# NZX, 2020d

## Appendix 1

# NZX Corporate Governance Code

**1 January 2020**

# Contents

# NZX Corporate Governance Code

## PURPOSE & STRUCTURE OF PRINCIPLES

The overarching purpose of the NZX Corporate Governance Code (the **NZX Code**) is to promote good corporate governance, recognising that boards are in place to protect the interests of shareholders and to provide long-term value. The NZX Code is the primary guidance on corporate governance for NZX-listed issuers.

Strong governance can lead to a lower cost of capital and higher valuations for issuers. Regulation has an important role to play in improving corporate governance standards. The NZX Code is set out in Appendix 1 to the NZX Listing Rules (**Listing Rules**), which all listed issuers must report against.[1]

The NZX Code is structured around eight principles:

1. Code of ethical behaviour – directors should set high standards of ethical behavior, model this behavior and hold management accountable for these standards being followed throughout the organisation.
2. Board composition and performance – to ensure an effective board, there should be a balance of independence, skills, knowledge, experience and perspectives.
3. Board committees – the Board should use committees where this will enhance its effectiveness in key areas, while still retaining board responsibility.
4. Reporting and disclosure – the Board should demand integrity in financial and non-financial reporting and in the timeliness and balance of corporate disclosures.
5. Remuneration – the remuneration of directors and executives should be transparent, fair and reasonable.
6. Risk management – directors should have a sound understanding of the material risks faced by the issuer and how to manage them. The Board should regularly verify that the issuer has appropriate processes that identify and manage potential and material risks.
7. Auditors – the Board should ensure the quality and independence of the external audit process.
8. Shareholder rights and relations – the Board should respect the rights of shareholders and foster relationships with shareholders that encourage them to engage with the issuer.

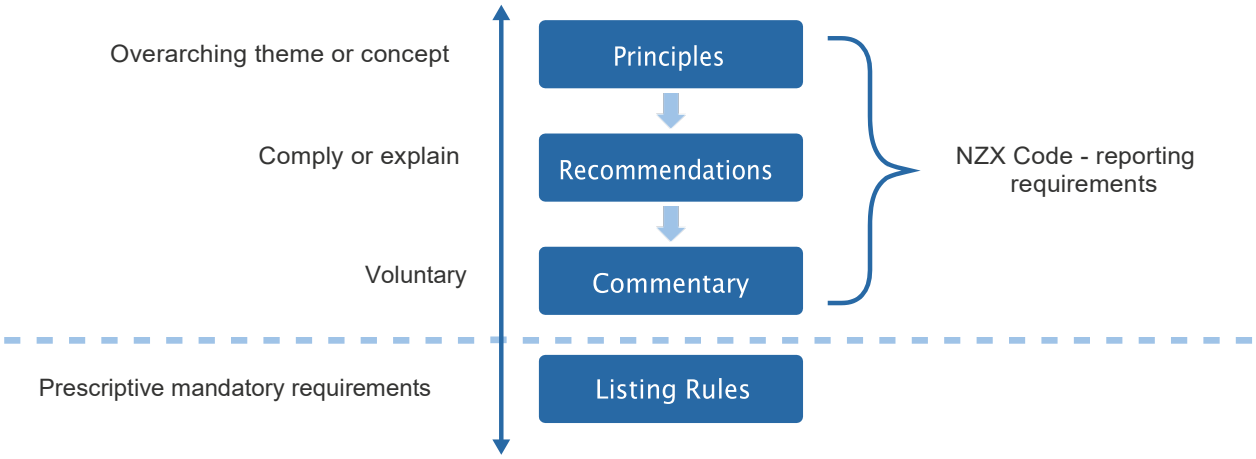
The NZX Code outlines recommendations under each principle recommending areas of good practice. If a particular recommendation is not appropriate for an issuer given its size or stage of development the issuer can explain why it has chosen not to adopt the recommendation and the alternative measures it has in place. The NZX Code therefore seeks to balance a desire to promote strong corporate governance while

[1] *Under Listing Rules 3.8.1(a) – (b)*

remaining flexible so that boards and issuers can determine the appropriate corporate governance practices for their businesses. Issuers should be continuously reviewing their corporate governance practices and seeking to improve these over time. NZX encourages issuers to think about disclosure on a continuous basis and not simply as an annual event. The recommendations have been drafted with the intention of allowing flexibility between disclosure in an Annual Report or on an issuer's website. NZX also notes the value of independence on boards.

## HOW TO APPLY THE NZX CODE

The NZX Code applies to all listed issuers on the NZX Main Board that do not fall under an exception in the Listing Rules. There are specific recommendations intended to give effect to general principles, as well as explanatory commentary in relation to both the principles and recommendations. The diagram below illustrates the hierarchy of the 'comply or explain' regime (described below) and how each issuer should interpret the principles, recommendations and commentary.




### The NZX Main Board Rules

Listing Rule 3.8.1(a) requires an issuer to provide NZX with a statement on its corporate governance reporting. The statement must disclose the extent to which the issuer has followed the recommendations set by NZX during the reporting period and be current as at the effective date specified for the purpose of Listing Rule 3.8.1 (see below for how more about the form in which this can be disclosed).

The disclosures under Listing Rule 3.8.1(a) relate to the *recommendations* in the NZX Code. The principles themselves and commentary about the principles do not form part of the recommendations and therefore do not trigger any disclosure requirements under the Listing Rules.

### Comply or explain

The Listing Rules act to encourage issuers to adopt the NZX Code but do not force them to do so. This allows an issuer flexibility to adopt other corporate governance practices considered by the Board to be more suitable. Under the NZX Code, if the Board of an issuer considers that a recommendation is not appropriate because it does not fit the issuer's circumstances, it is entitled not to adopt it. If it does not adopt it, it must explain why it has not. This is the basis of the 'comply or explain' ('if not, why not') approach. Requiring this explanation ensures that the market receives an appropriate level of information about the issuer's governance arrangements so that:

a. investors and other stakeholders can have a meaningful dialogue with the Board and management on corporate governance matters;

b. investors can use such information to help make decisions on how to vote on particular resolutions; and

c. investors can factor that information into their decision on whether or not to invest in the issuer.

