NZSUPERFUND
Te Kaitiaki Tāhua Penihana Kaumatua ō Aotearoa

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The New Zealand Superannuation Fund submission to discussion paper on the review of the NZX Main Board Listing Rules.

Dear Hamish

Thank you for the opportunity to make a submission to the NZX discussion paper on the proposed revision of the NZX Main Board Listing Rules (LRs). We are an active participant in the New Zealand Corporate Governance Forum. Our submission incorporates this letter and the Forum's submission attached.

The New Zealand Superannuation Fund ("Fund") is committed to promoting a fair and efficient New Zealand listed market and encouraging good governance for the successful growth of NZ companies. The Fund has significant long-term investment in the NZ listed market.

We have a strong belief that good governance, an efficient and fair regulatory environment, protection of shareholder rights and good information flows between companies, investors and key stakeholders improves company performance, creates shareholder value and increases confidence in the capital market.

We congratulate the NZX on the recent update to the NZX Corporate Governance Code. We support the benefits of the comply or explain approach and already see companies incorporating better disclosure on Board governance, diversity and environmental and social reporting as a result of the NZX Code.

The Listing Rules have not been holistically reviewed since 2003. It is incumbent on the NZ market - companies, shareholders, the NZX and other regulators – to learn from international developments in listing rules. We therefore welcome the two-phase approach to this review, so that this first phase can also identify any need for further work prior to drafting updates to the LRs.

In particular the following areas need further review:

We recommend the NZX conducts a review of capital raising approaches and how the LRs can best reverse the current dominance of placements over pro-rata share issuance.

We recommend that the NZX conducts a detailed analysis of the barriers and solutions to small and medium sized enterprises listing on the NZX and clearly relate these to any proposed Listing Rule changes.

In particular we wish to highlight the following:

Reporting

- We have reviewed the reporting requirements of other key markets and believe that reporting on the company's strategy and management of key risks should sit within the Listing Rules rather than the NZX Code.

Capital raising and allocation

- Whilst shareholders want Boards to have the flexibility to raise capital efficiently, companies should not be able to materially dilute shareholders without their approval. There is a range of views in the market on an appropriate threshold for shareholders to give discretion to Boards for capital raising and allocation.

- We believe the NZX should set a threshold no higher than 10% per annum, with some restraint also on repeated use of annual placements without approval. We have based our proposal on a high level review of 10 years data on capital raising by share issues.

- We strongly support the NZX proposal to reduce the threshold for major transactions to 25% of average market capitalisation and broaden the definition to include a wider range of transactions such as share issues.

Skills and independence

- Board nomination committees should ensure the Board has the correct skills within the Board and Executive team to oversee and deliver the strategy, and sufficient independence on the Board to challenge it. The NZX Code should include reporting on skills and independence in its recommendations. Our vote to re-elect directors will take account of the rigour of explanation, particularly with regards to skills gaps and the non-independence of the Chairperson.

- The NZX should retain the minimum requirement for two independent directors on the Board. We recognise that for small and medium sized companies it can take time and succession planning to achieve a majority independent Board and Chair. As such, we support a "comply or explain" approach in the NZX Code to achieving best practice.

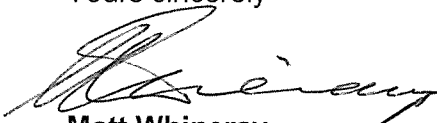
One share: one vote

- The NZX should no longer tolerate a "show of hands" at shareholder meetings and we support any proposals to require voting by poll in the LRs. Despite the NZX Code containing this recommendation we have seen this practice persist in the NZ market.

We look forward to working with companies and regulators to promote best international practice in our listing rules and codes for the long-term benefit of our market.

We would be happy to discuss our submission with you.

Yours sincerely



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SUBMISSION FROM NEW ZEALAND CORPORATE GOVERNANCE FORUM ON THE NZX LISTING RULE REVIEW DISCUSSION PAPER

1. Introduction

We welcome the opportunity to submit on the NZX Listing Rule Review Discussion Paper. Members of the New Zealand Corporate Governance Forum ("NZCGF"), are committed to promoting good corporate governance in New Zealand companies for the long term health of the capital market.

As a general statement, we believe that the NZX Listing Rules should:

- promote the confident and informed participation of investors and issuers in the NZX markets
- encourage good governance for the successful growth of companies
- promote and facilitate the development of fair, efficient and transparent NZX markets
- provide for timely, accurate and understandable information for investors
- provide investor protection against issuer misconduct, market misinformation and market misconduct, and
- avoid unnecessary compliance costs.

