



NEW ZEALAND'S EXCHANGE
TE PAEHOKO O AOTEAROA

NZX Corporate Governance Code Review

Consultation Response Paper

December 2022



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This consultation response paper has been prepared by NZX to provide transparency to the market of NZX’s consideration of the submission feedback that NZX received through the two consultations relating to the review of the Corporate Governance Code that were commenced in late 2021 and August 2022, and the associated review of the ESG Guidance Note. Capitalised terms which are not defined in this paper 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 NZX Listing Rules (**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.

Why are we reviewing the Code?

We are reviewing certain settings within the Code to assess their effectiveness, now that issuers have had at least three reporting cycles against which to report against the settings that were last amended as part of the 2018 holistic 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 New Zealand market conditions, to ensure that the settings in the Code are correctly calibrated to promote good corporate governance for our listed issuers.

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 recognising 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 the board of an issuer remains best placed to consider the governance settings that are appropriate for its business, and intends to retain the Code's regulatory settings as recommendations that issuers may adopt and adhere to on a voluntary basis.

What is the ESG Guidance Note?

The ESG Guidance Note is designed to assist issuers who are considering how they should report ESG information under the NZX Code. It is designed as a tool to support issuers in understanding the benefits of providing ESG information, and provides resources that can assist issuers in developing their ESG disclosure practices. The ESG Guidance Note does not impose any obligations on issuers above those which already exist in the Rules, Code and legislation.



Introduction

Background

NZX commenced the review of the Code in November 2021 with the release of an initial discussion document that sought early-stage feedback on the scope and direction of travel for the review.

NZX received excellent engagement in relation to the initial consultation, receiving 23 submissions from a broad range of submitters across issuers, wholesale and retail investors, industry interest groups and law firms. Many submitters took advantage of the opportunity to provide verbal submissions to NZX, which was beneficial in enabling NZX to discuss with submitters the views they represented. We would like to thank those who contributed to the initial phase of the consultation process.

NZX then undertook sample testing of issuers' disclosure practices across a number of metrics that were designed to assess the extent to which the Code recommendations that were within the scope of the initial review had been adopted, and the quality of issuers' reporting practices in disclosing non-adoption of the relevant Code recommendations. We also further reviewed the current Code settings against those of our international peers, including ASX given that New Zealand's capital markets form part of the broader Australasian capital markets. We used the initial submission feedback we received, along with our sample bench-marking exercise, and review of international practice, to develop proposals on which we consulted in a second round of consultation on the Code that was released in August 2022.

The second round of consultation was accompanied by the release of an exposure draft of proposed changes to the ESG Guidance Note, which were complementary to the proposed amendments to Principle 4 of the Code that were contained in the second consultation paper.

NZX again received excellent engagement through the second phase of the consultation on the Code, receiving 20 submissions spanning the broad markets eco-system. We also received good engagement in relation to the ESG Guidance Note review. We were also pleased with the strong attendance at our workshop series in which we were able to provide further context for the proposals.

What is the purpose of this consultation response paper?

We have now considered the submission feedback received through the consultations, and have conducted further international benchmarking in some areas. In accordance with our standard arrangements for the consideration of regulatory policy changes NZX has engaged with NZ RegCo, in determining our views of submitters' feedback.

This consultation paper is designed to provide transparency to the market of NZX's consideration of the submission feedback received both in relation to the Code and ESG Guidance Note consultations.

We are not seeking further submission feedback in relation to this review.



What are the next steps for the review?

The views expressed in this paper will form the basis for an application to the FMA for formal approval of the amendments to the Code, which is a requirement of the Financial Markets Conduct Act 2013.

Once the FMA has determined whether to approve the amendments to the Code, the changes will be announced to the market. We will also announce the changes to the ESG Guidance Note and consequential changes to other relevant Guidance Notes (including the Guidance Note relating to Governance), at that time. This is to ensure that the amendments align with the FMA's determination of the Code amendments.

We will provide mark-up versions of the Code and relevant Guidance Notes when we announce the changes. This is likely to occur in late Q1 2023.

When is it intended that the Code amendments will become effective?

It is intended that the revisions to the Code that are approved by the FMA will take effect for a listed entity's first full financial year commencing on or after 1 April 2023. Issuers may elect to voluntarily report against the Code amendments prior to that time. We expect issuers to identify which version of the Code they are reporting against.

