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NZX CONTINUOUS DISCLOSURE GUIDANCE UPDATE - TRANSCRIPT

Speakers:

Kristin Brandon, head of policy and regulatory affairs, NZX, and Chris Holland, team leader issuer compliance, NZX

Ian Matheson:

Oh, good morning, everyone. It is Ian Matheson here from the Australasian Investor Relations Association. Thank you very much for joining us for this important webinar on the NZX's revised continuous disclosure guidance note.

As hopefully, everyone saw last week, this updated guidance note, it was released on the 19th of October, and you should have either received directly from AIRA on the 20th and/or from NZX a copy of the revised guidance note. So hopefully you've had a chance to read it.

I'm delighted that we've been able to secure NZX to talk to us today about the key changes that were made to the guidance note. AIRA has welcomed the release of this new updated guidance note. I have to say, the instigation for the revisions to the guidance note came about in part as a result of a meeting that Marcus Driller and I had with NZX several months ago.

The format for this morning's webinar is that Kristin Brandon who's head of policy and regulatory affairs for NZX will speak to the changes. A colleague of hers, Chris Holland, who's the team leader issuer compliance for NZX will be with her to respond to any questions that you might have after Kristin has spoken. And we have up to an hour, but if we certainly don't need to go that long, if we exhaust the questions.

You have two ways of being able to ask a question. You can either submit a question online or if you put your cursor down on the Q and A button down the middle of the screen, down the bottom, and raise your hand, I'll then ask you to take yourself off mute and you can ask your question verbally.

So please feel free to ask questions after Kristin has spoken. The session is being recorded and as always where there are webinars, an archive and a transcript will be available in the next few days.

So thanks very much for your attendance. We look forward to your questions in due course, and I'd like to hand over to Kristin Brandon, head of policy and regulatory affairs for NZX. Thanks very much, Kristin.

Kristin Brandon:

Good morning, everyone. Thank you Ian for that welcome and for the opportunity to present to your members this morning. I'm just going to provide a short overview of the majority of the changes we've made to the continuous disclosure guidance note, and then as Ian said, the bulk of the session can be used for a Q and A.

As Ian said, the changes we've made to the guidance will come out of a conversation we had with AIRA, but I guess broader consideration we've been having, off the volatility in the market due to the COVID environment, and the changes relate to how issuers should manage their continuous disclosure obligations when they have a performance deviation from market expectations.

Initially, we started off at looking at making changes to in part better align the NZX and ASX position, but as we delve deeper into the guidance, we thought it was timely to make some other changes that could be helpful for issuers.

The main reason we wanted to conform the guidance to the ASX guidance was because the ASX guidance was very clear that when an issuer experiences a deviation against market expectations, that that deviation needs to be more significant when it's against market expectations that are derived from analyst coverage rather than an issuer's own earnings statement.

As I said as we got into looking at the guidance more deeply, we decided to add some other areas of clarification. Those include the types of statements that might amount to earnings guidance, how an issuer should consider the nature of a deviation. So we've added some factors that issuers may wish to consider when determining whether the nature of a deviation could cause the deviation to itself be material information. And then in terms of providing guidance on the materiality of the extent of a deviation, we've included some bright-line thresholds to provide further assistance for issuers.

One of the pieces of feedback we got through our consultation on the guidance note changes was that we should perhaps include more examples in the guidance note. We did consider that carefully and we have included some examples, but on balance we've decided not to include a lot of new examples because they don't really serve as a proxy for an issuer using its own judgment around whether a performance deviation is material information.

I guess standing back from everything, the headline test and the guidance note remains the same, that the question an issuer should be asking themselves is whether a performance deviation is material information. That is whether a reasonable person would expect to

deviation and actual or projected earnings from market expectations to have a material effect on the price of its securities. And if so that the deviation should be disclosed.

We've tried to break that question down for issuers so that they can segment their analysis. There are a number of things an issuer should consider when determining whether a deviation is material information.

The first thing to consider is the nature of the market expectations. Are they derived from an earnings guidance statement the issuer has put out or are they derived from analyst coverage or perhaps from prior comparable period performance?

