Guidance Note

Continuous Disclosure

Revised sections 3.4 and 3.5

October 2020

3.4 Issuing earnings guidance

Earnings guidance is an issuer's forecast (usually presented as a range) of one or more particular financial measures for a particular reporting period (rather than a qualitative outlook statement). Some issuers choose to provide periodic earnings guidance to the market; and/or to publish one-off earnings guidance in connection with transactions or other disclosure events. Statements made by an issuer that it is comfortable with consensus analyst performance expectations may also be earnings guidance, as may statements by an issuer that it expects its performance to be below, in line with, or to exceed, its performance in a prior comparable period. There is no requirement for issuers to provide earnings guidance to the market.

It is normal business practice for issuers to track financial performance against internal budgets or projections. Those budgets or projections are likely to be confidential to the issuer and generated for internal management purposes. Accordingly, if the issuer continues to satisfy the other requirements of Rule 3.1, an issuer's internal budgets or projections will be subject to a disclosure safe harbour, and there will be no requirement for issuers to provide earnings guidance to the market[1].

NZX considers that where an issuer publishes earnings guidance, that guidance will provide the best foundation from which to assess market expectations of the issuer's earnings and prospects, and the price of its financial products, and may therefore provide a benchmark that assists an issuer in managing its disclosure obligations.

3.5 Correcting market expectations

Market expectations of an issuer's earnings over the near term can be a material driver of the price of its financial products. An issuer should consider whether a reasonable person would expect a deviation in its actual or projected earnings from market expectations to have a material effect on the price of its quoted securities, such that the deviation should be disclosed as material information for the purposes of Rule 3.1. Issuers should also consider whether it would be appropriate to update their earnings guidance at the time of disclosing a deviation from earlier guidance.

In order to make this determination issuers will need to consider both the nature of market expectations, and the nature, extent and certainty of the deviation, in accordance with the guidance provided in sections 3.5.1 to 3.5.4, below. Where an issuer considers that the nature and/or the extent of a deviation is material information, and that deviation is sufficiently certain, disclosure will be required.

Should an issuer experience a material effect on its share price after the release of financial results, this may indicate that the issuer's performance was not in-line with market expectations.

3.5.1 How to assess market expectations

An issuer should assess changes in its financial performance against market expectations, for the purposes of determining whether a disclosure obligation is triggered. In determining market expectations an issuer should consider:

- the issuer's own published earnings guidance for the current reporting period, as the most accurate reflection of market expectations;

[1] Issuers should refer to section 5.1 of this Guidance Note for further guidance as to the applicability of the safe-harbours of Rule 3.1.

- outlook statements and other disclosures published by the issuer to the market in respect of the relevant reporting period;
- the earnings forecasts of any analysts that cover the issuer;
- the earnings results of the issuer for the prior comparable period; and
- the impact on the issuer of external events known to the market.

Where an issuer has published earnings guidance for the current reporting period, that guidance will be the best and most appropriate guide for the issuer in determining what market expectations are for its earnings in the current reporting period. Where an issuer has not published earnings guidance, or has withdrawn guidance, an issuer should determine market expectations by considering the earnings forecasts of analysts that cover the issuer and the issuer's earnings results for the prior comparable period, in the context of any outlook statements or other disclosures made by the issuer in the relevant reporting period.

An issuer's own guidance will provide the best foundation from which to assess market expectations, because analysts are necessarily "on the outside looking in" and so there may be errors in the analysis or insufficient understanding of an issuer's strategies or business plans. In addition, an analyst's research may not be widely available to the market, or there may be a wide range in views between analysts who cover the issuer. It is reasonable for issuers to place less emphasis on analyst coverage that is less credible or represents an outlier view, when determining market expectations.

In all cases, market expectations can be set or modified by disclosures the issuer makes to the market over the reporting period and by known external events affecting the issuer. However, NZX encourages issuers to be cautious in taking a view that the market will have correctly and fully deduced, concluded or inferred the impact of certain external events on the issuer without the issuer having provided disclosure of those impacts to the market such that its expectations are properly informed by them. The general availability of information about a known external event, will not discharge an issuer's obligation to disclose the effect of that event on an issuer, where that effect is material information.

3.5.2 Nature of the deviation

It is expected that all issuers regularly assess their financial performance against market expectations. The primary consideration for an issuer when determining whether it is required to disclose a deviation will always be whether a reasonable person would expect a deviation from market expectations in its actual or projected earnings to have a material effect on the price of its quoted securities, such that the deviation should be disclosed as material information for the purposes of Rule 3.1.

In order to make that assessment, NZX considers that issuers should consider whether a reasonable person would expect the nature of the deviation to have a material effect on the price of the issuer's financial products. This can include considering the following factors:

- whether near term earnings is a material driver of the price of the issuer's quoted financial products;
- whether the deviation affects cash flows (rather than being a result of a non-cash item such as a change in accounting treatment or an impairment charge);
- whether the deviation will affect the outlook for the issuer in the future reporting period, (rather than being due to a revenue recognition timing difference, or corrected by a

countervailing item (such as a tax credit)); and

- whether the issuer's performance is usually stable, rather than volatile.

