

The area of focus of this submission is  
Board Diversity

# Submission on the Consultation Paper

Review of the NZX Corporate  
Governance Code 31 August  
2016

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## Background

In November 2015, NZX Limited (NZX) released a discussion paper to commence a review of the NZX Corporate Governance Best Practice Code within the NZX Main Board Listing Rules (NZX Code).

NZX has reviewed the submissions that were received from interested parties and has released a consultation paper which includes a discussion of the submissions received, and outlines NZX's proposed amendments and the reasons for these decisions.

<https://nzx.com/files/static/cms-documents/Consultation%20Paper%20on%20NZX%20Corporate%20Governance%20Code%20-%2031%20August%202016.pdf>

## Introduction

This submission is made by Sunit Prakash as an interested party in his own right. The scope of the submission is related to Board Diversity.

Quote from page 6 of the consultation paper:

Diversity has been another area of focus. NZX proposes to build upon its current requirements in this area by introducing a new recommendation (to be met on a “comply or explain” basis) that issuers have a published policy on diversity. This will lead to more detailed reporting of diversity by issuers. Feedback also indicates that stakeholders have a wider interest in diversity, so we have suggested that diversity be considered beyond simply gender. NZX has also suggested within commentary certain matters for issuers to consider in the context of developing a diversity policy, including gender pay equality. NZX will also consider whether further updates are needed to its current guidance note in this area, particularly with a view to ensuring that issuers are reporting appropriate data to the market. NZX will also consider its current reporting of gender diversity data with a view to improving the current aggregated data reported by NZX.

I note and acknowledge the following have made submissions with respect to Gender Diversity/Diversity to the original discussion paper (from Appendix 1 of the discussion paper):

- Global Women
- Ministry for Women
- Human Rights Commission

Copies of *this* submission sent to the following organisation for their information:

- New Zealand Institute of Directors
- Office of Ethnic Communities
- Asia New Zealand Foundation
- New Zealand Indian Central Association
- India New Zealand Business Council
- India Trade Alliance
- Wellington Indian Association
- Appoint Better Boards

## Feedback on Principle 2 – Board composition and performance

Extract from page 13 of the Consultation Paper

***“To ensure an effective board, there should be a balance of independence, skills, knowledge, experience and perspectives”***

“2.1 Issuers should clearly distinguish and disclose the respective roles and responsibilities of the board and management;”

“2.2 Issuers should have a formal and transparent method for the nomination and appointment of directors to the board;”

“2.3 Issuers should enter into written agreements with each board member establishing the terms of their appointment;”

“2.4 Reporting should include information about each director, including a profile of experience, length of service, independence and ownership interests;”

“2.5 An issuer should develop a diversity policy, which at a minimum should address gender diversity;”

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

“2.7 The board should establish a formal procedure to regularly assess director, board and committee performance.”

### Feedback 1

***Suggest revise section 2.5 to: An issuer should develop a diversity policy, which should address not just ethnic and gender diversity, but diversity across the board.***

I note this is in line with “summary of feedback” on page 15:

#### ***Diversity***

There was a very high level of engagement on this issue, including a significant amount of support for an additional recommendation that issuers should have a policy on diversity.

This would broadly align with the position in the ASX Code. ***A number of submitters noted that NZX should ensure diversity is considered more broadly than just gender.***

## Observation on Feedback on Board Composition

Extract from page 14, “summary of feedback”:

...perception that New Zealand has a limited pool of directors currently. These views were also expressed by some investors, including NZSA. This was also reflected in the feedback from smaller issuers within the TNS Report.

### Feedback 2

***Feedback 2.1: Suggest research to see if the perception is valid (or not).***

***There is possibly also a perception that there is an even more limited pool of directors from diverse backgrounds.***

***Feedback 2.2: IF this is true, then engage with Ministry of Women’s Affairs, Office of Ethnic Communities, the NZ Institute of Directors and others to raise capability and capacity. This is particularly relevant as NZX listed companies look to overseas market for expansion and growth.***

***Feedback 2.3: As a note, the Office of Ethnic Communities holds a database of candidates from ethnic backgrounds who are interested in board roles, the NZ Institute of Directors also holds a database of interested candidates, and I am sure ethnicity and gender could be incorporated into the search, and there are other such providers – should NZX companies be serious in their search***

## Feedback 3 - Development of Proposed Recommendations

Extract from pages 15 & 16:

### **Diversity**

NZX has proposed a recommendation that issuers develop a diversity policy.

Feedback 3.1: Support and agree

This is supported by commentary explaining how this recommendation can be met, which incorporates by reference NZX's existing diversity policy guidance. This is intended to ensure that issuers who have developed a policy in reliance on our existing guidance can benefit from this early adoption (i.e. general diversity policies). The recommendation does not seek to prescribe what should be in a diversity policy but instead leaves it to issuers to determine appropriate metrics and targets to report and seek to meet. This seeks to ensure that issuers are committing themselves to targets that are appropriate to their circumstances.

Feedback 3.2: Pragmatic approach, support and agree

This proposed additional recommendation to the NZX Code will complement the existing rules relating to reporting against an issuer's diversity policy, and should lead to increased reporting of diversity metrics.

Feedback 3.3: To be reviewed if it indeed leads to an increased reporting of diversity metrics

A number of submitters opposed moving existing reporting requirements from the Listing Rules, such as Listing Rule 10.4.5(j), into the NZX Code if this meant they were no longer mandatory. Therefore NZX proposes to retain Listing Rule 10.4.5(j) in its current form. An explanation of the actual proposed rule amendments to give effect to an updated NZX Code is included in the final section of this consultation paper.

Feedback 3.4:

Feedback 3.4a: Listing Rule 10.4.5(j) relates only to gender diversity. Ethnic diversity and diversity of any other kind are conspicuous by their absence. Suggest review.

Feedback 3.4b: Suggest comparison of board composition against general demographics of New Zealand including ethnic diversity, gender diversity and diversity in general.

Feedback 3.4c: Suggest comparison of board composition against staff demographics of the organisation including ethnic diversity, gender diversity and diversity in general

Feedback 3.4d: As per the first paragraph at the top, suggest a commentary if or statement of intent relating to diversity policy as well as leaving it to issues to determine appropriate metrics and targets.

Feedback 3.4e: Where overseas markets form part of the growth strategy, particularly the Pacific & Asia, then an explanation as to why ethnic diversity has not formed part of the ethnic diversity mix on the board and how the shortcoming has been addressed

Further specific feedback requested about the proposed outcome

1. Are there any further matters in relation to board composition that stakeholders would like covered?

Covered in the feedback provided

2. Do stakeholders consider a recommendation that directors undertake training to be important?

Feedback 3.5: among other training, it is possible that Directors may need training on diversity and inclusion and its business benefits

3. Do stakeholders consider that the board should establish a formal procedure to regularly assess director, board and committee performance?

Feedback 3.6: Yes; and this should be published

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