

Update

Newsletter for members

Listed Companies

Listed Companies Association

Chairman's Column...

Welcome everybody in another year of opportunities for LCA. We achieved much in 2003 with NZX and the Securities Commission on issues of corporate governance and legal and regulatory framework. All of this has contributed to LCA being a stronger and more highly regarded organisation than it has ever been.

Please join me in welcoming Andrew Webster of Sky City and Charles Spillane of Auckland International Airport on the Executive Committee. I also take this opportunity to thank the committee members for their valued support and active contribution to the continued development of LCA and the interests of our members in the increasingly busy and high profile areas of corporate regulation and governance.

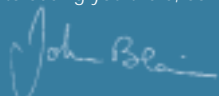
As members, we need to speak to our colleagues and invite all those who could benefit from our Association to contact us. A strong membership base gives us a stronger voice, which enables us to take a more active role as advocate for listed companies in discussions with government and regulators.

We encourage all listed companies to become actively involved with LCA in the ongoing debate of compliance and law reform issues.

In 2004, our agenda will as ever be driven by external forces as issues of concern or interest arise. We can and do however plan to further improve our services to members.

This newsletter is being produced only electronically to improve speed and reduce cost. We will also become more interactive with all our members through e-mail input into submissions as they are developed so we can better reflect a wider range of views.

Our seminar programme will be enhanced, beginning in April and then we will be joining NZX in a series of seminars in June to give some practical insights into compliance from a listed company perspective. These are being held in Christchurch, Wellington and Auckland – long overdue contact, but we look forward to seeing you there, so "watch this space"!



John Blair, Chairman

Executive Committee

The Executive Committee of LCA meets approximately once a month. If there are issues that you wish to raise in relation to proposed areas of law reform or listing rule or practical issues then please call or e-mail any member of the Executive Committee. Contact details can be found on the LCA website www.listedcompanies.org.nz

Seminars

ASX Update and Sarbanes Oxley Update, Auckland 3.00pm Tuesday 27 April 2004

On Tuesday 27 April the LCA in conjunction with ASX will be hosting a ASX Update seminar at 3.00pm at the offices of Bell Gully (48 Shortland Street, Auckland). This will be relevant to all NZX listed companies as the trends of ASX quickly "leap" the Tasman! Luise Elsing, ASX, Manager Companies - Sydney will present an update on recent ASX listing rule changes, the report back of the Corporate Governance Council Implementation Review Group and 2004 corporate governance disclosure, overlapping jurisdictional issues (such as directors & officers disclosure) and possible areas for listing rules amendment in 2004. Luise is keen for a full discussion of all issues and encourages you to bring along all your questions and concerns. In addition, Robert Williams from Skadden Arps, Sydney office will give a short presentation on Sarbanes-Oxley issues as they apply to New Zealand listed companies - and they do apply in some surprising ways!

The seminar is free to members and will be followed by refreshments at approximately 5.30pm. To assist with planning please e-mail erin.paviour-smith@airnz.co.nz as soon as

possible if you plan to attend the seminar. We are confident that you will find it interesting and worthwhile.

NZX Compliance Seminars

Christchurch (1 June), Wellington (8 June) and Auckland (10 June).

NZX is holding seminars for listed companies, other market participants and professionals involved in New Zealand's capital markets. The first day of each of these three seminars will be of most relevance to listed companies and LCA executives will present on the practical impacts of the continuing development of regulation. For details and to register, go to www.nzx.com/regulation.

Market Announcement Platform ("MAP")

The NZX Market Announcement Platform became operational from 29 March 2004. The LCA had some initial concerns about the agreement that companies were being asked to sign but these issues have now largely been addressed. The remaining regime is substantially the same as dual listed companies are required to comply with under ASX rules.

We note that NZX listing rule 10.2.2 does not contemplate delivery of announcements via MAP and we have suggested that NZX listing rule 10.2.2 needs to be amended, similarly to ASX listing rule 15.3 to avoid a technical breach of the listing rules in delivering announcements to NZX using a mechanism that is not

set out in listing rule 10.2.2. NZX has indicated that these amendments will be dealt with in due course.

