting the revised guidelines?**

Requiring a wider range of companies to appoint independent Directors will clearly have cost implications, since independent Directors will need to be remunerated. For the reasons set out above, we consider those costs to be unjustified for most closely held companies.

We also note that in a small market like New Zealand, the pool of appropriately qualified independent Directors is likely to be shallow, which will represent a significant barrier to broad adoption of the revised guidelines relating to Board composition.

8 December 2017

Financial Markets Authority  
PO Box 106 672  
Auckland 1143

Via email: [consultation@fma.govt.nz](mailto:consultation@fma.govt.nz)

## CONSULTATION PAPER: *FMA CORPORATE GOVERNANCE HANDBOOK*

### Introduction

1. The purpose of this submission is to provide the Financial Markets Authority (“FMA”) with BDO’s comments on Consultation Paper: *FMA Corporate Governance Handbook* (“the Consultation Paper”). More information on BDO is provided in Appendix A to this letter. Thank you for the opportunity to comment on the Consultation Paper.
2. We acknowledge that this submission may be made publicly available.

### General comments

3. BDO acknowledges the importance to New Zealand of:
  - a) Having fair, efficient and transparent financial markets
  - b) The confident and informed participation of businesses, investors and consumers in New Zealand’s financial markets.
4. BDO considers that New Zealand’s financial markets benefit from well-governed businesses. Further, BDO considers that the FMA’s 2014 *Corporate Governance Handbook* (“the Handbook”) provides substantial, principles-based, practical, guidance on effective corporate governance to businesses.
5. BDO notes that the FMA’s update of the Handbook primarily involves:
  - a) A change in focus from listed companies to non-listed companies, brought about by the NZX having published an updated corporate governance code (“the NZX Code”), which the FMA now views as the primary guidance on corporate governance practices for companies listed on the NZX’s markets
  - b) Relatively minor changes to align the Handbook more closely with corporate governance developments since the Handbook was originally published.
6. On the basis that the FMA considers that the NZX Code reflects best practice corporate governance principles, BDO agrees that:
  - a) The NZX Code should provide the primary guidance on corporate governance practices for companies listed on the NZX’s markets

- b) The focus of the Handbook should move from listed companies to non-listed companies.
- 7. BDO further agrees that the Handbook should be updated to reflect corporate governance developments since the Handbook was originally published.
- 8. On that basis, BDO supports the proposed updates to the Handbook.

**Responses to questions posed in the Consultation Paper**

- 9. Our response to each of the questions posed in the Consultation Paper is provided in Appendix B to this letter.

**Conclusion**

- 10. We agree that the proposed updates to the Handbook should be made.
- 11. If you require further information, or would like to discuss any aspect of our submission further, please do not hesitate to contact [REDACTED]  
[REDACTED]

Yours sincerely  
BDO New Zealand

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**APPENDIX A:  
INFORMATION ON BDO**

1. BDO is a network of eleven independently owned accounting practices, with fifteen offices located throughout New Zealand.
2. BDO firms in New Zealand offer a full range of accountancy services, including business advisory, audit, taxation, risk advisory, internal audit, corporate finance, forensic accounting and business recovery and insolvency.
3. BDO in New Zealand has 89 partners and over 800 staff.
4. Five BDO firms in New Zealand (BDO Auckland, BDO Christchurch, BDO Northland, BDO Waikato and BDO Wellington) are registered audit firms and thirteen audit partners are licensed auditors.
5. Internationally, BDO is the fifth largest full-service audit, tax and advisory firm in the world, with over 67,700 people in 1,401 offices across over 158 countries and territories.



**APPENDIX B:  
RESPONSES TO QUESTIONS POSED IN THE CONSULTATION PAPER**

1. Our response to each of the questions posed in the Consultation Paper is provided in the table below:

Question	BDO response
<p><i>Question 1:</i></p> <p>Do you agree with our overall approach to move our focus away from listed issuers?</p>	<p>On the basis that the FMA considers that the NZX Code reflects best practice corporate governance principles, we agree that the focus of the Handbook should be non-listed companies. We note that the principles of good corporate governance largely apply irrespective of the size and listing status of an entity and consequently, in the future, we would not expect to see substantial differences between the principles in the Handbook and the principles on which the NZX Code is based emerging.</p>
<p><i>Question 2:</i></p> <p>Is more guidance needed for companies seeking to grow and possibly raise capital and/or list in the future - if yes, in what areas would guidance be useful (please give examples of the additional guidance you think should be added)?</p>	<p>We note that the principles of good corporate governance largely apply irrespective of the size and listing status of an entity. We consequently consider that the Handbook’s principles-based guidance is appropriate for both entities that intend to remain unlisted and entities that intend to list in the future.</p>
<p><i>Question 3:</i></p> <p>Do you have any feedback on the structure or presentation of the document? Is there anything we could improve about the way it has been written, or communicated, to better assist directors and executives to apply the corporate governance principles?</p>	<p>We consider that the structure of the Handbook (each clearly stated principle being accompanied by guidance and commentary) makes it accessible to a wide audience.</p>
<p><i>Question 4:</i></p> <p>In most areas we have made very few changes to the substantive guidance. Are there any specific areas where we should include more guidance or commentary?</p>	<p>We have not identified any principles for which we think more guidance or commentary is required.</p>

Question	BDO response
<p><i>Question 5:</i></p> <p>Are there any areas where we are out of step with guidelines that your Company/Board follows, or any other areas of ambiguity in the handbook?</p>	<p>We are not aware of any areas in which the Handbook does not reflect appropriate corporate governance principles. Further, we do not consider that there are any areas of ambiguity in the Handbook.</p>
<p><i>Question 6:</i></p> <p>Are there any cost implications or other barriers to adopting the revised guidelines?</p>	<p>We note that the changes proposed to the Handbook are relatively minor. We consequently do not consider it likely that there would be substantial cost implications as a result of, or barriers to, adoption of the revised guidelines.</p>

## Feedback: FMA Corporate Governance handbook

Please submit this feedback form electronically in both PDF and MS Word formats and email it to us at [consultation@fma.govt.nz](mailto:consultation@fma.govt.nz) with 'Feedback: FMA Corporate Governance handbook' and your entity name in the subject line. Thank you. Submissions close on Friday, 8 December 2017.

Date: **8 December 2017**

Number of pages: 2

Name of submitter: **Bell Gully**

Company or entity: **Bell Gully**

Organisation type: **Law Firm**

Contact name (if different):

Contact email and Phone:

Question Number	Response
<b><u>Question 1</u></b>	Yes, for NZX listed issuers, this is a welcome change. Having a single reporting regime for listed issuers (being the NZX's 2017 Corporate Governance Code's 'comply or explain' regime) will avoid unnecessary duplication and confusion when it comes to reporting in relation to corporate governance.
<b><u>Question 2</u></b>	<p>We do not believe that any further detailed guidance should be included for companies seeking to grow and possibly raise capital and/or list in the future.</p> <p>For unlisted companies looking to grow, and seeking private capital, we do not believe that the FMA Handbook should include any specific guidelines. Investors in such companies will likely have their own set of requirements when it comes to corporate governance. These requirements may differ across investors and depending on the nature of the investee company itself. A "one size fits all" approach would not be appropriate in this context.</p> <p>For companies that are looking to list in the future, we think that they should consider their existing corporate governance practices and policies in light of those in the NZX Code given that, upon listing, they will need to "comply or explain" under the NZX Code's regime. It may be useful to include a sentence to that effect in the FMA's Handbook so that entities in that position are thinking about the NZX Code requirements in advance.</p>
<b><u>Question 3</u></b>	The FMA Handbook, in its current format (i.e., stating each principle with guidelines following), has been in existence since the first corporate governance handbook published by the Securities Commission in 2004, with the additional FMA commentary sections included in 2014. We do not think that there is any benefit in changing the structure or presentation of this well recognised format. In addition, it is consistent with the approach of the NZX Code.

	We submit that it would be useful to clarify in the introduction to the FMA Handbook that reporting against the principles is a voluntary matter. While this is implied, it is not explicitly stated and we think, at a practical level, it would be more helpful to be express about the voluntary nature so as to avoid confusion.
<b>Question 4</b>	No, we do not consider that any additional areas need to be reflected in the FMA Handbook.
<b>Feedback summary –</b>	
<b>Please note:</b> Feedback received is subject to the Official Information Act 1982. We may make submissions available on our website, compile a summary of submissions, or draw attention to individual submissions in internal or external reports. If you want us to withhold any commercially sensitive or proprietary information in your submission, please clearly state this and note the specific section. We will consider your request in line with our obligations under the Official Information Act.	
Thank you for your feedback – we appreciate your time and input.	

# Feedback form

## Feedback: FMA Corporate Governance handbook

Please submit this feedback form electronically in both PDF and MS Word formats and email it to us at [consultation@fma.govt.nz](mailto:consultation@fma.govt.nz) with 'Feedback: FMA Corporate Governance handbook' and your entity name in the subject line. Thank you. **Submissions close on Friday, 8 December 2017.**

Date: 7 December 2017

Number of pages: 2 (this page)

Name of submitter: [REDACTED]

Company or entity: Booster Investment Management Limited

Organisation type: MIS Licensee

Contact name (if different): [REDACTED]

Contact email and Phone: [REDACTED]

Question number:	Response
------------------	----------

*You don't need to quote from the consultation document if you note the paragraph or question number.*

Q1

None

Q2

None

Q3

None

Q4

None

Q5

None

Q6

None

### Feedback summary –

Reference: page 11 of the draft Handbook, sixth bullet point

“No director of an entity should simultaneously be a board member, chairperson and chief executive (or equivalent)”.

Clarification: In the equivalent section of the 2014 Handbook (page 12, 5<sup>th</sup> bullet point down) there was only a reference to “chairperson” and “chief executive (or equivalent)”. In the

current draft, the addition of “board member” has been added, as well as it applies to all and not just listed entities.

When reading together, it can be interpreted that a board member cannot also be a chief executive (or equivalent). Having a board member (an executive director) that is also a chief executive or equivalent position is not uncommon in New Zealand, and in financial services and I wonder if this was your intention? As with any position on the Board, any conflicts are managed and where relevant, the board member is removed from any decision where they have a material conflict. Page 13 of the draft Handbook, last paragraph, only focuses on the chairperson not also being a chief executive (which is what you would expect because the chairperson should ideally be independent).

**Please note:** Feedback received is subject to the Official Information Act 1982. We may make submissions available on our website, compile a summary of submissions, or draw attention to individual submissions in internal or external reports. If you want us to withhold any commercially sensitive or proprietary information in your submission, please clearly state this and note the specific section. We will consider your request in line with our obligations under the Official Information Act.

**Thank you for your feedback – we appreciate your time and input.**

# SUBMISSION ON FMA CORPORATE GOVERNANCE HANDBOOK

11 DECEMBER 2017





## CHAPMAN TRIPP SUBMISSION ON FMA CORPORATE GOVERNANCE HANDBOOK

- 1 The Financial Markets Authority (*FMA*) proposes to publish a revised corporate governance handbook.
- 2 We have set out our submission as a response to the questions asked in the consultation paper.
- 3 Please contact us should you wish to discuss our submissions and the reasoning behind them.







Question	Response
<p>Do you agree with our overall approach to move our focus away from listed issuers?</p>	<p>Yes. The NZX Corporate Governance Code reflects a significant amount of work by the listed issuer community, key stakeholders and NZX, and as such should be the primary source of corporate governance guidance and considerations for listed issuers.</p> <p>We note that the handbook still has one reference to “listed entities” in the commentary to Principle 8:</p> <p><i>allocating time and resources to providing clear, plain-language explanations of performance, strategies and goals, and identified material risks in the annual and (for listed entities) half-year reports</i></p> <p>We suggest this is changed to “and (if applicable) half-year reports”. While unlisted entities are generally not required to prepare half-year reports, some entities may find it necessary or desirable to do so.</p>
<p>Is more guidance needed for companies seeking to grow and possibly raise capital and/or list in the future - if yes, in what areas would guidance be useful (please give examples of the additional guidance you think should be added)?</p>	<p>We thought the handbook generally dealt with this topic well, and referring to the Going Public guide is a useful signpost.</p> <p>One suggestion to consider is replacing the reference in the commentary to Principle 2 to having “a minimum one-third of independent directors” with a minimum of 2 independent directors. This would better align with the minimum requirements for a listed issuer.</p>
<p>Do you have any feedback on the structure or presentation of the document? Is there anything we could improve about the way it has been written, or communicated, to better assist directors and executives to apply the corporate governance principles?</p>	<p>No, we believe the document is clear as currently presented.</p>





Question	Response
<p>In most areas we have made very few changes to the substantive guidance. Are there any specific areas where we should include more guidance or commentary?</p>	<p>No, we do not believe there are any areas where more guidance should be included.</p>
<p>Are there any areas where we are out of step with guidelines that your Company/Board follows, or any other areas of ambiguity in the handbook?</p>	<p>We have the following comments on areas that we believe are out of step with general market practice or are ambiguous (or otherwise merit amendment):</p> <ul style="list-style-type: none"> <li>• We note the guidelines to Principle 1 state that the code of ethics should include “not participating in illegal or unethical activity, including insider trading in the entity’s securities”. “Insider trading” per se under the FMC Act only applies to listed entities, so is not “illegal”. There is also a practical issue in that unlisted entities are not generally subject to continuous disclosure obligations, so company insiders will not be able to rely upon the entity being required to disclose material information in accordance with its continuous disclosure obligations, thereby cleansing the market for trading. It is not also clear cut that behaviour that would constitute “insider trading” in a listed entity is “unethical” in an unlisted entity – for example, the Companies Act restrictions in section 149 on share dealing by directors applies if shares are bought at less than fair value or sold for more than fair value, but not if such trading occurs merely while an information asymmetry exists.</li> </ul> <p>As such, we suggest that the statement referring to insider trading is removed from the guidelines. The commentary could instead note that directors of unlisted entities are subject to restrictions on trading under section 149 and that any trading in shares may be subject to the fair dealing provisions in the FMC Act. The board of an unlisted entity may also conclude that it is not consistent with the standards of integrity expected of employees and directors if they were to trade while in possession of material information – however, this may not be practicable or appropriate for all unlisted entities, depending on the structure of their shareholding, so would be better suited for inclusion in commentary rather than as a guideline.</p> <ul style="list-style-type: none"> <li>• We note the reference in the commentary to Principle 1 to larger boards convening an “ethics committee” to assess the performance of directors against the code of ethics. Firstly, such a committee should presumably assess the performance of the entity as a whole against the code of ethics, including its employees, not just directors. Secondly, we are not aware of any listed entities that have in fact convened a separate ethics committee – we query whether this commentary is in step with general market practice or expectations.</li> </ul>





Question	Response
<p>Are there any areas where we are out of step with guidelines that your Company/Board follows, or any other areas of ambiguity in the handbook? (Cont.)</p>	<ul style="list-style-type: none"> <li>• The guidelines to Principle 2 suggest that the board charter includes formal delegations to management. Given the suggestions that key corporate governance documents be provided on an entity's website, we suggest the commentary clarifies that it may be appropriate for commercially sensitive delegations (e.g. delegated authority limits of a certain dollar threshold) to be recorded in a separate delegated authority policy, rather than in the board charter.</li> <li>• The guidelines to Principle 4 should be updated to remove the suggestion that directors explain their responsibility for preparing the annual report, including that the financial statements comply with GAAP. Many unlisted entities will not necessarily need to prepare financial statements in compliance with GAAP (e.g. if they are not "large" under the Companies Act), and in any event the primary responsibility for preparing those financial statements falls on the entity, not the directors. This is more appropriately addressed in the commentary.</li> <li>• The reference in the first guideline to Principle 5 to "executive remuneration" is confusing, as it then goes on to say "including executive directors and non-executive directors". This would be clearer if it said "executive and director remuneration".</li> </ul>
<p>Are there any cost implications or other barriers to adopting the revised guidelines?</p>	<p>Not that we are aware of. The handbook has useful commentary to the effect that the practices adopted by entities should be fit for purpose and take into account the size of the entity.</p>



**AUCKLAND**

23 Albert Street  
PO Box 2206, Auckland 1140  
New Zealand

T +64 9 357 9000  
F +64 9 357 9099

**WELLINGTON**

10 Customhouse Quay  
PO Box 993, Wellington 6140  
New Zealand

T +64 4 499 5999  
F +64 4 472 7111

**CHRISTCHURCH**

119 Armagh Street  
PO Box 2510, Christchurch 8140  
New Zealand

T +64 3 353 4130  
F +64 3 365 4587

8 December 2017

**Financial Markets Authority**

Level 2, 1 Grey Street  
Wellington 6140

**By email:** [consultation@fma.govt.nz](mailto:consultation@fma.govt.nz)

**Cygnus Law's Submissions on FMA's updated corporate governance handbook**

Thank you for the opportunity to provide feedback on the FMA's updated corporate governance handbook (**Handbook**). Cygnus Law supports the overall approach set out in the Handbook and provides answers to the questions in the consultation document below.