### Reporting against the NZX Code

An issuer should explain what policies and practices it has in place in respect of the recommendation, and inform the investor or stakeholder where they can find any material referred to and where to find out more about their policies, which can be updated over time as practices develop and change. This is to demonstrate that the corporate governance practices of the issuer will evolve over time.

The disclosure of an issuer's compliance with the NZX Code is intended to be flexible so that disclosure can either be:

- in its annual report - where an issuer chooses to include its statement in the annual report rather than its website, NZX recommends that the statement and any related disclosures appear in a clearly labeled corporate governance section; or
- on its website - disclosures should be clearly presented and centrally located on or accessible from the landing page of the website, and the link should be easy to locate, prominently displayed in a category such as 'About Us' or 'Investor Centre'; or
- a combination of both reporting in the annual report and cross referencing on the website.

Issuers may incorporate material by reference as long as the material referred to is freely available and the statement clearly tells you where you can read or obtain a copy of it (such as a URL of a website).

#### *Disclosing that a recommendation is not followed*

If the issuer has not followed a recommendation for any part of the reporting period, its statement must separately identify that recommendation and what (if any) corporate governance arrangements it adopted in lieu of the recommendation during that period. An issuer's corporate governance statement must specify the date at which it is current. This must be the issuer's balance date or a later date specified by the issuer and state that it has been approved by the Board of the issuer. A statement regarding the explanation of why a recommendation was not followed should:

- be reasonably detailed and informative so that the market understands why it is that the issuer has chosen not to follow the recommendation;
- disclose the alternative practices it has, if any, employed in lieu of the recommendation and explain why they are more appropriate than the NZX Code in this instance; and
- avoid being short and uninformative, without analysis and unhelpful to investors.

#### *Exceptions*

Foreign exempt issuers are deemed under Listing Rule 1.7.1 to satisfy and comply with all the rules (including as to the content for annual reports) for so long as they remain listed on their home exchange (provided NZX can decide a rule does apply from time to time).

Issuers with only debt securities quoted are not required comply with Listing Rule 3.8.1(a) and (b).[2]

## NZX'S CONSULTATION APPROACH

In 2015, NZX commenced a comprehensive review of the previous Corporate Governance Best Practice Code. This was the first substantive update to the Code since 2003 and involved two rounds of formal feedback from market participants. NZX received over 80 submissions during the course of the review from a wide range of industry participants in New Zealand and offshore. NZX also engaged global market research company, TNS Qualitative Research to conduct interviews with 15 small to medium sized issuers to obtain their views on the issues raised, to ensure all the feedback from this sector of the market was considered as part of the review process.

In 2018 NZX updated the Code in conjunction with its holistic review of the Listing Rules.

The updated NZX Code seeks to more closely align with the Financial Markets Authority's *Corporate governance in New Zealand - Principles and guidelines* handbook, and the ASX Corporate Governance Council's *Corporate Governance Principles and Recommendations*.

## EFFECTIVE DATE

The updated NZX Code has been reviewed by the NZX Board and approved by the Financial Markets Authority.

This version of the NZX Code applies to all reporting periods from the 30 June 2019 year end period, but early adoption is encouraged.

2 *See Listing Rule 1.3.1.*

# Principle 1 – Code of Ethical Behaviour

## "Directors should set high standards of ethical behaviour, model this behaviour and hold management accountable for these standards being followed throughout the organisation."

### Overview commentary

Ethical behaviour is at the heart of good corporate governance and underpins an issuer's reputation. To maintain high ethical standards, it is important that an issuer has clear and consistent expectations of all its directors and employees, and that behaviour is modelled from the top down. A good code of ethics commits each and every person to the same standards and promotes a workplace culture of transparency. The code should be easy to read, apply to all persons throughout the issuer's organisation and be consistent with the recommendation below.

### RECOMMENDATION 1.1

1.1 The board should document minimum standards of ethical behaviour to which the issuer's directors and employees are expected to adhere (a code of ethics).

The code of ethics and where to find it should be communicated to the issuer's employees. Training should be provided regularly. The standards may be contained in a single policy document or more than one policy.

The code of ethics should outline internal reporting procedures for any breach of ethics, and describe the issuer's expectations about behaviour, namely that every director and employee:

a. acts honestly and with personal integrity in all actions;
b. declares conflicts of interest and proactively advises of any potential conflicts;
c. undertakes proper receipt and use of corporate information, assets and property;
d. in the case of directors, gives proper attention to the matters before them;
e. acts honestly and in the best interests of the issuer, as required by law, and takes account of interests of shareholders and other stakeholders;
f. adheres to any procedures around giving and receiving gifts (for example, where gifts are given that are of value in order to influence employees and directors, such gifts should not be accepted);
g. adheres to any procedures about whistle blowing (for example, where actions of a whistle blower have complied with the issuer's procedures, an issuer should protect and support them, whether or not action is taken); and
h. manages breaches of the code

### Commentary

***Why have a code of ethics?***

An issuer must act responsibly and ethically to build and maintain its reputation with investors and other stakeholders. Long term, ethics enhance the issuer's brand and investor confidence. It can be difficult for an issuer to re-build its image if a breach of ethics results in reputational damage.

An issuer should have specific processes in place to monitor compliance by its directors and employees with the code of ethics.

Recommendation 4.2 recommends that the code of ethics should be available on an issuer's website. Having transparency about ethical behaviour holds directors and employees accountable for their personal behaviour across the organisation. Over time, an issuer can track how it is progressing and improve its behaviour based on compliance with its own code of ethics.

***How should a breach of ethics be handled?***

An issuer should be transparent about how it plans to respond to breaches of a code of ethics, although it will be up to the issuer to determine whether to publicly disclose details of breaches of its code of ethics. Any breach of a code of ethics should be dealt with in a consistent and even-handed manner. The outcome of a breach should be consistent with past decisions where possible.

***How can the code of ethics be measured?***

The board should monitor instances where there is a breach of the code of ethics so that organisational behaviour is closely monitored.

An issuer should provide training on its code of ethics to new and existing staff. Providing training helps to ensure employees actively engage with the issuer's code of ethics. A code of ethics should be easy to find for all employees (for example, available on an issuer's website).