For those companies currently using the ASX online announcement system, the MAP system is very similar. You should note that despite statements by NZX in its newsletter that announcements should be delivered 10 minutes prior to required release, that companies that are dual listed should continue to deliver announcements simultaneously with the announcement to ASX otherwise you will find yourself in breach of the ASX listing rules.

Financial Issues for the CFO

Review of the Financial Reporting Act 1993

The Ministry of Economic Development is undertaking a review of the Financial Reporting Act. Part 1 addresses financial reporting structure and a discussion document has recently been circulated. Submissions are due by **14 May 2004**. LCA intends to make a submission and requests any comments from members be e-mailed to Grant Niccol at grant.niccol@fb.co.nz. A copy of the discussion paper is available from www.med.govt.nz or contact Matthew Farrington 04 470 2313 or matthew.farrington@med.govt.nz

International Financial Reporting Standards

New Zealand companies have to convert to IFRS for accounting periods beginning after 1 January 2007, but may choose to do so from 1 January 2005. Australian companies have to convert from 1 January 2005. In response to an enquiry, ASX has advised that New Zealand companies listed on ASX will not have to convert for ASX purposes until they do so in New Zealand.

Developing Corporate Governance Principles in NZ

The Commission's report on corporate governance principles for New Zealand was delivered to the Minister of Commerce in February 2004. As indicated in our submission on this issue and in previous newsletters, these largely track existing obligations of listed companies and will have little direct effect. The Principles do however provide a sensible code, although this can only be seen as voluntary and questions remain over practicalities about where compliance should be reported and to whom. Listed companies should however review some of the specific requirements which differ from NZX Listing Rules. They might also be useful for listed companies to apply to operating subsidiaries, especially joint venture businesses.

www.sec-com.govt.nz/publications/documents/governanceprinciples/index.shtml

ASX Listing Rule Amendments

The introduction of changes to the capital raising mechanisms in Chapter 7 of the ASX Listing Rules took effect from 31 March 2004.

It was originally proposed that the limits on issues of new capital without shareholder approval would be raised from 15% to 20%. This amendment is now not proceeding so the limit on capital raising without shareholder approval will remain at 15%.

Some of the more minor and technical amendments to Chapter 7 also came into effect on 31 March 2004. Luise Elsing, ASX will discuss these amendments and other issues at the LCA seminar on 27 April 2004.



NZX Discipline Rules

NZX has revised its surveillance and disciplinary regime in respect of the monitoring of market participants and issuers. These come into effect on 3 May 2004, subject to Ministerial

Review. The Discipline Rules will replace the current Market Surveillance Panel and its operations. LCA has remaining concerns about the proposed disciplinary structure, in particular:

- the appropriateness (and possibly legality) of a body closely related to NZX (itself an Issuer) undertaking the initial and appellate roles proposed;
- the broad powers and role of NZX Discipline, in particular the power to impose substantial fines and retain the "proceeds" (albeit for a regulatory and educational fund) and lack of appeal rights to a suitably independent body.

LCA nevertheless recognises the desirability of involving a wider range of market participants and a simpler process. Whether these result in justice for listed companies is something which remains to be seen.

LCA Submission – www.listedcompanies.org.nz

NZX Discipline Rules – www.nzx.com/regulation

NZX Miscellaneous Listing Rule Amendments

Further to earlier corporate governance amendments, NZX has proposed a number of changes to its listing rules designed to "enhance market efficiency and bring the rules into line with both current practices and overseas standards." You can view the proposed amendments on www.nzx.com.

Members of the LCA Executive made a lengthy submission on the proposed amendments and had extensive discussions with NZX on issues relating to directors retirement allowances and the threshold for 'material transactions' with respect to employment agreements. We are very pleased to see that NZX responded positively in some key areas and that the final position is now much more workable and allows grandfathered rights for existing directors as at 1 May 2004, including service following a subsequent re-election. The new rules are intended to come into effect on 3 May 2004.

