

# FINANCIAL PUBLIC RELATIONS IN NEW ZEALAND

Awareness at least of the key rules and regulations surrounding the operation of companies is an essential first step to practising financial public relations in New Zealand. The Companies Act, the Securities Act and Regulations, the Takeovers Code, the rules of the New Zealand Exchange (NZX) and the various laws applied by the Commerce Commission can all come into play when dealing with the communication of company developments. These are covered individually below.

In general, and often in law, the New Zealand financial scene is now characterised by as much open financial disclosure as possible and is less tolerant of earlier market practices that threatened to give the companies capital markets a bad name, particularly during the rampant 1980s. Similarly, there is far less chance of anti-competitive behaviour being permitted and companies that can show themselves to be good corporate citizens are likely to fare better both commercially and in terms of their perceived financial value.

The size of the New Zealand market is reflected in a relatively limited specialist business media sector. The key business media channels are listed below.

## COMPANY LEGISLATION

The Companies Office of the Ministry of Economic Development administers the registration of not only corporate bodies like companies, trusts, societies and credit unions, but also their corporate documents. The behaviour of all New Zealand companies, whether private or public, and their directors, is governed by the Companies Act 1993 and by common law. The Act effectively provides basic shareholder protection measures which help to ensure equal treatment and protection of the rights of all shareholders. It defines shareholder rights to information, clarifies the duties of directors and makes them more accountable, and provides shareholders with rights to take action against companies.

In the case of any share float or any other security offering in New Zealand, a prospectus and/or investment statement has to be registered with the Companies Office, along with all attachments, such as application forms.

## **SECURITIES COMMISSION**

The Securities Commission is New Zealand's main regulator of investments and has oversight of the New Zealand securities markets. It is a Crown entity, established by the Securities Act 1978, and its general purpose is to strengthen confidence in the capital markets and thereby foster capital investment in New Zealand.

The Commission is particularly concerned with offers of securities to the public. Securities includes equities (shares), debt securities (bank deposits, debentures, bonds, certificates of deposit, convertible notes), interests in superannuation schemes, life insurance policies, interests in unit trusts, and participatory securities (e.g. interests in partnerships and syndicates).

Offer documents for securities offered to the public must comply with the Securities Act 1978 and the Securities Regulations 1983. The offer documents required are a prospectus, which is registered with the Registrar of Companies, and an investment statement. The prospectus gives detailed information, including financial information, about the securities. The investment statement is a simplified document which enables the "prudent, but non-expert investor" to make an informed decision on whether or not to invest. The investment statement must answer specific questions, set out in Schedule 3D to the Securities Regulations, about the investment so that people can compare one investment with another.

Advertisements for securities must also comply with the law, in particular they must not mislead, deceive or confuse investors and they must be consistent with the prospectus. People preparing public information about offers of investments should pay particular care to the advertising. Legally, the requirements for an "advertisement" can apply to a media release or an article, not only paid advertising. The Commission has powers to ban offer documents or advertising of any securities if they do not comply with the law. This can mean that the offer cannot proceed and the money must be repaid to investors.

Public relations practitioners working in the financial sector should be aware of the requirements for offer documents and advertisements for securities in both the Securities Act and the Securities Regulations, and should work closely with the entity's legal advisers.

Listed companies must also comply with the Listing Rules of the NZX and with the Securities Markets Act 1988. Public relations practitioners working with listed companies should be aware of disclosure obligations. These include disclosure to NZX of any matters that may materially affect the price of the shares, and disclosure of trading in the company's shares by directors and officers of the company. Substantial security holders of listed companies

(i.e. those who control 5% or more of a company's shares) must also disclose changes to their holdings.

The Commission has oversight of the NZX and investigates unusual trading movements that could indicate insider trading, market manipulation, and non-disclosure of trading by substantial security holders. It has powers to take cases of suspected breaches to Court.

Companies and other entities that issue securities to the public, have reporting requirements that are likely to involve public relations people e.g. annual and periodic reports, annual general meetings, and communications with shareholders and other stakeholders about material changes to the company, such as mergers or acquisitions. The Commission monitors and investigates financial reporting by issuers. Reporting on certain aspects of corporate governance is required under the Listing Rules. However, entities aiming for best practice would also observe the Securities Commission's published Corporate Governance in New Zealand : Principles and Guidelines.