***How often should the code of ethics be updated?***

It is important that the code of ethics remains fit for purpose for each issuer. The code of ethics should be reviewed at least every two years to keep it up-to-date.

## RECOMMENDATION 1.2

1.2 An issuer should have a financial product dealing policy which applies to employees and directors.

### Commentary

A financial product dealing policy helps to provide transparency about expectations and requirements for financial product dealing by employees and directors and to protect them from the risk of breaching insider trading laws. It should clearly explain what processes are in place to manage the legal and reputational risks associated with staff financial product dealing. When developing a financial product dealing policy, an issuer may wish to consider existing third party guidance such as the Listed Companies Association's Securities Trading Policy and Guidelines. Recommendation 4.2 recommends that the financial product dealing policy be made available on the issuer's website.

# Principle 2 – Board Composition & Performance

"To ensure an effective board, there should be a balance of independence, skills, knowledge, experience and perspectives."

### Overview commentary

For an issuer's board to perform at an optimum level, the issuer must find the right mix of people to set its strategic direction. The board should have a procedure and criteria for the selection of its members. It is widely recognised that independence is an important consideration and that independent views add value to boards. Directors with an independent perspective are more likely to constructively challenge each other and executives – increasing their effectiveness. This means a director puts the interests of the entity before any other interests, including those of management or individual shareholders (except as disclosed and permitted by law).

### RECOMMENDATION 2.1

2.1 The board of an issuer should operate under a written charter which sets out the roles and responsibilities of the board. The board charter should clearly distinguish and disclose the respective roles and responsibilities of the board and management.

### Commentary

While some issuers are likely to have a similar split of functions between management and the board, these may vary. An issuer's board and management team should have clearly articulated roles, which should be set out in the board charter. The board may regularly review its roles and responsibilities to ensure the scope of the issuer's governance and management roles remains fit for purpose as the issuer evolves over time.

The board is usually responsible for:

- overall governance and providing strategic leadership;
- overseeing management's implementation of the issuer's strategic objectives and performance;
- overseeing the development, adoption and communication of a clear strategy for the business;
- overseeing accounting and reporting systems (including the external audit) and the issuer's compliance with its continuous disclosure obligations;
- adopting and reviewing a risk management framework;
- the appointment of the chair (and deputy chair if necessary) and the CEO;
- approval of the issuer's operating budgets/major capital expenditure; and

- adoption of the issuer's remuneration policy and other corporate governance documents

Management will usually be responsible for implementing the strategic objectives set by the board. They operate within the ambit of risk set by the board and deal with all other aspects of the issuer's day-to-day business. Management should provide the board with sufficient timely information to enable the board to perform itsresponsibilities.

A board charter may set out when directors may seek professional advice at the issuer's expense, such as through the use of external legal advisers or consultants. Recommendation 4.2 recommends that the board's charter be made available on the issuer's website.

### RECOMMENDATION 2.2

> 2.2 Every issuer should have a procedure for the nomination and appointment of directors to the board.

#### Commentary

Directors should be selected through a procedure administered by the issuer's board or nomination committee (if applicable). The procedure should be outlined in the charter of the board or the appropriate committee. Generally, this should provide for:

- proper checks (e.g. as to the person's character, experience, education, criminal record and bankruptcy history);
- the provision of key information about a candidate to shareholders to assist their decision as to whether or not to elect or re-elect the candidate (i.e. biographical details, relevant skills and experience, any other material directorships they hold); and
- if the candidate is standing for the first time, any material adverse information revealed by the checks the entity has performed (e.g. information regarding the person's character, criminal record or bankruptcy history); or
- if the candidate is being re-elected, information about the term of office served by the director.

All material information regarding a board candidate, including negative information, should be provided to the board or nomination committee if the director is being elected by the board. An issuer may choose to use a skills matrix to help ensure the correct mix of skills is achieved when considering appropriate appointments for the board. A director's independence should also be considered, particularly in light of Listing Rule 2.1.1(c) (namely "at least two Directors must be Independent Directors") and Recommendation 2.8 (that a majority of the board should be Independent Directors).

## RECOMMENDATION 2.3

2.3 An issuer should enter into written agreements with each newly appointed director establishing the terms of their appointment.

### Commentary

All new directors should enter into a written agreement with the issuer. This should apply to new board appointments only to avoid confusion about the retrospective effects of this policy. Note that directors are subject to appointment and removal from office via shareholder approval, which will supersede anything in a written agreement in respect of a director ceasing to hold office. The written agreement should include information about:

- the issuer's expectations of the director in his or her role;
- the director's expected time commitment to the issuer (including other duties);
- remuneration entitlements (including any superannuation included); and
- indemnity and insurance arrangements.

The written agreement should also include:

- the requirement to disclose interests that may affect the director's independence;
- a requirement to comply with corporate policies including the board charter, code of ethics and financial product dealing policy;
- the term of appointment;
- ongoing rights of access to corporate information;
- the right to receive access to information for regulatory or litigation purposes for 6 years post leaving a board; and
- ongoing confidentiality obligations

For executive directors only the written agreement should also include:

- a description of their position, duties and responsibilities; and
- the person or body to whom they report.

## RECOMMENDATION 2.4

2.4 Every issuer should disclose information about each director in its annual report or on its website, including a profile of experience, length of service, independence and ownership interests and director attendance at board meetings.

### Commentary

Releasing profiles about each director, experience, length of service and ownership interests and attendance at board meetings informs investors of the skills and experience and extent of involvement of the directors of an issuer.

'Independent' status should not be determined without careful consideration of all relevant factors and interests. An issuer must consider the definition of an 'Independent Director' when making such determinations. An issuer may also wish to establish and publish clear criteria for determining Independent Directors in accordance with the overarching test within the Listing Rules.

Factors that may impact a director's independence include:

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

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.

Disclosure should be made on an annual basis within the issuer's annual report or on the issuer's website.

## RECOMMENDATION 2.5

2.5 An issuer should have a written diversity policy which includes requirements for the board or a relevant committee of the board to set measurable objectives for achieving diversity (which, at a minimum, should address gender diversity) and to assess annually both the objectives and the entity's progress in achieving them. The issuer should disclose the policy or a summary of it.