It should be noted that for directors first appointed post 1 May 2004, shareholder approval will need to be obtained for any director retirement allowance or any director retirement allowance scheme. Companies with the standard listing rule in their constitutions for retirement allowances need to be giving consideration now to how they wish to treat retirement allowances for directors appointed post 1 May 2004.

If there are any aspects of the proposed listing rules that

companies are still concerned about then they can call Linda Cox, Company Secretary, Telecom New Zealand (Phone (04) 498 9059) who will be pleased to discuss these matters with you and raise them with NZX.

The LCA submission can be viewed on the LCA website – www.listedcompanies.org.nz

On the subject of Listing Rules, you should have received your complimentary printed copy of the Rules updated to include October 2003 amendments. We have had adverse comment about the "Conditions of Use of Content" in fine print on the back of the accompanying letter which in brief limit the ability to use the publication, disclaim liability for its contents and seek indemnity for NZX in respect of any liability. It does seem an unusual form of communication of such heavy handed legal issues which could be included in the Rules themselves – we leave members to draw their own conclusions about this as a principle of disclosure.

It also seems that subscriptions for additional copies of the Listing Rules are all lapsed on the basis that they were for the old – not the new – Rules and so additional copies must be re-ordered and paid for again!. Fortunately they are freely available (so far!) – and will hopefully be more quickly updated – on the NZX website. We could venture to suggest that no new Rule should become effective until it is published.

NZX Central Clearing House

NZX has released a discussion document setting out a proposal to develop a Central Clearing House. Many of you will be aware of the issues that NZX has experienced over the past year or so which have caused trading on NZX to be halted. The Central Clearing House proposal is intended to address these concerns and to align NZX with requirements of international capital markets.

LCA's Executive is closely reviewing the proposal and met

both Mark Weldon, CEO of NZX and Mike Smith, CEO of Computershare at its March meeting to discuss the proposal in depth. The Executive received a number of helpful comments from members prior to that meeting. LCA will provide a submission to NZX, so if anyone has views or concerns about this matter which they wish to raise, they should e-mail them to John Blair (john.blair@airnz.co.nz).

Directors' and Officers' Interests Disclosures

On 23 February 2004 Acting Commerce Minister Paul Swain postponed the commencement of the new regime until 3 May 2004. Subsequently the Chairman and the Deputy Chairman of LCA held a meeting with MED and Securities Commission on 3 March 2004 to discuss the practical issues faced by listed companies in attempting to implement the law. A summary of issues raised by LCA at the meeting can be viewed on the LCA website www.listedcompanies.org.nz

The outcome of the discussion was positive and the Minister of Commerce, Margaret Wilson is encouraging people affected by the new rules to use this time to communicate clearly the practical problems in complying with the new regime.

The Securities Commission, at this stage, only has the power to grant class exemptions from the disclosure obligations and they are welcoming feedback from all listed companies on issues being faced. The Commission has recently announced a number of general exemptions, but it remains open to individual organisations to apply for specific exemptions. The general exemptions can be viewed at www.sec-com.govt.nz

It is imperative that all listed companies identify those individuals affected by the new regime and make preparations for the initial disclosure on 3 May 2004. It is understood that the Securities Commission will be publishing a practice note to provide guidance to Issuers in identifying who is an "officer". This remains a critical compliance issue and clear guidance is needed in view of the unworkable definition in the legislation. ASX has confirmed to some individual companies that it will not require disclosure of this information unless it is considered relevant by the Issuer. Compliance by foreign issuers listed on NZX remains an open item as does the need to provide historical information on the initial disclosure.

LCA continues to question the value of this regime. Transparency of executive shareholdings adds little, if any, useful information for the market following the updated continuous disclosure regime and disclosure will never deter a determined inside trader. The LCA submission can be viewed at www.listedcompanies.org.nz

Executive Committee:

John Blair - Association Chairman – Air New Zealand
Jim Harknett - Association Secretary – Ports of Auckland
Linda Cox – Telecom New Zealand
Helen Fletcher – DB Breweries
Shehnaz Hajati – Carter Holt Harvey
Grant Niccol – Fletcher Building
Charles Spillane - Auckland International Airport
Andrew Webster - Sky City

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