Questions

If you have any queries in relation to the review, please email policy@nzx.com or contact:

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Executive Summary

Summary of Submission Feedback

Submitters generally supported the proposals contained in the second consultation paper, which has demonstrated the benefits of conducting a two-phased consultation approach to this review.

There was strong endorsement of the retention of the 'comply or explain' framework, the new Code recommendation that establishes a diversity target for boards of issuers in the NZX20, the separation of the Code recommendations relating to director and executive remuneration, and the removal of the contextual information relating to green bonds from the ESG Guidance Note.

Material changes since the second consultation

As noted above, submitters were generally supportive of the consultation proposals. In recognition of the submission feedback, we have made some changes to the proposals on which we consulted in the following key areas:

- clarification within the Code commentary that an issuer may wish to tailor its training program in relation to ethics to particular sections of its workforce,
- clarification within the Code commentary in respect of the director independence factor relating to close personal relationships,
- inclusion in the Code commentary to suggest that it is preferable that executive directors do not form part of an issuer's Remuneration Committee,
- clarification within the Code commentary in relation to the time at which the composition of an issuer's Takeover Committee should be announced, and
- amendment to Rule 3.7.1 to require climate statements in annual reports, to the extent required by Part 7A of the Financial Markets Conduct Act 2013 (FMCA).



Consideration of submission feedback

This section of the paper provides more detail of the submission feedback received and NZX's consideration of that feedback.

We have ordered this section for consistency with the principles contained in the Code, and included a summary of the ESG Guidance Note feedback with the discussion of the submission feedback that related to the Code's ESG reporting expectations that are contained in Principle 4 of the Code.

Code framework

Retention of the 'comply or explain' framework

In both of our consultation documents, we noted that NZX intended to retain the current 'comply or explain' reporting framework for the recommendations contained in the Code. This framework requires an issuer to provide a corporate governance statement on the extent to which it has followed the recommendations in the Code in the current financial year. Issuers may provide these disclosures in their annual reports, on their websites, or through a combination of both mechanisms.

While submitters had differing views in relation to aspects of the Code that should be elevated as mandatory requirements under the Listing Rules, there was general support for the retention of the 'comply or explain' approach, with submitters noting the correlation between an issuer's market capitalisation and good governance practices, including the quality of reporting under the 'comply or explain' framework.

NZX remains of the view that a 'comply or explain' regime is appropriate because it recognises the primacy of an issuer's board to adopt corporate governance practices where the board consider those practices to be more suitable than those recommended in the Code, while ensuring 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.

Clarification of disclosure practices

There was a general sentiment expressed by submitters in the first round of consultation that the quality of 'explain' disclosures could be improved. Submitters considered that issuers should be providing more detail as to the reasons for the non-adoption of a recommendation, and should provide clearer disclosure where an issuer has adopted only aspects of a recommendation.

In the second round of consultation NZX proposed specific changes to the introduction to the Code designed to provide further clarity as to NZX's conduct expectations for making disclosures against the Code. This included changes to encourage issuers to consider providing an index or using sub-headings to ensure that readers of the issuer's corporate governance statement can easily navigate disclosures in relation to the recommendations (including those that an issuer has not adopted). These changes were supported by those who submitted on this point in the second consultation, and NZX intends to adopt these changes.



Some submitters suggested including references to additional external resources such as the Institute of Directors' *Four Pillars of Governance Best Practice for New Zealand Directors*. While NZX considers that this is a useful resource we consider that it is inappropriate to include specific references to external publications of this nature within the Code itself, given the role of the Code in the context of the Listing Rules. We intend to discuss with the NZX Corporate Governance Institute whether these types of resources could usefully be included on the Institute's website.

NZX also proposed a technical amendment to Rule 3.8.1(b) in the second round of consultation materials to ensure that 'explain' disclosures are provided for past reporting periods where an issuer has failed to explain a different approach in the most recent past reporting period. One submitter suggested that this change should be supported by a requirement that an issuer make a market announcement relating to the disclosure failure at the earliest opportunity. We do not consider it appropriate to make this change to the proposed Rule amendment, noting that we have not consulted on this approach, and that issuers may nevertheless voluntarily elect to make an announcement in these circumstances.

