



Guidance Note

Governance

January 2025



This guidance note seeks to assist issuers to comply with their governance obligations.

Under Rule 9.15.1 of the NZX Listing Rules (**Rules**), NZX Limited (**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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This guidance note applies to the obligations contained in the NZX Listing Rules, relating to Governance. 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 and law as at 31 January 2025 which is subject to change. NZX takes no responsibility for any error contained in this 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.



1. Introduction

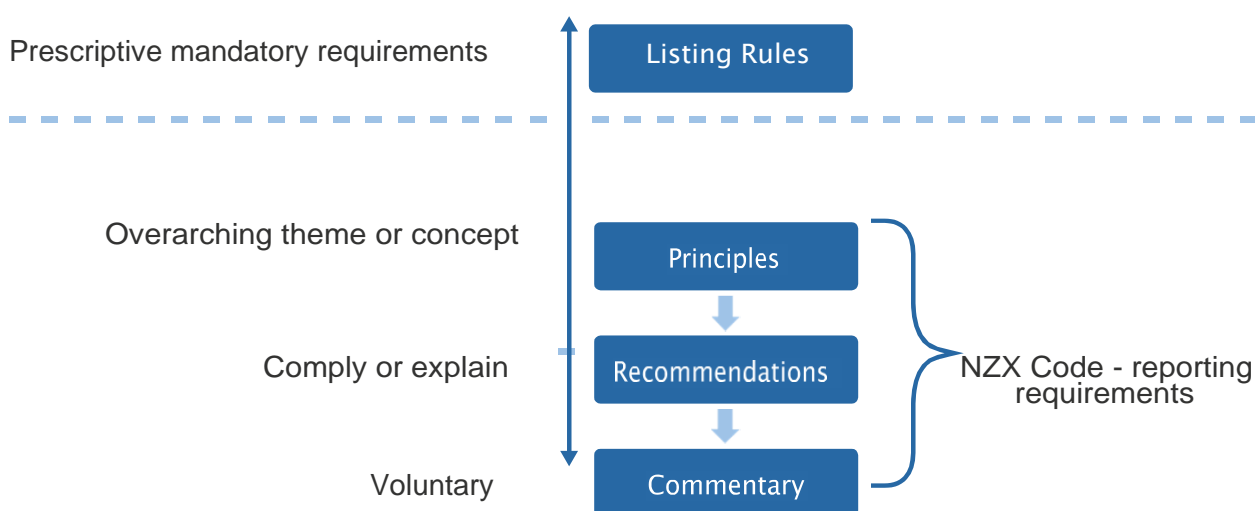
Section 2 of the Rules sets out the governance requirements for the different issuer types, which are differentiated based on the class of security that the issuer has Quoted on the NZX Main Board and the NZX Debt Market:

- (a) equity security issuers (Rules 2.1 to 2.14);
- (b) debt security issuers (Rule 2.15);
- (c) fund security issuers (Rule 2.16); and
- (d) issuers of other financial products (Rule 2.17).

The Rules relating to governing documents are set out separately at Rules 2.18 to 2.23. Unless otherwise defined, capitalised terms in this guidance note have the same meaning as given in the Rules.

In addition to the mandatory requirements under the Rules, the NZX Corporate Governance Code (**NZX Code**) provides recommendations for equity security issuers, which are subject to a mandatory “comply or explain” reporting regime. NZ RegCo has also published an annual report and governance practice note and template checklist to help issuers verify compliance with the annual report content and key governance requirements, which is available [here](#).

The interaction between these requirements is illustrated below.



2. Governance requirements for debt security and fund security issuers

The governance requirements under the Rules for issuers of debt securities and fund securities recognise the requirements set out in Part 4 of the Financial Markets Conduct Act 2013 (**FMC Act**). The FMC Act provides a comprehensive framework for governance of these issuers so the Rules do not need to replicate existing investor protections.

2.1 Debt security issuers

A debt security issuer must comply with Part 4 of the FMC Act to the extent required by law. In particular, this requires the issuer to have a supervisor, to provide reports to the supervisor and to hold meetings of security holders in particular circumstances.

In addition, a debt security issuer that is a company incorporated under the Companies Act 1993 will be required to comply with that Act.

2.2 Fund security issuers

A fund security issuer must comply with Part 4 of the FMC Act to the extent required by law. In particular, this requires the issuer to register the managed investment scheme (if it is making a regulated offer under the FMC Act), to have a licensed manager, a licensed supervisor, and to meet particular scheme management requirements such as a statement of investment policy and objectives.

