NEW ZEALAND'S EXCHANGE
TE PAEHOKO O AOTEAROA

NZX Corporate Governance Code Review 2021

Initial Discussion Document

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This discussion document has been prepared by NZX to seek comment on the proposals contained in the paper, with a view to ensuring that the proposals will enable NZX to operate its markets on a fair, orderly and transparent basis. The proposals set out in this paper do not reflect NZX's concluded views of the matters raised. Capitalised terms which are not defined in this discussion document have the same meanings given to them in the NZX Listing Rules (**Rules**).

Context for the Review

What is the NZX Corporate Governance Code?

The NZX Corporate Governance Code (**Code**) provides NZX issuers with guidance on NZX's expectations in relation to corporate governance practices. The Listing Rules require issuers to publicly report the extent to which the issuer has followed the recommendations set out in the Code.

This approach, known as 'comply or explain' recognises that an issuer's board is best placed to determine its own corporate governance practices, that are appropriate for its investors and other stakeholders. This is an internationally recognised approach to exchanges' regulation of corporate governance, and is designed to ensure that investors receive sufficient information regarding an issuer's governance practices to enable them to make informed investment decisions, and enable investors to appropriately engage with the boards of listed companies.

Review of the Code

We are reviewing certain settings within the Code to assess their effectiveness, now that issuers have had three reporting cycles against which to report against the settings that were last amended as part of the 2018 holistic Listing Rule review. This review also provides us with an opportunity to respond to stakeholder feedback in relation to key aspects of the Code, and to consider international developments in the context of the New Zealand market conditions, to ensure that the settings in the Code are correctly calibrated to promote good corporate governance for our listed issuers.

This discussion document seeks feedback in relation to the scope of the matters that we have identified for inclusion in the review, which will be used as a basis from which to develop more detailed proposals for further consultation. The responses that we receive along with our own sample testing of issuers' practices in relation to the Code recommendations, will be used to develop proposed amendments to the Code for further feedback. The questions raised in this paper do not pre-determine the settings that will be proposed in the second round of consultation.

We are reviewing the Code's settings to ensure that they remain appropriate for NZX's issuers, market conditions, and to address matters raised with us by stakeholders. We are interested in hearing from all stakeholder groups, including issuers and investors in relation to the questions raised for discussion in this paper.

NZX wishes to ensure that the settings in the Code continue to support the operation of NZX's markets on a fair, orderly and transparent basis, by promoting good governance and recognizing that boards act as a mechanism to promote shareholders' interests and provide long-term value. NZX considers that a fundamental aspect of the Code is its recognition that boards remain best placed to consider governance settings that are appropriate for their business, and intends to retain the Code's regulatory settings as recommendations that issuers may adopt and adhere to on a voluntary basis.

NZX's markets

We will be assessing the settings contained in the Code in the context of NZX's market conditions.

The number of equity issuers on NZX has grown to 131 as at the end of June 2021. Capital raised on NZX's markets for the six months ended 30 June 2021 totalled $7.3 billion, down 10.6% on the same time last year. However, this is similar to the same period in 2019 and up 16.5% on the average levels over the past five years.

NZX's issuer population includes a number of smaller entities. In particular nearly half of the current total listed issuers on NZX have market capitalisations below $200 million, with around one-third having a market capitalisation of less than $100 million.

In addition, investment into the NZX share market includes a substantial proportion of retail investors (around 17%) with NZ managed fund investment comprising approximately 27%, and foreign ownership representing approximately 40% of investors[1].

Objectives

In this context, and in response to the matters raised with us by stakeholders, we have identified the following objectives for the review:

- undertake a targeted review of issuers' reporting practices, and certain aspects of the settings of the Code, now that issuers have completed three reporting cycles using the settings that were implemented in 2018;
- facilitate the successful operation of New Zealand's capital markets by enabling issuers to access capital on a competitive basis, through settings that deliver appropriate costs of capital;
- ensure that the Code's settings enable access for investors and other stakeholders to information about issuers' corporate governance practices to facilitate efficient allocation of capital; and
- promote good governance practices that support the generation of long-term benefits for issuers' shareholders and other stakeholders, and contribute to a sustainable and productive economy for New Zealand.

The review is also intended to promote the confident and informed participation of businesses, investors, and consumers in the financial markets and be consistent with the other purposes of the FMC Act.

[1] https://www.jbwere.co.nz/media/qjnhoxtf/jbwere-2020-equity-ownership-survey.pdf

Consultation Process

We propose two stages of formal consultation in relation to this review.

The first formal consultation step is this discussion document, where we are seeking early-stage feedback from submitters on the scope and direction of travel of the review. The responses we receive will be used to develop proposals for consideration as part of the second round of consultation. In addition to develop those proposals, we will undertake sample testing of issuers' disclosure practices and their adoption of the relevant Code recommendations, and undertake a benchmark review of our settings against those of ASX, given that New Zealand's capital markets form part of the broader Australasian capital markets.

The second formal consultation step will be the release of a consultation paper in which we will provide detail of the nature of the proposed amendments to the Code, including an exposure draft of the proposed amendments. This stage of the consultation process will be supplemented by workshops and forums with smaller stakeholder groups. We note that if NZX concludes that a review of the current Environmental, Social and Governance Guidance Note is required that this review will be run as a separate workstream in parallel with the review of the Code requirements.

Indicative Timeline for the Review

Initial Discussion Document released	15 November 2021
Consultation responses due	28 January 2022
Second Consultation Paper released	March 2022
Workshops and bi-lateral engagement	March – April 2022
Second consultation responses due	29 April 2022
Application to FMA	June 2022
Code amendments finalised	August 2022
Code amendments effective*	September 2022

******We will consider whether a transition period is needed for issuers, depending on the nature of any revised settings contained in the Code.*

Submissions in relation to this Discussion Document

NZX is seeking submissions on the in principle scope and nature of the review which is described in this discussion document. We have included questions throughout the discussion document to guide submitters as to how to frame their submissions, although we are happy to receive all feedback in relation to the review areas identified in this document.

We invite interested parties to provide their views on the proposals raised in this discussion document by emailing NZX Policy. Alternatively, if you would prefer to provide a verbal submission, please email NZX Policy to arrange a time to speak with us.

You can contact NZX Policy at: policy@nzx.com. The closing date for submissions is **Friday, 28 January 2022**.

NZX may publish the submissions it receives, so please clearly indicate in your submission if you do not wish your submission to be published, or identify any part of your submission that contains confidential information.

If you have any queries in relation to the review, please contact:

Kristin Brandon
Head of Policy and Regulatory Affairs
Email: kristin.brandon@nzx.com
DDI: +64 4 495 5054

Context for the Review and Consultation Process

1. Do you agree with the objectives of the review?

2. Do you have any comments on the timeline for the review?

3. Are there any review areas where NZX should undertake a 'deep-dive' to review the adequacy of the current Code settings?

4. Do you have any other feedback on the proposed engagement framework for the review?

Review Area One: ‘Comply or Explain’

Current requirements under the Listing Rules and the Code

The Listing Rules establish the requirements for issuers of equity securities to report against the Code[2]. The Listing Rules require issuers to publicly report the extent to which the issuer has followed the recommendations set out in the Code.

