



Submissions on
the review of NZX
Corporate Governance
Best Practice Code
within NZX Main Board
Listing Rules

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Introduction

In this document we set out our submissions in response to the review of the NZX Corporate Governance Best Practice Code (“NZX Code”) within the NZX Main Board Listing Rules (“Listing Rules”), as set out in the consultation paper dated 31 August 2016 (“Consultation Paper”).

The submissions have been prepared based on our own review of the Consultation Paper and do not represent any client views or instructions.

We have structured our submissions to respond to the questions set out in the Consultation Paper. Unless otherwise defined in this document, capitalised terms have the meanings given to them in the Listing Rules.

We would be happy to meet with NZX to discuss the submissions contained in this letter and have no objection to the submissions being made publicly available on the NZX website.

The contact details for those persons responsible for the preparation of the submissions are listed at the end of this document. Please feel free to contact any of them if you wish to discuss any aspect of the submissions further.

Principle 1: Ethical Standards

1. Do stakeholders agree that a more detailed recommendation about ethics is useful?

In our view, the proposed list of matters to be included in an issuer's code of ethics is overly prescriptive. While the matters that are appropriate in a code of ethics applying to the Board or senior management of an entity are likely to be aligned across different listed issuers, the matters that will be relevant at an employee level may differ significantly according to the nature of work undertaken by those employees.

Further, at different levels of employment within a large listed issuer, the specific nature of the ethical standards that will apply to the work undertaken by employees may change according to the nature of the work they undertake.

Rather than prescribe the specific ethical standards that an issuer's code of ethics should apply to all directors and employees, the recommendations underlying Principle 1 should encourage issuers to prepare one or more codes of ethics, which between them apply to all of the issuer's directors and employees, and which each set out the appropriate ethical standards to be followed by the directors and employees to which they apply. Issuers should be encouraged to tailor codes of ethics for employees in different areas of work and at different levels of seniority in order to better reflect the requirements of the roles performed by those employees.

We are also of the view that the requirement to provide training "regularly" should be replaced with a requirement to provide "appropriate training". This would encourage issuers to tailor ethical trainings across their organisation, and update that training as and when appropriate for different groups of employees and directors (for example, directors may need more regular "update" sessions for developments in the relevant law and practice, whereas for certain employees the ethical requirements may be more constant and the trainings would be "reminders").

2. Is there anything further that should be recommended in the code of ethics or discussed in commentary?

We have no further comments.

Principle 2: Composition and performance

1. Are there any further matters in relation to board composition that stakeholders would like covered?

There are no further matters in relation to Board composition that we believe should be covered. However, recommendation 2.4 should clarify that reporting should include information about a director's ownership interests "in financial products of the issuer" (at present, the reference to "ownership interests" is unclear).

2. Do stakeholders consider a recommendation that directors undertake training to be important?

We support a recommendation that directors undertake training. We believe that it is important for directors to stay abreast of changes in relevant laws and practices, and to regularly refresh their approach

to governance. We do not consider at this stage that a CPD requirement would be appropriate, but it is something that could be considered at a later date once the general requirement to undertake training has become more established.

3. Do stakeholders consider that the board should establish a formal procedure to regularly assess director, board and committee performance?

We do not support a recommendation for the Board to put in place a formal procedure to assess its performance and the performance of committees. While there are some issuers who institute formal director, board and committee performance assessments, we do not consider that this is appropriate to require of all issuers (in particular smaller issuers).

The role of assessing Board performance lies primarily with shareholders, who are able to vote on those directors' appointment and remuneration. This is in line with the principles underpinning the Listing Rule director rotation requirements. We consider that in many cases these additional formal processes would serve as an unnecessary distraction from directors' core governance role.

Principle 3: Board committees

1. Do stakeholders consider it is still appropriate to include a recommendation that directors who are not members of the audit committee, and employees, should only attend audit committee meetings at the invitation of the audit committee? Alternatively, is this something that would be better as commentary?

We consider that this would be better suited for commentary. A non-executive director should be free to attend committee meetings where appropriate. It may even be that in some cases, where a particular concern arose, that the director may consider them self to be under a duty to do so to properly inform themselves as a function of their broader directors duties. An issuer should not be required to "explain" non compliance with the recommendations where this attendance occurs without a formal invitation.

2. Do you consider that the level of overlap between the mandatory Listing Rules and the Code is appropriate? Would submitters prefer some of the other committee related matters to be covered in the NZX Code as opposed to the mandatory Listing Rules? Note that this would have the impact of making these requirements non-mandatory.

We support requirements relating to other committees being covered in the NZX Code as commentary (as opposed to the mandatory Listing Rules). This would be in order to provide greater flexibility for small or medium issuers, in respect of which certain of the proposed recommendations/requirements may not be appropriate or feasible.