Once an issuer has determined the nature of the market expectations that apply to it within, the analysis should be for the issuer to look at the nature of the deviation and determine whether that could cause the deviation to be material information then to look at the extent of the deviation is it significant or material enough that it should be disclosed? And then obviously the deviation needs to be sufficiently certain for the disclosure obligation to kick in.

That's a high-level summary of the nature of the changes that we've made. I'm just now going to take you through each of the sections. Melissa, this is the next slide for your members. So the first section of change is section 3.4 of the guidance, and this is to do with issuing earnings guidance.

We've tried to provide more color in the guidance as to the types of statements that might amount to earnings guidance. So if an issuer comes out and sees that it's comfortable with consensus analyst performance expectations, that might be an earnings guidance statement. Similarly, if an issuer sees and expects its performance to be below or in line or to exceed prior comparable period performance, that could also be an earnings guidance statement.

We've also tried to highlight that there's no requirement for issuers to provide earnings guidance to the market, but the issuers might well want to do so because it does provide the best foundation for informing what market expectations are. As I said, that's the first bucket for issuers to think about in terms of whether or not what they have said is in fact an earnings guidance statement.

Then as issuers are looking at their own performance and thinking about, do they have an obligation to correct market expectations? As I said, the headline to use there is the deviation material information.

So the first thing to do is to assess what has informed the market expectations. What we've tried to do in section 3.5.1 is to create a waterfall. So in order of priority, these are the factors that issuers should consider. They should consider their own earnings guidance statement. As I said, that might be a softer statement around expecting performance to be in line with prior period performance, but have they actually put out an earnings guidance statement.

Next they should look at the outlook statements and disclosures that they've published over the period, because that could also inform whether or not they have, in fact, given earnings guidance.

Then the next question is the analyst coverage for the issuer, so in a situation where the issuer hasn't put out an earnings guidance statement analyst coverage should be considered? And then if an issuer is not covered by analysts, we think that the prior comparable period performance is the next best proxy for assessing market expectations.

And all of those assessments need to be informed by the impact of external events known to the market. We do think that the last factor should be considered by issuers, that it is reasonable for them to think about the macro environment, but we're also cautioning issuers to assume that the market will have fully understood a macro event and to consider whether they do have a disclosure obligation to explain to the market how a macro event might actually affect their own performance.

All of those factors go into the bucket of an issuer assessing what are the market expectations that apply to it, then to the extent a performance deviation against those market expectations has arisen, we think there are two main hits that issuers need to consider when determining whether a deviation could be material information.

The first is the nature of the deviation. So we've included in the guidance some factors the issuers might wish to consider when thinking about the type of deviation that they are experiencing, factors that are relevant there are is the deviation, a short term deviation. And part of that assessment goes towards how volatile the issuer's performance is and how much near term performance is a driver of the issuers share price. Also, factors to think about there are, is the nature of the deviation, such that it has a cashflow effect or is it, more akin to an accounting treatment type deviation.

We're trying to really emphasize on the section that the factors we've listed there are and non-exhaustive. Issuers need to really consider for themselves what is the type of deviation that they are experiencing. And if for any reason an issuer thinks that the type of deviation is material information, that the deviation itself should be disclosed.

The next head is a bit simpler and instantly something that has quite clearly highlighted the ASX guidance, and that's considering the extent of the deviation. So as I said, part of the reason we started looking at making these changes was looking at the way ASX approaches deviations from market expectations against an issuer's own earnings guidance or market expectations against analysts coverage. Because ASX has made it very clear that where a performance deviates from market expectations against analysts coverage, that that deviation needs to be greater in order to trigger a disclosure obligation.

So going back to what we've put into our guidance, we've said that where an issuer has market expectations informed by its own earnings guidance, it should be considering is the performance deviation material. And when we say material, we put some brightlines around that, so we've said broadly speaking a deviation of less than 5% against market

expectations is probably not material, between five and 10% may be material, and 10% or greater would usually be material. And we've intentionally included the words usually in maybe because there are still some latitude for issuers to consider for themselves as the deviation material information, but we wanted to provide some guidelines to help inform the assessment.