The Commission's other functions include considering applications for exemptions from securities law, authorising some securities markets participants, making recommendations for reform of the law, and promoting public understanding of the law and practice of securities.

Further information can be obtained from the Securities Commission's website:

[www.sec-com.govt.nz](http://www.sec-com.govt.nz) .

## **COMMERCE COMMISSION**

New Zealand's Commerce Commission is an independent, quasi-judicial body whose overriding aim is to promote dynamic and responsive markets so that New Zealanders benefit from competitive prices, better quality and greater choice. The Commission's enforcement activities cover investigations, adjudication, litigation and reporting. Legislation the Commission enforces is as follows:

### **THE COMMERCE ACT 1986**

The aim of the Commerce Act is to promote competition in markets within New Zealand. The Act:

- prohibits conduct that restricts competition (restrictive trade practices);
- prohibits the purchase of a business's shares or assets if that purchase leads to a substantial lessening of competition in a market;

- allows the Commerce Commission to authorise proposed anti-competitive behaviour and mergers and acquisitions that lead to the substantial lessening of competition in a market, on public benefits grounds; and
- allows the Commerce Commission to recommend to the Minister of Commerce that specific goods and services be controlled.

Under Part 4A, the Commission is given powers to impose control on electricity lines businesses, and to undertake related tasks.

#### Credit Contracts and Consumer Finance (CCCF) Act 2003

This Act repeals the Credit Contracts Act 1981 and the Hire Purchase Act 1971, placing obligations on creditors with respect to disclosure requirements; calculation of fees, charges and interest; and oppressive conduct. It also enables consumers to seek reasonable changes to credit contracts on the grounds of unforeseen hardship and oppressive contracts.

#### Fair Trading Act 1986

The aim of the Fair Trading Act is to protect consumers from misleading and deceptive conduct and unfair trading practices. The Act:

- prohibits businesses from engaging in misleading or deceptive conduct generally;
- prohibits certain types of false or misleading representations about employment, goods or services, including false claims that goods or services are of a particular price, standard, quality, origin or history or that they have particular uses or benefits or that they have any particular endorsement or approval;
- prohibits certain unfair trading practices; and
- provides for consumer information and product safety standards.

The Commerce Commission also carries out sector-specific surveillance and adjudication under the Electricity Industry Reform Act (EIRA) 1998, Dairy Industry Restructuring Act 2001 and the Telecommunications Act 2001.

## TAKEOVERS PANEL

The Takeovers Panel is a Crown entity established by the Takeovers Act 1993 to administer and enforce the Takeovers Code which came into force on 1 July 2001. The Code provides rules to ensure that takeovers take place in an orderly fashion. It requires all shareholders to be treated equally and to be given all relevant information so that they are able to make an informed decision as to whether to accept or reject the takeover offer.

The Code applies to “Code companies” i.e. those which are registered under the Companies Act 1993 and are listed on the NZX, or have been listed on the NZX in the past 12 months, or companies which have 50 or more shareholders and assets of \$20 million or more. (NB the asset value and listing criteria are likely to be changed by law.)

The Code generally applies to acquisitions that take a person’s voting rights to 20% or more of the voting rights in a Code company. Different rules apply where a person wishes to obtain between 20% and 50% of the voting rights, over 50% of the voting rights, and over 90% of the voting rights. These rules are explained in detail on the Panel’s website [www.takeovers.govt.nz](http://www.takeovers.govt.nz) in “The Code in Business Language”.

The Panel has powers to review and investigate takeover practices. When it suspects a breach of the Code, it can investigate and issue restraining orders, and apply to the High Court for orders for forfeiture of shares, removal of voting rights, avoidance of agreements and payment of compensation. The Panel also has powers to grant exemptions from compliance with the Code. However, conditions of exemption are always made so that the spirit of the Code is complied with.

The law relating to takeovers is complex. A public relations practitioner working with an entity that is seeking to acquire voting rights in a Code company, or with a Code company that is the target of a takeover bid, should consult with the company’s legal advisers on any public statements or activities during the takeover.