### Commentary

Authoritative research concludes that increased gender diversity on boards is associated with better financial performance.[3] Under Listing Rule 3.8.1(c) an issuer is required to provide a quantitative breakdown in its annual report as to the gender composition of the issuer's Directors and Officers as at the Issuer's balance date and including comparative figures for the prior balance date of the issuer. NZX publishes aggregated statistics of this information on its website.

An issuer should have a written diversity policy so that a clear summary of its attitude and goals regarding diversity in the workplace can be found. That should have measurable objectives set by the board of the issuer (or a board committee) to track how the issuer is progressing towards these, such as specific numerical targets to provide benchmarks. The periodic disclosure of this information will help keep the board of the issuer accountable. The policy should disclose how an issuer plans to achieve its objectives, which should include a mixture of qualitative and quantitative assessments such as corporate retention rates, equal pay, flexible working arrangements, organisational engagement regarding diversity and targets for diverse board appointments. More guidance can be found in NZX's guidance note on diversity.

Issuers should also consider diversity more broadly than just gender. A diversity policy will help an issuer ensures it is getting a wide mix of experiences and perspectives on the board and throughout its organisation.

Reporting should make clear how an issuer is tracking against the policy at the end of each reporting period. Recommendation 4.2 recommends that the diversity policy (or a summary of it) should be made available on the issuer's website.

The board may delegate an appropriate board committee (such as the nomination or remuneration committee) the task of setting the issuer's measurable objectives for improving gender (and other forms of) diversity. This should be reflected in the charter of the committee in question.

## RECOMMENDATION 2.6

2.6 Directors should undertake appropriate training to remain current on how to best perform their duties as directors of an issuer.

### Commentary

Where necessary, every issuer should provide resources to help develop and maintain directors' skills and knowledge.

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3 *Why Diversity Matters', McKinsey, 2015, http://www.mckinsey.com/business-functions/organization/our-insights/why-diversity-matters.*

### RECOMMENDATION 2.7

2.7 The board should have a procedure to regularly assess director, board and committee performance.

#### Commentary

Every issuer should have a process to conduct regular performance reviews of directors, the board and committees to ensure they are delivering to a high standard throughout their service. As part of the review, the board should assess whether appropriate training (as contemplated by recommendation 2.6) has been received by directors. The board may choose to use external facilitators from time to time to conduct reviews.

### RECOMMENDATION 2.8

2.8 A majority of the board should be independent directors.

#### Commentary

Having a majority of independent directors makes it harder for any individual or small group of individuals to dominate the board's decision-making and maximises the likelihood that the decisions of the board will reflect the best interests of the entity and its security holders generally and not be biased towards the interests of management or any other person or group with whom a non-independent director may be associated. Non-executive directors should consider the benefits of conferring periodically without executive directors or other senior executives present.

### RECOMMENDATION 2.9

2.9 An issuer should have an independent chair of the board. If the chair is not independent, the chair and the CEO should be different people.

#### Commentary

The chair of the board and the CEO should be separated to ensure that a conflict of interest does not arise. The chair of the board is responsible for leading the board, facilitating the effective contribution of all directors and promoting constructive and respectful relations between directors and between the board and management. The chair is also responsible for setting the board's agenda and ensuring that adequate time is available for discussion of all agenda items, in particular strategic issues.

Issuers should have an independent chair, which can contribute to a culture of openness and constructive challenge that allows for a diversity of views to be considered by the board. Good governance demands an appropriate separation between those charged with managing a listed entity and those responsible for overseeing its managers.

# Principle 3 – Board Committees

## "The board should use committees where this will enhance its effectiveness in key areas, while still retaining board responsibility."

### Overview commentary

Committees are a way for the board of an issuer to delegate authority in a specific area. Some committees may not be appropriate for all issuers but they can improve the performance of an issuer if used appropriately. Every issuer will have different needs and constraints for their committees depending on their size or complexity.

### RECOMMENDATION 3.1

3.1 An issuer's audit committee should operate under a written charter. Membership on the audit committee should be majority independent[4] and comprise solely of non-executive directors of the issuer. The chair of the audit committee should be an independent director and not the chair of the board.

### Commentary

Financial reporting is important for an issuer. Effective audit committees and audit processes are important tools to ensure financial accountability.

Under Listing Rule 2.13.1, each issuer must establish an Audit Committee. That Committee must:

- be comprised solely of directors of the issuer,
- have a minimum of three members
- have a majority of members that are Independent Directors, and
- have at least one member with an accounting or financial background.

Listing Rule 2.13 requires that an issuer's Audit Committee responsibilities include as a minimum:

- ensuring processes are in place and monitoring those processes so that the board is properly and regularly informed and updated on corporate financial matters;
- recommending the appointment and removal of the independent auditor;
- meeting regularly to monitor and review the independent and internal auditing practices;
- having direct communication with and unrestricted access to the independent auditor and any internal auditors or accountants;

4 *The requirement for a majority of independent directors is set out in Listing Rule 2.13*

- reviewing the financial reports and advising all Directors whether they comply with the appropriate laws and regulations, and
- ensuring that the Key Audit Partner is change at least every five years[5].

Every issuer should identify in its annual report or on its website the members of the audit committee. The audit committee's written charter should outline the role and responsibilities of the committee. Recommendation 4.2 recommends the audit committee's charter be made available on the issuer's website.

The chair of the audit committee should be independent, and not otherwise have a long-standing association with the issuer's external audit firm as a current, or retired, audit partner or senior manager at the firm. An audit committee chair will generally be perceived to be independent if there has been a period of at least three years between previously being employed by the external audit firm and serving as chair of the audit committee.

An issuer may also choose to have a separate risk committee, although these are often combined with the functions of the audit committee. Further information in relation to the use of risk committees is outlined under Principle 6.

### RECOMMENDATION 3.2

> 3.2 Employees should only attend audit committee meetings at the invitation of the audit committee.

#### Commentary

Employees should only attend audit committee meetings by invitation so as to protect the independence of the audit committee from undue influence.