That bucket is quite different to an issuer whose market expectations are informed by either prior comparable period performance or analyst coverage. In that situation we've said an issuer should consider whether the deviation is significant. And by that, we mean it is greater than material. We've steered away from actually including any brightline tests around what significant means, and we've left it to an issuer as discretion, but the expectation is that it was more than material.

So those are the two hints that an issuer should be thinking about, is the deviation of itself material information and then, Mellisa, the next slide. Obviously a deviation still needs to be sufficiently certain in order for the obligation to disclose to arise.

We've tried to provide a bit of guidance in section 3.5.4 around what certainty might look like. So the guidance here is, if a deviation occurs earlier in a period, it is less likely to be material because there is time for it to correct. But I guess in the same brief to the extent an issuer has put out half year earnings guidance, that could absolutely be a situation where a performance deviation for a half year would need to be disclosed. I guess the message here is you can't slice and dice deviations, that the incremental effect of a deviation needs to be considered when thinking about whether or not the deviation is such that it should be disclosed.

Then in the last part of guidance that we've changed, we've talked a little bit about engaging with analysts, and obviously this is something that's very important to get right. So we're very clear there's no general obligation to correct analyst coverage. Although if a deviation is material, it will need to be disclosed. Broadly speaking, issuers are not expected to be monitoring all the analyst consensus out there about them and to be correcting minor discrepancies or divergencies of views. We are encouraging issuers to engage proactively with analysts but in the same brief, to be careful that when they're engaging that they do disclose any material information to the market prior to disclosing it to analysts.

As I said, it's a short three or four pages that we've changed within the guidance note. They all really do wrap around performance deviations. We've tried to add color to help inform assessments around whether a deviation is material information, that the headline tests remains as it did prior to these changes, that a reasonable person has to expect the deviation to have a material effect on the price of an issuer's securities. But we hope that these changes will particularly in this volatile market environment be helpful for issuers.

So now as Ian said, I've got Chris Holland here from the regulation team. We'd be happy to take any questions from your members, Ian.

Ian Matheson:

Thanks very much Kristin. Folks, now's your opportunity to ask Kristin or Chris a question. Just a reminder, if you would like to ask a question, you can either type it in the chat box down the bottom or you can raise your hand and I will give you the call if you'd like to ask your question live and verbally.

Hopefully there are some questions coming through. I might nominate a few people to ask a question. If there aren't any, I know Roger Wallis from Chapman Tripp is on the call as well. I'm not sure whether Roger has any questions as well. Are there any questions anyone would like to ask?

Speak of the devil, Roger has raised his hand. Roger, if you could unmute yourself and ask your question, please go ahead.

Roger Wallis:

Can you hear me?

Ian Matheson:

Yes.

Roger Wallis:

That's lucky. Just a question on the extent to which NZX regulation will undertake monitoring in this area? Obviously this, probably more than any other area of the rules requires significant judgements to be made. And it's quite hard to do that monitoring at a desk. Well I'm just interested to hear what the approach is when issuers seek to progress, this topic.

Ian Matheson:

Kristin or Chris?

Chris Holland:

Thank you, Ian. Thank you, Roger. Thank you for the question, Roger. Obviously you're aware acting for a large number of issuers that we do seek out to engage. One of the issues that we have with this aspect of our work, as opposed to say the participant compliance sphere of our work, we're essentially monitoring media comments and the like, expressions of scufflebutt in the markets and obviously the statements put out by issuers. So to an extent, we are in a reactive mode. This is a priority for us. And we do reach out to issuers frequently, I think we often.

The nature of these things mean that we do have what you should call false positives, where we reach out and then subsequently satisfied from the issuer or from the issuer's advisors, that the issuer is in compliance with his continuous disclosure obligations, and so we have those. But we do also, on an ongoing basis, have a number of incidents. Sometimes some of our friends in the media can leak some publications more than others, and we need to have some rather quick discussions with issuers. But just in this space, generally, I just want to affirm it is a priority for us, and we do want to as well, just seek to promote a willingness to speak with issuers and their advisors if issuers would want to front foot these matters with us.

