

23 September 2022  
Kristin Brandon  
Head of Policy and Regulatory Affairs  
Email: kristin.brandon@nzx.com

## **NZX Corporate Governance Code (Code) Review – Second Consultation**

Dear Kristin,

We welcome the opportunity to provide feedback on the second round of the Code review (**Review**).

The New Zealand Corporate Governance Forum (**NZCGF**) is committed to promoting good corporate governance of New Zealand companies for the long-term health of the capital market. We believe that good governance improves company performance and increases shareholder value, which is a core focus for NZCGF members as custodians of public/client capital.

We appreciate the constructive engagement with NZX on the Code review process to date and acknowledge that many of our earlier recommendations have been reflected in the current proposals and exposure draft of the revised Code.

We set out our answers to the selected consultation questions in the Review in the accompanying table. Our key observations – including on certain matters not specifically covered by a consultation question – are:

- We are generally supportive of the changes pertaining to director independence as an interim measure pending the planned deep dive review on the concept of independence. We look forward to the coming discussion on director independence at the NZX Corporate Governance Institute. We consider that, because the revised settings only represent a relatively subtle shift from the status quo, there is a strong likelihood that they will not in all instances result in the intended holistic assessment of director independence.
- It is essential that NZ RegCo supplements these changes to director independence by monitoring prevailing market practices to ensure that Issuers respond appropriately and approach independence assessments in the intended holistic manner.
- We remain of the view that Principle 8 – Shareholder Rights & Relations and associated recommendations should be elevated within the Code. We support the proposed changes, including the hybrid shareholder meeting model, but consider these to be largely administrative. We recommend that:
  - The recommendations within Principle 8 should be expanded to more fully describe the shareholder-issuer/board relationship (as set out in our submission in the first round of the Review (**Initial Submission**)); and
  - In light of our concerns in respect of certain practices around seeking/granting waivers that remove important shareholder rights (refer to the Initial Submission for further details), the commentary to Principle 8 be changed to reflect that directors should only seek waivers that remove shareholder approval/voting rights where they are satisfied that this is necessary or desirable to significantly protect or substantially enhance long term shareholder value. This is consistent with the principle that “the board should respect the rights of shareholders”.

- As set out in our Initial Submission, NZX should review the thresholds for major/related-party transactions, which are out of step with comparable markets. We suggest that NZX considers whether it would be feasible to undertake policy analysis on this issue as part of the proposed Related Party Transaction and Major Transaction Guidance Note review.
- Regarding remuneration disclosure, the NZCGF is disappointed that the NZX response does not directly address the providing of information enabling shareholders to monitor executive remuneration. We would like to see the transparency cited in the principle reflected in the recommendations.
- This Code review has highlighted to the NZCGF the complexity involved in reviewing the entirety of the Code as a stand-alone exercise. Many of the issues which we have discussed during this Code review are nuanced and require well-researched, deep-thinking. The NZCGF considers the Code, as detailed in the Exposure Draft – Second Consultation 2022, to be largely fit-for-purpose in the short-term. We ask NZX to consider whether future updates to the Code could be made by iterative reviews of individual principles within the Code. Consequently, the NZCGF supports, and very much looks forward to contributing to the NZX Corporate Governance Institute, which is designed to “assist NZX by delivering practical recommendations in relation to the development of the NZX Corporate Governance Code and rule settings that apply to the corporate governance practices of issuers on the NZX Main Board”<sup>1</sup>.
- The NZCGF would like to see further review and market engagement in respect of its ongoing composition of the NZX Corporate Governance Institute to confirm that it is appropriately balanced and resourced beyond the initial establishment phase. We would also like to see the Institute engage with the market in order to derive and prioritise its proposed research focus areas.

Please note that individual Forum members may make their own submissions directly to NZX, and this submission will be published on our website ([www.nzcgf.org.nz](http://www.nzcgf.org.nz)) and LinkedIn page.