**Question 1- Do you agree with our overall approach to move our focus away from listed issuers?**

Yes, I support that approach. Moving focus away from listed issuers is an opportunity to give better and more practical guidance to the significant majority of organisations within the ambit of the Handbook that are quite small. However, the changes from the current handbook are minor, so it is difficult to see how it actually shifts the focus or is a substantive improvement on the current handbook. The Handbook retains a focus on a default best practice approach to governance that will only be applicable to relatively few larger or public organisations but notes that some of the matters in the Handbook may not be applicable to smaller organisations. I note in answer to question 4 how the Handbook could move away from that approach and be made more useful for smaller organisations.

Given FMA's regulatory ambit is limited to the financial services sector, but that the Handbook applies more widely, it may be helpful to note that in the introduction.

**Question 2- Is more guidance needed for companies seeking to grow and possibly raise capital and/or list in the future - if yes, in what areas would guidance be useful (please give examples of the additional guidance you think should be added)?**

While I fully acknowledge and believe in the importance of independent directors, in practice it is often difficult to find capable independent directors (especially the 1/3 proposed minimum) in New Zealand willing to play a role in early stage businesses at an affordable rate, because of the real risks involved and because in some cases the only way companies can recruit such directors is with share offers, which of course impact on independence. I think that could be specifically acknowledged. I also note more generally that some smaller financial services businesses in New Zealand (not just issuers) are trying to recruit independent directors at considerable cost because they think FMA is requiring that. To highlight the difficulties organisations face in finding capable

independent directors, FMA could consider re-introducing the following text from the current handbook that was not included in the Handbook:

- “Board effectiveness is not always enhanced by directors’ formal independence if it outweighs their independence of mind, and the skills, knowledge, experience and time that a director can contribute.”
- “With New Zealand’s relatively small pool of qualified and experienced directors, there is a risk that seeking independence at the cost of all else will lead to missed opportunities.”

I also note that the recommendation in the current handbook for an independent chairperson applies to “a publicly owned entity”. Reference to a publicly owned entity has been removed from this Handbook, suggesting that all entities subject to the Handbook should be aiming for an independent chairperson. That’s likely to be unrealistic for many smaller businesses so it may be helpful to re-introduce a qualification similar to that in the current handbook e.g. recommending chairperson independence for larger (widely-held) or public organisations.

**Question 3- Do you have any feedback on the structure or presentation of the document? Is there anything we could improve about the way it has been written, or communicated, to better assist directors and executives to apply the corporate governance principles?**

As noted in answer to question 4, the Handbook could be improved by providing more guidance for smaller organisations to help them understand how the principles can be applied by them.

**Question 4- In most areas we have made very few changes to the substantive guidance. Are there any specific areas where we should include more guidance or commentary?**

The category of organisation caught by the Handbook with the largest number of entities will be companies with a sole director and shareholder. Another category with significant numbers will be service companies where all shareholders are also directors and where many key governance matters will be addressed in a shareholders’ agreement prepared with legal advice. Particularly for smaller companies, a significant number of matters in the guidelines and commentary may not be applicable or otherwise will require significant adaptation to be in any way practical. Such companies often don’t have the resources and capability to divine what is required of them from principles-based standards. Stating that “Directors and executives should consider the nature and needs of their businesses when they consider whether each principle is relevant and how to apply it” is fine in principle but for a small business reading through and applying a 34 page principles-based document is not a simple task. FMA has previously provided more guidance for smaller businesses, for example the FMA’s 2014 *Quick guide to licence applications for small businesses providing DIMS*. Incorporating such practical guidance within the Handbook, or producing separate guidance for businesses within FMA’s regulatory ambit, would likely save small organisations significant time and money while also giving FMA greater confidence that those organisations will meet the standards FMA expects. As it is the Handbook provides more guidance to public sector organisations, which will be better placed to manage the Handbook requirements than small private companies. On the same theme I note that FMA has produced other guides that set principles-based standards. While they are helpful generally, I am concerned that, for smaller financial services businesses, the increasing number of such publications that apply to them may be unhelpful- the standards they set can be difficult for non-experts to apply and likely require support from consultants and/or lawyers to implement. Principles-based approaches to

regulations have often been tried in New Zealand and have not always been successful, examples including building code standards and food safety law. In those areas there has been a move back to detailed specification and “templated” tools to assist businesses, particularly smaller ones, to achieve good outcomes cost-effectively.

**Question 5- Are there any areas where we are out of step with guidelines that your Company/Board follows, or any other areas of ambiguity in the handbook?**

The Handbook states that “The principles do not impose any new legal obligations”. However, the Handbook includes a mixture of matters that are mandated by law and matters that can be considered guidance on good or best practice. And while the terms “Guideline” and “Commentary” are used in some cases, the language used in relation to matters not required by law sometimes appears to be mandatory e.g. “The board of an entity should adopt a written code of ethics”. That’s not to suggest that, in the case of a code of ethics, a code is not important (it is). Rather, failing to operate a code of ethics would not, in itself, constitute a breach of law and may not even be harmful if directors have a clear understanding of how to conduct themselves ethically and implement that. It may be helpful to re-introduce the following from the current handbook- “Different businesses face specific ethical issues. A code of ethics needs to suit the particular circumstances and needs of the entity.”

And the Handbook in places appears to imply that higher standards apply than is the case at law. For example page 19 of the Handbook states that “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”. However, the law now provides that many smaller companies do not have to prepare a detailed annual report or financial statements that are GAAP compliant. This was the result of an initiative to reduce compliance costs for smaller businesses. There will be cases where GAAP-compliant financial statements will not provide any substantive benefit to the company or wider stakeholders, for example a single director/shareholder company where all services are provided by the director. So it may be helpful to clarify that GAAP-compliant financial statements are not mandatory for some businesses.

I also note that, while I fully support environmental, social and governance (ESG) reporting for larger and public organisations, this is not a legal obligation for non-listed companies in New Zealand. This is in contrast to countries such as the UK, which under its company law requires directors, as part of their duties, to have regard to “the impact of the company's operations on the community and the environment” and “the need to foster the company's business relationships with suppliers, customers and others”. For many small businesses reporting ESG matters may be impractical and may not be appropriate, especially without evidence that ESG reporting can be scaled down to the level of a small business and still provide meaningful net benefits.

I think the approach in the UK Financial Conduct Authority’s handbooks to clarifying the nature of obligations is very helpful. The handbooks clearly note whether a particular matter is a “rule” or (non-binding) “guidance”. I don’t think this takes away from the impact of matters that are guidance but it certainly helps entities to understand the nature of the matters set out and to consider how best to approach them.

Given that some of the matters covered by the Handbook are not required by law, and that FMA is not suggesting that it is creating law by issuing the Handbook, I think this could be made clearer in the introduction. In that regard, FMA's *Conduct Guide* was clearer and the Handbook appears to have much the same function. So I propose that the Handbook includes a statement along the lines of that in the *Conduct Guide*, which I've quoted below with some changes:

"This guide [Handbook] does not create [or] replace, ~~or even supplement,~~ existing legal obligations. Instead, it signals how we will use conduct [governance] as a 'lens' for looking at how providers behave when meeting their existing [legal] obligations ~~to their customers, and for shaping how we interact with them.~~"

**Question 6: Are there any cost implications or other barriers to adopting the revised guidelines?**

Please see the answers above, particularly regarding the costs imposed on smaller businesses.

Yours sincerely  
**Cygnus Law Ltd**

██████████  
██████████



8 December 2017

**Rob Everett**  
Chief Executive  
Financial Markets Authority  
PO Box 1179, Wellington 6140  
Wellington 6142



**D'SOUZA  
ASSOCIATES**  
46 Rawhiti Terrace  
Kelburn, Wellington 6012  
Phone: 64 4 977-7463  
clyde@dsouzaassociates.co.nz

Dear Rob,

### **Re: Feedback for Corporate Governance Handbook & Audit Quality – a director's guide**

Thank you for the opportunity to provide feedback on the proposed update of the Financial Markets Authority's (FMA's) Corporate Governance Handbook (Handbook). I agree that it is important for the FMA to *continue* the process started with its 2004 document but believe that this is also an opportunity for the FMA to provide a consolidated source of best practice in this area

This is a *personal* submission and specifically unrelated to my stakeholder roles as a member of both the NZ Audit & Assurance Standards<sup>1</sup> Board and NZ Institute of Financial Professionals<sup>2</sup> Board. However, my views have undoubtedly been shaped by my membership of both these boards and my +30-year experience in the NZ capital markets in funds management, sell-side equity research and the provision of corporate finance advice<sup>3</sup>.

These comments primarily pertain to New Zealand listed and public interest reporting entities.

#### **Key Submission Recommendations**

Detailed below are 21 best practice recommendations that would aid in improving audit quality and corporate governance in New Zealand. These recommendations are examined in more detail further in my submission.

That Best Practice guidance be that:

#### **Audit Quality – a director's guide**

1. The Board have responsibility for the *fee* negotiations with the external auditor including approval of any fee overrun request<sup>4</sup>.
2. The Board disclose (via a statement in the Annual Report) the factors that were used to evaluate competing proposals for changes to assurance providers and the weighting they applied to these factors.

---

<sup>1</sup> From 2011 – 2016 I was a member of the NZ Accounting Standards Board.

<sup>2</sup> The voluntary, membership based body for the NZ wholesale capital markets participants.

<sup>3</sup> At AMP Investments, Citigroup New Zealand and D'Souza Associates respectively.

<sup>4</sup> Consistent with guidance for directors on page 7 of the 2017 Audit Quality Monitoring Report.

3. The Board's Audit committee interview the key members of the external auditor team when evaluating proposals to change assurance providers.

## **Corporate Governance Handbook**

### **Principle 2 – Board Composition & Performance**

4. Smaller board sizes are *preferable* with an indicative range of 5 to 8 members.
5. Minimum board size should be no less than 5 – except in exceptional temporary circumstances.
6. A cadet shadowing program for prospective directors is recommended.
7. Subject to a *rebuttable presumption*, that a standard board term limit be limited to 9 to 12 years – with extensions supported by a supporting board endorsement at the ASM.
8. Directors with over 12 years tenure be *precluded* from being declared Independent.
9. Provide guidance of a maximum board size with a range of 9 to 12 members.

### **Principle 3 – Structure of Board Committees**

10. Where practicable, boards endeavour to separate the audit monitoring role into a different committee (like Compliance) away from Risk.
11. The chair of any committee tasked with managing risk should be a person who has training and experience in managing commercial risk.
12. The audit committee have oversight and responsibility for all audit and assurance functions of the entity.
13. That the audit committee have a majority of Independent directors.

### **Principle 4 – Reporting & Disclosure**

14. Responsibility for a listed entity's compliance with the New Zealand Continuous Disclosure Regime be delegated to a separate Disclosure Compliance Committee or the board Chair.

### **Principle 6 – Risk Management**

15. The Board articulate in the Annual Report the risk appetite approved by the board.

### **Principle 7 – Auditors**

16. The guidance for Principle 7 be extended to include all assurance providers.
17. The Board obtains written clarification of the auditor's compliance with their ethical and professional obligations beyond the requirements of ISA (NZ) 260 (Revised) - Communication with Those Charged with Governance.
18. The guidance clarifies that while auditors are legally responsible to ensure independence, both parties (the Board) also have an inherent requirement to be comfortable.

### **Other Matters**

19. For an Initial Public Offering, that a majority of Independent Directors have participated in at least two budgeting cycles to gain experience with the company's financial performance.
20. The FMA's governance guidelines becomes the "reference best practice" for the industry.
21. The NZX's financial review of the draft prospectus include the financial forecasts.

### Rationale behind Submission

This submission has been precipitated by the recent *perceived* high profile corporate governance or audit failures at a number of NZX listed firms like Fletcher Building, Steel & Tube Holdings, Metro Glass, Orion Healthcare and Wynyard Group. It appears that New Zealand has not learned from the earlier failures of Feltex Group and the finance company sector. Consequently, the primary themes for my submission are:

1. **Audit Quality** – currently being driven by a management and board focus on cost at the expense of quality in the selection of auditors;
2. **Corporate Governance** – including during the IPO process;
3. **Need for Clarity on pre-eminent Best Practice** – it is currently unclear what should be considered to be corporate governance best practice.

The underlying assumption behind this submission is the view that improving the knowledge and discernment of New Zealand company directors, will have the greatest immediate and cost-effective impact for the least effort on improving corporate performance.

### Inputs to Submission

In forming my views, I have explicitly sought input from my professional network who include:

- Fellow board members;
- The audit committee chairs of three NZX listed entities;
- Equity markets participants – both fund managers and share brokers;
- Two international network accredited audit firms.

### Need for Clarity around pre-eminent Best Practice

The FMA's mandate is governed and constrained by the legislative framework that it operates under. At this point in time guidance for best practice corporate governance is currently provided by the:

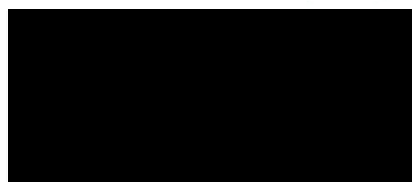
- FMA Corporate Governance in New Zealand: Principles and Guidelines (2014);
- NZX – Corporate Governance Code (2017);
- Institute of Directors – Code of Practice for Director (2014);
- New Zealand Corporate Governance Forum Guidelines (2015).

Given transparency and consistency in corporate reporting and governance standards are important to financial markets, it would appear useful for a single, consistent, reference point to be clear.

As the primary market regulator with setting, monitoring and enforcement powers, I would favour the FMA taking a co-ordination role in setting best practice. [Recommendation 20](#).

Finally, I would be pleased to meet with you to contextualise, elaborate and clarify any of these comments.

Yours sincerely,



## Appendix 1: Feedback on “Audit Quality – a director’s guide”

### Audit Fees

Both the Handbook and 2017 Audit Quality Monitoring Report published by the FMA note the importance of audit quality to the success of the entity. Additionally, the recent publication by the FMA of the “Audit Quality – a director’s guide” *usefully* enhances the guidance to directors in this sphere.

However, in my opinion, greater *prominence* and *elaboration* needs to be made in the guidance provided in both documents on the pre-eminence of audit quality in the auditor selection process. In particular, the non-linear relationship between price and audit quality where varying (improving) the chosen scope and materiality settings does not change the cost proportionately – a relatively small increase in cost improves quality disproportionately. This will address a major industry issue where current auditor selection appears to be primarily based on price, not on audit quality.

By example, I have been made aware of a recent audit tender where the invitation to submit alternate proposals to the incumbent was declined by two competing parties on the grounds that their bid prices would have been substantially higher than the incumbent in order to reflect a commercially sustainable fee commensurate with the level of audit effort and risk. The importance of this relationship is particularly pertinent as there is currently limited transparency or feedback to directors from investors on firm selection and poor audit quality. Thus, in the Fletcher Building case, investors are likely to be no wiser as to where the relative responsibility between corporate governance and audit failure lay.

