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**NZX review of corporate governance best practice code**

**Submission on proposed updated NZX Code**

**General Comments**

Overall Governance New Zealand supports the objectives that NZX is seeking to achieve with the review of current corporate governance reporting requirements within its main board listing rules.

Good corporate governance is important for listed issuers and we believe that regulation has an important role to play in maintaining and improving corporate governance standards in New Zealand to the benefit of all New Zealanders.

Specific recommendations from Governance New Zealand, along with reasoning for such recommendations, are addressed below.

**Background Information**

Governance New Zealand Incorporated (formerly Chartered Secretaries New Zealand Incorporated), is New Zealand's leading independent professional body with a sole focus on the practice of governance and is dedicated to providing leadership in the areas of governance, compliance and risk management.

Practitioners such as our members who are Chartered Secretaries and who have primary carriage in implementing the corporate governance reporting requirements have served New Zealand well in lifting and maintaining its standing as a country with a high-performing corporate governance environment.

Yours sincerely



Linda Noble  
Chief Executive

## Principle 1: Ethical standards

### Recommendation 1.1

#### Current Wording

1.1 The board of an issuer should adopt a code of ethics (to be regularly reviewed by the board) to which the issuer's directors and employees (**should**) adhere.

#### Governance New Zealand Proposed Wording

1.1 The board of an issuer should adopt a code of ethics (to be regularly reviewed by the board) to which the issuer's directors and employees (**are expected to**) adhere.

#### Reasoning

More appropriate use of language for the situation: strengthens the intent.

### Recommendation 1.1 (b)

#### Current Wording

(b) declare conflicts of interest;

#### Governance New Zealand Proposed Wording

(b) declare interests (**and proactively advise any potential conflicts;**)

#### Reasoning

The onus should be on declaring an interest, whether that becomes a conflict can be due to factors outside the interested parties control.

### Recommendation 1.1 (g) (h)

#### Governance New Zealand Proposed Wording

**(g) Managing breaches of the code**  
**(h) Trading in shares and/or securities**

#### Reasoning

Two additional minimum requirements could be added to the code of ethics to give more completeness.

### Recommendation 1.1 – Commentary - *How can the code of ethics be measured?*

#### Current Wording

The board should monitor instances where there is a breach of the code so that organisational behaviour is closely tracked when reported. Compliance with the code (**could**) form part of the annual performance assessment of the board.

#### Governance New Zealand Proposed Wording

The board should monitor instances where there is a breach of the code so that organisational behaviour is closely tracked when reported. Compliance with the code (**should**) form part of the annual performance assessment of the board.

#### Reasoning

More appropriate use of language for the situation: strengthens the intent.

## Principle 2: Board composition and performance

### Recommendation 2.1

#### Current Wording

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

#### Governance New Zealand Proposed Wording

2.1 An issuer should clearly distinguish and disclose the respective roles and responsibilities of the board, **(company secretary)** and management. The board of an issuer should operate under a formal written charter which sets out the roles and responsibilities of the board.

#### Reasoning

The company secretary plays an important role in supporting the effectiveness of a board and its committees.

### Recommendation 2.1 - Commentary

#### Current Wording

While most issuers are likely to have a similar split of functions between management, and the board, these may vary between issuers. To avoid confusion, an issuer's board and management team should have clearly articulated roles, which should be disclosed.

#### Governance New Zealand Proposed Wording

While most issuers are likely to have a similar split of functions between management, **(the company secretary)** and the board, these may vary between issuers. To avoid confusion, an issuer's board, **(company secretary)** and management team should have clearly articulated roles, which should be disclosed.

#### Reasoning

As above, the company secretary plays an important role in supporting the effectiveness of a board and its committees.

### Recommendation 2.1 - Commentary

#### Governance New Zealand Proposed Additional Paragraph

***The company secretary should be accountable to the board in relation to board functions and should be a qualified chartered secretary or a chartered governance professional who is a member of Governance New Zealand.***

### Recommendation 2.1 - Commentary

#### Current Wording

It appoints:

- the chair (and deputy chair if necessary); and
- the CEO (and/or replacement).

#### Governance New Zealand Proposed Wording

It appoints:

- the chair (and deputy chair if necessary);
- **(the company secretary) (and/or replacement);** and
- the CEO (and/or replacement).

#### Reasoning

Best practice dictates that the company secretary reports to the board therefore the board should be responsible for appointing the company secretary.

### **Recommendation 2.1 - Commentary**

#### Governance New Zealand Proposed Additional Paragraph

***The company secretary is responsible for advising the board of its legal obligations, ensuring the company is compliant with statutory and regulatory requirements, and for ensuring that the decisions of the board are implemented.***

#### Reasoning

The company secretary is responsible for the efficient administration of an organisation which includes acting as the corporate conscience of the board.

## **Principle 3: Board committees**

### **Recommendation 3.2**

#### Current Wording

3.2 **(Directors who are not members of the audit committee and employees)** should only attend audit committee meetings at the invitation of the audit committee.

#### Governance New Zealand Proposed Wording

3.2 **(Directors who are not members of the audit committee can attend meetings by written request unless the members of the audit committee believe there are good grounds to exclude them. Employees who are not members of the audit committee)** should only attend audit committee meetings at the invitation of the audit committee.

#### Reasoning

A director can delegate a duty or power but not accountability therefore directors should be able to attend audit committee meetings unless there are good grounds to exclude them.

### **Recommendation 3.4**

#### Current Wording

3.4 An issuer should establish a nomination committee to recommend director appointments to the board. **(At least a majority)** of the nomination committee should be independent directors.

#### Governance New Zealand Proposed Wording

3.4 An issuer should establish a nomination committee to recommend director appointments to the board. **(A majority)** of the nomination committee should be independent directors.

#### Reasoning

Deletion of unnecessary wording to improve readability.

### **Recommendation 3.5 Last Sentence Para 3**

#### Current Wording

Proceedings of committees (**should**) be reported back to the board.

#### Governance New Zealand Proposed Wording

Proceedings of committees (**must**) be reported back to the board.

#### Reasoning

The board remains accountable for the decisions of a committee even when acting under delegation.

## **Principle 6: Risk management**

### **Opening Paragraph**

#### Current Wording

“Directors should have a sound understanding of the key risks faced by the business. The Board should regularly verify that the entity has appropriate processes that identify and manage potential and (**relevant**) risks.”

#### Governance New Zealand Proposed Wording

“Directors should have a sound understanding of the key risks faced by the business. The Board should regularly verify that the entity has appropriate processes that identify and manage potential and (**material**) risks.”

#### Reasoning

All risks are potentially ‘relevant’ but the board should be focussed on the ‘material’ risks.

### **Recommendation 6.1**

#### Current Wording

6.1 An issuer should have appropriate policies and procedures in place to identify and manage the (**key**) risks facing their businesses and the issuer’s board should receive and review regular reports on the operation of the risk management framework.

#### Governance New Zealand Proposed Wording

6.1 An issuer should have appropriate policies and procedures in place to identify and manage the (**material**) risks facing their businesses and the issuer’s board should receive and review regular reports on the operation of the risk management framework.

#### Reasoning

‘Material’ defines the risk more clearly than the word ‘key’.

## Principle 8: Shareholder rights and relations

### Recommendation 8.1

#### Current Wording

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

#### Governance New Zealand Proposed Wording

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.

#### Reasoning

More clearly defines what type information is being accessed.