Ian Matheson:

Thanks very much Chris. Any other questions? I'm sure ... Sorry, Roger has got another question. Roger, did you have another question?

Roger Wallis:

I did. Yeah, a related follow-on question really. The extent to which NZX plan to liaise with the equivalent team at the FMA that also monitor particularly accounting disclosures, both post-factor and in relation to expectations or whether you'll be operating in a parallel universe from the FMA staff that look at the same thing?

Chris Holland:

We do seek to work with FMA all the time and we have quite a lot of active exchange of information. And this is one of these things that on an ongoing basis, we're always trying to fine tune or calibrate the relationship in terms of getting the most appropriate information.

And without going into particulars, we're continuing to work with FMA on how those matters get calibrated in terms of the processes that we follow and the discussions we have with them for the exchange of information.

So we have an MOU, we have a number of areas where we're engaging with them quite regularly, but it's a particular point to note. Also, if that's a point that Roger and his clients are seeing in the marketplace, that there's a perception that that's an area that we could do more on, that's very valuable feedback and that commentary is always helpful from events like this.

Ian Matheson:

Thanks Chris. Any other questions? Marcus or Annabel I'm sure you've got questions. While they're thinking about those, if I could just mention, some of you are aware that AIRA is in the process of revising its own best practice guidelines. And one of the issues that, areas we're going to strengthen further is in this area of commenting on analyst expectations, but

more particularly consensus as everyone knows and as is confirmed in the NZX continuous disclosure guidance note.

It's okay to point out factual errors in analyst forecasts, but it is not okay to comment on consensus and to discuss the company's version of what consensus is. This is an area that is particularly fraught area and that I would encourage everyone not to comment on consensus to analysts. And many of you, I think know that ASIC over in Australia at an AIRA conference a few years ago, came out and said that in their view, a company that commented on consensus, more particularly provided consensus back to analysts, that was a form of selective disclosure.

There is a right and a wrong way to publish consensus either on the company's website and/or through to the exchange, but of itself circulating the company's version of consensus that you might have compiled for internal purposes, distributing that selectively to analysts is not on.

So that was just a reminder on that practice of not circulating consensus to analysts, and that should be for internal purposes only. Any other questions from anyone? Marcus has a question. Marcus, would you like to take yourself off mute and go ahead, please?

Marcus Driller:

Can you hear me Ian?

Ian Matheson:

Yes, thank you.

Marcus Driller:

So apologies. I've just dialed in a bit late, but I guess not so much a question, but just I want to acknowledge the work of Chris and Kristin and the team at NZX. We had spoken to a number of issuers and then approached NZX. So I'd just like to thank you guys for your responsiveness to those discussions. And I think where we've arrived at is certainly an improvement for clarity for issuers. I just wanted to pass on those comments Ian.

Ian Matheson:

Thanks very much Marcus. Folks, unless there are any other final questions, we might wrap it up there. Final opportunity, anyone would like to ask another question? No? Look, I think we're done for today. Thanks very much for everyone's participation. Thank you very much to Kristin and Chris for sharing those thoughts with us today and talking to the revisions to the guidance note.

The next AIRA function in New Zealand is, hopefully everyone knows, a chapter lunch meeting on this Thursday, which Spark is hosting either in person or virtually for others who can't attend in person. And also if you're interested in another session on managing consensus during COVID, we've got another session, another webinar, this coming Friday, the 30th of October on it as well.

That just leaves me to thank, again on behalf of all AIRA members on this webinar, thank NZX. Again, and I certainly echo Marcus's comments as well, and it's very much appreciated NZX for your responsiveness to the contemporary challenges and continuous disclosure for issuers. Folks, thanks very much. We'll now close the event and thank NZX again very much. Thanks very much everyone.

Kristin Brandon:

Thanks Ian. Thank you.

End.

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