

‘He did not deny King Salmon had four “difficult” years but each year a profit had been made, and the company was coming out of that phase now. Information from the Companies Office showed a loss for King Salmon in 2012 and 2014 of more than \$9m and \$1.5m respectively.’

McPhee, E. (2016). *McGuinness Institute report attacks King Salmon financial position*. First retrieved 31 July 2016, then retrieved 8 August 2016 from www.stuff.co.nz/business/farming/aquaculture/82560364/mcguinness-institute-report-attacks-king-salmon-financial-position.

Submission

Submission on disclosing non-GAAP financial information

13 April 2017

About the McGuinness Institute

The McGuinness Institute was founded in 2004. The McGuinness Institute is a non-partisan think tank working towards a sustainable future for New Zealand. *Project 2058* is the Institute's flagship project focusing on New Zealand's long-term future. As a result of our observation that foresight drives strategy, strategy requires reporting, and reporting shapes foresight, we developed three interlinking policy projects: *ForesightNZ*, *StrategyNZ* and *ReportingNZ*. Each of these tools must align if we want New Zealand to develop durable, robust and forward-looking public policy. The policy projects frame and feed into our research projects, which address a range of significant issues facing New Zealand. In preparing this submission, the Institute has drawn largely on our projects *OneOceanNZ* and *ReportingNZ*.

About the author

Wendy McGuinness, Chief Executive

Wendy McGuinness wrote the report *Implementation of Accrual Accounting in Government Departments* for the New Zealand Treasury in 1988. She founded McGuinness & Associates, a consultancy firm providing services to the public sector during the transition from cash to accrual accounting from 1988 to 1990. Between 1990 and 2003, she continued consulting part-time while raising children. Over that time she undertook risk management work for the public good. In 2002, she was a member of the New Zealand Institute of Chartered Accountants (NZICA) Taskforce which published the *Report of the Taskforce on Sustainable Development Reporting*. From 2003–2004 she was Chair of the NZICA Sustainable Development Reporting Committee. In 2004 Wendy established the McGuinness Institute in order to contribute to a more integrated discussion on New Zealand's long-term future. In 2009 she became a Fellow Chartered Accountant (FCA).

Contact details:

Wendy McGuinness,
Chief Executive
McGuinness Institute
Level 2, 5 Cable Street
PO Box 24-222, Wellington 6142
+64 4 499 8888

wmcg@mcguinnessinstitute.org
www.mcguinnessinstitute.org

Submission to the Financial Markets Authority (FMA) on Disclosing non-GAAP financial information

Date: 13 April 2017	Company or entity: McGuinness Institute
Number of pages: 4	Organisation type: An independent research and public policy think tank
Name of submitter: Wendy McGuinness	Contact email and phone: wmcg@mcguinnessinstitute.org +64 4 499 8888

Feedback summary

Thank you for the opportunity to submit on this consultation. The McGuinness Institute regrets that we do not currently have the time or resources to engage with this issue as deeply as we would like. In accordance with these limits, this submission covers only our primary concern in relation to the disclosure of non-GAAP financial information (which is what we understand to be alternative performance measures [APM]).

This primary concern regards our experience in examining New Zealand King Salmon Investments Limited (NZKS) as a case study of a for-profit entity using public resources. In particular, we are concerned by their disclosure last year of alternative profit information in the media without clarifying that they were using non-GAAP financial information.

NZKS case study

In an article that originally appeared in the Marlborough Express and was published on stuff.co.nz on 8 August 2016, Elena McPhee notes of Grant Rosewarne (Chief Executive of NZKS) that ‘He did not deny King Salmon had four “difficult” years but each year a profit had been made.’ (Please see the article in Appendix 11 of *Working Paper 2016/02 – New Zealand King Salmon: A financial perspective*). On reading the article, we asked Marlborough Express to go back to NZKS to disclose GAAP information, but we understood (from conversation with the journalist concerned) that NZKS would not change their statement. This led to additional text being added by the editor outlining the conflict with the information available on the Companies Office showing losses for NZKS in 2012 and 2014 of more than \$9m and \$1.5m respectively (please see excerpts from NZKS’s Financial Statements for the the four years in question: the years ended 30 June 2012, 30 June 2013, 30 June 2014 and 30 June 2015 in Appendix 8 of *Working Paper 2016/02 – New Zealand King Salmon: A financial perspective*).