The Listing Rules allow issuers flexibility to adopt corporate governance practices considered by the Board to be more suitable than those recommended in the Code, but if an issuer does so it must explain why it has not adopted a Code Recommendation. This is known as ‘comply or explain’ reporting.

The intention behind the ‘comply or explain’ model is to provide flexibility for issuers while still recommending practices that are designed to ensure that investors and other stakeholders are provided with an appropriate level of information about an issuer’s governance practices to enable them to make informed decisions and have a meaningful dialogue with the boards of listed companies. This approach recognises that it is appropriate for issuers to design their own governance settings and develop differential practices that are suited to their businesses.

Issuers may provide these disclosures in their annual reports, on their websites, or through a combination of both mechanisms.

Reporting in the annual report applies to the financial year reporting period. Issuers are not required to explain non-adherence to a recommendation for prior reporting periods.

International context

International regulators have assessed the quality of the ‘comply or explain’ frameworks in their jurisdictions, and many have found that as a generalisation, issuers appear to be too formulaic in their approach to ‘comply or explain’ reporting, or hesitant about explaining non-compliance with a corporate governance requirement.

The United Kingdom’s Financial Reporting Council (**FRC**) study from November 2020[3] sampled 100 companies’ reporting against the 2018 UK Corporate Governance Code (**UK Code**), including both large premium UK listed companies and smaller market capitalisation entities. The FRC found that too many companies were reporting using ‘boiler plate’ language and that corporate governance disclosures often lacked cohesiveness.

We are also aware that an international study[4] has shown that company size and the period of time that a ‘comply or explain’ principle has been applicable in a country increases entities’ compliance with a corporate governance requirement. This suggests that the ‘comply or explain’ framework does improve corporate governance practices overall.

[2] Listing Rule 3.8.1(a).
[3] Financial Reporting Council, Review of Corporate Governance Reporting, November 2020, available here. See also Financial Conduct Authority, ‘Corporate Governance Disclosures by Listed Issuers’, 2020 available here. All companies with a premium listing of equity shares in the UK are required under the UK Listing Rules to report in their annual report and accounts on how they have applied the Code.
[4] ‘Comply or explain in Belgium, Germany, Italy, the Netherlands and the UK: Insufficient explanations and empirical analysis’, Annika Galle, available here.

Matters for discussion

We intend to retain the current 'comply or explain' reporting framework as set out in the Code, which enables the Code to operate as a recommendatory tool, that issuers may adhere to on a voluntary basis so long as they report why they have adopted an alternative approach. This approach ensures that investors and other stakeholders have access to an appropriate level of information regarding an issuer's governance arrangements.

We wish to understand the quality of current 'comply or explain' disclosure practices in the New Zealand market, in order to determine whether additional guidance should be included in the Code to assist issuers in meeting their reporting obligations.

We intend to conduct our own sample survey of the quality of NZX issuers' disclosures by reviewing disclosures against specific selected recommendations contained in the Code.

We would be interested in submitters' views in relation to the following matters:

1. What are your experiences of reporting under a 'comply or explain' model?

2. What is the overall quality of issuers' 'comply or explain' reporting practices?

3. Are there any specific recommendations where additional guidance should be given as to how to explain non-adoption of a Code recommendation?

4. Are there any recommendations that should be compulsory that should be addressed by way of an amendment to the Listing Rules?

Review Area Two: Director Independence

Current requirements under the Listing Rules and the Code

Determination of independence

The Listing Rules define an 'Independent Director' as a director who has no 'Disqualifying Relationship'.

A 'Disqualifying Relationship' is defined in the Listing Rules as any direct or indirect interest, position, association or relationship that could reasonably influence, or could reasonably be perceived to influence, in a material way, the director's capacity to: (a) bring an independent view to decisions in relation to the issuer, (b) act in the best interests of the issuer, and (c) represent the interests of the issuer's financial product holders generally. The Listing Rules require that this definition is interpreted having regard to the factors described in the Code that may impact director independence, if applicable.

Code Recommendation 2.4 recommends that every issuer should disclose information about each director in its annual report or on its website, including a profile of experience, length of service, independence and ownership interests and director attendance at board meetings. The commentary to Code Recommendation 2.4 provides further guidance as to the factors that an issuer should consider that may impact a director's independence, while noting that all relevant factors and interests relating to the director should be considered and assessed for materiality, in order to determine whether they are likely to impede a director's independence. As the Code operates on a 'comply or explain' basis, issuers are not required to consider the factors described in the commentary, to the extent that they consider that the factors are not relevant to their business, so long as they explain the reasons for not following recommendation 2.4.

The Code notes that the following factors may impact a director's independence:

- being currently, or within the last three years, employed in an executive role by the issuer, any of its subsidiaries, and there has not been a period of at least three years between ceasing such employment and serving on the board;
- currently, or within the last 12 months, holding a senior role in a provider of material professional services to the issuer or any of its subsidiaries;
- a current, or within the last three years, material business relationship (e.g. as a supplier or customer) with the issuer or any of its subsidiaries; a substantial product holder of the issuer, or a senior manager of, or person otherwise associated with, a substantial product holder of the issuer;
- a current, or within the last three years, material contractual relationship with the issuer or any of its subsidiaries, other than as a director;
- having close family ties with anyone in the categories listed above;
- having been a director of the entity for a length of time that may compromise independence.

Requirements relating to independent directors

The Listing Rules require that issuers of quoted equity securities must have at least two directors who are 'Independent Directors'. In addition, Code Recommendation 2.8 recommends that a board should be comprised of a majority of independent directors. Issuers are able to elect not to comply with this recommendation, so long as they explain the reasons for doing so.

The commentary to Code Recommendation 2.4, also suggests that issuers may wish to consider publishing clear criteria for determining Independent Directors in accordance with the overarching test within the Listing Rules.

Requirements relating to the independence of the chair

Code Recommendation 2.9 requires that an issuer of equity securities should have an independent chair of the board. It also states that if the chair of the board is not independent, that the chair and chief executive officer should be different people.

Requirements relating to the composition of board committees

The Code also contains recommendations in relation to the composition of board committees.

Code Recommendation 3.1 recommends that the chair of the audit committee should be an independent director and not chair of the board, which provides additional guidance in relation to the requirement contained in Listing Rule 2.13.2 that the audit committee be comprised of a majority of independent directors.

The Code also recommends that at least the majority of the remuneration committee should be independent directors (Code Recommendation 3.3); and that a majority of the members of the nomination committee should be independent directors (Code Recommendation 3.4).

Requirements relating to the establishment of an independent takeover committee

The independence status of directors is important in the event that an issuer receives a takeover offer.

Code Recommendation 3.6 recommends that a board should establish appropriate protocols to be followed if there is a takeover offer, which should include the option of establishing an independent takeover committee, and the likely composition and implementation of an independent takeover committee.

Issuers have the flexibility to determine the protocols that are appropriate for their businesses to manage a takeover situation and the Code commentary clarifies that it is useful for issuers to have protocols in place to deal with takeovers in advance of receiving a takeover offer. Where an issuer elects to follow the Code recommendation to include the establishment of a takeover committee within its protocols, NZX does not expect that committee to be established unless a takeover is received, but recommends that the takeover committee should be independent of the bidder.