### RECOMMENDATION 3.3

> 3.3 An issuer should have a remuneration committee which operates under a written charter (unless this is carried out by the whole board). At least a majority of the remuneration committee should be independent directors. Management should only attend remuneration committee meetings at the invitation of the remuneration committee.

#### Commentary

The remuneration committee's role is to recommend remuneration packages for directors for consideration by shareholders and to recommend to the board a policy for CEO and senior management remuneration. Every issuer should identify in its annual report and on its website the members of the remuneration committee. The remuneration committee's written charter should outline the role and

5 *These responsibilities are also reflected in Listing Rule 2.13.3*

responsibilities of the committee. Recommendation 4.2 recommends that the remuneration committee's charter be made available on the issuer's website.

The remuneration committee's written charter should outline:

- the remuneration committee's authority;
- the requirements relating to its composition (for example, whether a minimum number of Independent Directors are required);
- duties and responsibilities; and
- relationship with the board.

An issuer may decide not to have a separate remuneration committee. Where an issuer chooses not to have a remuneration committee under the "comply or explain" approach, an issuer should explain the alternative measures in place – for example, for these functions to be carried out by the board.

An issuer may choose to have a nomination committee to recommend director appointments to the board or to include these responsibilities in those functions to be performed by the remuneration committee.

More information about processes and policies in relation to remuneration is included under Principle 5.

### RECOMMENDATION 3.4

> 3.4 An issuer should establish a nomination committee to recommend director appointments to the board (unless this is carried out by the whole board), which should operate under a written charter. At least a majority of the nomination committee should be independent directors.

### Commentary

An issuer's nomination committee can help focus resources on appointing directors. An issuer's nomination committee may be comprised of members of the issuer's remuneration committee. For smaller issuers the remuneration committee may carry out the functions of the nomination committee. The nomination committee's written charter (which should be disclosed) should outline the committee's authority, duties, responsibilities and relationship with the board.

Smaller issuers may decide not to have a separate nomination committee. Under the "comply or explain" approach these issuers should explain the alternative measures in place – for example, for these functions to be carried out by the board.

## RECOMMENDATION 3.5

3.5 An issuer should consider whether it is appropriate to have any other board committees as standing board committees. All committees should operate under written charters. An issuer should identify the members of each of its committees, and periodically report member attendance.

### Commentary

An issuer may choose to have other specific committees depending on the nature of their businesses, for example a health and safety committee.

Each committee should have a written charter that clearly sets out the roles and responsibilities of the committee. The members of the committee should be identified. The members should have an appropriate mix of experience and skills. Proceedings of committees should be reported back to the board. Recommendation 4.2 recommends that the charters of board committees be made available on the issuer's website.

Although an issuer may decide that it is not appropriate to have some of the separate committees recommended above, as it increases in size and scale it should continue to assess whether additional committees are appropriate in future.

## RECOMMENDATION 3.6

3.6 The board should establish appropriate protocols that set out the procedure to be followed if there is a takeover offer for the issuer including any communication between insiders and the bidder. The board should disclose the scope of independent advisory reports to shareholders. These protocols should include the option of establishing an independent takeover committee, and the likely composition and implementation of an independent takeover committee.

### Commentary

It is useful for issuers to have appropriate protocols in place for dealing with takeovers given that issuers will often need to react quickly in response to any approach. Independence is an important issue in the context of takeovers and therefore any takeover committee should be independent of the bidder. Issuers are not required to disclose such protocols with other governance policies and documents.

# Principle 4 – Reporting & Disclosure

## "The board should demand integrity in financial and non-financial reporting, and in the timeliness and balance of corporate disclosures."

### Overview commentary

Disclosure is important for good corporate governance, particularly given the mandatory disclosure requirements for listed issuers within the Listing Rules.[6] Reporting and disclosure keeps issuers accountable to stakeholders and is a key measure of good corporate governance. NZX supports robust disclosure by issuers of information regarding financial and operational matters. This information should be accurate.

Disclosures which are recommended or suggested within this reporting framework should be made on at least an annual basis, however, an issuer may choose to disclose more regularly. The disclosure framework is also intended to be flexible so that issuers can determine the appropriate mechanism for disclosing information to investors and stakeholders – for example, within an annual report and on an issuer's website.

Disclosure should look forward, and backward, explain the strategy adopted by the board, and highlight for shareholders and prospective investors material changes to previously announced strategies.

### RECOMMENDATION 4.1

4.1 An issuer's board should have a written continuous disclosure policy.

### Commentary

An issuer should have a written policy that explains how it complies with its continuous disclosure obligations to ensure all investors have access to relevant information. Recommendation 4.2 recommends that the continuous disclosure policy be made available on an issuer's website.

Announcements from an issuer should reflect a factual and balanced representation about the issuer, disclosing both positive and negative information.

The continuous disclosure policy should explain the respective roles of directors, officers and employees in relation to:

- complying with the issuer's continuous disclosure obligations;
- safeguarding the confidentiality of corporate information to avoid premature disclosure;
- external communications such as analyst briefings and responses to investor queries; and
- responding to or avoiding the emergence of a false market in the issuer's securities.

6 *Primarily section 3 of the Listing Rules*

Additional guidance in relation to the contents of a continuous disclosure policy is outlined in NZX's guidance note available here.

### RECOMMENDATION 4.2

4.2 An issuer should make its code of ethics, board and committee charters and the policies recommended in the NZX Code, together with any other key governance documents, available on its website.

#### Commentary

Maintaining information on an issuer's website is important for investors and other interested stakeholders to remain informed about the issuer. Key governance documents should be available to investors and stakeholders on the issuer's website including:

- the code of ethics;
- the financial product dealing policy;
- the board and committee charters;
- a diversity policy (or a summary of it);
- the remuneration policy; and
- the continuous disclosure policy.

### RECOMMENDATION 4.3

4.3 Financial reporting should be balanced, clear and objective. An issuer should provide non-financial disclosure at least annually, including considering environmental, economic and social sustainability factors and practices. It should explain how operational or non-financial targets are measured. Non-financial reporting should be informative, include forward looking assessments, and align with key strategies and metrics monitored by the board.

