28 January 2022

Kristin Brandon
Head of Policy and Regulatory Affairs
NZX Centre
11 Cable Street
Wellington 6011
New Zealand

Email: policy@nzx.com and kristin.brandon@nzx.com

Dear Sir/Madam,

NZX Corporate Governance Code Review 2021: Initial Discussion Document (November 2021)

Thank you for the opportunity to comment on your initial discussion document. As you will appreciate, this is an area of strong interest. The Institute is currently in the process of completing three working papers that we believe might be of interest. All three use the same dataset; the NZSX-listed companies.

The working papers in progress have the following working titles:

- *Working Paper 2022/07 – Analysis of COVID-19 wage subsidy in 2020 Annual Reports by NZSX-listed companies*
- *Working Paper 2022/08 – Analysis of Non-IFRS information in 2020 Annual Reports by NZSX-listed companies*
- *Working Paper 2022/09 – Analysis of NZSX-listed companies in terms of market capitalisation and net assets in their 2018–2021 annual reports.*

Once these papers are in final draft, we would appreciate the opportunity to meet with you in person or by Zoom. We believe there are at least six characteristics driving change at present:

1. **The accounting framework is changing.**
   For example the XRB is currently developing Climate-related Disclosure Standards, the IFRS Foundation has established the International Sustainability Standards Board (ISSB) and a Taskforce on Nature-related Financial Disclosures has been established. Importantly, as part of the process, market capitalisation is used under the Climate-related Disclosures and Other Matters Amendment Act 2021 to enforce accounting rules based on company size (see s 461P (5)(b)(i)).

2. **The pandemic is requiring many businesses to review and redesign their business model.**
   For example, embracing technology, working from home and dealing with low staff numbers, possibly due to what is colloquially called the great resignation.

3. **Climate change is repositioning companies as either a victim or villain.**
   It is forcing companies to move away from emissions-intensive assets and find new models.
   For example, New Zealand King Salmon is now seeking out colder water for farming salmon, either on land or further out to sea.

4. **Inflation is an emerging risk.**
   Times of high inflation require a refocus on timely and accurate reporting. In order to meet public accountability requirements for publicly listed companies, the NZX needs to consider whether the current *Code* will safeguard the rights and responsibilities of both buyers and sellers.

5. **The gap between tangible and intangible assets (via market capitalisation) is widening.**
   Intangible assets are increasingly important in creating value for companies, even for companies whose value comes primarily from tangible assets. The risk is that current accounting frameworks only focus on the net assets in the financial statements, not the market value of those assets.

6. **Corporate social licence is changing.**
   In addition to all the above, we are now seeing the emergence of new types of corporates who see their rights and responsibilities more broadly than just profit-making for shareholders (e.g., the advent of The Companies (Directors Duties) Amendment Bill being sponsored by MP, Dr Duncan Webb). This relates to a legal opinion the Institute undertook in 2020; see *Legal Opinion 2020/01 – Obligations on directors to report risk in New Zealand annual reports under the Companies Act 1993*.

Seen together, these changes make a review of the *Code* very timely.

Thank you again for the opportunity to meet with you next month, to discuss our research and share our ideas (my mobile is 021 781200). If acceptable, we would also like to provide a more detailed submission late next month.

Kind regards,

Wendy McGuinness
Chief Executive