New Zealand context

In New Zealand, a number of international proxy advisors provide proxy voting services to investors, and governance rating reports to issuers. As part of their assessment of an issuer's corporate governance practices it is common for those proxy advisors to review the independence of directors against the proxy advisor's voting guidelines which contain the factors that the proxy advisors uses to assess independence.

While there is some variance in the factors that proxy advisors use to assess independence, it is common for the factors contained in the Code and the ASX Corporate Governance Code (**ASX Code**, discussed below) to be considered. NZX understands that proxy advisors[5] may also consider the following additional factors as precluding a determination of independence:

- a designated representative of a shareholder;
- a founder of the issuer;
- a director whose tenure exceeds 12 years; and
- excessive cross-directorships, or significant links with other directors.

Australian experience

The ASX Code operates on a 'comply or explain' basis in a similar way to the NZX Code. Recommendation 2.3 of the ASX Code recommends that an issuer discloses whom it considers to be an independent director.

The ASX Code takes a different approach to the NZX Code, because it encourages specific disclosure if a Board has determined a director to be independent along with the reason for that determination, where one of the following factors are present:

- the relevant director is, or has been, employed in an executive capacity by the entity or any of its child entities and there has not been a period of at least three years between ceasing such employment and serving on the board;
- the relevant director receives performance-based remuneration (including options or performance rights) from, or participates in an employee incentive scheme of, the entity;
- the relevant director is, or has been within the last three years, in a material business relationship (e.g. as a supplier, professional adviser, consultant or customer) with the entity or any of its child entities, or is an officer of, or otherwise associated with, someone with such a relationship;
- the relevant director is, represents, or is or has been within the last three years an officer or employee of, or professional adviser to, a substantial holder;
- the relevant director has close personal ties with any person who falls within any of the categories described above; or
- the relevant director has been a director of the entity for such a period that their independence from management and substantial holders may have been compromised.

The inclusion of performance-based remuneration as a factor that may preclude independence differs from the approach taken in the NZX Code, and is a change that was introduced into the fourth edition of the ASX Code in 2019. The 2019 amendments to the Fourth Edition of the ASX Code also extended the consideration of tenure, by including independence from substantial holders as a relevant consideration.

The ASX Code also recommends specific disclosure of the length of service of each director. ASX considers that the mere fact that a director has served on a board for a substantial period

[5] For example: the 'ISS proxy voting guidelines – New Zealand'; 'Glass Lewis – 2021 Policy Guidelines, New Zealand'; 'BlackRock - Proxy Voting Guidelines Australian Securities'.

does not mean that the director has become too close to management or a substantial holder to be considered independent. However, the ASX Code recommends that a board should regularly assess whether that might be the case for any director who has served in that position for more than 10 years.

ASX Code recommendation 2.5 notes that the chair of the board of a listed entity should be an independent director and, in particular, should not be the same person as the chief executive officer of the entity.

Matters for discussion

We do not intend to change the approach currently contained in the Listing Rules to the requirements for the composition of board and audit committees to include independent directors. We also consider that director independence should continue to be assessed using the principles outlined in the definition of 'Disqualifying Relationship' contained in the Listing Rules.

We are interested whether further guidance should be included in the Code as to the importance of making an assessment of the holistic interests and relationships of a director, when assessing his or her independence rather than the use of the factors contained in the Code as bright-line criteria.

We are interested in the extent to which tenure should be regarded as a fetter on director independence and whether additional guidance should be given in this area.

We intend to undertake sample testing of issuers with different sized boards to assess the factors that boards are considering when making independence determinations, and to review issuer practices in relation to having independent chairs and different people acting as the chair and chief executive officer.

We would be interested in submitters' views in relation to the following matters:

1. What difficulties do issuers have in applying the current principles-based assessment of a director's independence?

2. What is the overall quality of issuers' 'comply or explain' reporting practices in relation to the director independence recommendations in the Code?

3. Are there any factors which are currently included in the Code that are irrelevant to an issuer's assessment of a director's independence?

4.Are there any additional factors that should be included in the Code that issuers should consider in relation to director independence?

5. How relevant is a director's tenure to the consideration of his or her independence, and is more guidance required in the commentary to the Code to clarify the relevance of tenure to a director's independence?

Review Area Three: Remuneration

Current requirements under the Code

Remuneration policy

Recommendation 5.2 of the Code recommends that an issuer should have a remuneration policy for remuneration of directors and officers which outlines the relative weightings of remuneration components and relevant performance criteria.

Recommendation 5.3 contains specific suggestions for setting chief executive officer remuneration (discussed further below) including that an issuer has a policy in relation to setting the chief executive officer's remuneration (which may be part of the broader remuneration policy).

Executive remuneration considerations

The commentary to recommendation 5.2 also contains suggestions in relation to setting executive remuneration, noting that packages should generally contain an element that is dependent on the issuer's performance and performance of that individual. The commentary also provides guidance as to the factors that issuers should consider when setting executive remuneration, including that:

- fixed remuneration should be fair and should be based on the scale and complexity of the role, and reflect performance requirements and expectations attached to the role;
- any performance-based remuneration should be linked to clear targets aligned with the issuer's performance objectives and be appropriate to its risk profile; and
- equity-based remuneration schemes should be carefully designed to support a long term approach and not promote undue risk taking.

As the Code operates on a 'comply or explain' basis, issuers are not required to consider the factors described in the commentary, to the extent that they consider that the factors are not relevant to their business, although NZX would expect issuers to explain the reasons for not following recommendation 5.2.

Chief executive officer remuneration

NZX considers that information about a chief executive officer's remuneration is important to shareholders, and should be clearly disclosed in the annual report.

The Code commentary states that the annual report disclosure should enable a reasonable reader to understand the levels of a chief executive officer's remuneration which have been earned or which have vested for the reporting period and the different components of remuneration packages. Code recommendation 5.3 recommends that disclosure should include the chief executive officer's base salary, short term incentives and long term incentives and the performance criteria used to determine performance based payments.

In relation to incentive payments, the Code commentary recommends that material performance hurdles should be disclosed with details of timing for when any share entitlements will vest. Investors should be informed of the type of performance hurdle that applies, although NZX does not expect disclosure of the precise details of targets (as such targets may be commercially sensitive).

Where long term incentive payments have vested or been paid within the reporting period, the Code commentary recommends that the annual report should disclose the nature of those payments and the basis on which the incentives were granted and the vesting period for the entitlement.

Non-executive director remuneration

In relation to non-executive directors, the Code commentary recommends that issuers consider the following matters when designing remuneration packages:

- levels of fixed fees should reflect the time commitment and responsibilities of the role;
- there should not be performance based remuneration as it may lead to bias in decision making;
- equity-based remuneration is generally acceptable for non-executive directors, as it may align their interests with the interests of other security holders; and
- retirement payments should not be provided other than superannuation.

Use of a remuneration consultant

The commentary to Recommendation 5.2 provides guidance on the use of a remuneration consultant. The Code recommends that a consultant should be independent and engaged by the board. In this context 'independence' means that the consultant must not have been subjected to any influence from management, any board member or any other party in relation to the services provided or the outcomes of those services. The remuneration consultant should attest to its independence within the consultant's report that is provided to the issuer.