#### Commentary

It is important that every issuer provides disclosure of both financial and non-financial matters affecting it in its annual report, such as its sustainability strategy. Issuers may choose to report more regularly to investors on financial and non-financial matters.

***Financial reporting***

Financial reporting requirements are prescribed by the Companies Act 1993, Financial Markets Conduct Act 2013 and the Listing Rules. An issuer should ensure that financial reporting is accompanied by sufficient explanation and is expressed in a clear and objective manner to help investors to make meaningful investment decisions. An issuer should communicate a balanced and understandable

assessment of its performance, business model, strategic objectives and progress against meeting them. Changes in financial disclosure should be explained and allowed with historical comparison.

Issuer reporting should:

- be linked to the issuer's business model;
- be genuinely informative and include forward-looking elements where this will enhance understanding;
- describe the issuer's strategy, and associated risks and opportunities, and explain the board's role in assessing and overseeing strategy and the management of risks and opportunities (refer to recommendation 6.1 below);
- be accessible and appropriately integrated with other information that enables shareholders to obtain a picture of the whole organisation;
- use key performance indicators that are linked to strategy and facilitate comparisons; and
- use objective metrics where they apply and evidence-based estimates where they do not.

***Non-financial reporting***

As a step towards long term value creation, an issuer should determine the appropriate level of non-financial reporting to form part of its disclosure regime. While this non-financial reporting should include consideration of material environmental, social and governance (ESG) factors and practices, it could also include other non-financial disclosure, such as a description of the performance of the issuer's business against its strategic objectives. Companies should communicate a balanced and understandable assessment of the company's performance, business model, strategic objectives and progress against meeting them.

The Sustainable Stock Exchange Initiative recognises reporting frameworks for ESG policies and practices and it is now commonplace for stock-exchanges world-wide to provide guidance to issuers for reporting on ESG. This form of reporting is also referred to as sustainability reporting or by similar names.

In order for investors and other users of this information to be able to easily compare information, NZX suggests that if an issuer chooses a formal framework to report on ESG factors, it should report against a recognised international reporting initiative such as the Global Reporting Initiative guidelines or Integrated Reporting which can be found here. There should be balanced, transparent, public disclosure which connects financial, social and environmental performance. This should explain how ESG factors affect the financial performance of an issuer, allowing stakeholders to have a better understanding of the issuer's overall performance, risks and opportunities. Smaller issuers may consider that it is not appropriate to adopt a formal ESG framework and may instead select non-financial matters they choose to report upon.

Recommendation 6.2 deals specifically with management and reporting of health and safety risks.

# Principle 5 – Remuneration

## "The remuneration of directors and executives should be transparent, fair and reasonable."

### Overview commentary

Investors rightly have a particular interest in director and executive remuneration. Transparency in these areas is essential to foster investor confidence. Remuneration should be fair and reasonable, and take into account a person's skills, experience and other factors relevant to the issuer and proposed role.

### RECOMMENDATION 5.1

5.1 An issuer should recommend director remuneration to shareholders for approval in a transparent manner. Actual director remuneration should be clearly disclosed in the issuer's annual report.

### Commentary

Every issuer should recommend director remuneration to shareholders for approval in a transparent manner.[7] The remuneration proposed for approval should be clearly expressed so shareholders understand why directors are being paid a particular amount as compensation for their contribution to the issuer. Disclosure should make it clear what individual directors are proposed to be paid, including outlining separately any amounts payable for any committee work. Disclosure should not be limited to a total remuneration pool.

Actual director remuneration should be clearly disclosed to shareholders in the issuer's annual report, including a breakdown of remuneration for committee roles and for fees and benefits received for any other services provided to the issuer.

### RECOMMENDATION 5.2

5.2 An issuer should have a remuneration policy for remuneration of directors and officers, which outlines the relative weightings of remuneration components and relevant performance criteria.

### Commentary

The board should have a clear policy which sets remuneration at levels that are fair and reasonable in a competitive market. CEO remuneration is addressed specifically under recommendation 5.3 below.

Transparency is essential to foster confidence.

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7 *Director remuneration must be approved under Listing Rule 2.11.1*

The term 'Officer' has been used within the recommendation to align with the existing definition of Officer within the Listing Rules. The references to 'executives' within the commentary below is intended to capture Officers.

If executive and director remuneration consultants are used by an issuer, they should be independent and should be engaged by the board. In this context independence means that the consultant must not have been subjected to any influence from management, any board member or any other party in relation to the services provided or the outcomes of those services. Executive director and remuneration consultants should sign a declaration of independence. Executive and director remuneration consultants should report to the board in relation to CEO and director remuneration but the board may determine that it is appropriate for advice in relation to other (non-CEO) senior executive remuneration should be reported to the CEO, provided that no senior management personnel makes decisions in respect to their own remuneration outcomes.

If an issuer makes public statements referring to reliance on independent remuneration reports from executive and director remuneration consultants in respect of decisions relating to director remuneration, then a summary of the findings of the report should be made public, and the executive and director remuneration consultant should attest to its independence within the report. Please note that this commentary is directed to remuneration reports relating to directors only and only in situations where issuers choose to publicly state that they are relying on such advice in respect of director remuneration proposals.

Executive and non-executive director remuneration should be clearly differentiated. The remuneration policy should describe the general policy for executive remuneration. It should clearly segment the components of director remuneration. Executive remuneration packages should generally contain an element that is dependent on the issuer's performance and performance of that individual.

Establishing a framework for remuneration (and determining actual remuneration) is complex and needs to done in the context of each issuer's business. As such there is no 'one-size-fits-all' methodology but the elements of executive remuneration that should be considered include:

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

For non-executive directors:

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

An issuer's remuneration policy should ensure fair and equal pay throughout an organisation based on the value of the services performed within the context of a competitive market and having regard to the employees' experience, skills and performance. Recommendation 4.2 recommends that the remuneration policy is made available on the issuer's website.

### RECOMMENDATION 5.3

> 5.3 An issuer should disclose the remuneration arrangements in place for the CEO in its annual report. This should include disclosure of the base salary, short term incentives and long term incentives and the performance criteria used to determine performance based payments.

