

5 December 2014

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Dear Rob

## Consultation Paper: *Going Public – a director's guide*

Thank you for the opportunity to provide comment on the *Consultation Paper: Going Public – a director's guide*.

We strongly support the publication of guidance to help improve corporate governance and to support directors in their roles. We also support this initiative to provide specific guidance for directors of companies considering an initial public offering (IPO) or undertaking a 'compliance listing'.

As we noted in our submission on the revised *Corporate Governance in New Zealand Principles and Guidelines*, we encourage the FMA to involve key parties at an earlier stage, perhaps by reference panel, in the development of guidance affecting directors.

## About the Institute of Directors

The Institute of Directors in New Zealand (IoD) is a non-partisan voluntary membership organisation committed to raising governance standards in New Zealand. We represent a diverse membership of just under 7,000 members drawn from NZX-listed corporations, unlisted companies, private companies, small to medium enterprises, public sector organisations, not-for-profits and charities. 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.

## Comments

Overall we found the draft guide is easy to read and understand. The approach of 'key questions directors should ask' is both helpful and pragmatic. The scope and coverage of key issues in the accompanying advice and commentary seems appropriate and relevant for directors and boards.

We consider that guidance for directors that is published by the FMA will consequentially have a certain standing, and as such will be looked to as an authoritative source. Accordingly we think that there are some aspects of the guidance that need further clarity and additional information.

### ***Directors' legislative obligations***

The draft guide should be more specific about legislative obligations for directors in relation to IPOs and compliance offerings, especially given the changes in securities laws and the introduction of the Financial Markets Conduct Act.

We suggest the guide include reference to specific Acts alongside the main legal obligations for directors, for example in paragraphs 11, 12 and 13. By way of example the *IoD/FMA Director's Guide* includes references to the Companies Act in relation to key legal requirements.

Including legislative reference would also help clarify the difference in the guide between legislative obligations and the FMA's expectations of good corporate governance. For example the references to 'we expect' in paragraphs 14 and 19 appear to be an expectation of good practice rather than a legislative obligation.

### ***Alignment/fit with other guidance***

We suggest information be included about how this guide fits with other guidance and rules, for example the New Zealand Stock Exchange (NZX) Listing Rules, including if there are any key differences for directors of companies listing on different markets, e.g. the main market compared to the new NXT Market Rules.

We also suggest including the extent to which key stakeholders, in particular NZX, have been involved in the development of this guidance. Given the role of NZX in the public listing of companies, its endorsement of the guide would be valuable for a director using the guide.

Finally, we suggest including reference to and significant findings from other relevant information/guidance, such as the FMA's *Gentrack IPO Report* (10 November 2014) and guidance on FMA's website about issuers' obligations.

## **Conclusion**

We encourage the FMA to make the enhancements outlined in this submission. We would also welcome the opportunity to discuss our submission and to assist the FMA in its development of this and any future governance guidance.

Yours sincerely



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