This poses the question as to whether the cost structure / capability between the audit firms are that dissimilar or that audit quality is being compromised. The FMA has consistently supported higher audit fees to ensure audit quality is achieved but the message is not getting through to directors. This is exacerbated by the audit fees and auditor relationship frequently being managed by Management with the Board taking a lesser involvement. **Recommendation 1:** The Board have responsibility for the *fee* negotiations with the external auditor including approval of any fee overrun request (thereby ensuring consistency with the guidance on page 7 of the 2017 Audit Quality Monitoring report).

Specific guidance in this area should hopefully address this “compliance cost” based mentality among directors. This should hopefully also ameliorate the continued reduction in Licenced Auditors, thereby balancing the increasing unattractiveness of the audit profession to the next generation of talent consequentially reducing the long-term quality of audits.

**Recommendation 2** The Board disclose (via a statement in the Annual Report) the factors that were used to evaluate competing proposals for changes to assurance providers and the weighting they applied to these factors.

### **Auditor Selection Process**

Given the predominance (90% – 95%) of the audit work and client interaction will be conducted by the team under the supervision of the Engagement Partner, a recommendation that inclusion of the key staff in this team form part of the proposal. **Recommendation 3**

This suggestion is probably more relevant for inclusion in the “Audit Quality – A director’s guide”.

## **Appendix 2 : Feedback on Corporate Governance Handbook**

**Question 1:** *Do you agree with our overall approach to move our focus away from listed issuers?*

**No.** By broadening the scope the guidance will become more vague and less relevant to the key users – listed and public interest entities.

**Question 2:** *Is more guidance needed for companies seeking to grow and possibly raise capital and/or list in the future?*

### **Initial Public Offerings**

The poor financial performance of a number recent NZX listings (e.g. Wynyard Group, Orion Health, Metro Glass) versus their prospectus financial projections suggests specific guidance is needed in this area. I would recommend best practice guidance be that at least a majority of Independent Directors have participated in at least two budgeting cycles to gain experience with the company’s financial performance prior to listing and the Prospectus financial projections being set.

### **Recommendation 19**

I understand that the IPO subcommittee of the NZX *only* involves engaging limited independent *financial* advice for a half-day of work *adjacent* to the prospectus registration date. This is clearly too little too late to provide effective financial scrutiny. More surprisingly, this review of the draft prospectus is conducted without the inclusion of the prospective financial information. This reinforces my recommendation that the best practice guidance for independent directors needs strengthening. Furthermore, I would recommend that the FMA strengthens the NZX’s listing processes by requiring that the review of the draft prospectus should include the financial forecasts. **Recommendation 21.**

**Question 3:** *Do you have any feedback on the structure or presentation of the document? Is there anything we could improve about the way it has been written, or communicated, to better assist directors and executives to apply the corporate governance principles?*

### **General Comments**

The layout of the Handbook with the principles being separated from the guidance is good. I endorse the FMA’s approach of being principles based rather than a prescriptive “tick in the box” approach. The parties who need to apply the principles (page 5) are broader and inconsistent with the parties identified in the individual Principles’ commentary. For example:

- Principle 1 (page 9) refers to “The board of every entity...”;
- Principle 2 (page 12) refers to “Every issuer’s board...”;
- Principle 8 (page 34) refers to “...widely-held entities...”;
- All the other Principles refer to “The Board”.

Perhaps a definition of entities covered would assist. Also, if the FMA is to encourage adoption by “...those entities that are accountable, in various ways to the public...” (Page 5) reference to “Those Charged with Governance” would be more appropriate particularly to the Public Sector.

The guidance for the principles appear to have been added to prior guidelines being updated and refreshed. It appears that the later Principles from 5 onwards have far less guidance than the earlier Principles suggesting that they are of less importance which is clearly not the intent. For example, Principle 6 Risk management is particularly important and relevant.

**Question 4:** *In most areas, we have made very few changes to the substantive guidance. Are there any specific areas where we should include more guidance or commentary?*

**Yes** – I would recommend substantive content inclusion on the roles of directors during the IPO process and around Takeovers. Refer to previous comments.

**Questions 4:** *In most areas, we have made very few changes to the substantive guidance. Are there any specific areas where we should include more guidance or commentary?*

Also, I have the following specific comments on principles 2, 3, 4 and 7.

### **Principle 2 – Board Composition and Performance**

The guidance makes no reference to or provide specific guidance on the desirability of smaller boards and their beneficial effect on effective performance<sup>5</sup>. While the academic literature has found it difficult to pinpoint precisely *why* smaller board size improves corporate performance, it has varyingly placed optimal board size in the 5 to 8-member range – while acknowledging that exact board size should be determined by firm specific characteristics. Interestingly a 2015 study<sup>6</sup> of 145 listed NZX companies reported average board size of 5.81, a size significantly lower than other jurisdictions like USA (11.45) and Europe (12.86) in 2002.

This indicates that most NZX listed boards are already within the desired number. Never-the-less, I would recommend that explicit guidance be provided that; (a) Smaller board sizes are *preferable* with an indicative range of 5 – 8 members; **Recommendation 4** and (b) the minimum board size should be no less than 5. **Recommendation 5**.

---

<sup>5</sup> Wall Street Journal – Smaller boards get Bigger Returns by Joann S Lublin (26 August 2014).

<sup>6</sup> Gaur, Bathula & Singh - Ownership concentration, board characteristics and firm performance: A contingency framework. *Management Decision* (2015).

With the perceived lack of depth in experienced people to assume directorships and the diversity challenges, perhaps some guidance on the need for a commitment to train up directors through a cadet shadowing program is suggested. [Recommendation 6](#).

Given the FMA already refers to tenure (or length of time on the Board) as undermining independence, I would further recommend guidance of:

1. Subject to a *rebuttable presumption* that a standard board term be limited to 9 to 12 years – with extensions supported by board endorsement at the ASM. [Recommendation 7](#).
2. Directors with over 12 years tenure be *precluded* from being declared Independent. [Recommendation 8](#)<sup>7</sup>.

Additionally, I suggest the Handbook provide guidance on maximum board size with a range of 9 to 12 members. [Recommendation 9](#).

### **Principle 3 - Structure of Board Committees**

The proposed guidance for “Principle 3 – Board Committees” would benefit from a recommendation that the new best practice should be to either:

1. *Exclude* an audit specialist from being the Chair of a combined Audit & Risk Committee; or
2. Where *practicable*, separate the audit monitoring role into a different committee (like Compliance) away from Risk. [Recommendation 10](#).

This structure is already being put into practice by some boards like Augusta Group and the FMA. Additionally, the responsibilities of the audit committee should be broadened to all assurance (e.g. internal audit, Trust reporting etc.) and not limited to external audit.

[Recommendation 11](#) The chair of any committee tasked with managing risk should be a person who has training and experience in managing commercial risk.

[Recommendation 12](#) The audit committee of the board, have oversight and responsibility for **all** audit and assurance functions of the entity.

Adoption of this structure would undoubtedly improve the focus on the *existentially* relevant area of commercial risk. Furthermore, I would suggest that accounting practitioners *should* not be the preferred choice (by training or experience) to chair a committee whose key commercial role is the recognition and mitigation of risk. [Recommendation 13](#): That the audit committee have a majority of Independent directors.

### **Principle 4: Reporting and Disclosure**

The proposed guidance refers to the continuous disclosure regime. Consideration should be given to recommending that this be delegated to a separate Disclosure Compliance Committee or the board

---

<sup>7</sup> By example, a recently elected director of the Warehouse Group has had a 24-year tenure and is still classified as an Independent director.

Chair as continuous disclosure requires a quick response at short notice which needs a nimble proactive group of experienced people to respond. [Recommendation 14.](#)

### **Principle 6: Risk Management**

This is an area receiving more attention. It has been neglected in the past and greater guidance is needed. For example, the need for:

- Articulation of risk appetite approved by the board;
- Integrated dynamic program in place;
- Regular approval by the board;
- Documented response to risks;
- Approval of risk mitigation.

[Recommendation 15](#) the Board articulate in the Annual Report the risk appetite approved by the board.

### **Principle 7: Auditors**

The scope of the proposed guidance is very narrow as it refers only to external auditors. This Principle should be extended to all assurance providers. This is especially relevant with the increased reporting expectations such as Integrated Reporting and other assurance requirements where Board's may increasingly look to different service providers to provide relevant assurance over financial and non-financial reporting. [Recommendation 16:](#) Extend the proposed guidance for Principle 7: Auditors, to encompass all assurance providers.

The guidance selects some of the auditor's ethical responsibilities e.g. rotation. These are the auditor's not the board's responsibilities. I recommend that the board need only seek clarification of the auditor's compliance with their ethical and professional obligations. [Recommendation 17.](#)

The FMA commentary (page 32) suggests that the board and auditors are jointly responsible for the conduct of the audit. Perhaps a clarification is required stating that the auditors are legally responsible to ensure their independence (with no scope limitation in the conduct of the audit), both parties have to be comfortable with the situation. [Recommendation 18.](#)

***Question Five: Are there any areas where we are out of step with guidelines that your Company/Board follows, or any other areas of ambiguity in the handbook?***

No comment.

***Questions 6: Are there any cost implications or other barriers to adopting the revised guidelines?***

**Yes,** audit fees will undoubtedly rise if quality became a focus.



# Feedback form

Feedback: FMA Corporate Governance handbook	
Please submit this feedback form electronically in both PDF and MS Word formats and email it to us at <a href="mailto:consultation@fma.govt.nz">consultation@fma.govt.nz</a> with 'Feedback: FMA Corporate Governance handbook' and your entity name in the subject line. Thank you. <b>Submissions close on Friday, 8 December 2017.</b>	
Date: Wednesday 6 December 2017 <span style="float: right;">Number of pages: 4</span>	
Name of submitters: [REDACTED]	
Company or entity: Governance New Zealand Incorporated	
Organisation type: Professional Membership Body	
Contact email and Phone: [REDACTED]	
Question number:	Response
<i>You don't need to quote from the consultation document if you note the paragraph or question number.</i>	
Q1	Governance New Zealand agrees with the overall approach to move away from focusing only on NZX Listed Companies.
Q2	We do not believe this governance guide is the appropriate forum for providing guidance on growing a business or raising capital or listing a company. There are other forums that provide this information and an organisation should seek professional advice regarding any of these matters.
Q3	The layout of the 2014 handbook is clear and easy to read. We see no issues with the structure and presentation of the document.
Q4	<b><i>Principle 1: Code of Ethics</i></b>  We recommend that: <ol style="list-style-type: none"><li>1. more specific guidance is given around training i.e. all boards, executives and employees are given suitable training in the organisation's code of ethics, say every 5 years, and that this is a requirement in the code of ethics</li><li>2. more specific guidance is given around reporting i.e. the Ethics Committee gives an annual report on their activities which is included in the organisation's Annual Report to shareholders/stakeholders.</li></ol>

***Principle 2: Board Composition***

We recommend that:

1. there is recognition of the position of a chartered company secretary, who plays an independent role in supporting the effectiveness of a board and its committees
2. the guidance follows the ASX rule that “the company secretary should be accountable to the board in relation to board functions”. It is good governance practice that the company secretary role is independent and reports to the board rather than the CEO or other management positions
3. appointments are based on best skills combined with a proactive policy to develop gender diversity. This policy should be published and be readily available to shareholders/stakeholders
4. the board or a relevant committee of the board is set measurable objectives for achieving gender diversity, and to assess annually both the objectives and the organisation’s progress in achieving them.

***Principle 3 – Board Committees***

We recommend that:

1. the CEO (or management representative) is in attendance at all Board and Committee meetings (apart from board-only sessions) as well as Annual Meetings and special meetings
2. a conflict of interest register is maintained for all members of the board and committees of the board to identify and record personal interests that may be in conflict with the organisation.

***Principle 4: Reporting and Disclosure***

We recommend that:

1. there is a continuous disclosure policy as good practice. This policy should be published, and be readily available to shareholders/stakeholders
2. continuous disclosure policies be included in an organisation’s code of ethics, as continuous disclosure is as much to do with ethics as being part of compliance
3. diversity statistical analysis be included as a requirement of ESG Reporting
4. ESG is included as part of an ERM framework.

***Principle 5: Remuneration***

We recommend that:

1. a remuneration consultant or other suitably qualified person is used to provide current market analysis. They are appointed by the board or remuneration committee, and report to the board or remuneration committee, as determined by the board
2. there is transparency of long and short term incentives to provide shareholders/stakeholders with clarity on, and the rationale for, what directors and management are getting in terms of incentives.

***Principle 6: Risk Management***

We recommend that:

1. policies and procedures regarding key risks be mandatory as 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/renewal, material new investments, loss of key staff etc.
2. because material risks vary between organisations and change over time, the board has a pro-active risk identification and management policy and reports against this
3. there is a sound risk management framework to ensure directors do not trade recklessly and/or create substantial risk of loss to the organisation and shareholders/stakeholders
4. there is guidance on appropriate risk management frameworks, and/or standards e.g. AS/NZS ISO 31000:2009. This standard is referenced by ASX as a guideline to be used when implementing a risk management framework
5. a summary of matters covered by the risk management policy and procedures should be reported in the annual report.

***Principle 7: Auditors***

We recommend that:

1. five-year auditor rotation is continued.

***Principle 8: Shareholder relations and stakeholder interests***

We recommend that:

1. stakeholders include relevant communities of interest e.g. an organisation that is a generator that operates and owns flow of river

	hydro power plants should consider other users of that river as stakeholders.
Q5	<p><i>Areas of ambiguity are:</i></p> <ul style="list-style-type: none"> <li>• Training on ethics</li> <li>• Ethics Committee reporting</li> <li>• The role of the company secretary</li> <li>• Gender diversity in the board composition</li> <li>• CEO attendance at meetings</li> <li>• Conflicts of interest</li> <li>• Continuous disclosure</li> <li>• Gender diversity reporting</li> <li>• Process for setting remuneration</li> <li>• Appropriate risk management frameworks</li> <li>• Definition of stakeholders</li> </ul>
Q6	<p>There may be cost implications on some of the recommendations, but as these are only recommendations, there needs to be flexibility for an organisation to create a governance structure that fits their budget.</p> <p>However, transparency is a key element and flexible governance structures as well as variance to the guidelines needs to be well documented and reported on to shareholders/stakeholders.</p>
<p><b>Feedback summary</b></p> <p>Governance New Zealand actively supports and promotes good practice in governance, risk and compliance. For this reason, we support a handbook that sets minimum standards, as well as encouraging good practice.</p> <p>We believe that there should be a diversity element in all of the guidelines, particularly board composition.</p> <p>Recognising increased globalisation, and the fact that many New Zealand companies conduct business in Australia, the FMA Corporate Governance handbook should be consistent with both the NZX rules and ASX Listing Rules.</p> <p><b>Please note:</b> Feedback received is subject to the Official Information Act 1982. We may make submissions available on our website, compile a summary of submissions, or draw attention to individual submissions in internal or external reports. If you want us to withhold any commercially sensitive or proprietary information in your submission, please clearly state this and note the specific section. We will consider your request in line with our obligations under the Official Information Act.</p>	
<p><b>Thank you for your feedback – we appreciate your time and input.</b></p>	

18 December 2017

Financial Markets Authority  
PO Box 1179  
Wellington 6140

Email: [consultation@fma.govt.nz](mailto:consultation@fma.govt.nz)

## Revisions to the FMA Corporate Governance Handbook

The Institute of Directors (IoD) appreciates the opportunity to comment on the proposed revisions to the [FMA Corporate Governance Handbook](#) (the handbook).

We welcome the FMA's initiative to revise the handbook to ensure it is up to date with developments and trends in corporate governance. The handbook plays an important part in improving corporate governance in New Zealand and assisting directors in carrying out their roles and responsibilities.

Since the handbook was last updated in 2014, the NZX Corporate Governance Code (NZX Code) has been significantly revised. In the light of this, the FMA has refocused the handbook to apply to non-listed and public sector entities. The FMA encourages listed issuers to refer to the NZX Code for corporate governance obligations and has removed references to listed issuers in the handbook. We support this reorientation and the general alignment of content with the NZX Code. This will result in a reduction in fragmentation, duplication and inconsistencies in the various corporate governance reporting regimes in New Zealand. It will also support companies that list in the future to transition to the public operating environment.