### Commentary

An issuer should disclose information about its CEO's remuneration (both the general policy and the actual amounts of the remuneration package) and the criteria that the CEO must fulfil to be compensated based on his or her performance (where applicable). This information is of significant interest to investors and should be clearly articulated.

The CEO remuneration policy (which may form part of the broader remuneration policy required by recommendation 5.2) should outline each component of remuneration, such as base salary, short term incentives or long term incentives.

Disclosure should be provided in relation to the material performance hurdles for any applicable incentive payments, with details of timing for when share entitlements will vest. The disclosure in relation to performance hurdles need not disclose the precise details of targets (as such targets may be commercially sensitive), so long as sufficient information is provided to inform investors as to the type of performance hurdle that applies (e.g. is it based on shareholder return, operational performance or qualitative factors).

Remuneration payments should be disclosed in the annual report of the issuer. Disclosure should relate to a clearly defined period which is comparable with historical disclosures. Disclosure should be provided so that a person can reasonably understand the levels of remuneration which have been earned or which have vested for the period (including relevant key performance indicators or hurdles which have been met) and the different components of remuneration packages. Annual disclosures should address:

- target amounts set for the year;
- short term incentive payments made in the year;
- long term incentive grants made in the year; and
- long term incentive grants that have vested in the year.

Details in relation to granting or payment of any long term incentives (either cash or shares) should be disclosed in the years in which such entitlements have been made or vest. The issuer should disclose the basis on which these incentives have been granted and vest the time period to which they relate.

Every issuer should ensure that it addresses any privacy concerns and issues around the disclosure of the CEO's remuneration by obtaining the consent of the CEO to the disclosure on an annual basis or including consent to such disclosure in the CEO's employment agreement.

# Principle 6 – Risk Management

"Directors should have a sound understanding of the material risks faced by the issuer and how to manage them. The Board should regularly verify that the issuer has appropriate processes that identify and manage potential and material risks."

### Overview commentary

Any issuer will have a range of risks which need to be managed. To manage risk, it is critical that the board has processes in place to identify and manage the material risks facing its business, particularly to identify those risks that the board is willing to take in order to pursue its strategy and how it will manage these risks. The board should put processes in place to ensure it is regularly informed about the material risks facing the business.

### RECOMMENDATION 6.1

6.1 An issuer should have a risk management framework for its business and the issuer's board should receive and review regular reports. An issuer should report the material risks facing the business and how these are being managed.

### Commentary

Each issuer should have an appropriate risk management and reporting framework in place that outlines the processes in place to identify and manage these risks. The material risks will vary between issuers depending on their size and the nature of their business but these may include health and safety and other ESG factors (also see recommendation 4.3).

The board should be responsible for determining the nature and extent of the material risks it is willing to take to achieve its strategic objectives and how it will manage them. The board should track the development of any existing risks and the emergence of new risks to the issuer's business. Issuers are encouraged to develop and maintain a risk register which records the likelihood and impact of each risk to the issuer's business, identifies the key risks and notes the steps taken to mitigate each risk.

The board or risk committee should receive appropriate and regular reporting from management in relation to the operation of the risk management framework. Reports to the board from the risk committee should highlight the main risks to the issuer's performance and how these are being managed under the risk management framework.

An issuer should confirm in its annual report that it has carried out a robust risk assessment process and describe this to stakeholders.

An issuer may wish to have a risk committee as a sub-committee of the board (this function may also be combined with the audit committee). A risk committee's role is usually to review and make recommendations to the board in relation to:

- whether the issuer's processes for managing risk are sufficient;
- any incident involving fraud or other break-down of the entity's internal controls; and
- the issuer's insurance programme, having regard to the issuer's business and the insurable risks associated with its business.

See further detail about ESG reporting under Recommendation 4.3 which is also relevant in the context of risk reporting.

### RECOMMENDATION 6.2

> 6.2 An issuer should disclose how it manages its health and safety risks and should report on its health and safety risks, performance and management.

#### Commentary

Although it will depend on the size and nature of the business, an issuer may decide to have a specific health and safety committee at board or management level, reflecting the importance of health and safety considerations.

Issuers should determine the appropriate way to report on their health and safety risks, performance and management and may wish to consider reporting both lead and lag indicators in respect of health and safety. If an issuer reports lag indicators, it should consider reporting lost time injury frequency rates (LTIFR) and total recorded injury frequency rates (TRIFR).

# Principle 7 – Auditors

## "The board should ensure the quality and independence of the external audit process."

### Overview commentary

The quality of external auditing is critical for the integrity of financial reporting and provides an important protection for investors. External auditors should be independent.

### RECOMMENDATION 7.1

7.1 The board should establish a framework for the issuer's relationship with its external auditors. This should include procedures:

(a) for sustaining communication with the issuer's external auditors;

(b) to ensure that the ability of the external auditors to carry out their statutory audit role is not impaired, or could reasonably be perceived to be impaired;[8]

(c) to address what, if any, services (whether by type or level) other than their statutory audit roles may be provided by the auditors to the issuer; and

(d) to provide for the monitoring and approval by the issuer's audit committee of any service provided by the external auditors to the issuer other than in their statutory audit role.

### Commentary

Auditor independence is very important to maintain investor confidence. A framework for an issuer to manage external auditors is essential for an issuer. Note that external auditor rotation requirements are covered in the Listing Rules.[9]

The board should facilitate regular and full dialogue between its audit committee, the external auditors and management. A procedure for communication should be developed and implemented to make sure that occurs. This procedure should be documented in the audit committee charter given the importance of the external audit function to an issuer. There should be no relationship between the auditor and the issuer (or its directors and management) that could compromise the auditor's independence. The framework should ensure that confirmation of an auditor's independence is obtained by the board in writing.

Any other services that may be provided by the auditor to the issuer should be declared and there should be a plan in place for the monitoring and approval by the issuer's audit committee of any service provided by the auditors to the issuer other than their statutory audit role. The framework should explain how the board consider audit quality, any identified threats to auditor independence and how the threat is managed.

