

# To NZX – External measurement a spur to good governance

ASX has equipped itself with an additional transparency tool by commissioning regular external reports on how issuers are responding to its corporate governance recommendations, including diversity reporting.

As the NZX looks at sharpening its disclosure code, we suggest that it follows ASX's lead. After all, even the sharpest knife will only cut when pressure is applied.

As with ASX's Corporate Governance Council Code, we'd like to see NZX periodically review its Code, and seek consensus towards a single code in place of currently overlapping codes.

## NZX review

NZX outlined its proposals for change to its corporate governance reporting requirements in a discussion document<sup>1</sup> released last November. It is now developing its recommendations and is expected to produce a draft code for consultation in August/September. Proposals to update associated Listing Rules should follow early next year.

It is clear from the 45 submissions<sup>2</sup> which NZX has posted to its website that the likely reform directions will include:

- more transparent reporting requirements around executive remuneration and employee share and option schemes, particularly for the CEO, and
- greater risk disclosure around sustainability, including environmental and social governance (ESG).

There is widespread agreement among submitters that improvements are needed in both these areas, although there is some disagreement about whether a gentle push is required (voluntary reporting) or a shove (“comply or explain”).

More problematic is whether the NZX will proceed with a recommendation that boards should have a majority of independent directors as there was a strong view among some, including the Listed Companies Association and Chapman Tripp, that this would not be sustainable within the strictures of the small New Zealand market.

The Listing Rules currently require a minimum of two independent directors unless the board has eight or more members in which case the threshold rises to one third of the total. The FMA’s recommendation is that a majority of the board be non-executive, rather than independent.

## Diversity

Last year the NZX issued updated guidance<sup>3</sup> supporting its diversity reporting Rule 10.45(j) to put some traction under its gender diversity policies. This Rule requires that issuers include in their annual reports a quantitative breakdown as to the gender mix on their board and senior management team.

Chapman Tripp suggested<sup>4</sup> then that a weakness in the new regime was that the information published by NZX Operations was limited compared with the much richer reports published by ASX, backed by an independent analysis from KPMG.

The Institute of Directors (*IoD*) has filled the gap somewhat with the launch in June of a new guide – *Getting on board with diversity*<sup>5</sup> – to be sent to the chair of every NZX-listed company.

Despite initiatives like the Champions for Change<sup>6</sup> project launched last year progress so far has been slow. According to the IoD, almost a third of the top 122 listed companies still have no women on their boards, and only 5% have achieved 50% representation.

ASX began using KPMG to report on governance trends in 2012, when it commissioned the first of what were to be annual reports on diversity. The latest report is available.<sup>7</sup>

## Keeping the governance code current

The current NZX governance code is largely unchanged from the version first adopted in 2004.

The ASX Code is developed with support from the 21 member ASX Corporate Governance Council, and is now in its third edition. ASX requires fully listed issuers to complete an ‘Appendix 4G’ in which they record any departures from the ASX recommendations, allowing comparisons to be drawn.

In addition, this year ASX also commissioned KPMG to produce a separate comprehensive report on the approach issuers had taken to reporting the nine new or modified recommendations picked up in the third edition ASX code.<sup>8</sup>

We have previously lamented that New Zealand does not have an equivalent to the ASX Corporate Governance Council, instead having a fragmented system with separate promulgations of governance principles and recommendations from NZX, the FMA, the institutional investor Forum, the Institute of Directors, the NZ Shareholders’ Association, and others.

We would like to see a consensus emerge around a single code for New Zealand listed issuers, with periodic review to ensure it remains fit for purpose.

## Chapman Tripp comments

Our advice from NZX is that they do not have any current plans to commission an equivalent to the KPMG surveys but that they will be considering further the options for aggregated reporting around diversity as part of the ongoing review.

That would be a step in the right direction. A bigger step, delivering a higher benefit, would be to instigate a system of annual external reporting across a range of indices and areas. A good start would be a simple template to allow easy comparison between issuers in terms of their adherence or lack of it with NZX recommendations.

This would create a more transparent reporting environment in the interests of lifting governance standards – an area in which Australia is beginning to carve out a competitive advantage due to its stronger institutional arrangements.

## Footnotes

1. [https://nzx.com/files/static/cms-documents/Review of corporate governance reporting requirements - discussion document - 2 November 2015 \(final\).pdf](https://nzx.com/files/static/cms-documents/Review%20of%20corporate%20governance%20reporting%20requirements%20-%20discussion%20document%20-%202%20November%202015%20(final).pdf)
2. [https://www.nzx.com/regulation/corporate\\_governance\\_submissions](https://www.nzx.com/regulation/corporate_governance_submissions)
3. [https://nzx.com/files/static/cms-documents/Guidance Note Diversity 25 February 2015.pdf](https://nzx.com/files/static/cms-documents/Guidance%20Note%20Diversity%2025%20February%202015.pdf)
4. <http://www.chapmantripp.com/publications/Pages/NZX-gives-diversity-a-shove-along.aspx>
5. <https://www.iod.org.nz/Governance-Resources/Publications/Practice-guides/Getting-on-board-with-diversity>
6. <http://www.globalwomen.org.nz/diversity-initiatives/champions-for-change/>
7. <http://www.asx.com.au/documents/asx-compliance/asx-corp-governance-kpmg-diversity-report.pdf>
8. <http://www.asx.com.au/documents/asx-compliance/asx-corp-governance-kpmg-report.pdf>

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