If a fund security issuer is not subject to Part 4 of the FMC Act, NZX may require, by prior written notice to the issuer, to comply with any requirement in Part 4 of the FMC Act as if the issuer were subject to Part 4 of the FMC Act.

In either case, under Rule 2.16.3 the board of the manager of Quoted fund securities must include at least one director who is ordinarily resident in New Zealand or Australia. Section 3.2 of this guidance note provides guidance on NZX's interpretation of "ordinarily resident" in the context of Rule 2.1.1(b), which is equally applicable to Rule 2.16.3. In addition, if the manager of fund securities is a company incorporated under the Companies Act 1993, it will be required to comply with that Act as applicable.

3. Governance requirements for equity security issuers

The Rules relating to governance for equity security issuers fall into the following broad categories:

- (a) board composition (including director independence assessments and disclosures);
- (b) audit committee requirements;
- (c) directors' remuneration.

These requirements are intended to provide security holders with certain safeguards and protections, and are considered to be fundamental obligations.

3.1 Board composition

NZX recommends that issuers have in place adequate arrangements to ensure they can act swiftly to resolve any issues arising from unexpected director resignations. An issuer should be alert to the risk of failing to meet its board composition obligations where a board is constituted with the minimum number of directors. Issuers should consider appropriate contingency plans, such as succession planning or ensuring that additional directors above the minimum requirements have been appointed.

3.1.1 Independent Directors

It is widely recognised that independence is an important consideration and that independent views add value to boards. Independence must be determined in accordance with the test outlined in the Rules¹, including having regard to the factors outlined in the NZX Code.²

The NZX Code recognises that the purpose of the director independence settings is to ensure that there are a sufficient number of directors on an issuer's board who do not have relationships or interests that would reasonably cause them to be, or to be reasonably perceived to be, aligned with management³ or a particular shareholder⁴ group in a material way. These settings provide additional confidence for shareholders that an issuer's board includes a sufficient number of members who do not have interests or relationships that could reasonably be considered, (or could reasonably be perceived,) to materially affect their capacity to bring an independent perspective to board decision making – noting that both Independent and non-Independent Directors are subject to the same duties to act in the best interests of the company which are owed equally to all shareholders.

3.1.2 Test for independence

The Rules define an Independent Director as someone who is not an employee of the issuer and who has no Disqualifying Relationship. The Rules define a **Disqualifying Relationship** as

¹ Rule 2.1.1(c)

² Recommendation 2.4 of the NZX Corporate Governance Code

³ Refer to Table 2.4 of the NZX Code – Code factors 1, and 3 to 5. Code factors 7 and 9. Code factor 8 as it relates to relationships with persons referred to in Code factors 1 to 5, 7 and 9.

⁴ Refer to Table 2.4 of the NZX Code – Code factor 6 and factor 8 as it relates to relationships with persons referred to in Code factor 6.

any direct or indirect interest, position, association or relationship that could reasonably influence, or could be perceived to influence, in a material way, the director's capacity to:

- bring an independent view to decisions in relation to the issuer, or
- act in the best interests of the issuer, or
- represent the interest of its Financial Product holders generally, including having regard to the factors described in the NZX Code that may impact director independence, if applicable.⁵

It should be noted that the NZX Code factors are not exhaustive, and a board should consider additional factors, such as a director's broader interests and relationships when making a determination as to whether the director is an Independent Director.

Factors described in the NZX Code that may impact a director's independence include that the director:

- is currently, or was within the last three years, employed in an executive role by the issuer, or any of its subsidiaries;
- is currently deriving, or was within the last 12 months derived a substantial portion of the director's revenue from the issuer;
- is currently, or was within the last 12 months, in a senior role in a provider of material professional services (other than an external auditor) to the issuer or any of its subsidiaries;
- is currently employed, or was employed within the last three years by the external auditor to the issuers or its subsidiaries;
- currently has, or did have within the last three years, a material business relationship (e.g. as a supplier or customer) with the issuer or any of its subsidiaries;
- is a substantial product holder of the issuer⁶, or a senior manager of, or person otherwise associated with, a substantial product holder of the issuer;
- currently has, or within the last three years had, a material contractual relationship with the issuer or any of its subsidiaries, other than as a director;
- has close family ties, or personal relationships (including close social or business connections) with anyone in the categories listed above;
- has been a director of the entity for a period of 12 years or more.⁷

⁵ Rules Glossary 'Disqualifying Relationship'

⁶ The term substantial product holder has the meaning set out in section 274(1) of the Financial Markets Conduct Act 2013, and is a holder who has a relevant interest in 5% or more of a class of the issuer's Quoted voting equity securities.