Further information can be obtained from the Panel’s website:

[www.takeovers.govt.nz](http://www.takeovers.govt.nz)

## **NEW ZEALAND EXCHANGE LIMITED (NZX)**

NZX (formerly known as the New Zealand Stock Exchange) began during the Gold Rush of the 1870s in the financial centres of the early gold fields: Auckland, Thames, Dunedin and Reefton. In 1908 the Sharebrokers Act introduced compulsory licensing for sharebrokers and by 1915, the Stock Exchange Association of New Zealand had been formed to co-ordinate the activities of the then autonomous stock exchanges throughout the country. In 1962, the Post trading system with its familiar blackboards and "chalkies" replaced the older, slower call system of trading and then in 1974, the regional stock exchanges amalgamated to form the national Stock Exchange.

Artificially inflated by asset revaluations, the market continued to climb until, following a drop on Wall Street, the New Zealand stock market crashed spectacularly on Tuesday 20 October 1987. After the "crash", NZSE underwent a number of major changes to improve accountability and financial responsibility of its members and companies in 1989. On 24 June 1991 an era ended with the implementation of the computerised Screen Trading System and the abolition of the open outcry market carried out at the regional trading floors. On 1 August 1992 the Exchange introduced its FASTER system of electronic transfer and moved to fully automated clearing and settlement of trades on 18 May 1998.

With demutualisation complete by 2000, the New Zealand Stock Exchange had a new strategic focus - to grow the markets and unlock value for all market participants. So, on 30 May 2003, New Zealand Stock Exchange Limited formally changed its name to New Zealand Exchange Limited, trading as NZX. At the same time, NZX announced a new branding strategy for its markets, resulting in the NZSX Stock Market, NZAX Alternative Market and NZDX Debt Market. NZX then itself became a listed company, by listing its securities on the NZSX Market on 3 June 2003.

By renaming the organisation and listing its securities, NZX signalled to the market that it was not only taking on a new image and name, but a new mandate and a new focus.

### **NZX Market Participants (broking firms)**

A full list of accredited NZX Market Participants (commonly known as broking firms) can be found on the NZX website in the Market Participants section ([www.nzx.com](http://www.nzx.com)).

## **NZX LISTING RULES**

NZX's Listing Rules set the standard of conduct for all NZX Listed Issuers (companies and other entities which issue securities) and are regularly updated. The rules in force at any time should be consulted carefully whenever public relations practitioners are providing advice to corporate clients. The rules cover matters including:

- minimum company ownership
- limits on the unequal treatment of shareholders
- the disclosure of information
- procedures for appointing and remunerating directors.

The NZX Listing Rules are available for download on the NZX website ([www.nzx.com](http://www.nzx.com)) or a hard copy can be obtained from NZX Data ph: +64 4 495 2461.

## **MAKING MARKET ANNOUNCEMENTS TO NZX**

What is defined as “material information” from listed companies must be disclosed to NZX via the NZX Market Announcement Platform (MAP) before it is sent to normal media and distribution channels. MAP is an electronic platform that allows companies to publish market announcements directly to NZX. For more information about listing communications requirements, please see the NZX publication “Guide to Listing” which can be downloaded from the NZX website in the About NZX/NZX Publications section.

## **DUAL LISTING RULES**

Some of New Zealand's larger companies are dual-listed, mostly on the ASX, but occasionally on the exchange of another country. Financial public relations practitioners should be aware of the communications rules that apply to any other country concerned as these can vary in important areas.

## **BOX 9.3 NEW ZEALAND'S MAIN SOURCES OF FINANCIAL NEWS**

Major daily newspapers:

New Zealand Herald – Auckland

Dominion-Post – Wellington

The Press – Christchurch

Otago Daily Times – Dunedin

Waikato Times – Hamilton

Sunday newspapers:

Sunday Star-Times

Herald on Sunday

Weekly business newspapers

National Business Review – published Fridays

The Independent – published Wednesdays

Electronic media services

These provide immediate national and international coverage of major financial and business news (leading companies have access to these news services in New Zealand):

- AP
- Bloomberg Financial
- Dow Jones
- Reuters
- New Zealand Press Association
- Newsroom
- Scoop
- Sharechat
- i-Search – this is an online database provided by NZX that gives access to all market announcements made by NZX Listed companies.