Clarification of the role of the Code

One submitter suggested that the Code should include a clearer reference to the importance of the Code in ensuring that other stakeholders beyond investors receive appropriate information about an issuer's corporate governance practices. We consider that this is sufficiently reflected in the introduction to the Code which already recognises that an appropriate level of information about an issuer's governance arrangements should be provided so that investors and other stakeholders can have a meaningful dialogue with an issuer's board and management about corporate governance matters. We note that the role of stakeholders is also referenced throughout the Code in relation to specific recommendations.

Ethics: Principle 1

NZX included Principle 1 within the review, as a result of submitters' feedback in the initial consultation.

Rename Principle 1 "Ethical Standards"

In the second round of consultation we proposed renaming Principle 1 'Ethical Standards' to better reflect that recommendation 1.1 relates to ethical standards more broadly than a Code of Ethics. This was supported by submitters who agreed that this change would reinforce that Principle 1 goes beyond a recommendation that an issuer has a Code of Ethics.

Training

NZX is proposing updates to the commentary to recommendation 1.1 to note that it expects issuers to provide training to staff in relation to its Code of Ethics at least every three years, and to reinforce NZX's expectations around disclosure relating to the frequency of training.

There was broad support for the proposed training expectations, with one submitter suggesting training should be conducted every 2 years and one submitter suggesting that the proposed amendments were too onerous, and that a board should instead sign-off a Code of Ethics on an annual basis.



One submitter suggested that training should only be provided to senior staff where unethical behaviour provides the greatest risk. While we disagree that unethical behaviour by senior staff represents a higher risk, we do agree that issuers may want to consider the nature of the training that they provide based on the composition of their workforce, and propose include an amendment to the Code commentary to that effect.

One submitter suggested that the Code commentary clarify that where an issuer is making a disclosure in relation to the training conducted in relation to its Code of Ethics that this should be done as part of the disclosures under Rule 3.8.1 and that a stand-alone market announcement is not expected. We agree with this comment and propose to clarify within the Code commentary that where an issuer makes a disclosure it should form part of its corporate governance disclosures.

Whistleblowing

Recommendation 1.1 currently notes that the code of ethics should outline internal reporting procedures for any breach of ethics, and that the code of ethics should require that an issuer's employees and directors adhere to any procedures about whistleblowing. NZX is proposing updates to the Code commentary to suggest that issuers consider whether it is appropriate to provide access to an external agency for whistleblowing purposes, and to note that issuers should ensure they understand their legislative responsibilities in relation to protected disclosures.

The majority of submitters supported issuers being encouraged to consider the benefits of using a third-party agency for whistleblowing / speak-up purposes, noting the benefits that offering such services may provide, while some suggested this should be elevated to a Code recommendation others suggested that internal disclosure mechanisms may be sufficient. We consider that the submission feedback supports proceeding with the proposals in relation to whistleblowing on the basis on which we consulted.

Director Independence: Principle 2

NZX Policy plans to undertake a 'deep-dive' in relation to the Rule settings for independent directors in 2023, with the support of the NZX Corporate Governance Institute. In the interim we are proposing to make a number of amendments to the Code as part of the current review.

Matters to be considered when determining director independence

A 'Disqualifying Relationship' is defined in the 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 Rules currently require that this definition is interpreted having regard to the factors described in the Code that may affect director independence, if applicable.

As a result of submission feedback from our initial consultation we are proposing a technical amendment to the definition of a Disqualifying Relationship, to clarify that the factors contained



in the Code are not the only factors that a board should consider when assessing a director's independence. This amendment is supported by proposed clarifying edits to the Code commentary to emphasise that the factors contained in the Code are examples of interests and relationships that may preclude a director from being regarded as independent. Submitters supported these changes that are designed to ensure that boards make a holistic assessment of a director's independence.

Disclosures relating to an independence determination

In the second consultation NZX proposed a new Code recommendation as part of recommendation 2.4, to encourage issuers to provide disclosure when a director is determined to be independent despite the presence of one of the factors identified in the Code.

One submitter considered that the proposal should go further, and that the existence of a Code factor should preclude an assessment that a director is independent, two submitters supported the change as proposed, two submitters suggested that disclosure of an interest or relationship that triggered a Code factor should only be required where it was material, and two submitters suggested that this change might encourage a 'tick-box' rather than a holistic assessment being made.

We note that the Code operates on a 'comply or explain' basis, which would allow an issuer to explain why it is not making the recommended disclosures. We also consider that the factors themselves have been developed to reflect interests and relationships that NZX considers are likely to be material (e.g. substantial shareholder, material service provider to the issuer, etc.). As noted in the Code commentary where a factor described in the Code applies to a director, the factor's materiality to the director should then be considered to determine whether it might result in a Disqualifying Relationship.

