Submission

by

Business NZ

to the

Institute of Chartered Accountants of New Zealand (ICANZ)

on the

Discussion Document on Corporate Transparency: Making Markets Work Better

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Review of Discussion Document on Corporate Transparency: Making Markets Work Better

1. Introduction

1.1. This submission is made on behalf of Business New Zealand, incorporating regional employers' and manufacturers' organisations. The regional organisations consist of the Employers' and Manufacturers' Association (Northern), the Employers' and Manufacturers' Association (Central), Canterbury Manufacturers' Association, Canterbury Employers' Chambers of Commerce, and the Otago-Southland Employers' Association. Business New Zealand represents business and employer interests in all matters affecting the business and employment sectors.

1.2. Business New Zealand's key goal is the implementation of policies that would see New Zealand retain a first world national income and regain a place in the top ten of the OECD in per capita GDP terms. This is a goal that is shared by the Government. It is widely acknowledged that consistent, sustainable growth in real GDP per capita of well in excess of 4% per annum would be required to achieve this goal. Continued growth of around 2% (our long-run average) would only continue New Zealand's relative decline.

1.3. If New Zealand is to achieve this goal, one way is to ensure the right processes exist to send a signal to domestic and overseas investors that high levels of corporate transparency exist for New Zealand companies, while at the same time taking into account the unique structure of the New Zealand market.

1.4. Business New Zealand recognises that the discussion document by ICANZ concerning this submission takes a high-level view. However, we may wish to make a more detailed submission when an in depth proposal is put forward to the Government.

2. Assessment of Policy Options

2.1. Business New Zealand agrees that there are fundamental differences between the New Zealand market and larger overseas markets. Because of differences in financial reporting standards, size, complexity and board independency, it is essential there is no domestic over-reaction in light of what has happened in the U.S. and in other countries. The cases that have been mentioned in the discussion document (ie Enron and Worldcom) have primarily involved fraud. Any introduction or altering of rules is no substitute for honesty and integrity in management and governance.

2.2. Business New Zealand would also like to point out that in their essence, companies are entrepreneurial risk taking ventures. Failure in itself does not indicate a gap in rules and/or regulations. Rather, it is often due to unwise decisions made by management and/or governance. Culpability should lie when there are issues of fraud, dishonesty, the misleading of markets or the neglecting of the application of proper governance policies.

2.3. Business New Zealand primarily agrees with ICANZ's recommendations for proposals that warrant further discussion from the list of policy options. However, at this stage we would also like to make the following points, discussed below.

2.4. It is important to acknowledge that New Zealand already has an acceptance of the need for disclosure in the interests of transparency. Examples of this include the Companies Act 1993, the market surveillance panel and other legislative initiatives by the Government. Furthermore, companies are continually moving towards disclosing governance policies in their annual reports and that there is a general tightening of disclosure requirements in relation to directors' share dealings.

2.5. We agree that New Zealand's financial reporting standards should continue to be principle-based, rather than the U.S. situation of being rules-based. While both approaches can lead to misrepresentation of a company's financial position, it is important that a true and fair view of performance is maintained, rather than the rules-based approach that can provide a technically accurate view, but less likely to be viewed as breaching standards if misrepresentation occurs.

2.6. Business New Zealand clearly views remuneration options such as share options to be a responsibility of management and governance. We believe there should be no impediment towards having share options for New Zealand companies. Moreover, the problem lies in the failure of many larger companies overseas to stem the large-scale use of this option, which most New Zealand companies do not realistically have the capability for. Overall, any abuse of power by a small minority of management should not mean that options and other appropriate incentives to reward management should not be utilised.

2.7. Business New Zealand recognises the importance of considering adjustments to the relationship between auditors and companies - as long as this does not lead to the introduction of unnecessary compliance costs, which we would be strongly opposed to. It is vital that governance and management should not reach the stage where they are primarily concerned with compliance issues, rather than focusing their time and resources on the company.

2.8. We agree that there should not be any further consideration of the proposal that would prohibit directors and senior executives obtaining negligence insurance. The absence of insurance would put into question why directors or senior executives would take on a role that could have high dollar liabilities in return for a substantially lower annual fee. The only realistic situation where this may be possible would be for those who saw the liability risk as balanced by a very substantial investment in the enterprise. Actual instances of this in New Zealand would be uncommon.

3. Conclusion

3.1. While Business New Zealand believes that some rule changes may help in terms of market transparency, we also need to acknowledge the unique existing structures and systems our country has for our markets. If policies are introduced to prevent similar overseas problems occurring domestically, they should not lead to excessive and unwarranted compliance costs on companies. Excessive rules and regulations can only make the already difficult task of succeeding in business even more so. Also, given the fact that rules and regulations can only go so far when issues such as fraud are concerned, companies should not lose sight of the fact that when looking for management and directors, simple attributes such as honesty and integrity with the commitment to carry out the full role are fundamentally important for any company.