These factors are non-exhaustive, and issuers will need to consider for themselves the circumstances giving rise to a deviation and the effect of the deviation on their business outlook and earnings profile when assessing whether the deviation is material information for the purposes of Rule 3.1. Issuers will also need to consider the extent and certainty of the deviation (discussed further below).

Issuers are cautioned that an assessment that a deviation is not material information against one of the above factors, will not be sufficient for an issuer to determine that the deviation does not need to be disclosed. It is noted that the above factors are non-exhaustive, and the extent and certainty of the deviation are also required considerations for assessing materiality. For example: merely because a deviation is contributed to by a change in accounting treatment or an impairment charge, is not determinative that the deviation is not material information.

In addition to considering the non-exhaustive factors outlined above, issuers will also need to also assess the broader nature and effects of the deviation to determine whether a disclosure obligation has crystallized.

3.5.3 Extent of the deviation

Issuers will also need to consider the extent of the deviation, in addition to considering the nature of the deviation. NZX considers that a material deviation of performance from market expectations derived from an issuer's own guidance will usually require disclosure. In contrast, a deviation of performance from market expectations derived from sources other than an issuer's own guidance (including analyst coverage, or prior comparable period performance) will usually need to be more significant in order to be considered 'material information' and trigger a disclosure obligation under Rule 3.1(a).

Deviations from an issuer's earnings' guidance

The market will treat earnings guidance from an issuer as more authoritative and reliable than market expectations informed from other sources (including analyst coverage). Therefore, a deviation from the guidance published by an issuer is more likely to have a material effect on the price of the issuer's quoted financial products, than a deviation from market expectations derived from other sources.

In cases where an issuer has published earnings guidance for the current reporting period, NZX recommends that the issuer consider making a disclosure to the market, when it expects there to be a material deviation between its actual or projected earnings for the period, and the guidance it has previously given to the market.

NZX considers that deviations from an issuer's own guidance:

- of 10% or more will usually be material;
- of between 5% and 10% may be material; and
- below 5% will not usually be material.

In quantifying the extent of the deviation, where an issuer has presented its guidance as a range, the issuer should use the floor of the issuer's guidance range as the base amount in respect of negative deviations, and should use the ceiling of the issuer's guidance range as the base amount in respect of positive deviations.

The thresholds set out above are intended to support an issuer's assessment of whether a performance deviation is material and requires disclosure, and are not solely determinative of whether or not a known or expected deviation is material information for the purposes of Rule 3.1.

Deviations from market expectations derived from other sources

Issuers who have not published earnings guidance, should also consider whether the extent of a performance deviation from market expectations means that the deviation could be ‘material information’ that should be disclosed under Rule 3.1(a).

NZX does not consider it appropriate to prescribe any percentage guidelines as to the extent of a deviation in an issuer’s actual or projected earnings from market expectations that will constitute material information, where market expectations are derived from sources other than an issuer’s own earnings guidance, because those expectations are naturally less certain (for the reasons set out in section 3.5.1 above).

However, when assessing whether disclosure is required, it will be reasonable for issuers to consider that market expectations derived from analyst information and other sources is likely to generate a less certain and broader view of market expectations, and that therefore the deviation would usually need to be more significant than a deviation against market expectations derived from an issuer’s own earnings guidance[2], for a disclosure obligation to crystallize.

3.5.4 Certainty of the deviation

NZX considers that for a disclosure obligation to arise under Rule 3.1(a) in respect of a deviation in an issuer’s actual or projected earnings from market expectations, the issuer will need to be sufficiently certain that a deviation will occur. Discrepancies between internal budgets or forecasts, and market expectations will not necessarily trigger a disclosure obligation, unless the issuer is reasonably certain that the deviation will occur.

A potential deviation identified by an issuer early in a reporting period is less likely to require disclosure where there is still an opportunity for the deviation to reduce (either as actual results or market expectations change). Disclosure may still be required in respect of deviations of performance for a half-year reporting period, particularly where an issuer has provided half year earnings guidance to the market.

Sometimes, an issuer’s actual or expected earnings can change gradually due to a number of events that, viewed individually, may not require disclosure. However, if the combined effect of all of the events reveals a pattern or trend that a reasonable person would expect to have a material effect on the price of the quoted financial products of the issuer, disclosure will be required. For example, a review of an issuer’s monthly management accounts over a six-month period could reveal patterns, trends or changes, such as a gradual decrease in revenue or profitability. The impact of the decrease may not be material information if it is only considered on a month-to-month basis, but may be material if the cumulative decrease over the six-month period is considered[3].

