New Zealand Stock Exchange Governance Code and Reporting

I would like to take a moment to discuss the New Zealand Stock Exchange Governance Code and, in particular, Principle 2.7., which recommends boards should regularly assess board performance. Before continuing, let me say, my concern is not with the code, but with the substance and value to shareholders and stakeholders of the reporting that appears in the Annual Reports of organisations that fall under the NZX 'Governance Code' that concerns me.

To be clear, adherence to the Code is not mandatory. The Code has 'recommendations not requirements.' However, for all Main Board listed companies reporting on a 'comply or explain' basis is mandatory. Reporting can be in either the Annual Report, website or, a combination of both. Certainly, the three organisations I use as examples complied with these elements. Each detailed to greater or lesser degrees their compliance with the code and any policies (F&P) that supported these requirements. I took the following from the 2021 Annual Reports 'Governance Statements' of Auckland Airport (AA), Fisher and Paykel (F&P) and Christchurch City Holdings Ltd (CCHL):

Principle 2.7 Board Performance Review

> ***Auckland Airport[1]:*** *The Board assesses its own performance, and the chair of the Board continually monitors the dynamic of the directors to ensure it is working optimally at all times. With the most recent formal external review being completed in August 2021.*
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> ***Fisher and Paykel[2]:*** *During 2020, an external consulting company facilitated the Board's performance evaluation.*
>
> ***Christchurch City Holdings[3]:*** *The Board, every three years, evaluates its own performance, and its own processes and procedures to ensure that they are not unduly complex, that each director is performing adequately and that the Board as a whole is effectively fulfilling its role*

I question the value of these statements to the reader, what can a reader understand about the individual board's performance? My view is that, as these statements stand, they are glib and superficial, providing only what is known, that boards will review their performance occasionally.

The exception is CCHL's statement. Frankly, this is concerning. CCHLs expectation of its directors is that they; ***perform adequately*** and that the processes and procedures of the CCHL board are not ***'unduly complex.'*** There is much more that could be said about the statement of CCHL and how it may foretell CCHL's future performances. But for now, one must ask, what were the directors of CCHL thinking when they signed off on governance statement that highlighted their individual commitment to ***adequate performance***?

If '***adequate'*** is your boards performance criteria, then adequate is what you will get! Which raises the larger question; how is performance measured when no measures of performance are either specified or identified on which to report?

[1] AIA 2021 Annual Report Pg. 53
[2] F&P 2021 Annual Report Pgs. 80/81
[3] CCHL 2021 Annual Report Pg. 122 As the only shareholder, ChCh City have four director positions, filled by the Mayor, Deputy Mayor and two councillors.

Other than CCHL's requirement for adequate performance, nothing in the example statements give an insight into how or to what (standards) the boards were held accountable, or how to judge if, the performance was excellent, *adequate,* or poor. On these matters, the NZ Code is silent.

What the current code lacks is any direction on how performance should be judged. One solution would be to use the self-identified 'roles of the board' each company has detailed in their respective annual reports and measuring their adherence/performance against them. This would be better than nothing, which is the current standard.

The NZX Code is also silent regarding disclosure on the who, how and what was assessed to determine the boards performance/effectiveness. Even when stated, as with AIA and F&P, that an external agent reviewed the board's performance. The level of disclosure left more questions than answers, there is no transparency on which to base a judgement on the value of the assessment made. More so because the reporting doesn't detail anything about the outcome. Again, this is easily corrected through inclusion of the answers to these seven simple questions:

1. What was the name of the firm, consultant who conducted the review?
2. What qualifications/experience did the reviewer hold/have to support their appointment?
3. Were they independent? Do they or their firm have any present/past ties (financial, personal, etc.) to the company, its board, or directors?
4. If they were not independent what steps to mitigate potential/real conflicts of interest were implemented?
5. What method, tools, etc., were used?
6. Who were included/excluded from the review, and why?
7. Did the board meet the performance requirements as detailed in its board role?

With a required minimum standard of disclosure and reporting. Excellent reviews should give valuable insights for boards, shareholders, and stakeholders. Currently, the NZX Governance Code is deficient in its guidance and company adherence to it offers no tangible value or insights into a board's performance.

Reviews should be in-depth assessments detailing how effective the board was and may be in performing its duties, e.g., leading the company, working with the executive, developing its skill base, succession planning, and importantly, identifying the levels of synergy, trust and confidence existing within the board and between the board and executive.

Implementing the suggestions above would require a low level of additional disclosure from boards. Yet would add real value and improve the levels of transparency tenfold over what is currently provided. For more about reviews, see: Board Reviews - Abort, Retry, Ignore, Fail–A New Model is Needed.

There are two truths when it comes to board reviews: 'self-evaluation is useless,' and unless the review is conducted independently, those conducting the review are unlikely to jeopardise future fees with 'harsh truths.'

It is time the NZX updated 'Principle 2' of its Corporate Governance Code to enable better oversight of board performance by those it affects the most, shareholders and stakeholders.

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