

15 September 2010

Securities Law Review
Investment Law Team
Ministry of Economic Development
PO Box 1473
Wellington

Dear Sir/Madam

Thank you for accepting this late submission. We wish to acknowledge that the Sustainable Future Institute is not an expert in this area of law, nor is it well versed in capital markets. For this reason we do not answer each of the specific questions raised by the Investment Law Team. However, we hope you will find our perspective useful. In particular, it is the Institute's view that:

- (i) Entities need to report in an integrated way for the long-term public good;
- (ii) Regulatory bodies have a leadership role; they should actively support entities that are prepared to move beyond a rule-based approach, such as providing a voluntary filing programme for entities publishing integrated annual reports;
- (iii) Regulatory bodies (such as the current EPA, Health and Safety (DoL), the NZFSA, ERMA and the proposed FMA) should work together to actively pursue a much more integrated approach to regulation than is currently employed; and
- (iv) Regulatory policy should always take into consideration emerging trends, possible risks and upcoming opportunities; in other words, an effective public policy is one that takes a long-term view.

Ultimately, the Institute would like to see a central register established which lists each entity's company records, any financial products, its health and safety record and its environmental record. We believe this will reduce compliance costs, drive better public policy, provide more clarity (and benchmarking) for companies, ensure the market is more informed and therefore operates more effectively, and finally, creates a best-practice culture; all of which delivers the optimal outcome for this country.

Given that we missed this 'invitation to comment', we also feel there is a need to improve the process to ensure effective consultation takes place with regard to discussion documents published by government departments. For example, we were unaware the Ministry had called for submissions on this document until after the due date. The current 'department-specific' approach is reliant on members of the public hearing about a discussion document through the press or other means, and then managing to find the document on one of a number of possible websites; this is problematic. The Institute would like to raise the idea of the establishment of a government website that lists 'all discussion papers open for public feedback', ideally with links to the relevant government departments and ministries. We consider this a simple and cost-effective solution that would lead to a more effective process; one in which government departments would have the benefit of an increased range of diverse opinions and innovative solutions.

Thank you for taking the time to read the attached submission. The Institute is also happy to speak to this submission.

Kind regards,

Wendy McGuinness
Chief Executive

Jessica Prendergast
Research Analyst

About the Sustainable Future Institute

The Sustainable Future Institute, founded in 2004, is an independent think tank specialising in research and policy analysis. Our purpose is to produce timely, complete and well-researched information focused on New Zealand's long-term future.

Contact Details:

Sustainable Future Institute

l: Level 2, 5 Cable Street

p: PO Box 24222, Wellington

6142, New Zealand

t: +64 4 499 8888

f: +64 4 385 9884

w: www.sustainablefuture.info

Part 1: General Comments

The Sustainable Future Institute recently established a new project called *One Integrated Report*.¹ The Institute believes the use of 'one integrated annual report', by both organisations and countries, is a critical mechanism for improving global governance of resources, human health and well-being; hence, we suggest:

1. A voluntary filing programme for annual integrated reports (see Part 2: Background to Integrated Reporting below);
2. Flexibility in the legislation, in order to allow for a time in the future when the filing of integrated annual reports may become mandatory (see Part 2: Background to Integrated Reporting below);
3. The new legislation should cover the Top 200 companies and their financial products, as they are likely to have a significant impact on our social, economic and environmental position today and in the future. We note, in the discussion document's executive summary, that the proposal is only to '*regulate financial products for which generating a financial return or hedging financial risks is a significant feature*'; we believe the proposed Financial Markets Authority (FMA) needs to be broader in its role and responsibilities to the New Zealand public (not just investors);
4. The framework should ensure the 'invisible Top 200 entities' become more transparent to the general public. Notably, 52% of Top 200 companies are overseas controlled companies not listed on the NZSX (see Part 3: Background to Invisible Top 200 entities, Figures 1 and 2 below). This is of concern because these entities exert a significant social, economic and environmental impact, yet remain technically invisible to the general public.