Where a factor is determined by an issuer not to be material to a director, NZX considers that shareholders and other stakeholders will be interested in understanding that the interest or relationship exists and why the issuer has determined it to be immaterial to the director and therefore determined a director to be independent. We also note that this proposal aligns with the approach taken in Australia. We therefore intend to proceed with this proposal with additional amendments to the Code commentary from those consulted on to reinforce the holistic nature of the assessment.

Changes to the independence assessment factors

NZX is proposing technical amendments to the drafting of some of the factors listed in the Code as inclusive considerations that should be used to determine a director's independence, including changes to the length of time within which previous relationships with an external audit firm are relevant, for consistency with recommendation 3.1 relating to the audit committee chair's independence. This change was broadly supported by submitters, and NZX intends to proceed with this amendment.

NZX is also proposing to include a new factor relating to close family ties, to refer to close personal relationships, which includes personal, business or social connections, reflecting that these relationships can also affect a director's independence, and aligned with the approach taken in Australia. Submitters supported this change in principle but suggested that more guidance could be included in the Code to assist issuers in interpreting this factor. NZX agrees



with this suggestion and proposes to include further amendments to the Code commentary in this area to clarify the types of relationships that are intended to be captured within this factor.

Tenure

NZX proposes clarifying in the Code that where a director's tenure exceeds twelve years, that the director's tenure may be a factor that precludes the director from being regarded as independent. While some submitters felt that defining long tenure as tenure of 12 years or more, was at the upper limit of the range, there was general support for this change. NZX intends to proceed with this proposal.

Board composition: Principle 2

Succession planning

NZX is proposing an amendment to the commentary to recommendation 2.4 to note the value of issuers providing information regarding the succession planning arrangements for its board. Submitters broadly endorsed this proposal, which NZX intends to adopt.

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. NZX is proposing to split recommendation 2.9 into separate recommendations, to ensure that appropriate disclosures are provided in relation to both limbs of the current recommendation.

NZX is also proposing to amend new recommendation 2.10, to recommend that the chair of the board should be independent of the board's CEO, whether or not the chair is independent. This amendment is consistent with the corporate governance expectations of ASX, SGX and the UK Financial Reporting Council, and recognises the importance of the separation between the management of an issuer and the chair's governance role, in enabling a board to effectively challenge management. These changes were supported by the two submitters who commented on these proposals.

Diversity: Principle 2

Diversity is broader than gender

NZX's Code currently recognizes that diversity is broader than gender. NZX considers that it is appropriate to reinforce this in an amendment to the Code commentary to recommendation 2.5, to encourage issuers to consider factors beyond gender (such as factors including ethnicity, social background, sexual orientation, skills, and age) when designing their diversity policies and practices. We also proposed an amendment to note the importance of fostering a culture of inclusion to enable the delivery of diversity goals. Submitters supported these changes, and NZX is proposing to adopt these changes on the basis set out in the second round of consultation.



Gender diversity targets – S&P/NZX 20 Issuers

In its initial discussion document, NZX consulted on whether it should introduce targets for gender diversity within the Code, against which issuers could report on a 'comply or explain' basis. The majority of submitters who commented on this proposal were supportive, with a minority of submitters supporting an approach that would see issuers set their own gender diversity targets.

In the second round of consultation NZX proposed an amendment to recommendation 2.5 that if an issuer was in the S&P/NZX 20 Index at the commencement of the reporting period that it should have a minimum measurable objective for achieving gender diversity in the composition of its board that is to have at least 30% male and at least 30% female directors, within a specified period. This is consistent with recent changes made to the ASX Code in 2019, in relation to S&P/ASX 300 Index issuers.

NZX received 12 submissions in relation to this proposal, through the second round of consultation. 11 submitters either supported the adoption of the target or noted that its application should not present difficulties for NZX 20 issuers. 3 submitters felt that the target should either apply to a broader issuer population or should include additional targets (similar to the NASDAQ approach to include underrepresented minorities or members of the LGBTQ+ community). One submitter did not support the proposal on the basis that it failed to appropriately account for non-binary persons. We consider that the adoption of the target as proposed is an appropriate initial step in setting more objective deliverables in relation to diversity, and intend to move forward with this proposed amendment to recommendation 2.5.

