

4 December 2014

Simone Robbers
Director of Primary Markets and Investor Relations
Financial Market Authority
PO Box 1179
Wellington 6140

Dear Simone,

FMA Consultation Corporate Governance In New Zealand Principles and Guidelines

Thank you for the opportunity to submit on proposed revisions to the Corporate Governance in New Zealand Principles and Guidelines.

The New Zealand Superannuation Fund strongly supports the FMA's efforts to strengthen its Corporate Governance Principles and Guidelines.

As a long-term and active owner, we take great interest in corporate governance of the companies that we invest in. As a large institutional investor, we care about the dynamism and health of New Zealand's capital markets, and believe a robust corporate governance framework is necessary for equity markets to flourish here.

As you may know, we have helped set up an informal forum of institutional investors. This group comprises ourselves, other Crown Financial Institutions and private institutional investors. The purpose of this group is to help raise corporate governance standards in New Zealand, drawing on the group's considerable experience in New Zealand's capital markets.

We have provided some detailed recommendations in the attached submission form. For the Fund, the key areas where we believe that New Zealand lags behind international best practice – and where the FMA can usefully go further – include the following:

1. Board diversity. The breadth of skills and experience on many Boards could be improved further. This can be supported through improvements in nomination committees, board review processes, tenure and independence, all of which are important to board quality.
2. Independence. We believe that majority independence is needed to ensure adequate protection of the rights of minority shareholders.
3. Comply or explain. International experience shows that a "comply or explain" regime can be a very effective way of ensuring that your guidelines are taken seriously, and provide a sensible compromise between guidelines that can be ignored and formal, inflexible rules.
4. Say on pay. Shareholders in New Zealand have almost no ability to influence executive remuneration, in particular the structure of executive incentives. New Zealand has fallen behind a number of international jurisdictions, and there are some useful experiences from other countries.

5. Reporting to shareholders. The FMA and NZX could usefully review developments in the UK, Australia and US for reporting on strategy, risks and key environmental, social and governance issues.

Our submission includes this letter and the feedback form attached. We thank you for your consideration.

Yours sincerely

A handwritten signature in black ink, appearing to read 'S Owen', written over the printed name.

Sarah Owen
General Counsel

Feedback: Corporate Governance Handbook – Principles and Guidelines

Please submit this feedback form electronically in both PDF and MS Word formats and email it to us at consultation@fma.govt.nz with 'Corporate Governance Handbook – Principles and Guidelines' in the subject line. Thank you.

Submissions close at 5.00pm on Monday 1 December.

Date: 1 December 2014 Number of pages: 6 (including cover letter)

Name of submitter: Anne-Maree O'Connor

Company or entity: New Zealand Superannuation Fund

Organisation type: Sovereign Wealth Fund – Institutional Investor

Contact name (if different): Anne-Maree O'Connor

Contact email and phone: aconnor@nzsuperfund.co.nz; dparker@nzsuperfund.co.nz

Feedback summary

The New Zealand Superannuation Fund supports the FMA's efforts to strengthen its Corporate Governance Principles and Guidelines. Our submission includes our cover letter (attached) and this Feedback Form.

The Principles apply to a wide range of corporate entities. However, governance practices do vary between listed and unlisted companies, and between small enterprises and large companies. The Guidelines should apply to listed issuers, and specify where the Guidelines may not apply to unlisted companies or small enterprises.

The Guidelines should clearly set out the Board's responsibilities (rather than the description of responsibilities being part of the commentary section). The Guidelines should include a clear statement that it is the responsibility of the Board to manage the company in the best long-term interest of its shareholders.

We agree that companies should report on performance against the Principles but we believe the Guidelines should also form a basis for reporting. Whilst we do not expect a report against all the detail in the Guidelines, we support a "comply or explain" approach which explains significant divergence from the Guidelines.

The FMA and NZX should review significant updates in other markets, e.g. UK and Australia, to improve New Zealand listed issuer reporting on risks, strategy and environmental, social and governance (ESG) factors, and improve AGM and EGM procedures.

Para or Question #	Comment	Recommendation
Whole document	<i>General – the FMA Commentary adds useful context and support for the Guidelines. There are parts of the FMA Commentary that could usefully be included as a guideline, such as the commentary on non-executive remuneration.</i>	<i>Review FMA commentary and identify where recommendations within the Commentary could usefully be in the Guidelines themselves.</i>
Other	<i>FMA can add weight to the NZX rule on</i>	<i>Strengthen to adopt ASX guidelines on</i>