This is not to say that their practices are inappropriate; rather, there is no public body that scrutinises their actions, assesses their net value and reports to the public and/or to government on their level of contribution. It is timely that a framework be developed that enables such entities to become more visible; allowing the general public to become more knowledgeable, government to be better informed, and ideally public policy be better developed in the future;

5. Risks should be broadly defined and should be required to be described in terms of the nature of the risk; in particular, (i) who bears the risk, and (ii) the probability, magnitude and possible timeframe of the risk. A full risk assessment should be required and any significant risks that were identified should be mandatory required to be reported in any financial products that are marketed to the general public;

¹ See http://sustainablefuture.info/Site/Project/One_Integrated_Report/Project_One.aspx

6. The generalised obligation to act 'fairly' should be removed, as it is subject to wide interpretation; instead, a set of high-level principles that guide what is fair should be put in place – similar to the HSNO (Methodology) Order 1998;
7. Compliance costs should ideally take into account the cost of disclosure, the public benefit that can be derived from disclosure and the public cost if risks do occur; hence a disclosure regime should be appropriate to the size of the entity. More risky entities (and their more risky products) should be required to report in a more comprehensive manner than smaller entities and less risky financial products;
8. The proposed FMA should have sufficient authority, appropriate penalties and adequate resources to enforce high standards of behavior, and report on those that do not meet that standard in a transparent, accurate and comprehensive manner, and
9. The Environmental Protection Authority and the FMA should be required to work together to enhance public trust in the entities and the market in which they operate, not simply in terms of shareholders, but also in terms of the needs of the wider stakeholders. For example, we note that within the Top 200 there are many companies that will be subject to both regulatory entities – including those involved in the dairy industry (such as Fonterra), the mining industry (Oceana Gold, Solid Energy NZ, and Newmont Waihi Gold), and those carrying out genetic modification experiments in the outdoors (e.g. AgResearch). We believe it is in the interests of both the entities and the general public that similar regulatory bodies should be required to work together to minimise compliance costs and maximize public good outcomes.

Further, we suggest a central register of all entities should be created, listing each company's records, any financial products, its health and safety record and its environmental record. We consider this will reduce compliance costs, drive better public policy, provide more clarity and benchmarking for companies, create a best-practice culture, and deliver the best outcomes for the country as a whole. It would also provide greater clarity over what is expected from international companies that invest in New Zealand.

The proposed FMA could play a vital role in improving the footprint of large companies operating in New Zealand by inviting such organisations to voluntarily register integrated reports and actively make such information available to the general public. This would not only ensure companies have an incentive to report on their impact in the community – socially, environmentally and economically – but would also position New Zealand in global markets as clean and green.

Importantly, if New Zealand wishes to continue to brand itself internationally as 100% pure, clean and green, its regulatory regimes must align with this overarching brand. It is timely for New Zealand to consider implementing a voluntary filing programme, and show international leadership in an area that aligns with our brand.

Part 2: Background to Integrated Reporting

Earlier this year, the International Integrated Reporting Committee (IIRC) was established. The IIRC is developing standards and guidelines based on the actual experience of companies. Integrated reporting begins with a single document, combining an organisation's financial performance and its non-financial (environmental, social and governance) performance, and illuminating the relationship between the two. But it also extends beyond a paper document, utilising the internet to facilitate the integration of performance reporting as well as provide detailed information of particular interest to different stakeholders. In their recent book *One Integrated Report*, Professor Robert G. Eccles of Harvard Business School and public policy and external affairs partner with Grant Thornton, Michael P. Krzus, suggest it is about listening as much as talking – a conversation with all stakeholders about their expectations of a company's commitments and the performance metrics that ensure sustainability in economic, environmental, social and governance terms.