⁷ Recommendation 2.4 of the NZX Corporate Governance Code.

In each case, the materiality of the interest, position, association, or relationship needs to be assessed to determine whether it might interfere, or might reasonably be seen to interfere, with the director's capacity to bring an independent judgment to bear on issues before the board and to act in the best interests of the issuer, and to represent the interests of its financial product holders generally.

An issuer should ensure that the assessment of a director's independence is made by holistically considering the interests and relationships of a director without regard to any conflict management arrangements.

3.1.3 Arrangements for the assessment of a director's independence

The issuer is responsible for ensuring that the director provides information to the board to enable it to make a determination regarding that director's independence.⁸ An issuer should ensure that it has appropriate arrangements in place to ensure that the board has up-to-date information relevant to the independence assessment, noting that such information may be broader than the information disclosed for inclusion in an issuer's interests register.⁹

3.1.4 Disclosures relating to director independence

Annual report

The NZX Code recommends that an issuer's annual report includes a description as to why the board has determined a director to be independent when one of the factors contained in the NZX Code applies to the director. As at the date of this guidance note, recommendation 2.4 of the NZX Code recommends that an issuer's annual report includes a description as to why the board has determined a director to be independent when one of the factors in table 2.4 of the NZX Code applies to that director, along with a description of the interest, relationship or position that triggers the relevant factor.

This recommendation will be reflected as a Rule requirement under Rule 3.8.1(f) for annual reports in respect of financial years commencing on or after 1 April 2025. Rule 3.8.1(f) will require an equity security issuer to include additional code factor disclosures in its annual report where one of the factors listed in table 2.4 of the NZX Corporate Governance Code applied to a director determined to be an Independent Director during a financial year with a balance date on or after 31 March 2026. The disclosures will be required when the NZX Code factor applied to the director during the financial year reporting period, regardless of when the determination as to the director's independence is made (for example after the end of the financial year but prior to the publication of the annual report).

The **Additional Code Factor Disclosures** that will be required are a description of:

- the basis upon which the relevant factor was triggered, and
- why the board determined that the application of the factor did not cause the director to have a Disqualifying Relationship.

⁸ Rule 2.6.5

⁹ Section 140 Companies Act 1993

In addition the annual report must continue to include a statement as to which of the issuer's directors have been determined to be Independent Directors as at the balance date of the financial year in respect of which the annual report is prepared, and the matters considered as part of that determination (which may be combined with any disclosure under Rule 3.8.1(f)).

Market announcements

An equity security issuer must make a determination under Rule 2.6.1 as to whether a director is an Independent Director. The outcome of that determination must be released through the Market Announcement Platform (**MAP**) no later than 10 Business Days after any director's initial appointment.

In addition, if at any time the board makes a determination regarding a Director's independence that differs from the determination most recently released through MAP (for example, that an Independent Director is no longer independent), such determination must be made promptly and without delay and released through MAP. This includes determinations that are made in relation to the annual determination of a director's independence that are required under Rule 3.8.1(e).

Rule 2.6.4 requires the Additional Code Factor Disclosures to be included in the MAP announcement where a NZX Code factor applies to a director.

Notices of meeting

In relation to a notice of meeting to consider a resolution to appoint or elect/re-elect a director, if the board has expressed a view that a candidate is independent where one of the factors in table 2.4 of the NZX Code applies to the candidate, then the notice of meeting must contain the Additional Code Factor Disclosures.¹⁰

3.1.5 Alternate directors

An alternate director acts in place of the permanent director that has appointed them, and only when doing so does the alternate have the full power, responsibilities and duties of a director.

The Rules define a director of an issuer that is a company incorporated in New Zealand as "a director within the meaning of section 126(1)(a) of the Companies Act 1993". Section 126(1)(a) states that a director is "a person occupying the position of director of the company by whatever name called." However, the Rules carve out alternate directors from certain tests, in order to avoid double counting. In particular, alternate directors should not be counted as part of the test for determining the composition of the board. An alternate director that is an Independent Director should not be counted towards the number of Independent Directors sitting on the board of an issuer. For the avoidance of doubt, the rules relating to the appointment of alternate directors are self-contained in Rule 2.5. As a result, the rotation requirements in Rule 2.7.1 do not apply to alternate directors.

