



Guidance Note

Diversity Policies and Disclosure

1 April 2023 ~~10 December 2020~~



The purpose of this guidance note is to provide guidance to issuers in relation to NZX Limited's (NZX) interpretation of NZX Listing Rules ("rules") 3.8.1(c) and 3.8.1(d) that require certain information in relation to diversity to be included in an issuer's annual report.

This guidance note replaces the previous guidance note 'Diversity Policies and Disclosure' issued on ~~10 December 2020~~ January 2019.

Under rule 9.15.1, NZX may act by and through NZX Regulation Limited (NZ RegCo) in performing any function or discharging any power set out in the rules. References in this Guidance Note to NZX therefore also include NZ RegCo in relation to any regulatory activity or discretion.

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Issuers should note that this guidance note is not intended to be a definitive statement of the application of the rules in every situation and is only a guide to NZX's policy and practice. This guidance note does not limit NZX's discretion under the rules. This guidance note reflects the rules as at ~~1 April 2023~~ 10 December 2020, which are subject to change. NZX takes no responsibility for any error contained in the guidance note. NZX may replace guidance notes at any time and issuers should ensure that they have the most recent version of this guidance note by checking NZX's website at www.nzx.com.

Introduction

The guidance is intended to provide issuers with assistance in determining how to report the quantitative breakdown of the gender composition of their board of directors and its officers for the purposes of rule 3.8.1(c).

This guidance is also designed to assist issuers which wish to develop and implement their own ~~gender~~ diversity policies and related measures, for the purposes of rule 3.8.1(d). It sets out some suggestions as to the content of a diversity policy and examples of measurable objectives that issuers may wish to set for themselves to measure their progress against their diversity policy.

This guidance note focuses on gender diversity but acknowledges that diversity is inclusive of a range of different factors such as ethnicity, cultural background, sexual orientation, skills and age. Issuers are encouraged to consider diversity in all its forms when formulating a diversity policy.

Structure of this Guidance Note

This guidance note is divided into two parts. Section 1 provides guidance as to how issuers should report under rule 3.8.1(c). Section 2 sets out suggested content for a diversity policy and sets out examples of measurable objectives that an issuer may choose to set in order to enable the issuer to measure performance against a diversity policy.

1. Reporting gender composition

Rule 3.8.1(c) requires an issuer 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 quantitative breakdown must be reported numerically rather than proportionately via MAP as set out below. Issuers may choose to include a proportionate breakdown in addition if they so wish, for convenience of presentation and interpretation. NZX encourages issuers to report gender composition information in a tabular format.

The breakdown relates to directors and officers. Issuers will need to consider who falls within the category of "officer".¹

An **officer** means a person, however designated, who is concerned or takes part in the management of the issuer's business, ~~but excludes a person who does not and reports directly to:~~

- (a) ~~report directly to~~ the Board; or
- (b) ~~report directly to~~ a person who reports to the Board.

Issuers are encouraged to explain how the definition of "officer" applies to their organisation, by reference to the issuer's organisational structure, for the purpose of the gender composition reporting in the annual report. An issuer may wish to do so either by reference to reporting

¹ The definition of "officer" in this rule replicates the test that was contained in the Securities Markets Act 1988. This is to ensure that gender composition reporting is comparable for periods prior to the introduction of the Financial Markets Conduct Act 2013.

lines to the CEO or by describing the nature of the roles included.

Example of how to enter data into MAP:

Please select the type of data you wish to enter. Only one type may be entered at a time.

- Allotment of shares
- Gender diversity data
- Earnings data
- Key dates
- Change current director or officer
- Add new director or officer
- Net tangible asset figures
- No data to declare

Company	NZX NZX Limited ▼
Balance Date	dd/mm/yyyy
Do you have a diversity & inclusion policy?	Please select... ▼
Number of male directors	<input type="text"/>
Number of female directors	<input type="text"/>
Number of gender diverse directors	<input type="text"/>
Number of male officers	<input type="text"/>
Number of female officers	<input type="text"/>
Number of gender diverse officers	<input type="text"/>
<input type="button" value="Confirm"/> <input type="button" value="Confirm and add another"/>	

2. Diversity Policies

2.1 Why adopt a diversity policy?

There is credible research based evidence which suggests that diversity in a variety of forms, and gender diversity in particular, contributes to improved performance at both Board and senior management level,² through promoting additional and broader perspectives in approach, leadership, problem-solving and thought. NZX considers that promoting an inclusive culture is the most effective way for an issuer to achieve its diversity goals.

Issuers are encouraged to consider factors beyond gender (such as ethnicity, cultural background, sexual orientation, age, and skills) when designing their diversity policies and practices, in light of the issuer's size, product or service offering, customer base and the jurisdictions in which it operates. Issuers are encouraged to adopt and implement a diversity policy, with measurable objectives, to provide clarity as to both the terms and extent of their commitment to diversity, and as a potential tool in improving performance at both Board and senior management level.