A key aspect of integrated reporting is the need to improve public access and participation. A solution has been the establishment of voluntary filing programmes, which:

create a mechanism for companies to provide on a purely voluntary basis an integrated report of what they consider to be the material financial and nonfinancial measures of performance and how they are related to each other.²

Examples of voluntary filing programmes can be seen in a few countries, such as Denmark, France and Sweden. This is an emerging field. 'Developing an Action Plan for Integrated Reporting' is a conference Harvard Business School is hosting in October 2010. The purpose of the conference is to:

develop a set of recommendations for the rapid and broad adoption of integrated reporting on a global basis. It is not about developing a framework for integrated reporting, but it is about designing a process by which such a framework would be developed and implemented.³

Notably, South Africa is the first country to implement a mandatory integrated reporting framework for all listed companies. We suggest New Zealand should consider adopting such an approach. As we understand that the proposed Financial Markets Authority will be taking over some of the roles of the Companies Office, we consider it is timely to consider offering companies the opportunity to voluntarily register their One Integrated Report. Doing so will show leadership, which will in turn align and strengthen our national brand. No longer does it seem acceptable to consider and regulate the financial markets and the environment in isolation from each other, and from society as a whole. We need to find ways for institutions to work together to develop trust not simply in the investor markets, but to those who cannot afford to invest but are affected by the way these entities operate.

Part 3: Background to 'Invisible Top 200 Entities'

The Top 200 companies⁴ should be the primary focus for regulatory compliance, in that they exercise significant influence over society and the environment. In some circles, this question is reframed in terms of the public's right to ensure an entity has a legitimate 'licence to operate'. We have undertaken some preliminary research on the Top 200 companies and found:

(i) A diverse range of entity types exist within the Top 200 companies

Entities include private companies, cooperatives, state-owned enterprises, government organisations, societies, council-controlled organisations and Crown Research Institutes.

² R.G. Eccles and M. King, *Integrated reports voluntary filing*, p. 4, World Federation of Exchanges, 2010. Retrieved 14 September 2010 from <http://www.world-exchanges.org/files/focus/pdf/FOCUS%200610.pdf>

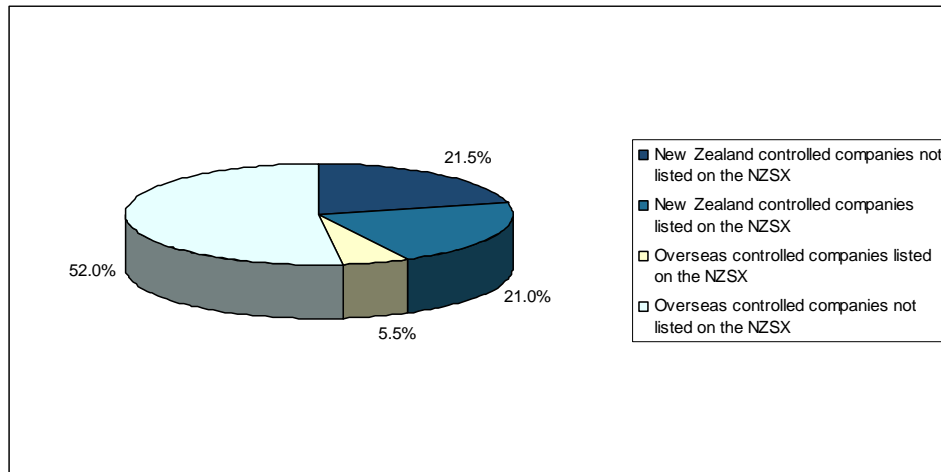
³ Harvard Business School. *Developing an Action Plan for Integrated Reporting Conference 2010*. Retrieved 18 September 2010 from <http://www.hbs.edu/units/ob/conferences/2010/integratedreporting/index.html>

⁴ See Management magazine, December 2009: 70–83.

(ii) Only 26.5% of the Top 200 companies are listed on the NZSX

Figure 1: Percentage of Top 200 companies by NZSX and by overseas control

Source: *Management* magazine, December 2009: 70–83.



(iii) 57.5% of the Top 200 companies are '50% or more controlled by overseas interests'

Figure 2: Percentage of Top 200 companies more than 50% overseas controlled

Source: *Management* magazine, December 2009: 70–83.