¹⁰ Rule 7.8.3(b)

3.1.6 Director Residency

Rule 2.1.1(b) requires the board of an issuer to have at least two Directors who are ordinarily resident in New Zealand. The purpose of Rule 2.1.1(b) is to ensure that there are a sufficient number of directors sitting on a board of a listed issuer who are familiar with New Zealand's financial markets and regulatory settings, and who can be easily held accountable by New Zealand based shareholders, regulators and other stakeholders.

The Rules do not define the term “ordinarily resident”. NZX considers that the test for whether a director ordinarily resides in New Zealand is broad and requires consideration beyond simply the number of days a director is physically present in New Zealand. This approach is consistent with the High Court's interpretation of section 10(d) of the Companies Act 1993 in *Carr*¹¹, where the Court considered a broad range of factors beyond the 183-day threshold derived from tax legislation.

NZX considers that the factors that may be relevant to the assessment of whether a director ordinarily resides in New Zealand include (but are not limited to):

- the amount of time a director spends in New Zealand;
- their connection to New Zealand;
- the professional ties a director has to New Zealand (for example, prior experience with New Zealand's financial markets and regulatory regimes); and
- the manner of the director's living when in New Zealand.

NZX does not consider that any one of the above factors is determinative of the director's residency status. NZX will consider all relevant factors relating to a director's circumstances as a whole when considering the director's residency.

3.1.7 Appointment and election of directors

Rule 2.2.1 sets out the different ways in which a person can be appointed as a director. The diagram at Appendix 1 is designed to assist issuers in applying the Rules for appointing directors. A timetable to assist issuers in preparing for appointment and re-appointment of directors at an annual or special meeting is at Appendix 2.

Issuers must provide equity security holders with an opportunity to nominate directors, and to vote on those nominations at the relevant meeting. The timing requirements for this process are set out in Appendix 2. A director who is appointed by this process must then retire and stand for election at the third annual meeting following the director's appointment, or after three years (whichever is longer).

If a director was appointed by the board, that director must retire and stand for election at the next annual meeting. The practical effect of this Rule is that the board must appoint any new director in enough time to permit the resolution for the re-appointment to be included in the notice of meeting for that annual meeting.

¹¹ *Re Carr* [2016] NZHC 1536

If a director was appointed by an equity security holder using a right under the issuer's Constitution, then that director is not required to stand for election or re-election.

All other directors must stand for re-election by the third annual meeting following the director's appointment or after 3 years (whichever is longer). This applies equally to Executive and Non-Executive directors.

3.2 Audit committee

Effective audit committees and audit processes are important tools for issuers to ensure there is effective disclosure and financial accountability. Under Rule 2.13.1 any equity security issuer seeking admission to the NZX must have an audit committee. The audit committee must meet the requirements under Rule 2.13. Recommendations relating to the composition of the audit committee are also contained in the NZX Code.

The NZX Code also provides commentary regarding the audit committee and its relationship with auditors under Principle 7. It notes that the board should facilitate regular and full dialogue between its audit committee, the external auditors and management. More details can be found under Principle 7 of the NZX Code.

3.2.1 Accounting or financial background

Rule 2.13.1(d) requires an audit committee to have at least one member with an accounting or financial background. NZX Code recommendation 3.1 recommends that this member has an adequate accounting or financial background and is also an Independent Director.

A member of the audit committee will be deemed to have an adequate accounting or financial background if they have the following experience and/or qualifications, the committee member:

- (a) is a member of the Chartered Accountants Australia and New Zealand (**CA ANZ**); or
- (b) has successfully completed the Chartered Professional Accounting (**CPA**) programme; or
- (c) has successfully completed Level III of the Chartered Financial Analyst (**CFA**) programme; or
- (d) has held a Chief Financial Officer position at an issuer for a period greater than 24 months.

NZX may determine additional criteria that if satisfied would represent an "adequate accounting or financial background". NZX will publish additional experience or qualification criteria [here](#).

A board may appoint an audit committee member with alternative experience or qualifications to those described above, provided that the board is satisfied that the member has an adequate accounting or financial background. A board should engage with NZX if it is unsure as to whether the member's alternative experience and/or qualifications are appropriate.