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8 *In Recommendation 7.1, "statutory audit role" means services required by any law to be provided by the auditors, acting as such*

9 *Listing Rule 2.13.3(f)*

## RECOMMENDATION 7.2

7.2 The external auditor should attend the issuer's Annual Meeting to answer questions from shareholders in relation to the audit.

### Commentary

Every issuer should ensure that their external auditor attends their Annual Meetings and that they are available to answer questions from investors relevant to the audit.

## RECOMMENDATION 7.3

7.3 Internal audit functions should be disclosed.

### Commentary

An issuer should disclose:

- if it has an internal audit function, how the function is structured and what role it performs; or
- if it does not have an internal audit function, the fact and the process it employs for evaluating and continually improving the effectiveness of its risk management and internal processes.

# Principle 8 – Shareholder Rights & Relations

"The board should respect the rights of shareholders and foster constructive relationships with shareholders that encourage them to engage with the issuer."

### Overview commentary

Shareholders beneficially own an issuer and the board is accountable to them. An issuer must engage with its shareholders and provide them with proper information and mechanisms to allow them to exercise their rights. Subject to the issuer's own continuous disclosure obligations, this includes communicating openly and giving shareholders ready access to information about the issuer and its governance.

An issuer's website should be kept up to date so that shareholders are kept informed. An issuer should have a range of options for shareholders to communicate with it.

### RECOMMENDATION 8.1

8.1 An issuer should have a website where investors and interested stakeholders can access financial and operational information and key corporate governance information about the issuer.

### Commentary

Information about the issuer and key corporate governance information should be made available on an issuer's website so interested investors and stakeholders can review it at all times.

This information should be easy to access and navigate.

The board should ensure sufficient channels for transparent and accountable, periodic engagement and reporting on environmental, social and governance issues with stakeholders.

In addition to the documents covered by Recommendation 4.2 to be made available on its website, every issuer should include and maintain links to the following on its website:

- a point of contact so the shareholder can get in touch with the issuer;
- the names and a brief bio of directors and key members of management;
- the information set out in Recommendation 2.4, if the issuer has chosen to disclose this on its website rather than its annual report;
- its constitution;
- links to copies of annual reports and financial statements for at least the last five years;
- copies of its announcements to NZX for at least the last two years;

- copies of notices of meetings of security holders, results of meetings and any accompanying documents; and
- if it keeps them, webcasts and/or transcripts of meetings of shareholders and copies of any documents tabled or made available at those meetings for at least the last two years.

The issuer can also help investors by including on the website the following information:

- an overview of its current business;
- a description of how it is structured;
- a summary of its history;
- calendar dates regarding results presentations, the Annual Meeting, details in relation to upcoming corporate actions including dividend payments and distributions;
- a description of different classes of securities (if relevant) and the rights attaching to them;
- historical information about the market prices of its securities for at least the last two years;
- a description of the issuer's dividend or distribution policy and information about the issuer's dividend or distribution history;
- copies of media releases the issuer makes and contact details for enquiries from shareholders, analysts or the media;
- contact details for its share registry; and
- links to download shareholder forms, such as transfer and transmission forms, dividend or distribution reinvestment plan forms etc.

### RECOMMENDATION 8.2

8.2 An issuer should allow investors the ability to easily communicate with the issuer, including providing the option to receive communications from the issuer electronically.

### Commentary

Each issuer should aim to allow investors and other financial market participants to gain a greater understanding of the issuer's business, governance, financial performance and prospects.

Shareholders should be specifically given an opportunity to express their views to the issuer on important issues.

Electronic communication is now commonplace and often more convenient for investors. An issuer should ensure that it has a modern communication framework in place so investors can receive communications in a manner that best suits them, such as webcasting.

An issuer should have an investor relations programme outlining how the issuer plans to engage with investors and encourage their input.

An issuer should have appropriate policies in place to encourage shareholder participation at meetings, which should ensure:

- meetings are held at times and locations that are convenient to shareholders and by providing clear notice; and
- the CEO should attend the Annual Meeting

### RECOMMENDATION 8.3

> 8.3 Quoted equity security holders should have the right to vote on major decisions which may change the nature of the issuer in which they are invested.

#### Commentary

NZX's mandatory Listing Rules outline specific requirements in respect of obtaining quoted equity security holder approval. This recommendation reflects the general principle that companies are run primarily for the benefit of shareholders as the owners of the company and shareholders should be entitled to vote on the key decisions impacting the company.

If an issuer seeks security holder approval for a transaction requiring approval under the mandatory Listing Rules, the issuer should disclose whether the approval was obtained, and the voting outcomes announced under NZX Listing Rule 3.19.1(a), when next reporting against the NZX Code.

### RECOMMENDATION 8.4

> 8.4 If seeking additional equity capital, issuers of quoted equity securities should offer further equity securities to existing equity security holders of the same class on a pro rata basis, and on no less favourable terms, before further equity securities are offered to other investors.

#### Commentary

Boards of issuers are responsible for considering the interests of all existing financial product holders when assessing their capital raising options. When practical, issuers should favour capital raising methods that provide existing equity security holders with an opportunity to avoid dilution by participating in the offer.

As such, a pro rata offer should be the preferred approach as this gives all equity security holders the option to take up their entitlements to avoid dilution.

This recommendation does not seek to inhibit issuers offering equity securities to employees (including executive directors), as the primary purpose of such incentives is not to raise capital.

If an issuer raises capital by a means other than a pro rata offer (e.g. placement or share purchase plan), the issuer should explain why such capital raising method was preferred when next reporting against the NZX Code.

## RECOMMENDATION 8.5

8.5 The board should ensure that the notices of annual or special meetings of quoted equity security holders is posted on the issuer's website as soon as possible and at least 20 working days prior to the meeting.

### Commentary

As part of encouraging shareholder participation in meetings, clear meaningful information about the matters to be addressed at the meetings should be provided to shareholders with sufficient notice in advance of the meeting. Information should be provided at least 20 working days in advance of a meeting to allow sufficient time for shareholders to consider such information.

If an issuer circulates a notice of meeting less than 20 working days in advance of the meeting in question, the issuer should explain why less than 20 working days' notice was given for that meeting when next reporting against the NZX Code.