<p><i>issues</i></p>	<p><i>diversity.</i></p> <p><i>Executive pay including incentive plans should be aligned to long-term shareholder value. ASX and UK shareholders have a stronger “say on pay” than NZ shareholders.</i></p> <p><i>NZ AGM and EGM procedures require improving.</i></p> <p><i>We consider share issuance of 20% without shareholder approval in the NZ market is too dilutive.</i></p>	<p><i>diversity.</i></p> <p><i>Strengthen “say on pay” for shareholders and provide good practice guidelines on remuneration plans including executive incentives.</i></p> <p><i>Review best practice in other markets for voting procedures and communication of resolutions. For example, companies should count votes by poll, allow postal votes, and provide timely and detailed Notices of Meetings.</i></p> <p><i>Listed companies should not be able to materially dilute shareholders without their approval.</i></p>
<p>Comments on changes and updates</p>		
<p><i>p12-14</i></p>	<p><i>We agree and support the additions to the section on Ethical Standards.</i></p>	<p><i>Add to Guideline: An effective code of ethics will set out processes for holding individuals accountable for unethical behaviour and include appropriate consequences.</i></p>
<p><i>p15 2.1</i></p>	<p><i>If an Executive is on the board of a listed company this should be the CEO – (Managing Director).</i></p> <p><i>It is not essential for executives to be on the Board as the Board has access to the skills and knowledge of executives.</i></p>	<p><i>Every issuer’s board should have non-executive directors who meet the formal criteria for “independent directors”. Explanation should be given to shareholders for the presence of executives on the Board other than the CEO.</i></p>
<p><i>p15 2.6; 2.9; 2.10</i></p>	<p><i>Agree with additional guidance on management and reporting on skills and director training</i></p>	<p><i>We support new wording of paras 2.6, 2.9 & 2.10</i></p>
<p><i>p16 2.11</i></p>	<p><i>Agree with update but shareholders need a detailed biography of directors, including details of all directorships on listed and unlisted entities.</i></p>	<p><i>Add to 2.1. “including a detailed biography, and details of past and current directorships of listed and unlisted entities”</i></p>
<p><i>p 16</i></p>	<p><i>FMA commentary on “trade-off” between independence and skills is unnecessary – independence on the Board is not an either/or situation. All directors should be selected on skills and capability. All directors must have the time to contribute to governance of the entity. The presence of independence on the Board is vital to shareholders of the issuer. Therefore issuers must seek appropriately skilled independent directors. Diversity policies can assist in the director search process by increasing awareness of a wider pool of people with relevant skills and</i></p>	<p><i>Remove last paragraph on p.16. On p.17 remove first part of paragraph beginning “there may be... contribute to the success of entities”.</i></p>

	<i>experience for the Board.</i>	
<i>p. 16</i>	<i>FMA should include criteria for defining independence in the Guidelines not only the Commentary. Shareholders prefer a consistent approach on this topic from issuers across the market.</i>	<i>Add a Guideline for defining independent directors. NZX and FMA should provide consistent guidance on definition of independence and review Australian and UK codes on independence.</i>
<i>p. 17</i>	<i>The FMA considers boards should have a minimum of one-third of directors as independent. Corporate Governance Codes in Australia, UK and US consider a majority independent board as best practice.</i>	<i>Add a Guideline that publicly owned entities should have a majority of independent directors, or report to shareholders why this cannot be achieved.</i>
<i>p. 18</i>	<i>Agree it is important to have strong executive presence at Board meetings – although not necessarily as a director. If executives are on the Board it is important that the Board meets without the executives and that audit, nomination and remuneration committees are comprised only of non-executives.</i>	<i>Add a Guideline stating that if there are executives on the Board, the Board and Committees should meet regularly without the executives present. Add a Guideline that remuneration, audit and nomination committees should be comprised of non-executive directors only and be majority independent.</i>
<i>p. 18</i>	<i>Support commentary that Boards consider tenure but this should also be in the Guidelines themselves. Long tenure on Boards can impact independence or renewal on Boards.</i>	<i>Add a Guideline that Boards review the tenure of Board directors in succession planning.</i>
<i>p. 21</i>	<i>Agree changes to role of audit committee commentary.</i>	
<i>P 21.</i>	<i>Typo para. 1 last sentence “board” should be “committee”.</i>	
<i>P 22. 4.4</i>	<i>Guideline 4.4 should include a requirement for the financial accounts to be signed off by directors (this was in the 2004 Guidelines but removed). (see Financial Markets Conduct Act 2013 section 460).</i>	<i>Reinstate the requirement for sign-off of the financial statements by at least two directors of the company.</i>
<i>p. 22</i>	<i>Reporting and disclosure should include material ESG risks and issues.</i>	<i>The required disclosure should include an analysis of the material ESG issues specific to the company and how the company deals with those issues.</i>
<i>P 24</i>	<i>The FMA commentary on continuous disclosure could be included in the Guidelines.</i>	<i>Guidelines to include continuous disclosure guidance.</i>
<i>p. 25</i>	<i>For issuers, Guideline 5.5 appears largely historic – it is not typical for NZ Directors to receive retirement</i>	<i>Add a Guideline that no non-executive director should receive retirement payments or options and remuneration should be fee-based, unless</i>

	<i>payments. Rather expand section to state that Directors should be paid in fees not options. If fees cannot be paid then a clear explanation is required e.g. an SME which has cash constraints could require alternative form of director remuneration. Shares are preferable to options in this situation.</i>	<i>there are clearly explained extenuating circumstances.</i>
<i>p. 27</i>	<i>Support addition to principle “Director should have a sound understanding of the key risks faced by the business” and support change to Guideline 6.2.</i>	
<i>p27-28</i>	<i>Some of the 2004 commentary has been removed: “disclosure of the nature and magnitude of material risks”. The Board should report on specific risks not just on risk management process.</i>	<i>Add a Guideline in the risk management section: the Board should report to shareholders on the material risks to the company and how these are being managed.</i>
<i>p. 29</i>	<i>Support changes to Auditors Guideline 7.6 – a good section. However there should be clearer guidance on rotation of the actual audit firm and type of non-audit work that is unlikely to undermine independence.</i>	<i>Board of listed issuers to rotate audit firm after 10 years or explain why this is not appropriate. In any case the maximum tenure that should not exceed 15 years.</i>
<i>p. 32</i>	<i>Guideline 8.2 could be a specific “comply or explain” approach rather than only reporting on adherence.</i>	<i>Strengthen 8.2 to a “comply or explain” approach.</i>
<i>p. 34</i>	<i>We support this principle. Stakeholder relationships have an impact on the long-term value of companies.</i>	<i>Reporting on ESG issues is an important feature in managing stakeholder relations.</i>
Feedback Summary – (see cover letter attached and section above)		
<p>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.</p>		
Thank you for your feedback – we appreciate your time and input.		