In our view, this was biased use of alternative profit information and contradicts the principle of unbiased use laid out on page 10 of the consultation document *Disclosing non-GAAP financial information*. We believe NZKS may have been tempted to use alternative profit figures because it was in the process of going public on the NZX (which has now happened) and/or because it was working with MPI on moving existing salmon farms¹ and may have wanted to illustrate to government and the community it was profitable and not financially unstable. Whatever the reason behind it, the misinformation was at best unfortunate and at worst intentionally misleading.

We are aware that at that time NZKS was not listed on the NZX and therefore not under the jurisdiction of the FMA. However, as NZKS is now listed, any further actions of this kind would be under the jurisdiction of the FMA and could be considered biased on the grounds that they serve ‘to avoid presenting adverse information to the market or to over-emphasise favourable

1 See <http://www.mpi.govt.nz/news-and-resources/consultations/marlborough-salmon-relocation>

information’.

Concerns

This leads us to raise three areas of concern.

1. The only reason the financial statements of NZKS were available on the Companies Office was because NZKS’s overseas shareholding required them to register their financial statements under section 207D of the Companies Act 1993. This raises further questions about incidences such as this that are not challenged because there are no financial statements publicly available for comparison.
2. What would have happened if NZKS was listed and under FMA jurisdiction? What possible guidance, penalties or restrictions could have been implemented?
3. Given that NZKS was not listed on the NZX at this time, what options were available to the public for registering a concern about this use of non-GAAP information in the public arena? Furthermore, what possible guidance, penalties or restrictions could have been implemented?

If you would like to learn more about our case study of NZKS, please see our publications at www.mcguinnessinstitute.org/publications. In particular:

- *Working Paper 2016/02 – New Zealand King Salmon: A financial perspective*
- *Working Paper 2013/01 – Notes on the New Zealand King Salmon Decision*
- *Think Piece 16 – New Zealand King Salmon: Was it a good decision for New Zealand?*

Extended External Reporting Survey

Up until the NZKS case, we had not appreciated the extent to which this practice was emerging in New Zealand. This led to the addition of Question 26 in our *Survey of the CFOs of Significant New Zealand Companies (the 2016 Deloitte Top 200 and NZX [main board] listed companies)*. Learn more about the survey [here](#). We have also attached a pdf.

26. Does your company have an approved policy on alternative performance measures (APMs) and/or does your company disclose APMs?

- Yes, we have a policy and disclose
- Yes, we have a policy but do not disclose
- No, we do not have a policy but we do disclose
- No, we do not have a policy and do not disclose

Please share your experiences or thoughts on the disclosure of APMs

If you are interested in obtaining early results of the responses to this specific question, please do not hesitate to contact the Institute. The survey will run over the next four weeks.

Recommendation

Looking more broadly at the current system, the NZKS case highlights that a continuum exists: some companies may intentionally go out of their way to pursue their own interests at the expense of broader stakeholders, while others may unintentionally focus on meeting their company’s (and shareholders’) needs without regard to the needs of other stakeholders. The role of the FMA is, in our view, to address the full range of this continuum. The tension between corporate interest and public interest is likely to increase as resources become more limited, climate change and pollution impact the planet and our population increases. Hence the FMA and other institutions must develop a package of principles, rules, complaint systems and penalties, that when combined, deliver good and consistent practice across the market place.

We are unsure how international reporting standard setters should best manage the disclosure of APMs. In the meantime we believe that companies that use APMs should be required to file a

written policy with the Companies Office on their use of APMs. The policy might include who in the company can disclose an APM, in what situations, the extent to which they are obliged to make clear the figure is an APM and the need to reconcile these alternative figures back to the financial statements (GAAP).

If you have any comments or queries, please do not hesitate to contact me.

Wendy McGuinness
Chief Executive
McGuinness Institute