

**This newsletter is relevant to Company Secretaries, CFOs, General Counsels -
please forward if you are not the right person.
Listed Companies Association
Newsletter**

I would like to update members on matters discussed at two LCA Executive Committee meetings last month. Please note that this newsletter contains important information about possible annual meeting matters for this year's annual meeting round and seeks your feedback on some issues.

1. Subscription notices

We had hoped to despatch these during June but they will now be sent to member companies during July.

2. NZX Legal & Regulatory

Under Listing Rule 3.3.2, issuers must advise the market, no less than three months prior to the date of the proposed annual meeting, the opening and closing dates for director nominations. We have been advised by the NZX that it will no longer be issuing waivers in respect of this Rule. Accordingly, we recommend that you closely monitor the relevant dates and make announcements within the required time-frame. We have asked NZX to provide Issuers with a clear interpretation of LR 3.3.2, as the wording is difficult to follow.

3. NZ Shareholders Association (NZSA) - Annual meeting proposals

Representatives of the LCA Executive have met with the NZSA to discuss that Association's proposed shareholder resolutions. Good progress was made on a number of matters and NZSA were very open to our views. However there are a few areas where we remain in disagreement. I set out below a summary of the various matters discussed and attach a copy of the NZSA summary of the discussions which is also available on the NZSA website (www.nzshareholders.co.nz). In a couple of areas we would like your feedback.

Proposed resolution 1:

"That the minutes of the previous AGM, including details of discussions be presented to the AGM for comment by shareholders"

NZSA has agreed not to pursue this resolution at the moment however we strongly encourage members

- to post the minutes of the previous annual meeting on their company website;
- to ensure that the minutes record undertakings made by the company at the meeting;
- to have copies of the previous annual meeting minutes at the annual meeting;
- to webcast meetings where appropriate for the size of the company.

Proposed resolution 2:

"That non-executive directors seeking election or re-election address the annual meeting outlining reasons in support of their election":

NZSA has agreed not to pursue this resolution however we strongly encourage members to ask their directors to speak at the annual meeting in support of their own re-election. Directors should focus on the value they believe they can bring to the company in the future. This is common practice already among many companies and we recommend it becomes the practice across all companies.

Proposed resolution 3:

"That it be a condition of appointment of any auditor engaged or retained by the company that they adopt and comply with the 'Audit charter of Independence' published and updated from time to time by the NZ Shareholders Association Inc."

NZSA have agreed not to pursue this resolution following discussions with audit firms, ICANZ and others. NZSA however are going to continue to monitor the issue of auditor independence and are particularly concerned about audit firms providing tax advice to audit clients.

Members should note section 4.2 of the NZX Listing Rules Corporate Governance Best Practice Code which recommends that Boards establish a formal and transparent framework for auditor relationships, to ensure independence is not impaired. LCA strongly encourages all listed companies to achieve this by adopting an appropriate audit independence policy and/or audit charter, and post this on their website. Examples can be found on the websites of most major NZ and Australian issuers.

Proposed resolution 4:

"That in each set of annual statements presented to shareholders, the company present a trend statement including all the information set out in the scheduled annexed, on white paper, in black ink, arial font, 12 point."

NZSA have agreed not to pursue this resolution however we strongly encourage all member companies to provide consistently presented and comparable relevant information for a 5 year period in a clear and simple format in their annual reports. NZSA acknowledges that with the introduction of IFRS, the provision of comparable information is going to be challenging and is not expecting companies to restate results for the past 5 years. Some examples can be found in the Telecom and Auckland Airport annual reports.

Proposed resolution 5:

(note numbering below refers to NZSA numbering in its original proposal as shown on its website)

"That the following special resolution be put: *That the Constitution of the Company be amended to provide:*

- (a) *"That no director shall apply any undirected proxy votes in support of the election or re-election of any director"*
- (d) *"That every proxy form require a shareholder to elect: for, against, undirected or abstain, and any form submitted without a positive election of one of the four options be deemed an abstention."*

NZSA has indicated that resolution (d) **and** (a) would no longer be required if Issuers included four voting tick box options on proxy forms - For, Against, Abstain, and **Proxy Holder's Discretion** [N.B. not "undirected" as proposed above). NZSA argue that a positive action should be required from shareholders in order to grant an undirected proxy to shareholders, whereas common current practice is for Issuers to deem non-completion of the tick boxes as an undirected proxy in favour of the Chairman.