Our submission focuses on some of the key revisions to the handbook and other matters the FMA may wish to include.

### About the Institute of Directors

The IoD is a non-partisan voluntary membership organisation committed to driving excellence in governance. We represent a diverse membership of over 8,500 members drawn from listed issuers, large private organisations, small and medium enterprises, public sector organisations, not-for-profits and charities.

The IoD's [Code of Practice for Directors](#) (IoD's Code) provides guidance to directors to assist them in carrying out their duties and responsibilities with high professional standards. All IoD members must sign up to the Code.

Our Chartered Membership pathway aims to raise the bar for director professionalism in New Zealand, including through continuing professional development to support good corporate governance.

### Overview of the handbook and revisions

The handbook is aimed at assisting directors, executives and advisors to apply corporate governance principles to their entities. There are 8 high-level corporate governance principles in the handbook, reduced from 9 in the 2014 edition (Principle 9 (stakeholder interests) has been merged with Principle 8 (shareholder relations)). The principles are largely the same as those in the NZX Code. There are also guidelines and commentary in the handbook. Boards are asked to *explain* how they comply with each principle, rather than 'comply or explain why not' (as per the NZX Code). This

allows for flexibility and meaningful reporting. We agree with the principles as expressed subject to some minor comments later in our submission.

### **Key revisions**

The handbook has been revised in the light of developments in corporate governance, including around non-financial reporting, director and executive remuneration, and auditors.

Now that the NZX Code has been updated for listed issuers, the handbook has been reoriented towards companies or entities with an economic impact in New Zealand and/or that are accountable to the public because of their involvement in our financial markets, including:

- companies wanting to raise capital and/or list on the NZX in the future
- companies providing financial services
- state-owned enterprises
- community trusts
- public sector entities
- other companies.

The broad scope of the handbook should help improve corporate governance across different sectors and especially entities seeking to raise capital or list on the NZX. However, we suggest the FMA further clarify the scope, for example the handbook's application to Māori and iwi owned entities, and large NGOs, NFPs or charities.

The FMA has asked whether more guidance is needed for entities seeking to grow and possibly raise capital and/or list in the future. We support further guidance from the FMA about the various ways entities can raise funds which would be a useful resource for boards. However, this would be better in a separate publication.

The IoD's Code and *The Four Pillars of Governance Best Practice* are listed as useful references in the handbook and we welcome 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.**

Ethical practice underpins sustainable success and should be fundamental to all boards and directors. The IoD's Code provides that directors should lead a culture of high ethical standards.

The guidelines to Principle 1 set out specific matters that an entity's code of ethics should cover including conflicts of interest. Conflicts of interest are perhaps the most commonly unidentified or overlooked risk for directors. They can be challenging to manage and can give rise to significant public scrutiny. The FMA may wish to consider conflicts in more detail in the handbook. For more information see the IoD's [Conflicts of Interest Practice Guide](#).

### **Principle 2: Board composition and performance**

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

Board composition is a major consideration for the effectiveness and performance of the board. A balanced board needs a broad mix of skills and experience and boards are at their best when they are distinguished by diversity of thought. A board with a variety of perspectives is likely to ask a wider range of questions when presented with options. Introducing diversity is about fresh thinking and appropriate challenge to board decision-making and the culture of the board.

The guidelines to Principle 2 provide that directors should be selected and appointed through rigorous, formal processes designed to give the board a range of relevant skills and experience. The commentary adds that each director should have skills, knowledge and experience relevant to the affairs of the entity. The commentary also adds that an effective board requires a range and balance of relevant attributes among its members. This will include consideration of gender, ethnicity, cultural background, age and specific relevant skills.

NZX has recognised the importance of diversity at a governance level. For example, it has required listed companies to report on the gender breakdown of directors and officers in their annual reports since 2013, and the NZX Code now recommends issuers set measurable objectives for achieving diversity (gender at a minimum) and assess and report on progress in achieving the objectives. In our view, the handbook should include similar guidelines whereby organisations are encouraged to adopt a diversity policy, establish measurable objectives, and track and report progress in achieving them. For more information see the IoD's guide [Getting on board with diversity](#).

### **CEO succeeding to chair**

The FMA says in the commentary to Principle 2 that, in general, the CEO should not become the chair. This is particularly relevant to listed issuers and we note that it is generally considered to be good practice to have a sufficient interval between the roles. However, in private entities, it is not uncommon for a CEO to become the chair, for instance, where a founding CEO transitions as part of a succession plan. Given the reorientation of the handbook away from listed issuers, the FMA may wish to address this matter in more detail and explain the reasons why it is generally not best practice for a CEO to become the chair (eg how the entity and the CEO/chair relationship may be impacted as a result).

### **Principle 3: Board committees**

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

Board committees, such as audit and risk, can aid the board by giving greater scrutiny to specific aspects of the board's duties and responsibilities.

### **Audit committee chair and audit firm relationship**

The FMA has updated the guidelines to Principle 3 saying that the chairperson of the audit committee should not have a long-standing association with the external audit firm as either a current or retired audit partner or senior manager within the firm. We support this revision, however we suggest this should be subject to an appropriate timeframe (eg of three years) and that the audit committee chair should not have an ongoing/residual financial relationship with the audit firm.

### **Director attendance at committee meetings**

The handbook outlines the composition of committees but it does not address attendance of other (non-executive) directors at committee meetings.

The IoD's Code states (at 3.18) that "any non-executive director should be invited to attend meetings of any board committee should they so wish, whether appointed to that committee or not, provided the director is not excluded by reason of conflict of interest".

Directors who are not members of committees should be able to attend committees. This is because directors (the board) remain liable under the Companies Act 1993 for actions of committees (except in limited circumstances). Activities of committees are generally restricted to making recommendations for the board's approval, rather than the committee being empowered to make decisions in its name or on the board's behalf.

We suggest including in the commentary that non-executive directors should have a standing invitation to attend all committee meetings (provided they do not have a conflict of interests) and that employees (including executive directors) may attend committee meetings at the invitation of committees.

#### Principles 4: Reporting and disclosure

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

Transparency and a level of consistency in corporate governance reporting are important to the market, shareholders and stakeholders. Good governance practice expects reporting that is open and meaningful – that goes beyond ‘tick box compliance’. This is supported by providing appropriate context and explanation.

The FMA has updated the guidelines and commentary in the light of developments around non-financial reporting and disclosure. We support these and suggest the FMA also update the Principle 4 description to refer to financial and *non-financial* reporting to provide more balance and emphasis. This will also align with the equivalent principle in the NZX Code.

Demand for greater transparency about corporate activities and for more holistic reporting is gaining global traction. Financial information alone does not tell the whole story, and scrutiny is extending beyond the bottom-line to examine what businesses are doing, how they are doing it, and their impact on the environment and society. Many different types of entities are already reporting non-financial information, including using established frameworks such as the international Global Reporting Initiative or Integrated Reporting. We expect entities will increasingly adopt these frameworks in the near future.

#### Principles 5: Remuneration

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

Effective communication about remuneration information with shareholders and the wider public helps build trust and confidence in companies.

##### **CEO remuneration**

Executive pay is increasingly in the spotlight in New Zealand and companies can expect greater scrutiny and debate about it and income disparities in the future. Given this, the FMA may wish to give more prominence and stronger guidance about it in the commentary. This may cover, for instance, what meaningful disclosure looks like, eg how executive pay is comprised and how it aligns with organisational strategy and performance. The FMA may also wish to consider including commentary about further disclosure on organisational remuneration policies and practices, for example on the gender pay gap and worker remuneration.

##### **Director remuneration**

We support the guidelines and commentary around the disclosure of director remuneration. The commentary could also add that the report on director remuneration should include a breakdown of remuneration for committee roles and for fees and benefits for any other services. The IoD has developed a [framework](#) (available on our website) for disclosing director remuneration in annual reports which may be helpful to companies and entities subject to the handbook. Using the framework will enable a more open and consistent approach to disclosure in annual reporting.

We note that the FMA has deleted from the guidelines “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”. We think it is important to have a guideline around retirement payments. We suggest clarifying that the payment of retirement allowances to directors is not good practice, and that director remuneration should be based on their services rather than their duration of service.

#### Principle 6: Risk management

Directors should have a sound understanding of the key risks faced by the business, and should regularly verify there are appropriate processes to identify and manage these.

Risk management is a critical element of the board’s role. The FMA’s revisions include guidelines and commentary on governing environmental, social, and governance risks. We support this additional material in the handbook to provide more fulsome and clear communication about organisational risks. Greater transparency in this area is consistent with international trends and underpins good governance. We note that much of the guidance and commentary aligns with recent updates to the NZX Code and we support this alignment, which will be especially helpful to companies deciding to list.

The NZX Code includes references to health and safety risks as part of a more holistic approach to risk management and corporate reporting. This highlights the importance of health and safety in organisations following the introduction of the Health and Safety at Work Act 2015. We suggest the FMA consider including similar coverage and take the opportunity to highlight other key risks such as cybersecurity, and ethical behaviour and conduct risk.

#### Principles 7: Auditors

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

The IoD’s Code recognises the importance of auditors and the need for independence.

The FMA has added into the guidelines that boards should approve audit fees, and any other services provided by their auditor, and should not delegate this function to management. We suggest the guidelines also recognise audit committees can approve fees (this is consistent with the requirements in the NZX Code). That is, the guidelines could state that “the board or audit committee if there is one” should approve fees.

The FMA has updated its commentary on non-audit work. It now says when considering independence, the audit committee should take into account what a reasonable and informed third party would be likely to conclude regarding the audit firm’s independence. The fees paid for non-audit work will be a factor in determining independence. We support the FMA’s commentary about improving the disclosure in financial statements regarding non-audit work to ensure investors can get an informed view of the auditor’s independence.

#### Principle 8: Shareholder relations and stakeholder interests

The board should foster constructive relationships with shareholders and stakeholders. Shareholders should be encouraged to engage with the entity.

The IoD’s Code provides that directors should adopt policies governing the management of relationships with key stakeholders that are consistent with the nature of the company, its mission or purpose and interests of shareholders. Companies should recognise and respect the legitimate interests of stakeholders. Engagement with key stakeholders should assist directors to act in the best interests of the company.

As noted above, the FMA’s 9 principles for corporate governance in the 2014 edition of the handbook have been reduced to 8 (to align with the NZX Code), with the principles on shareholder

relations and stakeholder interests being combined. Stakeholder considerations have also been included in other principles.

Stakeholder interests are gaining greater importance in today's operating environment and we support the retention of stakeholder interests as a principle (albeit with shareholder relations).

### Conclusion

We reiterate our support for updating the handbook to raise corporate governance standards in New Zealand. It is appropriate that the handbook has been refocused, away from listed issuers now that the NZX Code is in place. The alignment of content where appropriate with the NZX Code is welcome and will result in a reduction in fragmentation, duplication and inconsistencies in the various corporate governance reporting regimes in New Zealand. We encourage the FMA to make enhancements outlined in our submission to help reflect good corporate governance.

We appreciate the opportunity to comment on behalf of our members and would be happy to discuss this submission with you.

Yours sincerely

[Redacted signature block]

# Feedback form

Feedback: FMA Corporate Governance handbook	
Please submit this feedback form electronically in both PDF and MS Word formats and email it to us at <a href="mailto:consultation@fma.govt.nz">consultation@fma.govt.nz</a> with 'Feedback: FMA Corporate Governance handbook' and your entity name in the subject line. Thank you. <b>Submissions close on Friday, 8 December 2017.</b>	
Date: 6 December 2017	
Name of submitter: [REDACTED]	
Company or entity: International Integrated Reporting Council	
Organisation type: Not for Profit	
Contact email and Phone: [REDACTED]	
Number of pages: 2	
Question number:	Response
<i>You don't need to quote from the consultation document if you note the paragraph or question number.</i>	
Q1	N/A
Q2	N/A
Q3	<i>We found the structure of this document to be clear, informative and appropriately concise. We would welcome links to documents referred to in the guidance, for example the International Integrated Reporting Framework which can be accessed via the IIRC's website at the following URL: <a href="http://integratedreporting.org/resource/international-ir-framework/">http://integratedreporting.org/resource/international-ir-framework/</a></i>
Q4	<i>The IIRC welcomes the FMA's approach to the section 'Reporting and disclosure' and the recognition FMA has given to non-financial reporting. Furthermore, we welcome the reference to the International Integrated Reporting Framework.  In corporate governance codes around the world, including for example in Japan, the Netherlands, the UK, South Africa and Malaysia, the guidance for reporting has moved on from 'financial' and 'non-financial reporting' towards a more holistic form of reporting on 'value'. This means recognizing the interconnectedness of ESG and financial information and that the two are inseparable in regard to their impact on the organization and how an organization operates. The sentence in the section on ESG reporting stating it '...allows for a more comprehensive understanding of an entity's overall performance, and</i>

	<p><i>related risks and opportunities’ goes to the heart of this and we would welcome a further explanation that this is what the International Integrated Reporting Framework can assist with - by supporting organizations in their development and communication of a holistic future strategy, based on the interconnectedness of financial and non financial information, through one concise report. Currently, the guidance confuses ESG reporting – which is about standalone sustainability reports that the GRI standards can support - and integrated reporting which is about taking aspects of the financial statements and aspects of the sustainability report and communicating one holistic story – ensuring that providers of financial capital understand why this information is strategically important.</i></p> <p><i>We would also welcome a steer from the FMA to organizations in regards to what information should be considered material. Reporting for many organizations has become too long, convoluted and a case of ‘box ticking’, rather than really communicating with their providers of financial capital. We would welcome an inclusion in the guidance of how organizations should determine what information is material. The IIRC believes that information should be considered material if it substantially effects the organization’s ability to create value over the short, medium or long term.</i></p> <p><i>We welcome the statement in this guidance that ‘The principles should be ‘owned’ by the board’ and would welcome the addition that reporting on the principles is similarly a board issue which should also include an outline of how the governance principles in place have enabled the organization to create value.</i></p>
Q5	N/A
Q6	N/A
<b>Feedback summary – if you wish to highlight anything in particular</b>	
<p><b>Please note:</b> Feedback received is subject to the Official Information Act 1982. We may make submissions available on our website, compile a summary of submissions, or draw attention to individual submissions in internal or external reports. If you want us to withhold any commercially sensitive or proprietary information in your submission, please clearly state this and note the specific section. We will consider your request in line with our obligations under the Official Information Act.</p>	
<p><b>Thank you for your feedback – we appreciate your time and input.</b></p>	

8 December 2017

Financial Markets Authority  
Level 2  
1 Grey Street  
Wellington 6012

**By email: [consultation@fma.govt.nz](mailto:consultation@fma.govt.nz)**

## **Submission on Consultation Paper: FMA Corporate Governance handbook**

- 1 This is a submission by Kensington Swan on the *FMA Corporate Governance handbook* consultation paper released on 14 November 2017.

### **About Kensington Swan**

- 2 Kensington Swan is one of New Zealand's premier law firms with a legal team comprising over 100 lawyers acting on government, commercial, and financial markets projects from our offices in Wellington and Auckland.
- 3 We have extensive experience advising a range of organisations on all aspects of corporate governance and regulatory compliance. We act for many different entities, from start-up businesses to large listed entities, and including licensed insurers, public sector entities, registered banks, brokers, and other financial markets participants.

### **Suggested clarification as to scope of Conduct Guide**

- 4 We suggest that the reference to the *Guide to the FMA's view of good conduct* ('Conduct Guide') on page 4 of the revised Corporate Governance Handbook ('Handbook') is expanded to clarify the scope of the Conduct Guide.
- 5 Page 4 of the revised Handbook refers to the Conduct Guide being a useful reference for holders of market services licences under the Financial Markets Conduct Act 2013. However, page 5 of the Conduct Guide makes it clear that the scope of the Conduct Guide is much broader, on the basis that it is:
  - a also aimed at directors and senior managers of providers licensed or authorised by the FMA under any other financial markets legislation (including the Financial Advisers Act 2008); and
  - b relevant to the work of frontline regulators (NZX Limited, auditors, trustees, and supervisors) and other leaders and managers in the financial services industry.

