

NZX DIVERSITY RULE AND ITS IMPLEMENTATION

4 July 2012



NZX DIVERSITY RULE

1. Introduction

In its Consultation Memorandum issued in March 2012 on the NZSX/NZDX Listing Rules, NZX Limited (“NZX”) sought submissions on a proposed Diversity Listing Rule.

There is credible research based evidence which suggests that diversity, and gender diversity in particular, contribute to improved performance at both Board and senior management level.

The policy rationale behind the implementation of a Diversity Listing Rule is to ensure that information as to the diversity (and specifically gender diversity) of an Issuer’s board and senior management team is disclosed so that shareholders and other market participants can reach an informed view of the Issuer’s diversity policy and practice as a factor relevant to performance.

This is consistent with the requirement that Issuers provide all relevant information to the market to enable an informed view of value and prospects to be taken.

The Diversity Listing Rule in the Consultation Memorandum proposed:

- Requiring an Issuer to disclose in its annual report the gender composition of its Board, senior management team and any Subsidiary board; and
- Requiring a statement from the Board of the Issuer providing its evaluation of the Issuer’s performance with respect to its diversity policy (if applicable).

The proposed requirements did not preclude disclosure of additional information such as gender diversity across the entire entity and diversity policies that relate to matters other than gender.

The closing date for submissions on NZX’s proposed Diversity Listing Rule was 30 May 2012 and the submissions received confirmed broad support for the implementation of a Diversity Listing Rule.

2. Diversity Rule

NZX has decided to implement a Diversity Listing Rule in the form set out in **Appendix A** (“Diversity Rule”), subject to obtaining FMA approval, and to issue a guidance note which will explain the Diversity Rule, its application and timing. The guidance note will include the outline of a basic diversity policy and a recommended governance practice with respect to its adoption, including recommendations for adoption of measurable objectives and reporting progress against those objectives. If these recommended practices are adopted by an Issuer, these will also require disclosure in the annual report, allowing a comparison between Issuers which adopt and disclose and those which choose not to adopt a policy and measurable objectives, whose disclosure will be limited to the quantitative breakdown only.

The Diversity Rule itself is in substantially the same form as proposed in the Consultation Memorandum, with the following changes:

- The requirement for an Issuer to provide a quantitative breakdown of the gender composition of each of its subsidiary boards has been removed. NZX received a number of submissions that it would be impractical and unduly onerous for Issuers to report on the gender composition of subsidiary boards, particularly for Issuers which have large numbers of non-operating subsidiaries. NZX has accepted the validity of this concern;
- The term “Senior Management team” has been replaced with the term “Officer” adopting the definition of “officer” in the Securities Markets Act 1988. Issuers will be familiar with the application of this definition to their employees given the requirements in that Act relating to directors and officers disclosure, and the requirement in NZSX/NZDX Listing Rule 10.8.1 to disclose any change in any officer to the market. NZX received submissions that the term “senior management team” was vague, and would require Issuers to form a view as to who was covered by the definition. NZX has accepted these submissions.
- An additional requirement for an Issuer to provide comparative figures in respect of the gender composition of its directors and officers for the prior period has been added to ensure that trends in diversity are apparent when reading an Issuer’s annual report. This requirement will be phased in over time to reflect the commencement date of the new requirements; and
- A footnote will be provided to the Rule referring Issuers to the guidance note, and encouraging Issuers to adopt a diversity policy, which will include measurable objectives, and to otherwise act consistently with the recommendations in the guidance note

Considerations

In addition to taking into account the submissions received, NZX considered the following in formulating these requirements:

- Consistency with the policy rationale outlined above;
- The desirability of providing Issuers flexibility to decide whether or not to adopt a diversity policy, and avoiding other potential approaches such as requiring different degrees of compliance by reference to defined categories of Issuer (e.g., those in the NZX50);
- Simplicity and ensuring there is no limitation on additional disclosures to the extent Issuers so decide;
- The desirability of avoiding materially inconsistent requirements for dual listed Issuers without good reason and noting evidence that the approach in Australia in particular, appears to have had a positive impact; and
- The desirability of using the facility of a guidance note to explain the requirements, provide relevant recommendations and encourage the adoption of additional measures.

3. Implementation

Issuers' annual reports in respect of balance dates ending on or after 31 December 2012 will be required to comply with the new requirements and include the information required by the Rule. NZX intends to develop and publish the guidance note later in 2012. NZX will expect Issuers to have determined their response to the recommendations in the guidance note before the end of June 2013, and the extent to which Issuers have adopted the recommendations in the guidance note will be apparent from the disclosures made in annual reports over time.

NZX plans to monitor disclosures made by Issuers in relation to diversity with a view to building up a picture of approaches to diversity over time. This information will assist NZX in any subsequent review of the Diversity Rule.

APPENDIX A

The NZSX/NZDX Listing Rules (“Rules”) will be amended as follows:

1. Addition of a new paragraph (j) to Rule 10.5.5 as follows:

“The annual report of an Issuer shall contain: ...

(j) a quantitative breakdown, 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. Comparative figures are not required to be provided in respect of balance dates falling in periods before the effective date of this Rule;”

2. A new definition will be inserted in Rule 1.6 as follows:

*“**Officer**” bears the meaning assigned to the term “officer” in section 2 of the Securities Markets Act 1988.”¹*

3. Addition of a new paragraph (k) to Rule 10.5.5 as follows:

“A statement from the Board of the Issuer providing its evaluation of the Issuer’s performance with respect to its diversity policy (if applicable);”

4. Two footnotes will be added at the end of Rule 10.4 as follows:

1. *“An Issuer may choose to disclose in its annual report any diversity policy or any other matter relating to its diversity practices or position (including in particular in relation to diversity other than gender).”*

2. *“Issuers’ attention is drawn to the NZX Guidance Note – Diversity Policies and Disclosure and the recommendations in the Guidance Note. NZX encourages Issuers to follow the recommendations in the Guidance Note.*

¹ The intention is that someone who is an “officer” and therefore required to release Director and Officer disclosures under the Securities Markets Act 1988 will also be an “officer” for the purposes of the Diversity Rule.