We have agreed to consider these issues further.. We are trying to determine whether offering the four options will make the directing of proxies clearer or more confusing for shareholders.

ASX have indicated that they would approve proxy forms in this format. We are yet to have a conversation with NZX. In addition, we are seeking legal advice on this point. Any feedback on whether member believes the 4 voting options is a workable solution would be most welcome.

- (b) *"That no subsidiary of the company may enter into any major transaction*

or approve any major transaction without a special resolution of the company".

The Companies Act requires a special resolution of the group company entering into the major transaction, but there is no requirement to look through to the ultimate holding company. Conversely the listing rules require an ordinary resolution of the company and do look through to the listed entity holding company. The result is that a subsidiary company undertaking a major transaction (relative to the value of the group as a whole) is only required to seek approval by *ordinary* resolution of the shareholders of the listed entity holding company. Given that a Companies Act special resolution is not required in these circumstances, minority buy out rights are not available to dissenters. NZSA would like to see an amendment to the listing rules to require a special resolution. LCA is considering further whether to support NZSA on this matter. We would appreciate feedback from members as to whether they consider; (a) a listing rule change should be supported to require a special resolution consistent with the Companies Act and (b) the Companies Act should be amended requiring a look through test consistent with the Listing Rules.

(c) *"That any reference in this Constitution to the Listed Issuer Rules of NZX be a reference to those rules existing as at 1 June 2004."*

NZSA claim that "auto-pilot" constitutions are invalid, and, that by issuers annually updating the reference to the Listing Rules, the claimed invalidity is remedied. LCA do not support NZSA on this resolution and a number of issuers, and, we understand, the NZX, have received legal advice that auto-pilot constitutions are valid. NZX has also advised the NZSA that it will not approve a constitution that includes this wording. We are seeking legal advice and will provide it to our members once we receive it.

(e) *"That every proposed change to a scheme authorised by shareholders pursuant to listing rule 7.3 require shareholder approval before it can be effective."*

NZSA are not going to pursue this resolution at the moment. NZSA are going to seek a guidance note from NZX as to the circumstances when NZX would grant a waiver from the requirement to seek shareholder approval for changes to schemes previously authorised by shareholders.

4. NZX fee increase

We have met with the NZX which was receptive to our views, particularly in the legal and regulatory area. NZX have indicated that they will be mindful of our concerns in the case of future increases. In addition they will try to be transparent about the costs of the legal and regulatory area indicating that this is not a profit making centre for them. We have indicated we will survey our members on NZX service levels. We also raised with the NZX the matter of the 20 minute delay in making the full content of releases available to the wider market. We have been independently advised that this is standard practice of stock exchanges around the world.

5. NZX Index Methodology

In May 2005, the NZX released a paper entitled "An Update on Enhancements to the NZX Index Methodology" which suggested changes to the NZSX 50, NZXS 10, NZSX MidCap and NZSX 50 Portfolio indices. The LCA was invited to comment and, while we were generally comfortable with the proposals, offered suggestions in the dual and overseas listed issuers area and also in how imputation credits are treated under the proposed gross index calculation method. Our comments have been positively received. The NZX is now aiming to introduce any changes effective 1 October 2005.

6. Securities Legislation Bill

Notwithstanding a number of submissions, including one from the LCA, to the Commerce Select Committee on the Securities Legislation Bill on a range of issues, it seems the Bill will become law. Listed companies need to be familiar with the implications of the changes, in particular those around insider trading and the effects on directors and officers. The LCA will be developing a note on how companies may need to deal with the removal of the so-called "safe harbour" provisions and other aspects of the Bill.

7. Education

The LCA is continuing to review educational opportunities for members, including running joint seminars with stock exchanges and/or legal firms to update people on listing rules changes, Securities Act requirements and any other matters

which members feel would be useful. Please let me have any suggestions.

We welcome dialogue with members. The email addresses and telephone numbers of the Executive members are all on the LCA's website (<http://www.listedcompanies.org.nz/>), so feel free to contact any of us with feedback, suggestions, comments etc.