3.3 Director Remuneration

Issuers should have an open, transparent, and fair process to determine director remuneration. The NZX Code recommends that an issuer should have a remuneration policy which is publicly accessible via an issuer's website.¹² There are several ways in which directors might receive remuneration, for example:

- (a) a monetary sum;
- (b) an issue of equity securities;
- (c) a lump sum payment or pension to a director or former director, or to his or her dependents, on retirement or cessation of office.

All of these must be authorised by shareholders via an ordinary resolution. Directors are disqualified from voting on resolutions that relate to their own remuneration.

NZX has worked alongside the NZX Corporate Governance Institute to develop a voluntary remuneration reporting template to assist issuers with their annual remuneration reporting requirements under the Rules, the NZX Code, and the Companies Act 1993. The template is available [here](#).

3.3.1 Payment of remuneration as a monetary sum

Listing Rule 2.11.1 states that no remuneration may be paid by an issuer, or its subsidiaries (unless such subsidiary is a listed issuer of Quoted equity securities), to a director in his or her capacity as a director without prior authorisation by an ordinary resolution by shareholders. A resolution of this kind must express directors' remuneration as a monetary sum payable per annum to either:

- (a) all directors of the issuer in aggregate (sometimes referred to as a **remuneration pool**);
or
- (b) any person who from time to time holds office as a director of the issuer (**individual amounts**).

An ordinary resolution of shareholders is required to approve remuneration and for any increase, except in limited circumstances where an issuer is utilising the remuneration pool approach.

If an issuer is using the remuneration pool approach, and the number of directors increases from the number when the remuneration was originally approved by an ordinary resolution, the issuer can increase the size of the remuneration pool. The amount of the increase per director cannot be any larger than the amount required to allow the additional director to be paid the average amount being paid to each non-Executive director (other than the Chairperson) of the issuer.

¹² Recommendations 5.1 and 4.2 of the NZX Corporate Governance Code

3.3.2 Payment of remuneration in equity securities

A resolution for the purposes of Rule 2.11.1 may provide that the remuneration may, in whole or in part, be through an issue of equity securities provided the issue is made in compliance with Rule 4.7. To comply with Rule 4.7, the issue must be:

- (a) of a Class of equity Securities already on issue;
- (b) made after the end of the period to which that remuneration is payable; and
- (c) at an issue price that is not less than the Average Market Price before the issue is made.



4. NZX Corporate Governance Code and Reporting Obligations within the Listing Rules

4.1 Reporting

Rule 3.8 requires an equity security issuer to include in its annual report either a corporate governance statement that meets the requirements of the rule or the URL of the page on its website where such a statement is located.

The corporate governance statement must include the extent to which the issuer has followed the recommendations of the NZX Code during the relevant financial year, and the date at which the corporate governance statement is current. The NZX Code applies to equity security issuers Quoted on the NZX. It does not apply to issuers of funds or debt securities only.

4.2 NZX Corporate Governance Code

The NZX Code has commentary to support and provide guidance on the recommendations and can be found [here](#). The manner in which the NZX Code operates is explained in more detail below.

Under Rule 3.8.1(b), if the issuer has not followed a recommendation in the NZX Code for any part of the relevant reporting period, its corporate governance statement is required to separately state information to provide context as to why the issuer has not followed the recommendation, including:

- which recommendation, or recommendations, have not been followed,
- the period when this occurred during the relevant reporting period,
- the issuer's reasons for not following the recommendation,
- what, if any, alternative governance was adopted in lieu of the recommendation during that period, and
- the alternative governance practice has been approved by the board.

Issuers do not need to state this for any part of the period prior to first Quotation of a Class of its equity securities.