### **General comments on approach**

- 6 Other than the above, we support the FMA's decision to update the Handbook to clearly delineate between entities listed on markets operated by NZX Limited and non-listed entities. This will provide clear guidance to entities as to which principles to apply at the various stages of their growth, and will make the most relevant information for each type of entity more easily

accessible. Further, we consider that the FMA's changes to the earlier version of the Handbook appropriately reflect that decision.

- 7 We believe that it is important to have a range of easily accessible and relevant resources available to New Zealand businesses and public sector entities, with each drafted to assist as broad a range of entities as possible. We see the Handbook as complementing the existing range of resources available, and providing valuable guidance to directors and senior managers of non-listed entities.

**Further information**

- 8 We are happy to discuss any aspect of the above feedback.

- 9 Thank you for the opportunity to submit.

Yours faithfully  
**Kensington Swan**

[Redacted signature block]

[Redacted contact information]

[Redacted contact information]

[Redacted signature block]

[Redacted contact information]

[Redacted contact information]

# Feedback form

Feedback: FMA Corporate Governance handbook	
Please submit this feedback form electronically in both PDF and MS Word formats and email it to us at <a href="mailto:consultation@fma.govt.nz">consultation@fma.govt.nz</a> with 'Feedback: FMA Corporate Governance handbook' and your entity name in the subject line. Thank you. <b>Submissions close on Friday, 8 December 2017.</b>	
Date: <b>5 December 2017</b>	Number of pages: <b>2</b>
Name of submitter: <b>[REDACTED]</b>	
Company or entity: <b>Medical Assurance Society New Zealand Limited</b>	
Organisation type: <b>Financial service provider / QFE</b>	
Contact name (if different):	Contact email and Phone: <b>[REDACTED]</b>
Question number:	Response
Q1	Yes.  If the NZX is mandated to supervise listed issuers, and maintains its own guidance for on corporate governance practices it is logical that the FMA shift the focus of their own governance principles document away from listed issuers.
Q2	N/a
Q3	The structure of the document is logically presented. The FMA commentary following on from the guidelines of each principle provide useful context into the rationale that has gone into them.
Q4	Governance risk is one of the key risks outlined in the FMA's Strategic Risk Outlook. Specifically, this risk is described that ineffective governance leads to poor conduct in organisations. To mitigate this risk it is expected that boards and senior management lead organisational culture and place customer interests at the centre of their business strategies. This is consistent with the core principles of the separate document for licensed entities, <i>A guide to the FMA's view of conduct</i> . This document sets out that "the conduct of those who provide financial services directly affects the consumers of those services, which is all New Zealanders".

	<p>As it is, the handbook is relatively silent on conduct expectations, with the exception of reference to the conduct guidance being “useful further commentary” for licensed entities.</p> <p>A practical view is that the principles of good conduct, that is focusing on customers and good customer outcomes, are not limited to just those entities licensed under the FMC Act, but reflect good practice for any entity within the FMA’s scope of oversight. For this reason, and in order to better align with the FMA’s strategic risk outlook, it seems a reasonable approach to integrate the conduct guidance into the broader handbook for corporate governance.</p>
Q5	As answered above in Q4. There is ambiguity about the importance of conduct, by omitting it as a principle from the handbook when it is a focal point that plays an important role in the FMA’s view of managing governance risk and achieving its objectives.
Q6	N/a
<p><b>Feedback summary – if you wish to highlight anything in particular</b></p> <p>N/a</p>	
<p><b>Please note:</b> Feedback received is subject to the Official Information Act 1982. We may make submissions available on our website, compile a summary of submissions, or draw attention to individual submissions in internal or external reports. If you want us to withhold any commercially sensitive or proprietary information in your submission, please clearly state this and note the specific section. We will consider your request in line with our obligations under the Official Information Act.</p>	
<p><b>Thank you for your feedback – we appreciate your time and input.</b></p>	



# Feedback form

## Feedback: FMA Corporate Governance handbook

Please submit this feedback form electronically in both PDF and MS Word formats and email it to us at [consultation@fma.govt.nz](mailto:consultation@fma.govt.nz) with 'Feedback: FMA Corporate Governance handbook' and your entity name in the subject line. Thank you. **Submissions close on Friday, 8 December 2017.**

Date: 7 December 2017

Number of pages: 2

Name of submitter: [REDACTED]

Company or entity: Milford Asset Management Limited

Organisation type: Non-listed private company

Contact name (if different):

Contact email and Phone:

Question number:

Response

*You don't need to quote from the consultation document if you note the paragraph or question number.*

Q1	<i>Yes, given the differing characteristics of listed and non-listed issuers, we consider it appropriate for there to be a separate governance code (NZX Code) applying to listed issuers while the updated Corporate Governance Handbook can be directed towards the particular governance requirements of non-listed issuers. The principles of good corporate governance enunciated in the Handbook will, we believe, provide a helpful benchmark against which a broad range of entities can measure their own governance standards.</i>
Q2	<i>We consider the question of growth and capital raising options can best be addressed through stand-alone guidance such as the director's guide to IPOs.</i>
Q3	<i>We think the handbook is well structured and coherently presented.</i>
Q4	<i>Considering the wide range of non-listed entities to which the Handbook will apply, it would, we think, be challenging to provide more entity-specific guidance without compromising the overall principles-based thrust of the Handbook's governance principles. Those entities bound by specific obligations (such as holders of market services licences) have existing well-documented guidance and commentary to assist them in discharging their licence obligations. To the extent more guidance is needed in those areas, that can be provided through FMA's existing communications processes and educative</i>

	<i>tools.</i>
<b>Q5</b>	<i>No, we consider the principles and guidelines represent best practice for non-listed entities and resonate well with the approach typically taken by issuers of financial products in particular.</i>
<b>Q6</b>	<i>We think it unlikely that there are material cost barriers to adopting the revised guidelines although for some (particularly smaller) entities ESG reporting could involve some cost.</i>
<b>Feedback summary – if you wish to highlight anything in particular</b>	
<b>Please note:</b> Feedback received is subject to the Official Information Act 1982. We may make submissions available on our website, compile a summary of submissions, or draw attention to individual submissions in internal or external reports. If you want us to withhold any commercially sensitive or proprietary information in your submission, please clearly state this and note the specific section. We will consider your request in line with our obligations under the Official Information Act.	
<b>Thank you for your feedback – we appreciate your time and input.</b>	

# MinterEllisonRuddWatts

8 December 2017

**BY EMAIL:** consultation@fma.govt.nz

## **Feedback: FMA Corporate Governance Handbook**

1. This submission is made by MinterEllisonRuddWatts, a national law firm. It relates to the feedback on the proposed FMA Corporate Governance Handbook (**Handbook**). This submission reflects our own views and not necessarily those of any of our clients.
2. We agree with the FMA that good corporate governance is important to all businesses and we commend the FMA for its efforts to review and update guidance on corporate governance for other entities.
3. However, as outlined below, we consider that refocusing the coverage of the Handbook, as proposed, will require a more radical re-write than has been undertaken to date. That is because to be a useful guide, the Handbook will need to address the extent to which the “gold standard” approach is likely to be appropriate for different types of entities, with different stakeholders, and different levels of resource available to those entities.
4. Merely proposing compliance “as appropriate” with the standards currently specified in the Handbook risks:
  - (a) doing little to guide “willing compliers” as to what governance arrangements are appropriate on a cost benefit basis for their organisation;
  - (b) inadvertently becoming an inappropriately high benchmark to which smaller businesses or those with limited external stakeholders, as a result of a tickbox approach by regulators or others in the future; and
  - (c) undermining the value of the Handbook as failing to provide useful guidance to any particular groups of entity because of the resulting ambiguity.
5. We have set out our responses below to the questions in the feedback form, dated 14 November 2017.

### 1. Do you agree with our overall approach to move our focus away from listed issuers?

6. We agree that with the existence of the NZX guidelines, there is little value in FMA publishing a Handbook targeted primarily at the same audience. Accordingly, we can see value in the overall approach to move focus away from listed issuers, and to provide guidance for other entities.
7. However, as a general comment, and we elaborate on this throughout these submissions, we consider there needs to be further clarity for guidance applicable to at least major sub-categories within the full range of entities the Handbook is aiming to cover.
8. We acknowledge the FMA has commented that there is no one-size-fits-all approach to governance and that not all principles and guidelines will apply to all entities. However, the approach in the Handbook is to set out a ‘gold standard’ of principles and guidelines essentially based on the approach considered appropriate for listed companies, and then to provide for lesser compliance on an ‘as appropriate’ basis. As a result, there is considerable ambiguity as to what entities that are not of the significance of a listed entity are meant to do. Specifically, there is no guidance as to:



- (a) in what specific circumstances would it be appropriate for an entity to depart from the “gold standard”; and
  - (b) what the extent of departure from the gold standard should be in particular cases.
9. Therefore, while we agree with the move away from listed issuers, the FMA needs to add substantially more detail to the guidance so that it is clear what at least significant categories of covered entities need to do.

2. Is more guidance needed for companies seeking to grow and possibly raise capital and/or list in the future - if yes, in what areas would guidance be useful (please give examples of the additional guidance you think should be added)?

10. We have two main points under this heading:

- (a) the need to address other forms of entities different to companies; and
- (b) the broad range of types of investors from whom capital may be raised, and their different needs.

*Forms of entities other than companies*

11. The question itself suggests an assumption that “companies” (by which we assume the FMA means companies registered under Part 2 of the Companies Act 1993) are the only entities covered. However, our experience is that an increasingly wide range of entities may engage in capital raising activities. While it remains true that companies are the dominant form, the NZX itself has recently consulted on the way in which the Listing Rules may be better tailored to other entities including managed investment schemes.
12. For example, limited partnerships have in recent years become a more common form of entity in which to undertake business in the small and medium-sized business space. It would be very useful to understand FMA’s governance expectations for such entities.

*The broad range of types of investors*

13. The spectrum of persons from whom entities seeking to grow, raise capital and/or list in the future may raise funds is also wide, given the scope of the exclusions in Schedule 1 to the Financial Markets Conduct Act 2013 (**FMCA**).
14. In relation to capital raisings, having good corporate governance means that putative investors will have a degree of comfort in addressing the information asymmetry between them and the entity. This follows as good corporate governance should mean that shareholders are provided with:
- (a) timely, meaningful and desired disclosure as to the entity’s affairs; and
  - (b) confidence that information released to them is accurate as there would be processes and procedures in place to ensure this is the case.
15. Having said this, clearly, the method of capital raising used (for example crowd funding or small offers as opposed to offers to wholesale investors) will impact the nature of the corporate governance systems that should be in place.
16. For example, where funding is sought from wholesale investors or close business associates, strict compliance with the Handbook principles will not be necessary as these investors are able to ‘protect themselves’. However, the greater the number and amount of funding received from retail investors is the greater the degree of adoption (in whole or in part) of the principles should be.
17. In this regard, it may be appropriate for such entities to look first to principles 2, 4, 6 and 7 as these would appear to be most relevant to an investor’s investment. The issuer could then evaluate on a regular basis the degree to which they comply with them and the need to consider the application of the other principles. For example, the appointment of independent directors and reporting on ESG matters would clearly not be suitable for all entities.

18. Therefore, we suggest that the FMA includes guidance as to the scope and degree of compliance with its principles and guidelines for entities looking to raise capital. In particular, greater clarity will be needed as to the basis on which the degree of compliance increases. This may be by, for example, looking to:
- (a) the suggested core principles noted above and the number of retail investors and the size of their investments relative to wholesale investors or close business associates; or
  - (b) considering more formalised tiers based on which exclusions in Schedule 1 of the FMCA are relied upon or if a PDS has been prepared; or
  - (c) whether the entity is a Code company.
19. As for entities looking to list, we consider there is sufficient guidance given the approach noted in question 1. Moreover, such entities will have the assistance of various advisers that would cover compliance with NZX's Corporate Governance Code.

3. Do you have any feedback on the structure or presentation of the document? Is there anything we could improve about the way it has been written, or communicated, to better assist directors and executives to apply the corporate governance principles?

20. Further to our submissions to questions 1 & 2, we consider that outside of the capital raising scenario, substantial revision and restructuring of the Handbook is required as to the degree of compliance with a principle or guideline that is 'appropriate' in what circumstances, and to what extent.
21. Given the scope of the Handbook, it is clear that the size, nature of operations and existing accountability (including whether or not licenses or registrations are required) mean that not all the principles and guidelines will be relevant to all entities and the degree of compliance with each one will need to vary. This message needs to be more explicit in the introduction to the Handbook.
22. Further, in each situation where a principle or guideline is qualified (for example, 'as appropriate') more colour should be given as to what that means. Entities should not be left guessing what may be appropriate if the high standard expressed in the Handbook is not sensible or useful for it to adopt.
23. A possible starting point could be by including a table in each section giving guidance as to the FMA's expectations of compliance in relation to each entity noted on page 3 of the Handbook.
24. In relation to the 'other companies' section perhaps a financial threshold would be a useful cut-off as to application such as the thresholds applied in the Financial Reporting Act 2013 or as recommended to the Minister by the Takeovers Panel in relation to non-listed Code companies. Indeed as economic impact is one of the factors noted by the FMA in considering the application of the principles this would be appropriate, as for smaller entities the principles are unlikely to be appropriate to apply.

4. In most areas we have made very few changes to the substantive guidance. Are there any specific areas where we should include more guidance or commentary?

25. As noted above, the Handbook is expressed at a 'gold standard' of corporate governance which is appropriate for listed entities or those with similarly significant public impact. Therefore, following on from our response to questions 2 and 3, further guidance is needed as to the scope and degree of compliance with the principles for the vast number of entities to whom the Handbook is meant to apply and which are not listed or similar entities.
26. We recognise that the FMA does not expect all entities to apply all guidelines, and states that guidance should be applied "where appropriate". However, it is this approach that leaves smaller entities without substantive guidance as to the FMA's expectations.
27. In addition to the table format suggested in response to question 3, we suggest that the FMA provide examples of variations of compliance with guidelines for entities who are not expected to comply with certain principles and guidelines set out in the Handbook.

5. Are there any areas where we are out of step with guidelines that your Company/Board follows, or any other areas of ambiguity in the handbook?

28. In addition to our submissions above concerning the need for greater clarity as to the scope and degree of compliance with the principles and guidelines, we also note that included in the scope of the Handbook are “companies providing financial services”.
29. This is a very broad category and would capture entities that provide financial services only to wholesale clients, and so are not necessarily “publicly accountable”. Our view is that this category should be limited to include only companies providing financial services to retail clients in New Zealand.
30. Again and further to paragraph 25 above, we note that the principles and guidelines described in the Handbook are the ‘gold standard’ which would be expected of listed entities or those with a similarly significant impact. While it is useful to document governance best practice, many smaller companies and entities will be grappling with governance basics, such as having terms of reference, formal board meetings and producing meeting minutes. For those companies and entities, the Handbook in its current form will unlikely provide any meaningful guidance as to how they can improve their governance practices, and therefore we recommend providing more substantive guidance as to the FMA’s expectations.

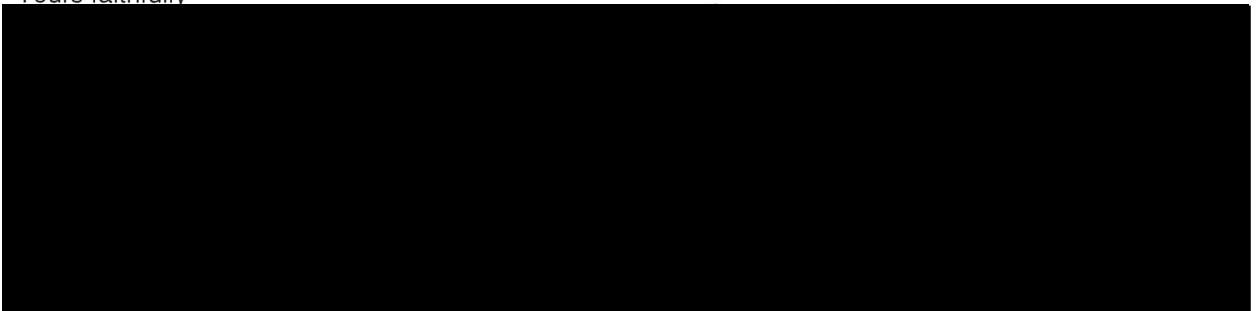
6. Are there any cost implications or other barriers to adopting the revised guidelines?

