

# Update

Newsletter for members

Listed Companies

Listed Companies Association

## Chairman's Column...

There are a number of things going on in the regulatory environment affecting listed companies:

- the release of the NZX of Listing Rules on corporate governance;
- a Securities Commission exercise to establish corporate governance principles;
- Government plans to amend (tighten) the securities trading law.

We should brace ourselves for more changes, and for a continuation of the pressure for greater restrictions on listed companies. In a recent statement Commerce Minister Lianne Dalziel had this to say: *"I am well aware that there are those who say that because we haven't seen an Enron or Worldcom scandal here, that we do not have to revisit our own regulatory framework. However in my view that is naive. If we look too different to the outside world, the international investors won't be stopping to ask why"*.

The evolving situation, and ministerial statements like that, fully justify our decision to take on a more active role as advocate for listed companies in discussions with government and regulators.

The Executive and I therefore repeat our call for maximum support for the objectives and activities of Listed Companies. Here are some practical things every listed company can do:

1. Become a financial member.
2. Provide the data in the company profile.
3. Attend our corporate governance seminar on 5 November.

Further information on these and other aspects can be found on our website [www.listedcompanies.org.nz](http://www.listedcompanies.org.nz)

Remember, we get the outcomes we deserve.



John Blair, Chairman

## NZX releases corporate governance listing rules

The New Zealand Exchange (NZX) has released its Corporate Governance Listing Rule changes. They are a culmination of a review and consultation process which started with a first draft being released for public comment in August 2002. A revised draft was released in May 2003. Although NZX did not publicly open the revised draft for submission, Listed Companies and other parties made further submissions. These resulted in further amendments.

The final version requires an issuer to:

- have a minimum of two independent directors, or one third of the board;
- have an audit committee with at least three members; all members are to be directors, a majority are to be independent directors and least one member is to have an accounting or financial background;
- change the external auditor or the lead audit partner every five years.

The earlier proposal for quarterly reporting has been dropped.

An independent director is a director who is not an executive and has no "disqualifying relationship", for which there is a new definition. The board of

an issuer is to determine which directors are, in its view, to be independent directors, and is to release those names to the market.

Other proposals that were, in earlier versions, to have been Listing Rules requirements have been moved to the Corporate Governance Best Practice Code. These include:

- encouraging directors to participate in a shares based remuneration plan or to invest a portion of their director's fees in securities of their company;
- separating the roles of chief executive and chairman of the board;
- training for directors, now to be "appropriate training to remain current on how to best perform their duties" and not, as previously proposed, to require successful completion of a director certification course offered by the Exchange.

The provisions of the Best Practice Code are voluntary, although issuers will have to disclose the extent to which they follow them. The Code is now to be prescribed from time to time, rather than being an appendix to the Listing Rules.

## Corporate governance - Securities Commission to act

The Securities Commission is to lead the development of a set of corporate governance principles to establish "a benchmark for shaping the behaviour of New Zealand businesses".

On 10 July, Commerce Minister Lianne Dalziel announced that the Commission will work with the business community and other stakeholders to develop the set of principles for best practice corporate governance.

The Commission's discussion document

was published on 8 September along with a number of questions on which the Commission wants responses.

Listed Companies has been assured by the Minister that our full involvement in this process is welcome.

On 5 November, in Auckland, Listed Companies will host a seminar on Corporate Governance. A key speaker will be Jane Diplock, Securities Commission Chairman (see separate item).

## Government moves on securities trading law

Commerce Minister Lianne Dalziel has announced a range of proposals aimed to strengthen New Zealand's securities trading law. The Minister said the Government wants "to promote confidence and participation in New Zealand's securities markets to ensure that businesses can access the capital they need to grow. This involves strengthening the regulatory framework to encourage investment and enhance market performance."

The first two stages of the Government's programme involved the implementation

of the Takeovers Code in July 2001 and the legislation arising out of the Securities Markets and Institutions Bill which came into force on 1 December 2002.

The next phase, termed the Securities Trading Law Review, "has been designed to increase the effectiveness and efficiency of law relating to the trading of securities and futures on registered securities exchanges and authorised securities exchanges", said the Minister in her 24 July announcement. Among the changes to be introduced:

- a new insider-trading regime, similar to the Australian model.
- more prohibitions on market manipulation.
- amendments to the law relating to investment advisers.
- tougher penalties and remedies for breaching securities trading law.

A Securities Trading Law Reform Bill will be the subject of "targeted consultation" later this year before it is introduced to Parliament, said the Minister. The Minister's announcement and relevant Cabinet papers can be found at [www.sec-com.govt.nz](http://www.sec-com.govt.nz).

## FASTER insurance not renewed

In 1997, when the total paperless settlement regime was introduced via the FASTER system, a number of issuers were concerned about the risk that they might be required to compensate dispossessed shareholders from an unauthorised transfer of securities, even where the transfer was the result of the fraud or negligence of a broker or other third party. There was a fear that such unauthorised dealings might be likely in a paperless system.

Listed Companies took up these concerns with the then NZSE and negotiated an insurance policy which

would provide prompt compensation to any issuer required to reinstate a shareholder. It was understood that the insurance might not be permanent but was a prudent transitional measure.

Listed Companies and NZX have reviewed the continued need for the insurance. A decision was made not to renew the policy after 30 June 2003. The policy has served its original purpose. Since then there has been a reduction in risk as a result of measures introduced by NZX to regulate and monitor member firms and to examine and authenticate all transactions in excess of \$1M.

## Financial regulatory framework to be externally assessed

A team of experts led by a high-ranking IMF official is to conduct an assessment of New Zealand's financial regulatory framework against agreed international (IOSCO) principles. The team will focus on banking supervision, securities market regulation, payment systems, anti-money laundering frameworks, and the transparency arrangements applicable to monetary policy and financial regulatory agencies.

The purpose of the exercise, which will commence on 30 October, is to discover any fundamental flaws in regulatory arrangements and to suggest any suitable means of improvement.

Further information may be found at [www.sec-com.govt.nz](http://www.sec-com.govt.nz)

## Corporate Governance Seminar

This Listed Companies event will be held in Auckland on Wednesday 5 November at the offices of Bell Gully, starting at 4pm.

Securities Commission Chairman Jane Diplock will explain the process being followed by the Commission to establish a set of corporate governance principles (see separate item). Other speakers will comment on

the exercise and present their views. The seminar is an excellent opportunity for representatives of listed companies - directors, company secretaries and corporate counsel - to discuss the issues and questions raised by the Commission in its discussion document and questionnaire.

Further details are on our website at [www.listedcompanies.org.nz](http://www.listedcompanies.org.nz)

### Company profiles needed

Has your company returned the company profile form sent to company secretaries in July? The responses are needed to support Listed Companies when preparing submissions to government and regulators.

### Membership subscriptions now due

Has your company become a financial member for the year to June 2004? Membership subscription invoices were sent to listed company chairpersons in July.

Contact: [info@listedcompanies.org.nz](mailto:info@listedcompanies.org.nz)

### Executive Committee:

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 Jim Harknett - Association Secretary – Ports of Auckland  
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