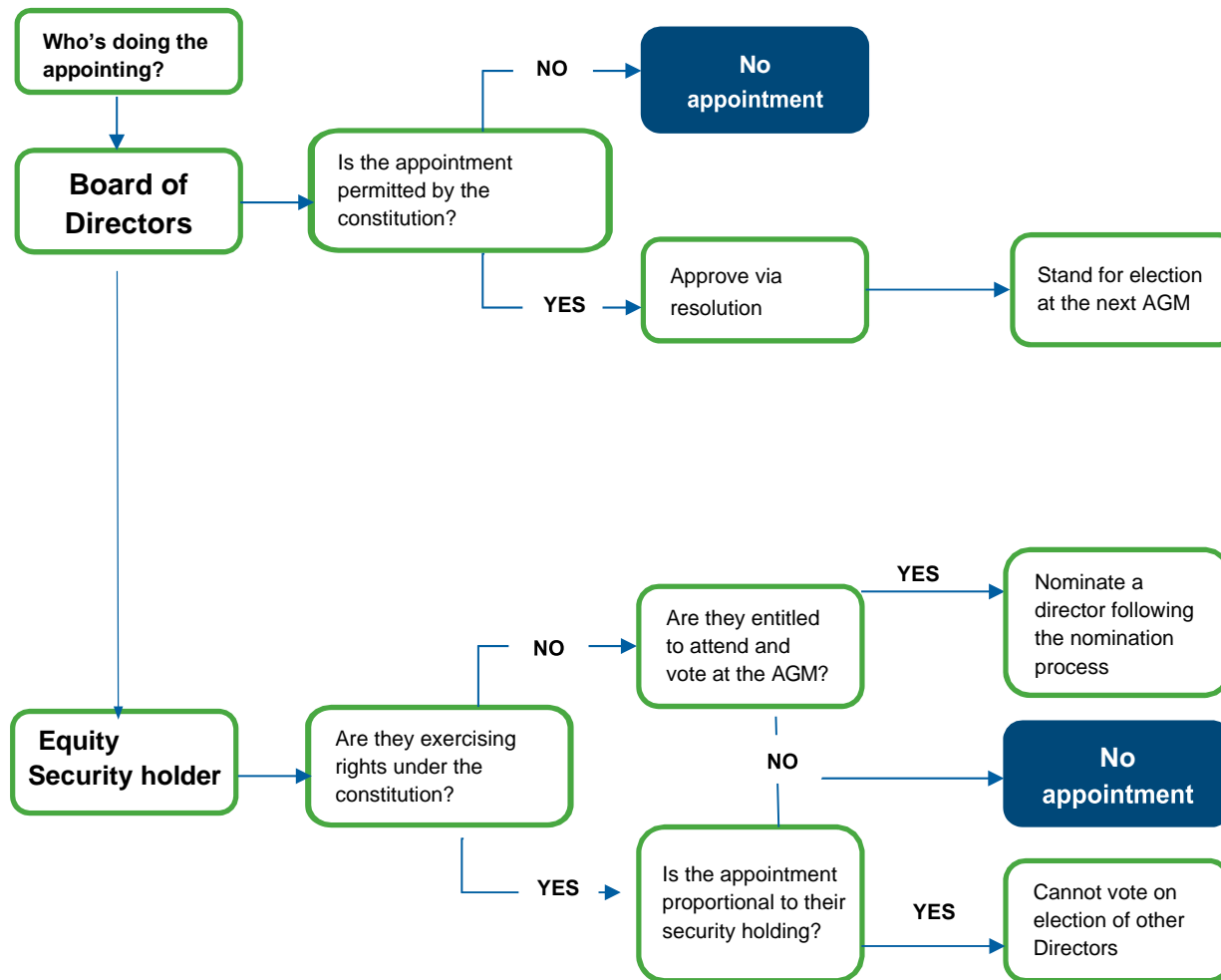
The policy objective of Rule 3.8 is to ensure that an issuer provides transparency on its corporate governance practices so that investors can have a meaningful discussion with the board and management about corporate governance, and use information about the issuer's corporate governance practices to determine how to vote on resolutions and in relation to their investment decisions.

5. Contact us

If you have any questions on the matters in this guidance note, please contact NZ RegCo at issuer@nzregco.com or (04) 495 2825. However, it is the issuer's obligation to comply with the Rules and any assistance from NZ RegCo should not be taken to constitute legal advice on the issuer's obligations.



Appendix 1. Appointment of Directors



Appendix 2. Timetable for appointment and re-appointment at annual or special meetings

Business days		✓
T-50	Announce closing date for nominations	
T-40	Latest closing date for nominations by equity security holders	
T-30	Latest date for sending notice of meeting to NZX for approval (if required)	
T-20	Recommended date for circulating notice of meeting to equity security holders	
T-10	Latest date for circulating notice of meeting to equity security holders	
T+0	Annual or special meeting is held Speeches or presentations must be released to the market Outcome of voting must be released to the market if Material Information	
T+1	Outcome of voting must be released to the market (unless Material Information, then release on T+0)	