Principle 4: Reporting and disclosure

1. Do you agree with the proposed recommendations?

As stated in our prior submission, we strongly support a recommendation for issuers to have in place a written continuous disclosure policy. While we do not consider that there will be substantial added benefit for investors or other stakeholders in issuers publishing their written policies, including continuous disclosure policies, this is not something that we see as a significant concern.

We do not consider recommendation 4.3 to be sufficiently clear. It would seem somewhat arbitrary to require an issuer to specify non-financial targets and assess performance against those targets, without additional guidance as to the nature of what those non-financial targets should be.

Presumably, recommendation 4.3 is intended to refer primarily to ESG factors, and therefore effectively imports the commentary around those factors into a recommendation, requiring issuers to “comply or explain” with the requirement to provide ESG disclosure. If this is not intended to be the case, it should be made clearer.

Further, in our prior submission, we emphasised our view that NZX should not include anything more than a “best practice commentary” regarding ESG disclosure. Given the limited size of the New Zealand market and the financial constraints of many market participants, requiring ESG reporting (even under a “comply or explain” regime) would create an undue financial and resource burden. Many New Zealand issuers already report on these matters as a matter of course, but this is industry and issuer-dependent. We do not believe that NZX should recommend this more broadly.

Therefore, the recommendation in 4.3 should be removed or amended to make clearer the nature of the intended non-financial benchmarking and reporting recommended.

2. Do you agree with the proposal to address ESG reporting within commentary?

Please see our response above.

3. Do you agree NZX should develop its own ESG reporting guidance based on the SSEI’s model guidance or alternatively allow for issuers to use the GRI framework?

We support a standard reporting model being included as commentary, with issuers free to adopt other frameworks as appropriate (for example, if those other frameworks are used more consistently among industry peers in other markets).

4. Do you think another framework should be used instead?

Please see our response above.

5. Do you agree that issuers should make key governance documents available to interested investors and stakeholders?

We do not object to the NZX Code including a recommendation that an issuer make their code of ethics, board committee charters and other key governance documents available on their website. However, we would add that we do not consider these documents to be of significant value to investors and stakeholders, and requiring disclosure may encourage homogenisation of those governance documents rather than issuers tailoring them as appropriate.

Principle 5: Remuneration

1. Do you agree with the proposals outlined above?

We support a recommendation that issuers put in place formal and transparent methods to communicate and recommend director remuneration packages to employees. We believe that this is an area in which

several issuers have struggled in recent times, leading to adverse outcomes at shareholder meetings which might have been avoided with clearer communication.

We do not consider that the publishing of detailed remuneration policies for senior management should rise to the level of a recommendation. In our view, investors as a whole are not overly interested in the detailed makeup of senior executive compensation below CEO level, and therefore the existing disclosure of pay bands provides sufficient information.

2. Do you agree that it is appropriate to require heightened disclosure in respect of CEO remuneration as proposed?

We support the proposal to include more detailed requirements for CEO disclosure (noting our comments above regarding other senior executives).

Principle 6: Risk management

1. Are there any other risk concerns you think should be specifically addressed in commentary?

We strongly support NZX’s decision to omit the specific categories of risk from the recommendations on the basis that their applicability to issuers will differ significantly, and therefore requiring all issuers to report in respect of each category would impose an additional compliance burden that would not be compensated by the benefit to shareholders and other stakeholders.

We would encourage NZX to similarly ensure that the commentary is not overly prescriptive. Issuers should be encouraged to identify and manage the key risks to their business, which will differ between industry and over time. An overly detailed commentary will risk encouraging issuers into a “tick the box” exercise assessing only those risks identified in the NZX Code, which may not be the key risks for their business.

Principle 7: Auditors

1. Are there any other risk concerns you think should be specifically addressed in commentary about audit requirements?

There are no additional concerns that we consider should be addressed in the commentary around audit requirements.

Principle 8: Shareholder relations

1. Do you have any concerns about principle 8 and 9 being merged into a single recommendation regarding shareholder interests?

We do not have any concerns with the merging of the principles into a single recommendation.

Recommendation 8.2, as currently drafted, seems slightly unclear in its proposed scope. New Zealand listed issuers typically provide an investor relations representative’s email contact details on their website for investors to contact with queries. This is in addition to the typical forum for shareholder input, the shareholder meeting.

However, as currently drafted it is unclear whether recommendation 8.2 would require more than this customary practice. While certain executives at listed issuers may choose to engage in a more open or regular dialogue with investors, we do not believe that the NZX Code should imply a requirement to do so.

Senior management of listed entities should be focussed on improving the performance of the company, with annual meetings providing shareholders with the opportunity to question and comment on that performance. We do not believe that there should be a requirement for greater ongoing engagement with investors.

The first and second parts of recommendation 8.2 also seem slightly inconsistent. The first part addresses the ability of investors to communicate with the issuer easily, but the example provided in the second part is of an issuer communicating with its investors.

2. Are there any other concerns you think should be specifically addressed in relation to shareholder rights and relations?

We have no further comments.

Contacts

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