31. It is clear that a vast majority of entities in New Zealand will not have the financial ability or expertise to implement some of the principles and guidelines in the full degree set out in the Handbook.
32. Of course, as the benefit and therefore need for full compliance will in most cases be lacking this is a problem that is self-regulating. Conversely, when an entity becomes of a significant size or has a significant role in capital markets (for example, being listed) corporate governance would be a cost of doing business.
33. This is why we consider that it is important, as set out in our responses above, that greater clarity is provided as to the scope and degree of compliance required with the principles and guidelines.

General

34. Please let us know if you have any questions in relation to, or would like to discuss any part of our submission. Thank you for the opportunity to respond to the Handbook.

Yours faithfully



# Submission

to the

# Financial Markets Authority

on the

# FMA Corporate Governance

# Handbook

8 December 2017

## About NZBA

1. NZBA works on behalf of the New Zealand banking industry in conjunction with its member banks. NZBA develops and promotes policy outcomes that contribute to a strong and stable banking system that benefits New Zealanders and the New Zealand economy.
2. The following seventeen registered banks in New Zealand are members of NZBA:
  - ANZ Bank New Zealand Limited
  - ASB Bank Limited
  - Bank of China (NZ) Limited
  - Bank of New Zealand
  - Bank of Tokyo-Mitsubishi, UFJ
  - China Construction Bank
  - Citibank, N.A.
  - The Co-operative Bank Limited
  - Heartland Bank Limited
  - The Hongkong and Shanghai Banking Corporation Limited
  - Industrial and Commercial Bank of China (New Zealand) Limited
  - JPMorgan Chase Bank, N.A.
  - Kiwibank Limited
  - Rabobank New Zealand Limited
  - SBS Bank
  - TSB Bank Limited
  - Westpac New Zealand Limited

## Background

3. NZBA welcomes the opportunity to provide feedback to the Financial Markets Authority (**FMA**) on its Consultation Paper: Updated Corporate Governance Handbook (**Consultation Paper**) and commends the work that has gone into developing the Consultation Paper.
4. If you would like to discuss any aspect of the submission further, please contact:

[Redacted contact information]

## Responses to the Consultation Paper questions

5. NZBA supports FMA’s approach to updating the Corporate Governance Handbook (**Handbook**) by shifting the focus away from listed companies in order to avoid overlap and potential confusion with NZX’s Corporate Governance Code.



6. NZBA sets out its responses to the questions set out in the Consultation Paper as follows:

<p><i>Question 1: Do you agree with our overall approach to move our focus away from listed issuers?</i></p> <p>Where possible, NZBA advocates that Handbook should align with the recently published NZX Corporate Governance Code to ensure a consistent corporate governance approach.</p>
<p><i>Question 2: Is more guidance needed for companies seeking to grow and possibly raise capital and/or list in the future - if yes, in what areas would guidance be useful (please give examples of the additional guidance you think should be added)?</i></p> <p>We have no comments on this question.</p>
<p><i>Question 3: Do you have any feedback on the structure or presentation of the document? Is there anything we could improve about the way it has been written, or communicated, to better assist directors and executives to apply the corporate governance principles?</i></p> <p>NZBA believes that the Handbook would benefit from the inclusion of additional guidance in respect of personal director liability, and notes that detail of the relevant legislative and regulatory regimes that govern and impact on director liability would also be useful for directors.</p>
<p><i>Question 4: In most areas we have made very few changes to the substantive guidance. Are there any specific areas where we should include more guidance or commentary?</i></p> <p>FMA commentary on Principle 5 (at page 23) states that as part of shareholder transparency 'total remuneration and a full breakdown of any other benefits and incentives paid to directors' [should be disclosed]. This breakdown should include 'short-term and long-term term incentives.'</p> <p>NZBA notes that that information is already provided by members on an aggregated basis as part of their registered bank disclosure statement obligations. It is expected that this would be sufficient for the purposes of the Handbook.</p>
<p><i>Question 5: Are there any areas where we are out of step with guidelines that your Company/Board follows, or any other areas of ambiguity in the handbook?</i></p> <p>NZBA considers that the following areas of the Handbook are out of step with industry practice:</p> <p>Principle 2 'Board composition and performance':</p> <ul style="list-style-type: none"> <li>• NZBA notes the following changes from the 2014 version of the Handbook, which we consider are out of step with industry practice: <ul style="list-style-type: none"> <li>○ The 2014 Handbook included a recommendation that the chairperson of the board of a publicly owned entity should be independent. In the Handbook, that recommendation seems to apply in respect of the board of any entity.</li> <li>○ The recommendation that every issuer's board should have an appropriate balance of executive and non-executive directors, and include directors who meet formal criteria for independence, has been strengthened in the commentary on Principle 2 of the Handbook.</li> </ul> </li> <li>• NZBA agrees that for main boards it is appropriate to have a balance of both independent and non-independent directors and an independent chair. However, NZBA notes that a number of its members have wholly owned subsidiaries included in their governance structures, which are typically constitutionally permitted to act in</li> </ul>

the best interests of their holding company, and are not perceived to be publicly accountable due to their role in financial markets. In NZBA's view, for these entities, an independent chair and a balance of independent and non-independent directors is not necessary to ensure that directors act in accordance with their duties.

- Similarly, we acknowledge that certain issuers of unlisted securities (notably, managers of registered managed investment schemes under the Financial Markets Conduct Act) owe duties to act in the best interests of investors. However, NZBA considers that including independent directors on these boards is also not always necessary, provided that the issuer is able to demonstrate that directors have sufficient independence of mind to be able to perform their role appropriately. There are a number of ways in which an issuer could demonstrate this short of appointing independent directors. Examples include:
  - ensuring newly appointed directors receive appropriate training on their role and the importance of acting independently and in the best interests of the company; and
  - ensuring director representation from a range of functions across the wider organisation – for example, the board could include directors from an independent risk function, as well as other directors with a separate reporting line from those with profit and loss accountability for the relevant issuer.
- Finally, the FMA commentary on Principle 2 refers to companies that are 'perceived to be publicly accountable due to their role in the financial markets', and suggests that all such entities should be building towards a majority of non-executive directors, and a minimum of one third of independent directors. The introduction to the Handbook also suggests that all companies providing financial services should be treated as being accountable to the New Zealand public. NZBA notes those comments differ significantly from section 461K of the Financial Markets Conduct Act, which specifies a more limited list of financial service providers as having a higher level of public accountability for financial reporting purposes. Accordingly, NZBA submits that the Handbook should align with the legislation in this respect.

#### Principle 5 'Remuneration':

- As currently drafted, the FMA commentary on Principle 5 could be read as suggesting that disclosure in respect of remuneration policies, and total remuneration and its components, is required for all entities. In the 2014 Handbook it is clearer that this recommendation is limited to publicly owned companies.
- Accordingly, NZBA considers that this section should be amended to reflect the different considerations applicable to wholly owned subsidiaries and other closely held companies. In these instances, the entity will not have a wide number of shareholders, and, in any case, shareholders will usually have direct access to the relevant information. Requiring disclosure for closely held companies may unnecessarily impinge on directors' rights to privacy in circumstances where there is little or no public benefit in providing access to that information.

#### Principle 8 'Shareholder relations and stakeholder interests':

- In the 2014 Handbook, the guidelines to this principle make it clear that it is relevant only to widely held entities. We consider that this emphasis should be retained in the Handbook. In our view, recommendations such as maintaining a shareholder relations type website and encouraging shareholders to take part in annual and special meetings are irrelevant for closely held companies. Shareholders in closely held companies will have other options for obtaining information, for example the company may appoint directors, or the CEO/CFO could be contacted.

*Question 6: Are there any cost implications or other barriers to adopting the revised guidelines?*

NZBA considers that Principle 2 (ie the requirement to have independent directors) could introduce significant additional costs and administration. We also note that in a small market like New Zealand, the pool of appropriately qualified independent directors is likely to be shallow, which will represent a significant barrier to broad adoption of the revised guidelines relating to board composition.

# Feedback form

Feedback: FMA Corporate Governance handbook			
Please submit this feedback form electronically in both PDF and MS Word formats and email it to us at <a href="mailto:consultation@fma.govt.nz">consultation@fma.govt.nz</a> with 'Feedback: FMA Corporate Governance handbook' and your entity name in the subject line. Thank you. <b>Submissions close on Friday, 8 December 2017.</b>			
Date:	7 December 2017	Number of pages:	1
Name of submitter:	[REDACTED]		
Company or entity:	New Zealand Guardian Trust trading as Perpetual Guardian		
Organisation type:	Financial Services and Corporate Trustee		
Contact email and Phone:	[REDACTED] [REDACTED]		
Question number:	Response		
<i>You don't need to quote from the consultation document if you note the paragraph or question number.</i>			
Q1	Yes, given that listed companies form a small proportion of the company numbers in New Zealand.		
Q2	No, the rules for listing are prescriptive and companies wanting to list (and or raise capital through crowd funding) should be able to determine the gaps between where they are at and what is required to do so, in order to prove they are sufficiently robust to seek capital from the public.		
Q3	The document is well written, easy to read and fulfils the clear, concise and effective objective.		
Q4	No		
Q5	To the best of our knowledge the guidelines are not out of step with other industry or regulatory guidelines although the sections around ESG and web-site disclosures are modern innovations.		
Q6	There will be costs involved in providing additional reporting (on the website) but in the spirit of continuous improvement we don't consider them a barrier. As a willing licensee and audit participant we believe that formal, structured reporting saves businesses time and money in the long run.		
<b>Feedback summary:</b> ESG reporting and web-site disclosures may impose additional reporting requirements that are not currently undertaken across the industry and may not be appropriate due to the commercial sensitivity of the information. It may also be dependent on a company's IT capabilities, web-site and social media resources.  The scale and type of the business; and the size of a Board and Executive may limit their ability to have multiple committees eg a small Board would of necessity have the same representatives on all Committees. It may instead be more appropriate for some reporting such as ESG, to be added to the agendas of existing committees as opposed to creating additional committees.			
<b>Please note:</b> Feedback received is subject to the Official Information Act 1982. We may make submissions available on our website, compile a summary of submissions, or draw attention to individual submissions in internal or external reports. If you want us to withhold any commercially sensitive or proprietary information in your submission, please clearly state this and note the specific section. We will consider your request in line with our obligations under the Official Information Act.			
<b>Thank you for your feedback – we appreciate your time and input.</b>			

# Feedback form

## Feedback: FMA Corporate Governance handbook

Please submit this feedback form electronically in both PDF and MS Word formats and email it to us at [consultation@fma.govt.nz](mailto:consultation@fma.govt.nz) with 'Feedback: FMA Corporate Governance handbook' and your entity name in the subject line. Thank you. **Submissions close on Friday, 8 December 2017.**

Date: 5<sup>th</sup> December 2017

Number of pages: 3

Name of submitter: [REDACTED]

Company or entity: NZ Superannuation Fund

Organisation type: Asset Owner

Contact name (if different): [REDACTED]

Question number:	Response
------------------	----------

*You don't need to quote from the consultation document if you note the paragraph or question number.*

Q1

*We believe Principle 8 should be rewritten so the Principle expressly covers shareholder rights. The NZX Corporate Governance Code includes a statement about respect for shareholder rights (as does the OECD Corporate Governance Principles). Shareholder rights should be fundamental to the good governance of companies, whether listed or private.*

*It is somewhat difficult to bundle stakeholders and shareholders together. Boards should however have in place good stakeholder management practices as this protects the long-term value of the business and is part of a good Code of Ethics.*

*The future challenges facing boards and companies in the management of stakeholders, including social media, customer and employee privacy, and supply chains, and the impact this has on the company's consumer, regulatory and employer profile, could mean stakeholder management is deserving of its own principle.*

Q2

*We have recommended in our submission to the NZX Review of its listing Rules that NZX conducts detailed analysis of the barriers and solutions to small and medium sized enterprises listing on the NZX and clearly relate these to any proposed Listing Rule changes. The FMA should contribute to this work. There are a number of reasons why companies do not choose to IPO – including low*

	<p><i>liquidity in the NZ market, overseas trade buyers, cost of listing including such things as verifying forecasts in IPO documents, legal and broker fees. Given a number of companies have had a persistent fall in share price after their IPO, a focus on key causes and solutions is important for maintaining confidence amongst investors and companies seeking to list.</i></p> <p><i>Raising capital in the Private Market also requires good governance practices and the FMA, the IOD and private equity managers can play an important role in advising company founders, executives and boards.</i></p>
Q3	<p><i>No substantive comments. The Handbook is a useful structure for its purpose as a voluntary guide with supporting information.</i></p>
Q4	<p><i>More guidance could be provided on the Board's role in guiding the organisation's strategy and its oversight of strategic goals.</i></p> <p><i>The Board should guide the strategy and ensure this is presented clearly to the Shareholders, Board, Management and employees. The Board should be aware of the risks to achieving that strategy, and incentives should be set to appropriately reward employees for achieving strategic goals. Shareholders should approve the strategy, which should also set out dividend policy, re-investment, capex and capital raising. The Board should understand the core assumptions made in the financial accounts and forecasts.</i></p> <p><i>Boards should ensure that changes in the way financial data is presented are made with the agreement of, or properly communicated to, their shareholders. The previous year's financial numbers should be reworked so they are comparable over time.</i></p>
Q5	<p><i>The inclusion of ESG reporting in recommendations is consistent with best practice. Perhaps the statement "over and above their commercial and economic objectives entities are encouraged to disclose ...ESG " is a bit ambiguous as later it is then acknowledged that ESG factors are relevant to business risks and costs, that is, can be commercial.</i></p> <p><i>Strengthening the section on auditors and relationships with auditors is good to see. The rotation of the audit firm itself should be discussed by the Board when the audit firm has had a long tenure. Sometimes the competitiveness this introduces to fees can offset the disruption as well as ensuring independence and a new audit "lens".</i></p>
Q6	<p><i>We do not believe there are additional cost implications to adopting the revised guidelines. Over the long term, evidence supports good governance correlating well with additional value for the company including lower cost of capital and better financial results.</i></p>

**Feedback summary** – *if you wish to highlight anything in particular*

**Please note:** Feedback received is subject to the Official Information Act 1982. We may make submissions available on our website, compile a summary of submissions, or draw attention to individual submissions in internal or external reports. If you want us to withhold any commercially sensitive or proprietary information in your submission, please clearly state this and note the specific section. We will consider your request in line with our obligations under the Official Information Act.