Recommendation 5.2 relates to the setting of remuneration for directors and officers. The commentary to that recommendation clarifies that where an external consultant is used to develop a director remuneration proposal, and an issuer wishes to publicly refer to reliance on an independent consultant's remuneration report, that an issuer should also make then a summary of the findings of the report public.

Approval of director remuneration changes

Recommendation 5.1 of the Code suggests that an issuer should recommend director remuneration to shareholders for approval in a transparent manner. The recommendation informs how issuers should meet their obligations under Listing Rule 2.11. Issuers seeking shareholder approval of director remuneration are specifically required by Listing Rule 2.11.2 to provide notice of the amount of any increase in remuneration in the notice of meeting at which the resolution is tabled.

The commentary to the recommendation clarifies that the disclosure of the remuneration proposal should make clear the amount individual directors are proposed to be paid, including outlining separately any amounts payable for any committee work, and that disclosure should not be limited to a total remuneration pool.

New Zealand context

NZX understands that anecdotally directors of NZX listed issuers are being asked to do more, for less, in part due to the increase in the more complex regulatory environment in which NZX issuers operate. In addition, New Zealand directors are being paid at a significant discount to their Australian counterparts[6]. It is also becoming increasingly more common for directors who sit on Board Committees to receive additional fees for doing so.

We are also aware that the New Zealand Shareholders' Association (**NZSA**) has issued '*A framework for reporting of CEO remuneration in New Zealand companies*'[7]. The framework makes a number of suggestions which are not currently reflected in the Code in relation to the reporting of chief executive officer remuneration. These include that a five-year historic summary of chief executive officer remuneration is disclosed by companies which includes an indication of the relative attainment of performance pay against maximum opportunity over a five-year period.

The NZSA also suggests the publication of a five-year historic total shareholders' return (**TSR**) performance graph that depicts the TSR for a holding of the company's shares for the previous five years, alongside the TSR of an appropriate comparator group of shares of the same kind and number belonging to a specified broad equity market index. The NZSA considers that this will assist retail investors in understanding a company's performance and the company's remuneration decisions.

The NZSA also suggests that it would be appropriate for companies to disclose the pay gap between the chief executive officer and employees, expressed as a multiple of the single figure for chief executive officer remuneration over the median pay of all the company's employees.

International context

Australia

ASX Code recommendation 8.2 recommends that a listed entity should separately disclose its policies and practices regarding the remuneration of non-executive directors, executive directors and other senior executives. The commentary to the ASX Code notes that non-executive directors should be compensated with cash, superannuation and non-cash benefits (including equity), whereas executive remuneration should include performance-based remuneration. These expectations are consistent with those established by the NZX Code.

Although not required under the Corporations Act or the ASX Listing Rules, the commentary to the ASX Code notes that issuers may find it useful to submit to security holders any proposed equity-based incentive scheme for senior executives.

The 2019 amendments to the ASX Code expanded the considerations relevant to setting remuneration, including that conduct that is contrary to the entity's values or risk appetite should not be rewarded. This sentiment is further reflected in the commentary which notes that the implications of being perceived by the community to be paying excessively is a relevant factor for issuers to consider.

The ASX Code commentary to recommendation 1.5 notes that issuers are encouraged undertake gender pay equity audits to gain a stronger insight into the effectiveness of their

[6] Egan Associates, KMP Report No 7.
[7] NZSA, '*A framework for reporting of CEO remuneration in New Zealand companies*', available here.

gender diversity programs. It is relevant to note that in Australia, the Workplace Gender Equality Act 2012 requires non-public sector entities with 100 or more employees to report on gender equality outcomes and provide the Workplace Gender Equality Agency with standardised data, including gender pay gap reporting. The Australian reporting requirements are therefore legislative in nature, and neither the ASX Code nor the NZX Code contain any requirements for gender pay gap reporting.

The Corporations Amendment (Improving Accountability on Director and Executive Remuneration) Act 2011 requires publicly listed companies to provide a remuneration report to shareholders at the company's annual meeting. The remuneration report must include remuneration recommendations as to the quantum and nature of remuneration for key management. If 25% or more of the shareholder votes cast are against the resolution to adopt the remuneration report the company receives a 'strike'. If the company receives two consecutive strikes it must table an ordinary resolution within 90 days of the latest annual meeting, that allows shareholders to require all directors to stand for re-election. No such requirements apply in New Zealand for listed issuers under either the Listing Rules or New Zealand legislative requirements.

Singapore

The Singapore Corporate Governance Code (**Singapore Code**) contains mandatory principles, and provisions against which issuers must comply or explain.

The Singapore Code contains a mandatory principle that the level and structure of remuneration of the Board and key management personnel should be appropriate and proportionate to the sustained performance and value creation of the company, taking into account the strategic objectives of the company.

The Singapore Code also requires that a company is transparent in relation to its remuneration policies including the level and mix of its remuneration. The Code provision recommends that the company discloses in its annual report the policy and criteria for setting remuneration, as well as names, amounts and breakdown of remuneration of each individual director and the CEO. This information must also be disclosed for the top five key management personnel (in bands no wider than S$250,000) and in aggregate the total remuneration paid to these key management personnel should be disclosed.

United Kingdom

The UK Code applies to listed issuers with a premium listing and requires companies to make a statement of how they have applied the Principles contained in the UK Code, in a manner that would enable shareholders to evaluate how the Principles have been applied. The UK Code contains a principle that a formal and transparent procedure for developing policy on executive remuneration, and determining director and senior management remuneration, should be established.

The provisions contained in the UK Code provide further guidance for UK issuers in relation to remuneration practices. This includes that the appointment of a remuneration consultant should be the responsibility of the remuneration committee of the board, and that the company's annual report should identify any connection between the consultant and the company or individual directors. This goes further than the NZX Code's requirements in relation to reporting the independence of a remuneration consultant.

The provisions of the UK Code also recommend that share awards granted under remuneration schemes for executive directors should contain restrictions on when an executive director can sell shares granted under a long-term incentive scheme, and should be subject to a total vesting and holding period of five years or more. The NZX Code does not set any restrictions on the design of executive director remuneration schemes.

The Equality Act 2010 (Gender Pay Gap Information) Regulations 2017[8] require UK companies with at last 250 employees to publish gender pay gap information on their websites. This is a legislative requirement. There is no legal requirement to report gender pay gap information in New Zealand.

Matters for discussion

We are interested in submitters' views of the extent to which Recommendations 5.1 to 5.3 of the NZX Code contain settings that are appropriate for the New Zealand environment, in light of the international developments in this area.

We would be interested in submitters' views in relation to the following matters:

1. Do you consider that any amendments are required to the Code in relation to the setting and/or reporting of director and/or executive remuneration? If so, please provide evidence to support your submission.
2. Should the commentary to the Code include any additional or different matters that should be considered as a relevant factor for setting executive and/or director remuneration?

[8] The Equality Act 2010 (Gender Pay Gap Information) Regulations 2017 are available here.

Review Area Four: Shareholder Meetings

Current requirements under the Listing Rules and the Code

Listing Rule 2.14.3 provides that issuers which have NZX as their Home Exchange may hold meetings as a physical meeting, by audio, audio and visual, and/or electronic means.