Yours sincerely,

Sam Porath  
*Chair*  
**NZ Corporate Governance Forum**

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<sup>1</sup> NZX, *NZX Corporate Governance Institute establishment members announced*, 14 September 2022

#	Question	Response
1	Do you consider it appropriate for issuers to disclose their practices in relation to providing employees with training in relation to their Code of Ethics, including the frequency of that training?	Yes.
2	Are the costs involved for issuers providing access to their employees to third-party whistleblowing services proportionate to the benefits of those services?	<p>In our experience the costs are relatively modest, but we will leave this for Issuers to confirm based on their own operations and risk profiles.</p> <p>We suggest that the commentary in the Code could be strengthened – i.e. Issuers “<u>should</u> consider whether”, as in general terms having an policy on protected disclosures would be regarded as good governance practice.</p>
3	Do issuers have any concerns with the revised recommendation that the issuer discloses its reasons for determining a director to be independent in the presence of a Code factor?	N/A.
4	Do you have any comments in relation to the amendment to the factors described in the Code?	<p>As a general comment, we strongly support the underlying intent of the proposed changes to the Listing Rules and Code – i.e. to ensure that Issuers:</p> <ul style="list-style-type: none"> <li>• undertake a holistic (rather than tick-box) assessment of director independence; and</li> <li>• disclose more comprehensive information on their determination to shareholders, particularly in circumstances where a director is classified as independent despite factors existing that could be seen to compromise that director’s independence.</li> </ul> <p>We note that the changes build incrementally on the reforms as part of the 2017-19 Listing Rule review. At that time, there was also strong signalling around the intended “holistic” independence assessment, but our perception is that this did not achieve the desired changes in overall practice.</p> <p>As such, we consider that more substantive changes (such as those outlined in our Initial Submission) may be required to drive change in this area. However, pending that, we note that it will be crucial for NZ RegCo to monitor Issuer independence assessments and disclosures to ensure Issuers are applying the Rules and Code in the intended manner.</p> <p>In terms of the specific amendments to the factors in the Code, we are generally fine with the changes. However, we note that 12 years is at the very upper limit of what would be regarded as a long tenure impacting independence (the usual range is 9-12 years).</p>

		<p>From a practical perspective, we note that given 3-year director rotation requirements, shareholders will need to be assessing potential independence at the time of a director's third re-election (i.e. for years 9-12). As such, we think the better approach would be for the guidance to recommend enhanced disclosure from year 9 onwards.</p> <p>We acknowledge that many directors will continue to be independent beyond year 9, but this is an appropriate point at which boards should intensify their scrutiny and reporting on the issue and other broader information that might be relevant to shareholders (e.g. on succession, as per question 5).</p> <p>Refer more generally to our comments in the covering letter.</p>
5	What is the utility of information relating to an issuer's succession planning arrangements for its board, are there any difficulties that issuers face in providing this information?	This information is very important for investors, and ideally will be integrated with disclosures on other aspects of board composition, such as the board skills matrix and any identified skills shortages or requirements for greater balance in board tenures.
6	Should executive directors be able to sit on an issuer's Remuneration Committee?	<p>The Code should more explicitly recommend that executive directors are not members of the Issuer's Remuneration Committee, given the actual and/or perceived conflicts arising.</p> <p>We note that:</p> <ul style="list-style-type: none"> <li>• While executive directors may have a legitimate and important function in contributing to remuneration policies/settings, this does not necessitate formal committee membership.</li> <li>• The Review notes that the ASX Corporate Governance Principles and Recommendations do not restrict executive directors from acting as members of the remuneration committee. However, an important point of context is that the ASX Listing Rule 12.8 provides that issuers in the S&amp;P/ASX 300 index must have a remuneration committee comprised solely of non-executive directors.</li> <li>• Other good practice guidelines are consistent with our view – i.e. the UK Good Governance Code provides that "The board should establish a remuneration committee of independent non-executive directors...".</li> </ul>
7	What difficulties will issuers in the S&P/NZX 20 Index face in reporting against a target over a specified period for its board to be comprised of persons 30% of whom are male and 30% of whom are female, noting the comply or explain nature of this recommendation?	N/A.