**Thank you for your feedback – we appreciate your time and input.**

# Feedback form

## Feedback: FMA Corporate Governance handbook

Please submit this feedback form electronically in both PDF and MS Word formats and email it to us at [consultation@fma.govt.nz](mailto:consultation@fma.govt.nz) with 'Feedback: FMA Corporate Governance handbook' and your entity name in the subject line. Thank you. **Submissions close on Friday, 8 December 2017.**

Date: 8 December 2017

Number of pages: 2

Name of submitter: [REDACTED]

Company or entity: Oyster Management Limited

Organisation type: MIS Manager

Contact name (if different): [REDACTED]

Contact email and Phone: [REDACTED]

Question number:	Response
------------------	----------

*You don't need to quote from the consultation document if you note the paragraph or question number.*

**Q1**

*One of the reasons that private companies prefer to remain unlisted is to avoid the compliance burden of the listing rules. Adopting what are essentially the listing rules and applying these to private companies will place the burdens of a listed company on a sector that in many cases is very different to that of listed companies.*

*The statement on page 3 that certain non-listed entities are "accountable to the New Zealand public" is factually incorrect for many of the entities listed. A private company is only accountable to its shareholders. Where these shareholders are a small group of private individuals it is a stretch to state that the company has accountability to the public at large. Companies that provide financial services are regulated and have certain statutory and contractual responsibilities when they provide these services. However, they remain private companies and their governance shouldn't be assessed as if they were public companies. Their provision of services are regulated, not the companies themselves.*

*Most private companies don't report to shareholders or stakeholders in the fashion contemplated by the handbook. Annual Reports are just the financial statements for the company.*

*The shareholders in most private companies have little interest in independence of directors, the directors are often all appointed directly by the*



	<p><i>sole shareholder. Having a breadth of skills and experience is certainly useful, independence is debatable as to whom are these independent directors representing?</i></p> <p><i>Principle 8: Has little relevance to private companies. Outside of listed companies what companies hold Annual Meetings and require shareholder relations policies?</i></p>
Q2	<i>The guidance is focused heavily on companies that are looking at listing, it already covers the key requirements.</i>
Q3	<i>The overall structure is good.</i>
Q4	<i>No comments.</i>
Q5	<i>We have adopted many of the governance principles where these are applicable to a private company of our size. Where the guidance goes off track is its assumption that private companies have a wide shareholder base and should be acting like a major corporate/listed company. It would assist if the particular types of companies that certain provisions are applicable too was clarified. Currently the guidance sets a very high bar.</i>
Q6	<p><i>The introduction of independent directors across a broad range of entities will create cost a resourcing issues. Independent directors are paid market rates for their services. Shareholder appointed directors are often unpaid or paid a smaller sum due to their relationship with the major shareholders. There will certainly be an increase in directors' fees with the introduction of independents.</i></p> <p><i>Another issue is the ability to source suitably qualified independent directors. New Zealand has a relatively small pool to choose from. Guidance such as is contained in the handbook could lead to these directors being stretched thinly across too many entities. In many cases entities could end up taking on less suitable directors so as to avoid a negative review of their governance practices.</i></p>
<b>Feedback summary – if you wish to highlight anything in particular</b>	
<p><b>Please note:</b> Feedback received is subject to the Official Information Act 1982. We may make submissions available on our website, compile a summary of submissions, or draw attention to individual submissions in internal or external reports. If you want us to withhold any commercially sensitive or proprietary information in your submission, please clearly state this and note the specific section. We will consider your request in line with our obligations under the Official Information Act.</p>	
<b>Thank you for your feedback – we appreciate your time and input.</b>	

## Email body

Morena:

Feedback: FMA Corporate Governance handbook – Consultation Submission by Proxima Consulting

Thank you for the opportunity to provide feedback on the proposed FMA Corporate Governance Handbook.

Please find our submission attached, noting that we have focussed our feedback on question 4 - on specific guidance text elements, which relate to our areas of expertise in sustainability and integrated reporting. Where applicable we have responded directly to the other consultation questions asked.

This submission is on behalf of Proxima Consulting. In preparing it we have connected and consulted with The IIRC (International Integrated Reporting Council), Global Reporting Initiative (GRI) as well as the New Zealand Sustainable Business Council (SBC) and where appropriate, related some of their feedback in our submission.

Proxima are New Zealand's only GRI Certified Training Partner and provider of <IR> approved training in partnership with BSD. Proxima have worked directly with over 50 listed and non-listed New Zealand companies to develop their strategic sustainability and reporting systems and capabilities. For more information about Proxima visit [www.proxima.global](http://www.proxima.global).

If requested we would be happy to provide any further rationale, clarification or additional detail in support of this submission.

Kind regards



## Submission as attachment

**Question 1: Do you agree with our overall approach to move our focus away from listed issuers?**

- *Yes, on the basis it removes duplication and avoids confusion for end users.*

**Question 3: Do you have any feedback on the structure or presentation of the document? Is there anything we could improve about the way it has been written, or communicated, to better assist directors and executives to apply the corporate governance principles?**

- *The overall structure and presentation is appropriate for the target audience.*
- *A glossary of critical terms used throughout the document is recommended to ensure there is one key source of reference for technical terms used and to assist with consistency and saving having to include multiple definitions of terms throughout the document.*

**Question 4: In most areas we have made very few changes to the substantive guidance. Are there any specific areas where we should include more guidance or commentary?**

- ***Consistent and defined use of critical terms.*** *A number of critical terms related to non-financial reporting, risk and stakeholder relations are presented in different contexts and are open to different interpretations throughout the document. A glossary with the following terms, amongst others, aggregated and/or defined would ensure consistency and greater understanding:*
  - *ESG reporting*
  - *Non-financial reporting*
  - *Sustainability reporting*
  - *Integrated reporting*
  - *Materiality*
  - *Stakeholder*
  - *Shareholder*
  - *Issue*
  - *Aspect*
  - *Topic*
  - *Other key terms used throughout the document.*
- ***Integrity in non-financial reporting should be explicitly stated,*** *not just for financial reporting as currently inferred, i.e. principle 4 on page 2 and again on page 18.*
- ***A key element of non-financial reporting is materiality.*** *An inferred reference to materiality is included in your guidelines for principle 4 (“...integrity of financial statements and non-financial reporting including their relevance”, “considering the interests of their stakeholders and all relevant environmental, social and governance (ESG) factors.”) and this could be more strongly emphasised and could be aligned with recommendation 4.3 in the NZX Corporate Governance Code (“considering material exposure to environmental, economic and social sustainability risks”).*
- ***Referencing and linking to internationally-recognised non-financial reporting frameworks.*** *Include a direct reference and link to the IR Framework and GRI Standards in alignment with the NZX Corporate Governance Code.*
  - ***GRI Standards*** <https://www.globalreporting.org/standards/>
  - ***<IR> Framework*** <http://integratedreporting.org/resource/international-ir-framework/>
- **ESG reporting guidance on page 20.**

- Consider using the most appropriate term for the guidance on non-financial reporting. 'ESG' is very narrow and the term 'Non-financial' or 'pre-financial' may be more appropriate, in alignment with the glossary of terms.
- Consider replacing the guidance on ESG topics to report 'Where appropriate, entities are encouraged to report on environmental issues, business ethics, human rights, and other public policy commitments.' This implies a list of topics to report on and could be more clearly stated through the introduction of the materiality concept e.g. 'Where appropriate, entities should report on material topics such as social and environmental issues, business ethics, and other relevant topics identified and assessed through a materiality determination process.'
- 
- **Linking to section 6 on risk.** The guidance commentary in section 6 could be strengthened through 1) accurate use of critical terminology e.g. ESG vs non-financial etc, 2) introducing the concept of materiality and materiality determination processes and 3) providing clear linkages to principles 4 (reporting) and 8 (shareholder/stakeholder relations/interests).

**Question 5: Are there any areas where we are out of step with guidelines that your Company/Board follows, or any other areas of ambiguity in the handbook?**

***A number of ambiguities have arisen through the inconsistent and clearly defined use of key terms – see remedies above.***

***Size of companies and reporting expectations – see page 6. Enough information is already provided that this handbook is not a 'one size fits all' or tick box exercise for management, so therefore it should not infer that 'small' (by whatever definition that 'small' relates to) companies can be less expected to deliver on the principles of the handbook.***

# Feedback form

## Feedback: FMA Corporate Governance handbook

Please submit this feedback form electronically in both PDF and MS Word formats and email it to us at [consultation@fma.govt.nz](mailto:consultation@fma.govt.nz) with 'Feedback: FMA Corporate Governance handbook' and your entity name in the subject line. Thank you. **Submissions close on Friday, 8 December 2017.**

Date: 8 December 2017

Number of pages: 3

Name of submitter: [REDACTED]

Company or entity: Public Trust

Organisation type: Crown entity / licensed supervisor

Contact name (if different):

Contact email and Phone:

Question number:	Response
------------------	----------

*You don't need to quote from the consultation document if you note the paragraph or question number.*

Q1

*Yes, we agree with and welcome this approach.*

Q2

*Not applicable to Public Trust.*

Q3

*Public Trust is comfortable with the structure and presentation of the document, which we found user friendly.*

Q4

*We believe that the level of guidance and commentary for each principle is appropriate. However, in relation to Principle 3: Board Committees, we suggest that it would be useful to provide further detail on the factors to be considered when determining whether a risk committee or health and safety committee should be appointed, and FMA's expectations in this regard.*

Q5

*Public Trust has some concerns with the following areas, which do not align with our internal policy or approach on the matter:*

***Principle 1: Ethical standards***

*The guidelines and commentary recommend that reporting on the steps taken to implement and monitor compliance with the code of ethics should include information about any serious instances of unethical behaviour within the entity and the steps taken to deal with this.*

	<p><i>We query whether such publication is appropriate, and the level of detail that would be expected in the report. Given that there will be privacy and employment implications associated with an instance of serious unethical behaviour, the level of detail able to be reported will be limited – which in our view is likely to raise more questions and concerns than provide assurance to stakeholders. While we are comfortable with publishing the policy and process for dealing with serious unethical behavior or more detailed information being provided to the FMA (or the entity’s regulator) only, we do not agree that such detail should also be made publicly available.</i></p> <p><b>Principle 2: Board composition and performance</b></p> <p><i>The guidelines recommend that reporting should include the board’s training processes. We suggest that it would be useful to clarify that only the general policy or process relating to board training needs to be disclosed and not the specific courses or training attended by each board member. We do not consider that it would be appropriate or practical for entities to specify each course undertaken by each individual board member.</i></p> <p><b>Principle 3: Board committees</b></p> <p><i>The commentary suggests that specific consideration should be given to appointing a risk committee. In addition to our response to question 4, we also suggest clarification of whether, for smaller entities (for example an entity of Public Trust’s size) a combined Audit and Risk Committee would be more appropriate and would meet FMA’s expectations, rather than having two separate committees.</i></p> <p><b>Principle 8: shareholder relations and stakeholder interests</b></p> <p><i>This principle recommends maintaining an up to date website providing commentary on goals, strategies and performance. We query whether this reporting is necessary for some entities such as Crown entities, which provide regular reporting to stakeholders, detailed reporting in the Annual Report and forward looking documents such as a Statement of Intent. We consider that maintaining this information on a website as well would be unnecessary double reporting.</i></p>
Q6	<p><i>An obvious cost implication is that resourcing will be required to meet the reporting requirements. We do not expect any barriers to adopting the revised guidelines.</i></p>
<p><b>Feedback summary – if you wish to highlight anything in particular</b></p>	
<p><b>Please note:</b> Feedback received is subject to the Official Information Act 1982. We may make submissions available on our website, compile a summary of submissions, or draw attention to individual submissions in internal or external reports. If you want us to withhold any</p>	

commercially sensitive or proprietary information in your submission, please clearly state this and note the specific section. We will consider your request in line with our obligations under the Official Information Act.

**Thank you for your feedback – we appreciate your time and input.**



Financial Markets Authority  
Level 2, 1 Grey Street  
Wellington  
By email: [consultation@fma.govt.nz](mailto:consultation@fma.govt.nz)

8 December 2017

### ***Feedback: FMA Corporate Governance handbook***

Thank you for the opportunity to submit our views on the abovementioned consultation. Our comments in this submission focus on the updated text to Principle 7: Auditors. We trust that our comments will be helpful to the FMA in finalising the handbook.

PwC New Zealand<sup>1</sup> is part of the global network of PwC firms. The firm is New Zealand's largest firm of chartered accountants, with 7 offices and more than 1,200 partners and staff. Our practice as Chartered Accountants gives us extensive experience of a range of professional services that are valued by the wide variety of entities and individuals that participate in capital market and investment activities in New Zealand. In responding to this consultation, we draw on our areas of expertise in preparation and presentation of financial information, financial reporting compliance, and in the provision of assurance and related services.

#### ***General Comments***

The FMA has stated that the intent of the handbook is to assist directors, executives and advisors to apply corporate governance principles. We support the FMA's aim of establishing best practices for oversight and the discharging of governance responsibilities.

Whilst the consultation paper has asked for responses in respect of six separate questions, as we have noted above, our focus in making this submission is on the proposed amendments to Principle 7: Auditors. As such, we are not providing feedback in respect of the six individual questions posed in the consultation paper. We have provided our responses to the amendments to Principle 7: Auditors in tabular form as an appendix to this letter.

Auditors are required to comply with *Professional and Ethical Standard 1 (Revised) – Code of Ethics for Assurance Practitioners (PES 1)* issued by the New Zealand Auditing and Assurance Standards Board. We believe it would be helpful to audit quality if the FMA referenced this fact for those charged for governance.

If you have questions or would like to discuss any aspect of our submission please do not hesitate to contact [REDACTED]

We understand the submission is subject to the Official Information Act 1982, and have no objection to the release of any information contained in our submission, or its publication on the FMA's website.

Yours sincerely

[REDACTED]

---

<sup>1</sup> This response is being filed on behalf of PwC New Zealand, a separate legal entity within the network of member firms of PricewaterhouseCoopers International Limited. References to "PwC", "we" and "our" refer to PwC New Zealand.



## ***Feedback on amendments to Principle 7: Auditors***

### ***Handbook amended text P.28***

*Boards should approve audit fees, and any other services provided by their auditor, and should not delegate this function to management.*

#### ***PwC comment***

We agree that Board should approve audit fees. With respect to other services that may be provided by the auditor it is important that a Board considers each service by type or level and monitors and approves such services. In practice many Boards establish a framework and auditor independence policy covering non-audit services to facilitate this process. This often includes pre-approval for certain audit-related services i.e. services that are essentially an extension of the audit and where the auditor is the best placed party to perform the service (such as assurance over solvency, half year review etc) and limits on the nature of work that can be provided by the auditor. Management have therefore a policy under which certain services may be procured.

We would be interested in whether the FMA would consider management acting under the authority of such a policy and external independence standards would contravene the “should not delegate this function to management”.

The approach above is consistent with that adopted by listed entities as outlined under Principle 7 of the NZX Corporate Governance Code 2017.

### ***Handbook amended text P.29: The role of the audit committee***

*The committee should engage with auditors to ensure there is a common understanding about the scope of audit engagements and the evidence auditors will expect to be able to find when testing judgments applied to financial statements.*

#### ***PwC comment***

Communication with the audit committee on the topics suggested helps contribute to audit quality. An engaged audit committee is in the best interests of the stakeholders.

In our experience, where a client has an audit committee, we already engage with the committee on what an audit is and what it isn't and entities subject to audit.

However, there are varying degrees of involvement of audit committees on key judgements in the financial statements. Reinforcing that approving the key judgements and the evidence requirements to support those judgements is the responsibility of the audit committee is helpful.

### ***Handbook amended text P.29: Non-audit work***

- 1. When considering independence, the audit committee should take into account what a reasonable and informed third party would be likely to conclude regarding the audit firm's independence.*
- 2. Non-audit services often create self-review threats for the auditor. The audit committee should consider whether these threats are sufficiently mitigated. Using different teams within the same audit firm to perform these services will not always sufficiently mitigate the threats.*
- 3. Issuers should focus on improving the disclosure in financial statements regarding non-audit work, to ensure investors can get an informed view of the auditor's independence. Further, the audit committee should provide feedback to the full board regarding auditor independence. Feedback should cover non-audit work and other threats to the independence of their auditor.*

#### ***PwC comment***

We agree that the audit committee should explicitly consider the auditor's independence. As the FMA are aware auditors are bound by the requirements of *Professional and Ethical Standard 1 (Revised) – Code of Ethics for Assurance Practitioners (PES 1)*, and in particular section 290 and 291 on Independence where the words “reasonable and informed third party” are included. However, these



words are used in the context of all the specific facts and circumstances that are available at the time after application of safeguards. We suggest number 1 above be amended as follows to clarify this:

“When considering independence, the audit committee should take into account what a reasonable and informed third party would be likely to conclude regarding the audit firm’s independence taking into account all the specific facts and circumstances.”

We do not agree with the wording that non-audit services “often” create self-review threats. We believe it would be more appropriate to say that they “may” do so.

There are other threats to be considered not just self-review which can arise from the auditor performing other services. We are unclear why this particular threat has been separated when all need to be considered. We suggest an additional sentence be added to state to the end of this paragraph:

“The audit committee should also consider other independence threats relevant to a non-audit service outlined in section 290 of PES 1 (e.g. self interest, advocacy etc.), and whether the safeguards proposed by the auditor will adequately address the threats”.