Issuers that have NZX as their Home Exchange are also required by the Listing Rules to hold all physical meetings of holders of Quoted Financial Products either in New Zealand, or in Australia if holders of Quoted Financial Products in New Zealand may participate in the meeting by audio, audio and visual, and/or electronic means.

The Listing Rule settings are supported by Recommendation 8.2 of the Code which recommends that an issuer should allow investors the ability to easily communicate with the issuer, including by providing the option to receive communications from the issuer electronically.

The commentary to this recommendation encourages issuers to have appropriate policies in place to enable shareholder participation at meetings by ensuring that meetings are held at times and locations that are convenient for shareholders, and by providing clear notice. The Code commentary also notes that the chief executive officer should attend the annual meeting.

New Zealand context

It is becoming increasingly common for issuers to hold hybrid or virtual meetings rather than purely physical meetings, in part as a response to COVID-19. NZX considers that this evolution is also a natural result of the more prevalent availability of modern technology, and reflective of the ability for shareholders to engage with the Boards of issuers on a continuous basis through an issuer’s investor relations channels, rather than solely at the annual general meeting each year.

International context

ASX Code recommendation 6.3 recommends that listed entities disclose how they facilitate and encourage securityholder participation at meetings. The amendments to the fourth edition of the ASX Code in 2019 included changes to the commentary to this recommendation to note that issuers should consider using technology to assist their engagement with members, including live webcasting of meetings so that security holders can view and hear proceedings online, holding meetings across multiple venues linked by live telecommunications, and holding hybrid meetings that allow shareholders to attend and vote in person, by proxy or online. In Australia the legislative position was recently clarified through amendments to the Corporations Act 2001 to provide certainty that Australian companies may hold virtual meetings as a substitute for physical meetings[9].

Neither the UK Code or Singapore Code contain recommendations or commentary in relation to holding annual meetings using technology or other virtual means.

[9] The Treasury Laws Amendment (2021 Measures No.1) Act 2021 was enacted on 10 August 2021.

Matters for discussion

NZX intends to continue to permit issuers to hold shareholder meetings on a purely virtual basis.

NZX is considering whether it would be appropriate to amend the settings in the Code to promote the use of hybrid meetings in preference to a physical meeting. We are also considering whether the Code should be updated to provide guidance as to the manner in which such meetings should be conducted, to promote shareholder participation and access to the Board of an issuer.

We intend to engage with the registries and undertake sample testing of issuers' practices to the use of meetings via technological methods to support the design of our proposals.

We would be interested in submitters' views in relation to the following matters:

1. Should the Code commentary to recommendation 8.2 be amended to encourage issuers to enable shareholders better access to an issuer where virtual meetings are held?
2. Do you have any objections to NZX's proposal to prefer hybrid meetings over physical meetings?
3. What do you consider to be the benefits of a hybrid meeting model? In particular, do you consider that there would be time and cost savings for issuers who facilitate hybrid rather than physical meetings?
4. Are there any other matters in relation to shareholder access to issuers that should be addressed by way of an amendment to the Code?

Review Area Five: Shareholder Participation in Capital Raisings

Current requirements under the Listing Rules and the Code

The Listing Rules specify the thresholds and requirements for shareholder approval for capital raisings. These requirements are supported by recommendation 8.4 of the Code that contains recommendations relating to the manner in which capital raisings are structured.

The Code recommends that where an issuer is seeking additional capital it should offer further equity securities to existing equity security holders on a pro rata basis, and on no less favourable terms, before further equity securities are offered to other investors. The commentary to the Code recognises that a pro-rata offer is the preferred approach for providing existing equity security holders with an opportunity to avoid dilution.

The Code notes that if an issuer raises capital by means other than a pro rata offer, for example where the issuer uses a placement or share purchase plan to do so, that the issuer should explain why it has preferred a non pro-rata mechanism, when it next reports against the Code.

COVID-19 class waivers in 2020

In light of the COVID-19 situation that arose in 2020, NZ RegCo granted class waivers and rulings[10] (**COVID regulatory relief**) that were designed to enable issuers to urgently access capital by:

- increasing the placement cap under Listing Rule 4.5.1 from 15% to 25% of shares on issue;
- increasing the value of issues under a share purchase plan per holder from $15,000 to $30,000, subject to a total cap of 30% (rather than 5%) of an issuer's equity securities at the time of the offer;
- allowing a shorter timetable to be applied to Rights issues; and
- allowing accelerated non renounceable entitlement offers (ANREOs) to be undertaken on the same basis as accelerated offers subject to certain conditions that were designed to mitigate the potential dilutionary affects for shareholders who wished not to participate in the offer.

At the time that the waivers were granted NZX Regulation (now NZ RegCo) noted that Issuers should rely on the COVID regulatory relief in a manner consistent with the policy and principles underpinning recommendation 8.4 of the Code. In particular it was recommended that issuers utilising the COVID regulatory relief should:

- be cognisant of the interests of all existing financial product holders when assessing possible capital raising options;
- seek to provide wider existing equity security holders with an opportunity to avoid dilution by participating in the offer where possible; and

[10] The COVID regulatory relief comprised the regulatory decisions made on 19 March 2020, available here and 26 March 2020, available here. These decisions were refreshed in 2020, but have subsequently expired.

- be mindful of the number of existing financial product holders that would likely be able to participate in an electronic only Rights issue.

The COVID regulatory relief has now expired.

New Zealand context

NZX is aware that different stakeholder groups have strong opinions about the extent to which issuers are structuring capital raising mechanisms to include existing equity holders, and particularly retail investors. NZX also considers it important for there to be alignment in the Australian and New Zealand capital raising settings to ensure that the cost of capital for New Zealand issuers enables them to raise capital in New Zealand and provide New Zealand investors with investment opportunities into New Zealand companies. While a full review of NZX's capital raising settings is outside the scope of this review, these considerations remain relevant to the review of the Code.

A sample review of disclosures contained in the annual reports of issuers who raised capital in 2020 and 2021, including those whom relied on the COVID regulatory relief, reflects that issuers have adopted differing practices in relation to the extent to which they have explained why a non pro-rata mechanism has been preferred. While some issuers have provided detailed disclosure of the proportion of retail participation in their offer, others, including some who relied on the COVID regulatory relief, reported a departure from recommendation 8.4 because the structure 'achieved a fair result for all shareholders' but did not provide additional detail or reasoning for these statements.

International experience

The ASX Code, UK Code and Singapore Code do not contain recommendations or principles regarding the manner in which capital raisings are structured.

Matters for discussion

We are not considering changes to the capital raising requirements or thresholds for shareholder approval that are contained in the Listing Rules as part of this review.

We would be interested in submitters' views in relation to the following matters:

1. Is the quality of issuers' disclosures as to why they have not followed recommendation 8.4 sufficient to provide meaningful information for investors and other stakeholders?
2. Is there particular information that issuers have difficulty in disclosing when explaining an approach that differs from recommendation 8.4?
3. Should the commentary to recommendation 8.4 encourage issuers to make specific disclosure of any particular matter when a non pro-rata offer has been made?
4. Should the commentary to recommendation 8.4 include specific factors that issuers should consider when structuring a capital raise, if so what factors should be included?