One submitter suggested that the Code should be updated to the effect that where a director takes extended leave (such as parental or sick leave) that the issuer should be considered as compliant with the Code recommendation. NZX considers that this is likely to be a relatively uncommon situation, and as such does not intend to update the Code commentary in this respect. NZX notes that the amended recommendation would apply on a 'comply or explain' basis, and that in these circumstances, it would be useful for an issuer to disclose the circumstances that have given rise to the issuer not meeting the diversity target it had adopted.

Gender pay gap reporting

A significant number of submitters provided feedback in respect of gender pay gap reporting in response to NZX's initial discussion document. Submitters were broadly supportive of NZX encouraging gender pay gap reporting as an ESG disclosure.

In response to this feedback, NZX proposed an amendment to the Code commentary to recommendation 2.5, that an issuer (particularly an issuer within the S&P/NZX 50 Index with more than 50 employees) may wish to provide gender pay gap information either on its website or in annual report. Submitters generally supported this proposal, with one submitter suggesting this should be included within the Code recommendation. NZX considers that it is appropriate to move forward with this amendment on the basis set out in the second consultation paper.



Board Committees: Principle 3

Recommendation 3.1 – audit committees

In order to enhance the visibility of the skills and experience of audit committee members, NZX is proposing an amendment to the Code commentary, similar to the approach taken in Australia, that issuers should disclose the qualifications and experience of audit committee members. One submitter suggested that the Code should endorse one audit committee member having internal audit experience, and one submitter suggested one audit committee member should be both independent and have financial expertise. We do not propose making this change at this time, as we consider that issuers should have flexibility to determine the composition of the Audit Committee, so long as the requirements of Rule 2.13.2 (that requires one member to have an accounting or financial background, and the committee to have a majority of independent members) are satisfied.

Recommendation 3.3 – remuneration committees

As a result of initial submission feedback, NZX expressly consulted on the extent to which executive directors should form part of an issuer's remuneration committee. NZX received good engagement on this topic with split feedback between those who supported allowing executive director participation with appropriate conflict management arrangements (some law firms, one issuer and one individual) while others who felt that the inherent conflicts involved were too difficult to manage (one issuer, and several industry groups).

As a result of this feedback, NZX has conducted further international benchmarking. We note that while the ASX Code permits executive director participation with appropriate conflict management protections, that the ASX Listing Rules prohibit executive directors of ASX 300 issuers from sitting on a remuneration committee. The UK Financial Reporting Council's Code and SGX Code also do not permit remuneration committees to include executive directors.

We therefore propose to amend the Code commentary to note that it will be preferable for issuers not to allow executive directors to sit on an issuer's remuneration committee, given the conflicts inherent in the relationship. This will provide flexibility (as Code commentary need not be reported against) but will encourage best practice in this area.

Recommendation 3.6 – takeover committees

Currently recommendation 3.6 recommends issuers have protocols that include the establishment of an independent takeover committee and the likely composition of that committee. The commentary currently explains that the takeover committee should be independent of the bidder. NZX is proposing an amendment to the commentary to encourage issuers to disclose the composition of its takeover committee, once the committee has been established, and the takeover bid is made public, as this information is important to stakeholders. Submitters supported this proposal, noting that takeover committees are normally formed after a bid has been made. We are proposing some additional amendments to clarify that the expectation is that disclosure is made at the time the committee is convened, and the bid is made public, as two submitters queried the timing expectations for the disclosure.



Recommendations 2.4 and 3.5

One submitter suggested that recommendation 3.5 (which recommends that an issuer should periodically report member attendance at board committees) should be referred to in recommendation 2.4 (which recommends that an issuer discloses a director's attendance at board meetings). We consider that this may be helpful in assisting issuers navigate the Code and propose to include a cross-reference to recommendation 3.5 in the commentary to recommendation 2.4.

Environmental, Social and Governance Reporting: Principle 4 and Guidance Note

Principle 4 of the Code

Split recommendation 4.3 – financial and non-financial reporting

NZX is proposing to split recommendation 4.3, so that the Code contains be-spoke recommendations relating to financial and non-financial reporting, to increase the prominence of the Code's endorsement of non-financial reporting. This proposal was broadly supported by submitters, and NZX intends to proceed with these changes on the basis proposed.