It is unclear if the FMA intended this paragraph to relate to non-assurance services as opposed to non-audit services. In our experience, there would usually be no need to apply a safeguard of using a different team from within the firm for other assurance services.

We are supportive of this addition subject to the amendments suggested above.

***Handbook amended text P.29: Auditor independence***

*This accountability can be achieved by including a statement as to why, in the board’s opinion, any non-audit work or other threats to independence, such as a long association between a member of the audit committee and the audit firm, do not impinge on the independence of the auditor.*

***PwC comment***

We suggest that the FMA changes the words “non-audit” to “non-audit related” or “non-assurance work” as audit related or assurance work is unlikely to create a threat to independence.

Additionally, PES1 uses the word “impair” rather than impinge. We believe the same terms as included in PES1 should be used in the Governance handbook.

We are unclear as to the intent of the statement with respect to “long association between a member of the audit committee and the audit firm”. PES 1 covers various relationships which may create a threat to independence such as a director, officer or employee in a financial reporting oversight role at the audit client who was previously employed by the audit firm where a connection remains between the individual and the audit firm. Is this the relationship which the FMA is seeking to identify? An audit committee member may have acted in a governance capacity for multiple entities for which the audit firm was the auditor over a long period of time. Whilst this could be described as a “long association” we do not believe this creates a threat to independence because an audit committee comprises of more than one member. The FMA could consider changing the language to align to what the specific threat to independence is consistent with the independence threat of familiarity and recommended safeguards in PES1.

## FMA Corporate Governance Handbook Consultation

Thank you for the FMA Corporate Governance Handbook Consultation.

Risk Management Ltd is a specialist company providing consultancy, mentoring and training services in risk management and has been in business since 2003. We also carry out applied and academic research in risk and its management.

Our comments respond to your six questions but are primarily about the content of Principle 6, our area of expertise.

Should you wish to discuss our comments we are willing to visit your offices in Wellington.

[REDACTED]

### Question 1

Yes.

There are considerably more non-listed issuers and many need to improve their corporate governance.

### Question 2

We are not competent to respond to this question.

### Question 3

Each of the Principles is on a separate page, followed by Guidelines, and then FMA commentary. While aesthetically pleasing, this leads to a waste of paper and reading time. We encourage FMA to move to a layout that facilitates reading and avoids waste of resources.

### Question 4

There are two areas of legislation that might be relevant:

- Sections 137 and 138, Companies Act 1993
- Section 44, Health and Safety at Work Act 2015.

Both relate to eliciting and use of information for good governance and both might be expanded on. We refer you to the following article that explores their relationship and the duties of directors and officers.

Peace, C., Mabin, V., & Cordery, C. (2017). Due diligence: a panacea for health and safety risk governance? *Policy and Practice in Health and Safety*, 15(1), 19-37.

### Question 5

In relation to Principle 6, the draft guidance was somewhat dated. We have suggested some changes that make it more relevant.

### Question 6

There will be some minor costs but these should be counterbalanced by the benefits.

## **Principle 6: Risk management**

In the second paragraph under the heading “Processes to manage risk”, delete the first sentence and replace it with:

Risk management frameworks are essential to the coordinated identification, analysis, evaluation and monitoring of risk.

In the same paragraph, give “ESG” in full where it first occurs.

In the following paragraph delete the first sentence and replace it with:

We encourage entities to develop and regularly update a register of their key risks, including the likelihood of the impacts of each risk. It should also set out the effectiveness of controls that are already in place and actions in progress that will control risks that would otherwise be unacceptable.

# Feedback form

## Feedback: FMA Corporate Governance handbook

Please submit this feedback form electronically in both PDF and MS Word formats and email it to us at [consultation@fma.govt.nz](mailto:consultation@fma.govt.nz) with 'Feedback: FMA Corporate Governance handbook' and your entity name in the subject line. Thank you. **Submissions close on Friday, 8 December 2017.**

Date: 17 November 2017 Number of pages: 1

Name of submitter: [REDACTED]

Company or entity: Spark New Zealand Limited ("Spark")

Organisation type: NZX (and ASX) Listed Entity

Contact name (if different):

Contact email and Phone: [REDACTED]

Question number:	Response
------------------	----------

*You don't need to quote from the consultation document if you note the paragraph or question number.*

Q1	Spark welcomes and agrees with the FMA's overall approach to move its focus away from listed issuers. This approach reduces duplication between the NZX Code and the FMA Corporate Governance handbook and makes clearer the interplay between the two sets of guidance.
----	--

Q2	
----	--

Q3	
----	--

Q4	
----	--

Q5	
----	--

Q6	
----	--

**Feedback summary –**

We note feedback received is subject to the Official Information Act 1982.

Thank you for the opportunity to provide feedback.

# Feedback form

## Feedback: FMA Corporate Governance handbook

Please submit this feedback form electronically in both PDF and MS Word formats and email it to us at [consultation@fma.govt.nz](mailto:consultation@fma.govt.nz) with 'Feedback: FMA Corporate Governance handbook' and your entity name in the subject line. Thank you. **Submissions close on Friday, 8 December 2017.**

Date: 5 December 2017

Number of pages: 2

Name of submitter: [REDACTED]

Company or entity: Trustees Executors

Organisation type: Licensed supervisor

Contact name (if different):

Contact email and Phone: [REDACTED]

Question number:	Response
------------------	----------

*You don't need to quote from the consultation document if you note the paragraph or question number.*

Q1

- This approach could be interpreted as a focus towards unlisted issuers which is considered good and needed. Although there is considerable overlap with the IOD guidance in this handbook, in our experience continued focus (and repeat of key messages) is needed on governance. Unfortunately not all directors on boards are engaged with the IOD (even though encouraged). This handbook usefully links and reinforces good governance with good investor outcomes.

Q2

- Perhaps consider a comment along the lines that companies should evaluate and invest in the skills needed on their boards in advance of growth or other major strategies to ensure they have the right skills at the right time for their business cycle.
- Question IOD versus FMA taking the lead on broader governance guidance to industry and where collaboration could result in jointly produced training and development opportunities for directors.

Q3

- Agree that a principles approach is appropriate for the handbook, given the breadth of company types and sizes targeted.
- Some boards will need more assistance than others to translate this into practice (depending on their motivation and capability) but the document is a succinct and useful tool for us, as supervisor, to use with Boards and

	management to effect improvement.
Q4	<ul style="list-style-type: none"> <li>● Believe the section on Risk Management (Principle 6) would benefit from a note that key compliance and conduct risks are widely considered to be key risks and included on key risk registers for regular tracking by boards of companies that issue products to investors. On page 4 a reference to the FMA’s Guide to Conduct could be added to support this.</li> <li>● Page 20, under heading “ESG Reporting”, sentence beginning “This is because ESG...”. Good to see ESG reporting featuring but challenge whether ESG these days is typically considered to be non-financial. There is mounting evidence that institutional investment managers are increasingly integrating ESG into their research because of the potential financial impact on the portfolio and therefore their fiduciary duty to their investors. Also challenge whether “increasing costs” is necessarily a consequence of ESG (if that is the meaning of the phrase). The cost of <u>not</u> taking ESG into account is likely to be greater. Financial impact is broader than an entity’s licence to operate. Suggest “for example” is inserted.</li> <li>● Page 29, under heading “The role of the Audit Committee”. Acknowledge that not all readers of the handbook will have a licensed supervisor but we would find it useful to remind those boards of their obligation to consult their supervisor on auditor appointments.</li> <li>● Page 16 – there are variations on audit committees eg Audit, Risk &amp; Compliance – perhaps reflect that to ensure adequate coverage of risk and compliance gap.</li> <li>● Page 16 - suggest it is added that it is good practice to have an independent director chair the Audit Committee (or equivalent) and not an Executive Director or Chair of the Board.</li> <li>● For smaller entities, one approach is the engagement of outside experts to supplement governance. An example would be the engagement of a compliance consultant to advise the compliance committee, or to perform assurance functions until the entity has the scale to implement these internally. This could fit under the “one-size-fits-all” banner, or in the pre-amble.</li> <li>● Principle 1 - Believe there is a need to underscore that the same governance standards apply fully to all directors, regardless whether they are paid directors fees. It may also be useful to set expectations for board Advisors, and that governance and ethical standards also apply to such roles.</li> <li>● It might be useful to mention that board and committee proceedings need to be appropriately documented in order to demonstrate governance in</li> </ul>

	<p>action.</p> <ul style="list-style-type: none"> <li>• Even for small organisations it is probably important that all directors and staff formally acknowledge (and potentially, certify regularly) that they have received and read key policies such as code of ethics and conflicts policies. This is key to ensure that these remain fundamental to the employment relationship.</li> </ul>
Q5	<ul style="list-style-type: none"> <li>• No areas identified that are out of step or ambiguous.</li> </ul>
Q6	<ul style="list-style-type: none"> <li>• Believe that communicating the fact that there is 'no one size fits all' will be key to the handbook being accepted and used.</li> <li>• Board and senior management capability to operationalise the principles – training/guidance need? Eg Sample board and committee charters and standing agendas for FMCA issuers?</li> <li>• Some may balk at the dollar and time costs of independent director/s, skills matrices, formal director searches, board evaluation surveys etc if they don't understand the eventual business value that they bring – an education opportunity?</li> <li>• A barrier for companies with high regulatory risk and without good reputations will more likely struggle to find quality directors to join their boards. This may challenge their ability to adopt many of the recommendations in the handbook.</li> </ul>
<p><b>Feedback summary</b> – Nothing further to highlight.</p>	
<p><b>Please note:</b> Feedback received is subject to the Official Information Act 1982. We may make submissions available on our website, compile a summary of submissions, or draw attention to individual submissions in internal or external reports. If you want us to withhold any commercially sensitive or proprietary information in your submission, please clearly state this and note the specific section. We will consider your request in line with our obligations under the Official Information Act.</p>	
<p><b>Thank you for your feedback – we appreciate your time and input.</b></p>	



## Feedback form

### Feedback: FMA Corporate Governance handbook

Please submit this feedback form electronically in both PDF and MS Word formats and email it to us at [consultation@fma.govt.nz](mailto:consultation@fma.govt.nz) with 'Feedback: FMA Corporate Governance handbook' and your entity name in the subject line. Thank you. Submissions close on Friday, 8 December 2017.

Date: Number of pages: December 12, 2017, 3 pages

Name of submitter: [REDACTED]

Company or entity: Department of Accountancy and Finance

Organisation type: University of Otago, Dunedin

Contact name (if different): Contact email and Phone: [REDACTED]

Q1. Moving the focus away from listed firms is fine however I think that the listing requirements still set a precedent for disclosure expectations and it is valuable to track how listed versus non-listed firms comply with NZX standards.

Q2. I think the guidance is sufficient at present. Clearly a firm intending to list must meet all the listing requirements however the FMA guidance does run parallel to the listing requirements and by meeting these the firm has to some degree already met requirements around listing.

Q3. Some of the communication is very general. Perhaps more specific lists about the detail that will enhance transparency and increase readability for relevant stakeholders would be beneficial. For example, Principle 5 refers to: The board should have a clear policy for setting executive remuneration, including executive directors and non-executive directors. Remuneration should be fair and reasonable in a competitive market for the skills, knowledge and experience required in the first point. However, while this may be a clear policy statement the relevant information is often not disclosed in the detail useful for a stakeholder to be able to determine with confidence how policy is set, how incentives are determined and linked back to performance and alignment of short- and long-term incentives to shareholder value. Without more explicit detail the firm can meet the general requirements of this criteria but still limit transparency to the user of the information. This is something that the guidelines need to explicitly address.

Q4. Details about remuneration disclosure should be more specific. All firms should be required to disclose explicit remuneration policies and amounts paid under them to shareholders regardless of the size of the shareholder base. Executive (including executive director) remuneration packages should include an element dependent on entity and individual performance that is adjusted for overall industry or market change so that executives are not rewarded on the basis of overall sector performance but for their individual

contribution and specific skills in leading change within their organisation (Principle 5: Remuneration). Shareholders should be informed about the criteria and key performance indicators used to set and measure how short and long-term incentives are being awarded. Any changes from the original contract should also be carefully disclosed. Shareholders need adequate disclosure around compensation practice to be able to verify and question the type and amount of compensation being paid to the CEO and other executive directors and board members. Rather than just requiring compensation policy to be disclosed, actual details about compensation setting practice, measurement and determination of pay out needs to be more transparent.

One serious gap in the current disclosure regime concerns those CEOs who are **NOT** board members. These individuals do not have to have their compensation disclosed under the Companies Act because they are not directors. This means that often it is very difficult to determine exactly how much they are paid in any given year. In these cases the readers of the annual report have to rely on the disclosures for employees earning more than \$100,000 that are given in \$10,000 bandwidths. However it might be that the highest paid individual reported in this list is not necessarily the CEO. It could be another executive manager (e.g. the CFO) or the highest amount that is paid out actually includes compensation for retirement or redundancy purposes for the CEO or some other individual. The case is even more complex when a CEO is only in office for a short time and enters during a financial year or is replaced very close to the end of a financial year. For example, Neil Cowie who was the CEO of Pumpkin Patch, appointed on September 11, 2012 and resigned on July 30, 2013. If you read the 2012 and 2013 annual reports there is no transparency concerning what Mr Cowie was paid in either 2012 when he replaced Maurice Prendergast or in 2013 when he was placed by Di Humphries as CEO.

More disclosure requirements need to be introduced for cases where the CEO is not a board member and is therefore not required to report compensation as deemed for board members according to the Companies Act.

Q5. I think the guidelines overall match up well with the overall practice of firms both listed and unlisted in NZ.

Q6. The reporting function can be very time consuming and expensive, especially under the regulations that require auditors to be replaced. This may be particularly onerous and costly for smaller firms, particularly concerning disclosures of non-audit items. Also these requirements will be harder for small firms to meet due to their size and financial constraints to remain sustainable. It is important that the guidelines are not so demanding that cost of implementation removes or prohibits the disclosure benefits sought from this exercise.

Feedback summary – if you wish to highlight anything in particular

Please note: Feedback received is subject to the Official Information Act 1982. We may make submissions available on our website, compile a summary of submissions, or draw attention to individual submissions in internal or external reports. If you want us to withhold any commercially sensitive or proprietary information in your submission, please clearly state

this and note the specific section. We will consider your request in line with our obligations under the Official Information Act.

Thank you for your feedback – we appreciate your time and input.

# Feedback form

## Feedback: FMA Corporate Governance handbook

Please submit this feedback form electronically in both PDF and MS Word formats and email it to us at [consultation@fma.govt.nz](mailto:consultation@fma.govt.nz) with 'Feedback: FMA Corporate Governance handbook' and your entity name in the subject line. Thank you. **Submissions close on Friday, 8 December 2017.**

Date: 7 December 2)17

Number of pages:

Name of submitter: [REDACTED]

Company or entity: Self Employed

Organisation type:

Contact name (if different):

Contact email and

Question number:

Response

*You don't need to quote from the consultation document if you note the paragraph or question number.*

Q1

Directors and Officers

In view of the regular reappearance of "shady" directors I feel a section of the website should cover Barred Directors and officers.

The Register should show the date when their bar expires.

It should also state the last major organisation with which they were registered as a Director or Officer (which presumably is the reason for their being barred).

For website logistical purposes I suggest a minimum company reported equity size of NZ\$20million.

I also suggest that for all Directors of companies with a reported equity base of \$20million or larger that each director be allocated a permanent Director Registration Nr. This would also facilitate website searches to ensure that invalid Directors are not trying to operate as current directors

Q2

Q3	
Q4	
Q5	
Q6	
<b>Feedback summary</b> – <i>Too often shareholders are in ignorance of directors' past performances.</i>	
<p><b>Please note:</b> Feedback received is subject to the Official Information Act 1982. We may make submissions available on our website, compile a summary of submissions, or draw attention to individual submissions in internal or external reports. If you want us to withhold any commercially sensitive or proprietary information in your submission, please clearly state this and note the specific section. We will consider your request in line with our obligations under the Official Information Act.</p>	
<b>Thank you for your feedback – we appreciate your time and input.</b>	