Review Area Six: Environmental, Social and Governance Reporting

Current requirements under the Code and the ESG Guidance Note

The reporting of environmental, social and governance (**ESG**) matters has become increasingly important to investors alongside an issuer's other financial and strategic information.

Code recommendation 4.3 suggests that an issuer provide non-financial disclosure at least annually, including by considering environmental, economic and social sustainability factors and practices. The recommendation notes that this reporting should explain how operational or non-financial targets are measured, should include forward looking assessments, and align with market strategies and metrics monitored by the board.

The commentary to recommendation 4.3 notes that if an issuer chooses a formal framework to report on ESG factors, that it should report against a recognised international reporting initiative such as the GRI guidelines or Integrated Reporting framework[11].

NZX is part of the Sustainable Stock Exchange Initiative, and the Code commentary notes that it is now commonplace for stock exchanges to provide guidance in relation to ESG reporting. NZX's ESG Guidance Note is designed to support issuers in understanding how ESG reporting is relevant to their business and the benefits of ESG reporting, and contains non-binding recommendations for issuers, including a description of certain internationally recognised frameworks. The Guidance Note suggests that issuers may wish to consider reporting the following matters as part of their ESG reporting:

- the relevance of environmental, social and governance factors to their business models and strategy, as an integrated component of business drivers and considerations;
- how ESG issues may affect their business, e.g. through legislation, reputational damage, employee turnover, licence to operate, legal action or stakeholder relationships, and how these impacts may affect business strategy and financial and operational performance (also known as 'value mapping');
- how they intend to access the new opportunities and revenue streams generated by green and socially beneficial products and services, including how their investments in innovation and R&D will drive future growth for the business;
- identify the parts of the business that manufacture or provide goods, products and services delivering environmental solutions and supporting the transition to a low carbon economy, and break down and quantify the associated revenues;
- provide data that is accurate, timely, aligned with their fiscal year and business ownership model, and based on consistent global standards to facilitate comparability; and

[11] The Global Reporting Initiative guidelines are available here. You can read more about the integrated reporting framework here.

- recognise that reporting is just one part of the wider dialogue they have with their investors. ESG reporting, irrespective of the specific format, provides a basis for dialogue with investors and other key stakeholders but is not a replacement for it.

The reporting of ESG risks is a core component of most internationally recognised reporting frameworks, along with the reporting of ESG opportunities. Code recommendation 6.1 suggests that issuers should report on the material risks facing the business and how they are being managed. The commentary to the recommendation notes that material risks will vary between issuers, depending on their size and nature, but may include health and safety and ESG factors. Issuers are encouraged to ensure that their board or risk committee receives appropriate and regular reporting from management in relation to the operation of the risk management framework which should include a risk register. In addition, Code recommendation 6.2 recommends that an issuer should disclose how it manages its health and safety risks and should report on its health and safety risks, performance and management.

New Zealand context

Reporting practices

NZX and Wright Communications have published the ESG Report 2020[12], which provides a snapshot of NZX issuers' ESG reporting practices and includes case studies to assist issuers in understanding and developing their ESG frameworks.

The report noted that in 2020 there was an increased uptake in ESG reporting amongst the issuer population, with a noticeable increase in climate change reporting. In particular, Integrated Reporting was completed by 13 issuers that were sampled (up from 5 in the prior year) and 14 S&P NZX 50 companies had made a start on climate disclosure by adopting the Taskforce on Climate Financial Disclosures (**TCFD**) reporting framework. Half of all issuers had adopted some form of ESG reporting framework in 2020 (up from one-third in the prior period). Issuers with smaller market capitalisations reported on fewer ESG metrics.

In addition, the McGuinness Institute has conducted a review of NZX issuers' TCFD disclosures from 2018 to 2020. The report shows that there is an increase in the number of companies that include a dedicated TCFD section in their annual report has increased. In 2018, only one company out of 123 had a dedicated TCFD section in their annual report, whereas in 2020, 5% (seven out of 130 companies) provided a dedicated TCFD section in their annual reports. In their 2020 annual reports, 43% of NZX Main Board issuers (57 out of 130 companies) reported on climate-related risks, 43% (57 out of 130 companies) on climate-related initiatives, and 42% (55 out of 130 companies) reported on controls to help reduce emissions.

Broader legal environment

The Financial Sector (Climate-related Disclosures and Other Matters) Amendment Bill[13] was enacted on 27 October 2021. The legislation will require climate reporting entities, which will include all NZX issuers (other than small listed issuers[14]) to mandatorily report using the TCFD framework for financial years commencing in 2023, with initial reporting required in 2024. The detail of the reporting requirements is currently being developed by the XRB as standards which

[12] NZX and Wright Communications, 'ESG Report 2020', available here.

[13] The Bill can be viewed here.

[14] There is an exemption for issuers who have a market capitalisation of $60 million or less.

will sit under the legislation. The XRB will be consulting in relation to the content of the standards against which climate reporting entities must report from October 2021 through to mid-2022[15].

In addition, in late 2019 the Aotearoa Circle commissioned a legal opinion in relation to the need for company directors and managers of registered investment schemes to consider and manage material climate-related financial risk when taking business and investment decisions. The Aotearoa Circle, of which NZX forms part, is a partnership of public and private sector business leaders committed to sustainable prosperity for New Zealand. The legal opinion[16] concluded that directors and scheme managers must assess and manage climate risk as they would any other financial risk. Of relevance to our review of the Code, the opinion concluded that directors of companies affected by climate-related financial risk must, at a minimum: identify that risk; periodically assess the nature and extent of the risk to the company, including by seeking and critically evaluating advice as necessary; and decide whether, and if so, how to take action in response, taking into account the likelihood of the risk occurring and possible resulting harm. The legal opinion also noted that where the company has public disclosure obligations, directors also need to ensure they are disclosing material financial risk due to climate change as they would disclose other material business risks.

In 2021, a private member's Bill[17] was introduced to the House that clarifies that the requirement for a company director to act in good faith and the best interests of a company may consider environmental, social and governance factors in doing so. This may include matters such as the principles of te Tiriti, environmental impacts, good corporate ethics, being a good employer, and the interests of the wider community.

International context

Australia

ASX Code recommendation 7.4 suggests that a listed entity should disclose whether it has any material exposure to environmental or social risks, and if it does so, how it manages those risks. While the ASX Code does not recommend an integrated or sustainability report, it notes that issuers who do provide those reports may meet the expectations of the Code simply by cross-referring to that report.

As part of the changes to the fourth edition of the ASX Code, the commentary to the ASX Code now encourages issuers who have a material climate change risk to consider making the disclosures recommended by the TCFD and notes that an issuer should satisfy itself that its risk management framework adequately deals with contemporary risks such as sustainability and climate change risks.

In addition, the 2019 amendments to the ASX Code included commentary noting that ASX issuers who believe they do not have any material exposure to environmental or social risks are encouraged to consider carefully their basis for that belief and to benchmark their disclosures in this regard against those made by their peers. ASX defines social risks to include risks associated with the entity or its suppliers engaging in modern slavery, aiding human conflict, facilitating crime or corruption, mistreating employees, customers or suppliers, or harming the

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[15] The XRB's consultation timeline is available here.