2.2 Rule requirements in relation to diversity policies

The rules do not *require* an issuer to adopt a diversity policy. However, if an issuer chooses to adopt a diversity policy, rule 3.8.1(d) requires the issuer to include a statement from the Board providing an evaluation of its performance with respect to its diversity policy in the issuer's annual report. The objective of rule 3.8.1(d) is to ensure that where an issuer has chosen to adopt a diversity policy, shareholders and other stakeholders are provided with information to assess the issuer's performance against that diversity policy. ~~This is consistent with the requirement that issuers provide all relevant information to enable the market to make an informed view of an issuer's value and prospects.~~

Issuers should note that rule 3.8.1(d) applies to Main Board Listed issuers which have Equity Securities Quoted and do not apply to 'Debt-only' or 'Fund-Only' issuers which does not have Equity Securities Quoted. However, all issuers are free to adopt a diversity policy and to report against that policy in their annual reports if they wish to do so.

2.3 Content of Diversity Policy

There is considerable variability in the content and format of corporate diversity policies.

Issuers are advised to consider what diversity means to them, and their own specific needs when formulating a diversity policy. This will vary depending on factors such as the size and nature of the issuer's business, the nature of its product or service offering, its customer base, the geographies in which it operates and its strategy. 'Boilerplate' language that offers little or no insight into a company's approach to diversity should be avoided.³

² Deloitte LLP and Bersin by Deloitte (2014) *Global Human Capital Trends 2014 Engaging the 21st century workplace*

McKinsey and Company (2007) *Women matter: Gender diversity, a corporate performance driver*

McKinsey and Company (2013) *Women matter: Gender diversity in top management : moving corporate culture, moving boundaries*

See also, 'Board Diversity and Effectiveness in FTSE 350 companies' published in 2021 by the UK Financial Reporting Council.

³ KPMG (July 2012) *ASX Diversity Report: Analysis of 31 December 2011 year end disclosures*

International practice indicates that gender should be an explicit component of any diversity policy. Where gender diversity is prioritised, it is not uncommon to have a stand-alone gender diversity policy.

Some companies commence with a gender diversity policy and broaden this to encompass other forms of diversity over time, while others may opt for policies that acknowledge the benefits of diversity, express a commitment to general inclusivity and an absence of any form of discrimination, and encompass named attributes relevant to or particularly valued by the organisation, such as culture, nationality, gender, age, and background.

Issuers may need to collect certain data so that they have an accurate picture as to existing diversity levels on which they can then base the formulation of a diversity policy.

The following are examples of what a diversity policy might contain:

- a statement of the issuer's commitment to diversity and an outline of the perceived benefits of diversity to the issuer. The nature of an issuer's commitment to diversity, and the benefits of diversity to an issuer, will vary from issuer to issuer, and should be formulated based on the specific needs of the issuer;
- a requirement for the Board to set measurable objectives against which to measure the issuer's performance against its diversity policy (for example recommendation 2.5 of the April 2023 NZX Corporate Governance Code recommends that an issuer within the S&P/NZX 20 Index at the commencement of its reporting period has a measurable objective for achieving gender diversity in relation to the composition of its board which is to have not less than 30% of its directors being male and not less than 30% of its directors being female, within a specified period that the issuer may determine)⁴. The measurable objectives themselves may either be included in the content of the diversity policy or may be contained in a separate stand-alone document (see section 2.4 below);
- provision for the establishment of a senior management team or officer with authority and in each case accountability to lead the implementation of the issuer's diversity policy. The policy may allow for performance against the diversity policy to be built into key performance indicators, with consideration given to related performance bonuses;
- a requirement for the Board to conduct a review of its skills mix on a regular basis to identify areas in which diversity may be improved and to identify opportunities to improve diversity through succession planning;
- provision for a regular review of diversity metrics at all levels of the organisation in order to identify levels at which diversity may be improved;
- provision for regular training of Board and management in recruitment and selection, with an emphasis on assessing merit and avoiding discrimination;
- provision for the establishment of programmes which encourage diversity. For example, a flexible working program that permits work/life balance and enables valued staff to maintain/resume their employment resulting in optimal use of talent, minimum impact on career progression and flow on effects for diversity at senior management levels;

⁴ Applicable for issuers reporting against the 1 April 2023 version 1.6 of the Corporate Governance Code, which applies to reporting for financial years beginning on or after 1 April 2023.

- a summary of the issuer's participation in wider diversity programmes and support or membership of organisations that promote diversity;
- a statement of the types of behaviour that will not be tolerated, including harassment and victimisation and a reference to any associated whistleblower policy; and
- the establishment of a process for the Board to be provided with regular reports on the implementation of the issuer's diversity policy and its performance against that policy.

2.4 Monitoring and evaluating performance

Rule 3.8.1(d) states that if an issuer has chosen to adopt a diversity policy, the issuer must include in its annual report a statement from the Board providing its evaluation of the issuer's performance with respect to its diversity policy.