Where issuers provide financial or operational information to the market on a regular and frequent basis, it is likely that the market will react less dramatically than it may if, for example, a loss is reported at the end of a long period. Some issuers choose to release financial or

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[2] Please refer to NZXR’s guidance as to materiality thresholds, set out earlier in section 3.5.3, above.

[3] In a public censure of Energy Mad by the NZ Markets Disciplinary Tribunal (“the tribunal”) released on 14 October 2013, the tribunal found that Energy Mad did not release Material Information in relation to a change in its forecast EBITDA for FY2012 promptly enough, as required by Listing Rule3.1. The tribunal noted that “financial projects and forecasts can be inherently commercially difficult, particularly for new issuers. However, it is vitally important that all Issuers [regularly] assess their financial performance against any announced projections, forecasts or expectations and keep the market fully informed of any matters which [are] material to their progress in achieving them.” See the full statement from the tribunal for further detail.

operational information, such as monthly or quarterly metrics, on a regular basis to manage this. NZX encourages issuers to consider whether this approach is appropriate for their particular circumstances.

Once it is sufficiently certain that an issuer's performance will deviate from market expectations and the issuer has assessed that deviation to be material information (for the purposes of Rule 3.1) the issuer must promptly, and without delay, disclose that the issuer's performance for the reporting period is expected to deviate from market expectations, and give an indication of the order of magnitude of that deviation (which may be a description of the extent of the deviation, if the issuer is unable to numerically assess its magnitude). NZXR does not consider that where a deviation in an issuer's earnings from market expectations is material information, any of the safe harbours to disclosure under Rule 3.1 will apply[4]. Issuers should refer to section 5.1 of this Guidance Note for further guidance as to the applicability of the safe-harbours of Rule 3.1.

3.5.5 Correcting information published by analysts

A number of issuers are covered by analysts or other third parties, who publish earnings forecasts that may shape market expectations of the issuer's earnings or which may reflect market expectations.

Ongoing internal monitoring of financial performance means that issuers will be aware of how their actual or projected earnings are tracking against third party forecasts or estimates, on an ongoing basis. NZXR does not consider that issuers have a general obligation under the Listing Rules to:

- correct analyst earnings forecasts or consensus estimates which do not align with an issuer's internal earnings projections; or
- publish their internal earnings projections solely because they do not align with analyst earnings forecasts or consensus estimates.

However, as noted in section 3.5.1 above, where an issuer has not published earnings guidance, the best and most appropriate guide for an issuer in determining market expectations are will be a combination of the earnings forecasts of analysts that cover the issuer and the issuer's earnings results for the prior comparable period. Therefore, where analyst earnings forecasts significantly differ from an issuer's actual or projected earnings, issuers should carefully consider whether disclosure is required applying the principles set out in sections 3.5.1 to 3.5.4, above.

3.5.6 Engaging with analysts

NZX encourages issuers to monitor analyst coverage that relates to it and, if appropriate, clarify any issues with that analysis proactively. There may be legitimate reasons why analyst coverage may not align with an issuer's own expectations, such as errors in the analysis or insufficient understanding of an issuer's strategies or business plans. In addition, the issuer may have factored in information, or made assumptions, that remain confidential to it and which are not subject to any disclosure obligation and therefore cannot have been considered by the analyst. Analysts will also have a number of issuers to cover, and will not have the constant

[4] The information that is required to be disclosed in these circumstances is the fact that the issuer's actual or projected earnings will deviate from market expectations (to the extent it is material information), not the issuer's internal budgets or forecasts, which are generated for internal management purposes and therefore remain within the safe harbour to disclosure provided they continue to be confidential as noted earlier. For the avoidance of doubt, an issuer may legitimately rely upon a safe harbour to disclosure where the deviation in actual or projected earnings only arises as a result of a matter that itself falls within a safe harbour – for example, if an issuer is considering an acquisition or disposition that will result in a material deviation in actual or projected earnings, but the transaction itself remains a confidential, incomplete proposal or negotiation, then there would be no separate obligation to disclose the expected deviation in earnings as a result of the transaction.

focus that an issuer's own board and senior management will have.

Engagement with analysts may indicate to an issuer that the market does not have all of the information it needs to inform its expectations of an issuer's performance, or that the market has not properly understood the importance of information previously released to the market. In those circumstances, issuers should consider whether there is any information they are able to release to better inform market expectations. If issuers do engage with analysts, they are reminded to ensure they do not inadvertently breach their disclosure obligations under the Listing Rules by selectively disclosing material information to analysts which is not otherwise available to the market.

Issuers should carefully consider their disclosure obligations before approving or supporting forecasts or estimates provided by third parties. NZX considers that statements by issuers that could be construed as supporting third party estimates or forecasts are likely to be treated as de facto guidance by the issuer. This, in turn, increases the onus on issuers to address discrepancies that arise between that guidance and actual results.