[16] 'Sustainable Finance, Legal Opinion 2019' Daniel Kalderimis and Nicola Swan, Chapman Tripp, available here

[17] The Companies (Directors Duties) Amendment Bill 2021 is available here.

local community. The Code recommendations in this area in part reflect the Australian legislative landscape[18] which includes modern slavery reporting requirements for Australian entities, that have consolidated revenue in excess of $100 million, for reporting periods ended after 30 June 2020. Affected entities are required to report their modern slavery risks, and the actions taken to assess and remediate such risks.

ASX Code recommendation 4.3 also suggests disclosure of an issuer's processes to verify the integrity of any periodic corporate report released to the market that is not audited or reviewed by an external auditor, including sustainability or integrated reports, noting the reliance that investors now place on these types of reports.

Singapore

The introduction to the Singapore Code notes that companies that embrace the tenets of good governance, including accountability, transparency and sustainability, are more likely to engender investor confidence and achieve long-term sustainable business performance. While the Code includes recommendations in relation to risk management frameworks, climate-related and sustainability risks are not specifically referred to.

The requirements for sustainability reporting are included in the SGX Listing Rules and supported by a bespoke Sustainability Reporting Guide. SGX issuers must publish a sustainability report that describes the sustainability practices with reference to the following primary components: (a) material environmental, social and governance factors; (b) policies, practices and performance; (c) targets; (d) sustainability reporting framework; and (e) Board statement. If an issuer excludes a description of one of these areas it must disclose such exclusion and describe what it does instead, with reasons for doing so.

In August 2021, SGX RegCo released consultation materials[19] relating to proposed changes to the SGX Listing Rules that would require TCFD reporting on a comply-or explain basis for financial years commencing in 2022 and mandatory reporting under a phased approach for financial years commencing in 2023. SGX RegCo is also proposing that issuers subject their sustainability reports to assurance by internal auditors, external auditors or other service providers. It is also proposed that all directors complete one-time training on sustainability.

In addition, SGX is separately consulting[20] on a list of 27 proposed ESG metrics, that are quantitative in nature, have defined standardised units and are mapped against globally accepted sustainability-reporting frameworks. It is proposed that, all issuers would be encouraged to consider reporting against this list of metrics as a baseline, through guidance to the SGX Listing Rules.

United Kingdom

In the United Kingdom, the Companies, Partnerships and Groups (Accounts and non-financial reporting) Regulations 2016[21] prescribe the requirements for sustainability reporting. UK companies with over 500 employees must provide a strategic report which includes a non-financial information statement. This statement must contain information, that is necessary for an understanding of the company's development, performance and position and the impact of

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[18] Modern Slavery Act 2018, available here.

[19] SGX RegCo, 'Consultation Paper: Climate and Diversity, The Way Forward' 26 August 2021, available here.

[20] SGX RegCo 'Starting with a common set of core ES metrics'. 26 August 2021, available here

[21] The relevant UK legislative requirements are available here.

its activity, including as a minimum: (a) environmental matters (including the impact of the company's business on the environment), (b) the company's employees, (c) social matters,(d) respect for human rights, and (e) anti-corruption and anti-bribery matters.

Issuers with a premium listing on the London Stock Exchange are required to include a compliance statement in their annual reports for financial years commencing in 2021 as to whether they have made disclosures consistent with the TCFD Recommendations, and if not, to provide an explanation and describe the steps they propose to take to enable disclosures to be made in the future. In June 2021, the FCA began consulting[22] on proposals to extend the application of the climate-related disclosure requirements presently applicable to issuers with a premium listing, to issuers with a standard listing on the LSE.

In addition, in the United Kingdom, the legislative requirements are for entities carrying on business in the United Kingdom with an annual turnover in excess of £36 million must publish a modern slavery statement on their website that explains how modern slavery risks are managed and how the effectiveness of measures used to manage those risks is assessed.

Matters for discussion

NZX is aware that the inclusion of ESG reporting significantly increases the size of an annual report. While the Code permits issuers to make disclosure of their compliance with the Code in their annual reports, on their websites, or through a combination of both mechanisms, we are interested in how ESG information can be best provided to stakeholders (including whether the Code should encourage that it is displayed on an issuer's website). We are also be interested in the frequency with which stakeholders review and consider ESG information.

We are also interested in views as to the extent to which the Code settings should align with those contained in the ASX Code, given that NZX issuers access capital from Australasian investors.

We would be interested in submitters' views in relation to the following matters:

1. What is your purpose for reviewing an issuer's ESG reporting information?
2. How frequently do you review and issuer's ESG report?
3. What is your primary source of an issuer's ESG disclosures?
4. Do you consider that an ESG report must be included in an annual report, or should it primarily be housed on an issuer's website? Do you consider that an issuer's annual report needs to refer to the location of ESG reporting information and that some level of integration is necessary?
5. Does the Code contain appropriate guidance for issuers in relation to ESG reporting, if not what amendments should be made?
6. Should the ESG Guidance Note or Code be updated to reflect the New Zealand legislative requirements for TCFD reporting?

[22] FCA, CP 21/18 'Enhancing climate-related disclosures by standard listed companies available here.

7. There is no legislative requirement for modern slavery reporting for New Zealand companies, to what extent should this type of reporting be brought within the non-financial reporting recommendations contained in the Code?

8. Should there be greater alignment between the Code and the ASX Code in relation to ESG reporting?

Review Area Seven: Diversity Practices

Current requirements under the Code and the Diversity Guidance Note

Listing Rule 3.8.1(c) requires an issuer of equity securities to include in its annual report a quantitative breakdown of the gender composition of the issuer's board of directors and its officers as at the issuer's balance date (including comparative figures for the prior balance date). The term 'officer' is specifically defined for the purposes of this requirement as a person, however designated, who is concerned or takes part in the management of the issuer's business and reports either directly to the board, or to a person who reports to the board.

Listing Rule 3.8.1(d) does not require an issuer to adopt a diversity policy, but if it does not do so it must explain why in its annual report, due to the operation of Code recommendation 2.5. NZX's Guidance Note on Diversity Policies and Disclosure includes a description of suggested content for a diversity policy.

Where an issuer has adopted a diversity policy it must evaluate its performance against such a policy in its annual report for the purposes of Listing Rule 3.8.1(d). Code recommendation 2.5 suggests that a board or board committee set measurable objectives for achieving diversity and annually assess those objectives and its performance against them. The Guidance Note on Diversity Policies and Disclosure notes that an assessment of an issuer's diversity policy can be assisted by an issuer setting numerical and non-numerical targets. The Guidance Note notes that while NZX is not prescribing quotas or numerical targets, issuers may wish to adopt numerical targets if they consider that it is in their best interests to do so. If an issuer does commit to a particular target, NZX expects the issuer to report against that target in its annual report in compliance with Listing Rule 3.8.1(d).