Setting measurable objectives

When adopting a diversity policy, issuers should also set themselves measurable objectives so that they are able to measure their performance against their policy and report that performance against their policy in accordance with rule 3.8.1(d).

Performance against loosely defined targets cannot be objectively measured, evaluated or reported against and will therefore be of limited value to the issuer, its shareholders and other stakeholders.

Measurable objectives may either be included in the diversity policy or they may be contained in a separate stand-alone document. Whichever form they take, measurable objectives should be formally documented and approved by the Board.

Types of measurable objectives

There are two main types of measurable objectives that issuers may wish to consider in order to measure their performance against their policy:

- numerical; and
- non-numerical.

Numerical objectives

Numerical objectives in relation to gender diversity include Board, officer, senior management and broader organizational composition and the number and proportion of new Board, officer or senior executive appointments that have been women, or are targeted to be women in a defined period, and may include other related indicators such as pay equity.

While NZX is not prescribing quotas, issuers may wish to adopt numerical targets if they consider that it is in their best interests. If an issuer does commit to a particular target, NZX would expect it to report against that target in its annual report in compliance with rule 3.8.1(d). However, NZX is not mandating the adoption of targets.

[Recommendation 2.5 that is contained in the 1 April 2023 update to the NZX Corporate Governance Code recommends that S&P/NZX 20 issuers, set a measurable objective of having of at least 30% male and 30% female directors within a specified timeframe.⁵](#)

⁵ Applicable for issuers reporting according to the 1 April 2023 version 1.6 of the Corporate Governance Code, which applies to reporting for financial years beginning on 1 April 2023 onwards.

Issuers which wish to commit to targets should clearly define how those targets apply to positions within their organisation, to ensure maximum transparency and usefulness to shareholders and other stakeholders. Issuers (particularly issuers within the S&P/NZX 50 with more than 50 employees) may wish to provide gender pay gap information either on their website or in their annual report. Where appropriate, the manner in which performance against targets is measured should be kept the same over time to enable changes in diversity to be monitored.

The following are examples of additional targets that an issuer may choose to set:

- the issuer's Board will include X number or proportion of women directors by a specified date;
- X percentage of new Board appointments will be women for a specified period of time;
- X percentage of the issuer's senior managers/officers will be women by a specified date.

As described in section 1 above, the rules require issuers to provide in their annual report a quantitative breakdown as to the gender composition of the issuer's Directors and Officers as the balance date of the issuer. This requirement focuses on the actual make-up of an issuer's board and officers as at the issuer's balance date, and is different to the setting of and reporting against numerical targets.

Where an issuer has elected to adopt numerical targets, the issuer should ensure that reporting against that target is clear. In particular where an issuer sets a proportionate or percentage target NZX would expect the issuer to report its performance on both a numerical and proportionate basis.

Non-numerical objectives

The non-numerical measurable objectives an issuer chooses to set for itself will depend upon the specific aims of that issuer's diversity policy, and may include the following:

- establishing a diversity working group or committee to monitor diversity and to regularly report to the Board on diversity-related matters;
- establishing training programmes for employees on the benefits of diversity, or conducting an employee survey or programme of surveys on diversity to obtain employees views as to diversity;
- establishing recruitment procedures which ensure that a wide range of potential candidates are considered at all levels of the issuer's structure, including at both Board and senior manager level and that a minimum prescribed percentage of shortlisted candidates are (for example) female;
- conducting regular reviews to ensure that there is pay equity at all levels of the organisation to minimise inadvertent discrimination that may affect retention and career progression, which in turn may affect diversity at senior management levels; and
- establishing a diversity scorecard.

Issuers should carefully consider the nature of non-numerical targets to ensure that they will be able to provide a meaningful report of the issuer's performance against the target, at year end. In particular, qualitative objectives may be more difficult to report against.

Issuers will need to consider how best to monitor and report on performance against the

measurable objectives they set themselves so that they can provide an annual statement on performance in accordance with rule 3.8.1(d).



Appendix 1: Relevant Listing rules

NZX Listing Rule 3.8.1(c)

3.8.1(c) a quantitative breakdown as to the gender composition of the Issuer's Directors and Officers as at the Issuer's balance date, including comparative figures for the prior year which, at a minimum, must include:

- (i) the number ~~Directors who self-identify as of male, and female~~ and gender diverse Directors, and
- (ii) the number ~~Officers who self-identify as of male, and female~~ and gender diverse Officers,

at the relevant balance date and with comparative figures for the prior balance date (if any).

For the purposes of this Rule 3.8.1(c), "Officer" means a person, however designated, who is concerned or takes part in the management of the Issuer's business and reports directly to:

- (iii) the Board, or
- (iv) a person who reports to the Board,

NZX Listing Rule 3.8.1(d)

3.8.1(d) an evaluation from the Board on the Issuer's performance with respect to its diversity policy (if applicable),