



2 September 2022

NZX Limited
PO Box 2959
Wellington 6011

By email: policy@nzx.com

Submission on NZX Capital Raising Settings and Listing Options Targeted Review

The Institute of Directors (IoD) appreciates the opportunity to comment on the NZX Capital Raising Settings and Listing Options Targeted Review released for consultation on 27 July 2022. Our submission focuses on Part A - the consultation on NZX Capital Raising Settings.

NZX Review Objectives and Aims

The NZX stated objectives of the review are to ensure that the NZX Listing Rules ('Rules'):

- facilitate current transaction structures with necessary shareholder protections
- appropriately reflect international developments in the context of our capital markets, with regards to quoted product design and primary/secondary capital raisings.

In addition, NZX indicates that the aim of the review is the continued promotion of market development and integrity through Rule enhancements designed to balance the needs of all participants in NZX's markets.

Part A of the consultation paper concludes by NZX stating "it seems uncontroversial that companies should be considering the rights of existing shareholders and seeking to facilitate pro rata outcomes when conducting capital raisings. Therefore we propose to enhance existing disclosure requirements so that there is more transparency on the decision making for capital raising structures and arrangements" and the NZX "also consider that additional information and guidance for issuers may support decision making".

About the Institute of Directors

The IoD has over 10,000 members, is New Zealand's pre-eminent organisation for directors and is at the heart of the governance community.

We believe in the power of governance to create a strong, fair and sustainable future for New Zealand. Our role is to drive excellence and high standards in governance.

We support and equip our members who lead a range of organisations from listed companies, large private organisations, state and public sector entities, small and medium enterprises, not-for-profit organisations and charities.

Many of our leading directors are Chair or members of boards of NZX listed companies. NZX rules and codes related to governance and board practice are of direct relevance to them. Their practice and approach have significant implications for capital market operations and, ultimately, New Zealanders prosperity and wellbeing.

Directors duties in relation to capital raising

The IoD supports the NZX objectives to reinforce the fundamental duty of directors to act in the best interests of the company. The IoD notes best practice governance encourages organisations to embrace a long-term view and develop strategy that results in sustainable business. On listed issuer boards shareholder's elect the directors and entrust them with the responsibility for protecting shareholder interests and complying with the duty to act in the best interests of the company.

We note that the proposed Rule changes continue the general expectation that existing shareholders should be offered an opportunity to participate in capital raisings. This sets limits on how a listed issuer may raise capital "as of right" without shareholder approval. When raising capital, shareholders ought to be able to rely on the commercial judgement of their elected directors to work out the best structure for the capital raise (after weighing up all different options), in the best interests of the company.

Board and director capital raising skills and experience

Shareholders of listed issuers should have the reasonable expectation that the directors they elect maintain sufficient knowledge of the different capital raising options, including understanding the implications of those options on the company and its shareholders. Key expectations do not change with the proposed capital raising rule changes which mean:

- directors performing duties and exercising powers with care, diligence and skill in relation to capital raising decisions, as well as other board decisions; and
- shareholders expecting directors to weigh up the need to protect existing shareholder interests in making a capital raising decision in the context of the company's interests, including the company's ability to continue to raise capital now and into the future.

In this context, we think that Boards need to be adapting their skills matrix to reflect changing company circumstances, including capital raising. Board-driven strategies will reflect changing capital requirements, including prospective capital raising. Board skills and capability should be considered to successfully implement company strategy. This will ensure boards have the right mix of directors, including capital raising experience and expertise, and the skills to obtain and interpret independent expert advice (and communicate advice received/decisions made).

With the appropriate skills and capability around the board table, boards are more able to rely on external advice when performing their duties, in accordance with the Companies Act 1993. However, directors should have sufficient knowledge and experience that would enable them to apply their independent judgement to any external advice received, instead of merely following the advice or recommendations.

We appreciate the opportunity to comment on behalf of our members and would be happy to discuss this submission with you.

Yours sincerely



David Campbell
Senior Governance Advisor



Guy Beatson
General Manager, Governance Leadership Centre