New Zealand experience

NZX monitors issuers' compliance with the Listing Rules in relation to diversity reporting. We publicly report the trends that this data in gender diversity statistic reports[23]. As at September 2020, 86% of S&P/NZX 50 issuers had a written diversity policy. At that time, 31.6% of S&P/NZX 50 issuers' directors were female, while only 16% of directors of issuers outside of the S&P/NZX 50 were female. As at 30 September 2020, the proportion of female officers is now equivalent across S&P/NZX 50 and other issuers, with the average for all companies rising above 25% for the first time.

International context

Australia

Recommendation 1.5 of the ASX Code recommends that issuers disclose their board diversity policy, and set measurable objectives for achieving gender diversity in relation to the board, senior executives and the workforce, and to disclose those objectives annually. The 2019 amendments to the ASX Code now recommend that an issuer in the S&P/ASX 300 Index should have a measurable objective for achieving gender diversity in the composition of its board, which is to have not less than 30% of its directors being of each gender within a specified period.

[23] NZX's gender diversity statistics reports are available here.

The amended ASX Code commentary notes that non-measurable or aspirational objectives are unlikely to achieve diversity without measurable targets, and states that a meaningful objective could be achieving specific numerical targets for female representation in key operational roles within a specified timeframe with the view to developing a diverse pipeline of talent that can be considered for future succession to senior executive roles.

Singapore

SGX RegCo is currently consulting[24] on amendments to the SGX Listing Rules that would require SGX issuers to have a board diversity policy. The consultation also proposes introducing requirements for issuers to disclose in the annual report a description of the board diversity policies, the issuer's targets for achieving diversity, and a description of how the skills, talents, experience and diversity of directors serves the needs and plans of the issuer.

United Kingdom

The UK Code includes a principle that appointments to the board should promote diversity of gender, social and ethnic backgrounds, cognitive and personal strengths. An additional principle recommends that the annual evaluation of the board should consider its composition, diversity and how effectively members work together to achieve objectives. The commentary in the UK Code encourages disclosure in the annual report of the policy on diversity and inclusion, the board evaluation process and gender balance of those in the senior management and their direct reports.

In July 2021, the UK Financial Conduct Authority began consulting[25] on amendments to the UK Listing Rules to require issuers listed on LSE to disclose, in their annual reports, whether they meet specific board diversity targets on a 'comply or explain' basis. The targets relate to both gender and ethnicity. One of the proposed targets is that at least 40% of the board should consist of women, and at least one of the senior board positions should be held by a woman. Another target is that at least one board member is from a non-white ethnic minority background. It is also proposed that issuers include a numerical breakdown of gender and ethnic diversity of their board and executive management team.

Nasdaq

On 6 August 2021, the US SEC approved Nasdaq's board diversity rule[26] as an amendment to the Nasdaq Listing Rules. The amended requirements require Nasdaq-listed companies that do not have at least two diverse directors, including one who self-identifies as female and one who self-identifies as either an underrepresented minority or LGBTQ+, to provide an explanation for not doing so, in its annual report. The revised requirements also require standardised reporting of board-level diversity statistics.

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[24] SGX RegCo, 'Consultation Paper: Climate and Diversity, The Way Forward' 26 August 2021, available here.
[25] UK FCA, CP 21/14 'Diversity and inclusion on company board and executive committees' available here.
[26] Nasdaq's Board Diversity Rule, what Nasdaq-Listed companies should know, available here.

Matters for discussion

We are considering whether the current settings in the Listing Rules, the Guidance Note on Diversity Policies and Disclosure and the Code remain appropriate, in particular we consider that it may be appropriate to more closely align the settings in the Code to those of the ASX Code to ensure consistent expectations regarding diversity practices for listed issuers across the Australasian capital markets.

1. Are the Code's settings appropriate in relation to diversity practices? If not, what amendments should be made?
2. Are the Code's settings appropriate in relation to diversity reporting? If not, what amendments should be made?
3. What are your views in relation to a recommendation to report against a target determined by NZX that would specify thresholds for gender diversity on boards, which is similar to the approach taken by ASX?
4. Does the Code's guidance in relation to ESG reporting appropriately take account of diversity considerations?

Review Area Eight: NZX Corporate Governance Institute

Background

In addition to considering specific changes to the Code Recommendations and commentary, NZX has being considering the manner in which it engages with industry and stakeholders to ensure that NZX's corporate governance expectations are appropriate for the New Zealand environment.

NZX has been considering whether it would be appropriate to convene a group of interested industry stakeholders that could provide feedback to NZX in relation to the Code's settings, and provide recommendations to the NZX Board in relation to amendments to the Code. This group would be known as the NZX Corporate Governance Institute. NZX intends to develop a Terms of Reference for the NZX Corporate Governance Institute, and to provide further detail of the manner in which the Institute would operate (including its purpose, role and membership), as part of the second stage of the consultation in relation to the Code

NZX's intention is to allocate seats on the Institute to be held by certain key stakeholder groups to enable representation of the eco-system in which NZX's markets operate. NZX considers that the Institute could comprise representatives of: the NZX Board; the NZ RegCo Board; the New Zealand Shareholders' Association; institutional investor groups such as the NZ Corporate Governance Forum; private equity investors; issuers; the Listed Companies' Association; issuer candidates; NZX Participants; New Zealand Universities; the Australasian Investor Relations Association; the Institute of Internal Auditors – New Zealand; Chartered Accountants Australia and New Zealand; and the ASX Corporate Governance Council. NZX intends that individuals representing a key stakeholder group category would be appointed to the Institute by the NZX Board, at the invitation of the NZX Board. Initially, inaugural members would be appointed for the Institute's one-year establishment phase, after which permanent members would be appointed.

In accordance with NZX's governance arrangements NZX would engage with NZ RegCo in relation to potential changes to the Code before determining whether recommendations should be formalised for consultation with the market.

International experience

In Australia, the ASX Corporate Governance Forum is an independent forum that includes ASX as a member which has been operating since 2012. The ASX Corporate Governance Forum is responsible for developing and issuing principles-based recommendations on the corporate governance practices to be adopted by ASX listed entities, against which those entities are required to report on an "if not, why not" basis under ASX Listing Rule 4.10.3, which are contained in the ASX Code.

The approach taken in Australia differs from the approach NZX is considering, where the NZX Board would retain control of the requirements for listed issuers under the Code.

In England, the Financial Reporting Council is responsible for the settings contained in the UK Corporate Governance Code against which all companies with a premium listing of equity shares are required to report by operation of the UK Listing Rules. The Board of the FRC is

appointed by the Secretary of State for Business, Energy & Industrial Strategy (BEIS). The UK Listing Authority which is part of the Financial Conduct Authority is responsible for setting the standards contained in the UK Listing Rules. The Financial Conduct Authority is an independent regulatory body.

In Singapore, the Monetary Authority of Singapore (**MAS**) established the Corporate Governance Committee as a permanent, industry-led body to advocate good corporate governance practices among listed companies in Singapore. The Committee has responsibility for recommending updates to the Code to SGX and MAS but does not carry regulatory or enforcement powers.

Matters for discussion

We are interested in submitters' views of the following matters:

1. Do you support the introduction of the NZX Corporate Governance Institute?

2. Which stakeholder groups do you consider should comprise the NZX Corporate Governance Institute?

3. Do you agree that the mandate of the NZX Corporate Governance Institute should act as an advisory body to NZX?