Process for non-financial disclosures

Submitters in the first round of consultation were supportive of NZX expanding the Code commentary to encourage issuers to report the process by which their non-financial reporting disclosures had been prepared where the disclosures have not been subject to formal review or audit by an external auditor. This reflects amendments made by ASX to the ASX Code in 2019.

Submitters in the second round of consultation were generally supportive of these proposed changes, with one submitter querying whether this change would derive meaningful disclosures, and one submitter suggesting that disclosure of the preparation process was too onerous. NZX proposes to move forward with this proposal as we consider that this information will be useful for investors, noting that NZX is not prescribing any particular process for the preparation of non-financial information.

Climate-related disclosures

The Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act¹ was enacted in October 2021. The legislation will require climate reporting entities, which will include all NZX issuers (other than small listed issuers²) to mandatorily report using the framework to be implemented by climate standards that are being developed by XRB in line with the principles of the TCFD framework for financial years commencing in 2023, with initial reporting required in 2024.

NZX wishes to support issuers in ensuring that they meet their legislative obligations in relation to making climate related disclosures. NZX is proposing consequential changes to the Code commentary to alert issuers of to the new legislative obligations, and to update the ESG Guidance Note to provide additional material to support issuers in becoming familiar with the new reporting requirements. These changes were supported by submitters through the second consultation phase.

¹ The legislation is available [here](#).

² There is an exemption for issuers who have a market capitalisation of \$60 million or less.



We are also proposing an amendment to the Listing Rules to require that an issuer's annual report must contain climate statements in accordance with the requirements of Part 7A of the FMC Act (unless the issuer is exempt from Part 7A of that Act). This replicates the current approach taken under the Listing Rules, to requiring financial statements in annual reports. The proposed change also reinforces the importance of the disclosures contained in an issuer's climate statements, and reflects the views of submitters who suggested that the legislative requirements should be captured in the Listing Rules.

NZX also received submission feedback from some submitters that other elements of recommendation 4.4 should be elevated to Listing Rule requirements. NZX does not intend to make further changes at this time, given the significant transition process for many issuers in relation to the CRD regime.

ESG Guidance Note

We intend to release a mark-up of the amendments to the ESG Guidance Note, at the time the changes to the Code are announced. We expect to do so in Q1 2023.

[Context for the proposed amendments](#)

NZX sought feedback as part of the consultation process on the greatest challenge for issuers in relation to providing ESG information to investors and other stakeholders. Submitters noted that ESG reporting is an emerging practice in which many issuers are still building capability and capacity, and that users of ESG information often have different needs. Submitters also noted the developing nature of global standards making comparability between disclosures difficult for users of ESG information.

[Flexibility in relation to reporting frameworks](#)

Submitters generally supported the Code's approach of acting as a resource for issuers and providing complete flexibility to issuers to elect which ESG framework to adopt. Some submitters queried whether the Guidance Note imposed additional obligations on issuers or inadvertently extended the CRD regime. We have therefore made further amendments to the Guidance Note to clarify that the guidance is not intended to create any additional obligation or expectation in relation to ESG reporting from those which exist under the Rules, the Code and legislation.

[Additional frameworks](#)

In our consultation we also sought feedback as to whether the Guidance Note should include any additional frameworks as resources that could be useful for investors, and whether any of the frameworks currently contained in the Guidance should be removed.

As a result of submission feedback, NZX is proposing to amend the Guidance Note to refer to the 'B Corp Certification' rather than the UN Global Compact, as one of the major frameworks that issuers may wish to consider reporting against, although we have retained references to the UN Global Compact in the general resources section of the guidance. We are also proposing to refer to the work being conducted by the International Sustainability Standards Board (ISSB) which is in the process of developing global sustainability-related disclosure standards. In addition, we have included a reference to the GRESB Benchmark which may be of relevance to issuers in the property sector.



We have also removed the references to the IIRC, SASB and CDP given that these organisations have now been absorbed into the ISSB.

Reference to the Climate-related disclosures regime

Submitters were supportive of NZX incorporating references within the Guidance Note to the incoming Climate-related disclosures regime (**CRD regime**). The Guidance Note contains references to the TCFD framework which are intended as contextual references for the development of the CRD regime. In response to submission feedback, we have amended the Guidance Note to clarify that NZX does not additionally expect issuers to apply the TCFD framework. We have expressly noted in the Guidance Note that TCFD may be a useful framework for issuers who are not captured by the CRD regime (such as those with a market capitalisation of less than \$60 million) to voluntarily report against.

We have included a reference to where the XRB's responses to frequently asked questions about the CRD regime are available, rather than including them in the guidance note itself, as we are mindful that XRB is best placed to provide guidance of this nature.

Green bonds

We consulted on removing the section of the guidance note which relates to green bonds, given that this section of the guidance is now outdated, and that the FMA has published guidance in relation to its disclosure expectations in respect of green bonds. Submitters generally supported this deletion, and we therefore propose to make this change to the guidance note.

Greenwashing

Some submitters noted that greenwashing was a growing concern, and suggested that the guidance note actively discourage greenwashing, including reporting of non-relevant information. We have included an amendment to the guidance note to discourage this practice.

Structure of the Guidance Note

One submitter provided a helpful detailed mark-up of proposed technical changes to the Guidance Note some of which we propose to adopt. This submitter suggested restructuring the guidance note so that the sections relating to New Zealand's global commitments appears first in the guidance note. We have elected not to make this structural change as we consider it important for issuers to engage with the relevance of ESG to them, before being provided with the broader context for the requirements.

Remuneration: Principle 5

Non-financial goals when setting executive performance-based remuneration

NZX is proposing to amend the commentary to recommendation 5.2 that relates to the elements that are relevant considerations when setting performance-based remuneration for executives, to expand those considerations to include non-financial goals which have been identified by an issuer as integral to its strategy, and the values of the issuer. We also propose a change to the commentary to encourage issuers to disclose how its executive remuneration arrangements align with its strategy and performance objectives, and generic eligibility and vesting hurdles for



any long-term incentive scheme that forms part of those arrangements. These changes were supported by submitters and we intend to adopt these proposals.

Independent advice

The commentary to recommendation 5.2 currently states 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. NZX is therefore proposing a change to the Code commentary, such that where an issuer has *relied on* an independent remuneration report in formulating its director remuneration arrangements, that the issuer should disclose a summary of the report, to support greater disclosure in this area.

There was broad general support for this change, other than from one law firm who suggested that such disclosures may discourage reliance on advisers, with most submitters noting the value of this information for stakeholders. We therefore intend to progress with this proposed amendment.

Clarification of recommendations applying to directors and executives

NZX is proposing drafting changes to recommendations 5.1 and 5.2, and the associated commentary to clarify the recommendations and commentary that apply to director and executive remuneration, respectively. This change was supported by submitters, and NZX proposes to make these amendments to the Code.

Risk management framework: Principle 6

In the context of NZX's consultation on the Code's ESG reporting recommendations, NZX received a submission through the initial consultation that it would be helpful for the commentary to recommendation 6.1 (which relates to an issuer's risk management framework) to clarify that an issuer should report its risk management framework.

NZX agrees that this could be a useful disclosure, in order to provide investors with more clarity as to how an issuer has identified the material risks to its business. NZX is therefore proposing additional commentary to recommendation 6.1 to address this consideration. This was supported by the submission feedback received in the second round of consultation.

Internal audit: Principle 7

Description of the internal audit function

NZX received submission feedback from the Institute of Internal Auditors who noted that the role of internal audit was not well understood and that the Code would benefit from the inclusion of a description of the role and purpose of the internal audit function. While recommendation 7.3 was not originally included within the scope of the review, we agree with this submission and therefore propose a change to the commentary to recommendation 7.3, to address this feedback.



Shareholder Meetings: Principle 8

Hybrid meetings preferred

NZX is proposing changes to the Code commentary that would encourage issuers, particularly those in the S&P/NZX 50 Index, or those with geographically diverse registers to facilitate hybrid meetings. This change was supported by submitters in both rounds of consultation, with submitters noting the benefits of the in-person elements of a hybrid meeting, and we propose to proceed with this amendment.

Some submitters suggested that it would be helpful for the Code commentary to address when a physical only meeting might be appropriate, and we agree that it would be helpful to amend the Code commentary to clarify that physical only meetings may be appropriate where an issuer has a small geographical shareholder base, or a strong record of high levels of proportionate physical only attendance, that make the expected costs of the virtual aspects of a hybrid meeting uneconomic.

Virtual meeting guidance

NZX is also proposing updates to the Code commentary to provide additional guidance as to how issuers can assist investors in understanding and participating in the virtual aspects of meetings (including when part of a hybrid meeting). These changes were also supported by submitters.