We believe the NZX made a fundamental leap forward in improving governance in the NZ market through the update of its NZX Corporate Governance Code ("NZX Code"). We welcome the promised review of the full set of NZX Listing Rules and the two step process to this review which has worked well previously.

We believe that the NZX Listing Rules should mandate that governance ensures that companies are managed for the benefit of the companies and shareholders.

Of particular note, NZX has recognised the risk to the market of the current high major transaction threshold for shareholder approval and we support the move to a 25% of market cap threshold and the widening of the definition of major transactions.

Our key themes are outlined in Section 2. These are the areas that we feel are most important for NZX to act on. In particular:

- Improved disclosure on strategy (and risks) in the NZX Listing Rules. Disclosure on board skills to deliver the strategy.
- Shareholder approval requirements for share issuances, material transactions and related party transactions.
- Strengthening audit committee requirements
- Ensuring shareholder votes are actually counted (voting by poll).
- Remuneration reporting as a recommendation in the NZX Code.

Our answers to selected questions outlined in the Discussion Document are contained in section 3.

The NZCGF published a set of Corporate Governance Principles and Guidelines which sets out our views on good corporate governance practice, which is reflected in much of the NZX Code recommendations and commentary.

2. Responses to questions: key themes

The NZX Listing Rules ("LR"s) have not been reviewed since 2003, notwithstanding the substantially improved NZX Code, and so it is important that the topic of small & medium enterprise ("SME") issuers does not dominate the review. The discussion paper tends to be quite weighted towards SME considerations.

In preparation for the redraft of the LRs next year, we suggest some areas for further analysis or more granular discussion with market participants, in particular with the SME market and more generally on approvals for capital raising.

The key high level feedback to the review:

- **Reporting:** LRs should require a report from Issuers to their shareholders on their strategy that is clear and presented each year in their Annual Report and at the AGM, and the key risks to achieving that strategy, to the extent this reporting does not compromise competitive advantage. Company results should be reported against the strategy. Improvements to Financial Reporting are covered in our response to Question 32 in the Table in Section 3. The NZX Code should include a recommendation to report on remuneration utilising the Shareholder Associations template.

  This would bring the NZ market closer to the requirements of other markets, for example, the ASX requirement for a Management Analysis and Operation report, the UK's requirement for an overarching Strategic Report (which includes ESG reporting) and the NYSE reporting requirements.

- **Audit Committee:** The Audit Committee fulfils a vital role for the Board and for shareholders. We do not support removal of the requirement for the committee from the LRs and believe the NZX Code requirements for audit committees should be brought in to the LRs.

- **Capital raising and shareholders:** When companies set out their strategy, they should describe the capital requirements to execute it, including if this requires debt, or equity raising by pro-rata issue or placements. Shareholders should be afforded protection from dilution of ownership, and approval rights over major transactions and major changes to the business. Such rights are fundamental to long-term shareholder value and therefore the proper functioning of the listed market.

    - **Major transactions:** We support the reduction in threshold for shareholder approval of major transactions to 25% of market capitalisation. The current situation where a company can significantly change the nature of the company or enter into transactions of significant scale without the approval of its shareholders is detrimental to the market. We believe this is an essential improvement.

- **Dilution:** Pro-rata capital raising is fairer to existing shareholders than equity placements. The newly released NZX Code recognises that boards must protect the interests of shareholders. The New Zealand and UK Companies Act require shareholder approval for dilution of ownership, unless these rights are dis-applied by the constitution. In the UK, constitutions cannot dis-apply this right and shareholders approve any dilution, often through pre-approval at the AGM. The current threshold in the LRs of 20% new shares per annum for placements is too high and encourages significant dilution of existing shareholders. Pro-rata share issuance has improved over the years to be relatively fast and cost effective, particularly using a two phase approach where institutional investors respond according to a quicker timetable than retail investors. We recommend:

    - Non pro-rata share issuance should be limited to 5-15% ownership dilution per annum without shareholder approval. The average threshold of issues which were not shareholder approved over the previous 10 years should be investigated by NZX to help determine the appropriate threshold. However, in setting the threshold the NZX should take into account the greater flexibility now available under the FMCA[1] making for faster and lower cost issuance for pro-rata exercises, reducing the need to do placements. NZX should also take into account that companies can, and do on occasion, put a resolution to the AGM for pre-approval to increase the share issue capacity under LR 7.3.1(a).

    - Decisions to issue shares other than pro-rata should be subject to a comply or explain in the NZX Code and spoken to at the AGM.

  The LR Review, the first holistic review in over a decade, offers a rare opportunity to explore other approaches to capital raising within the LRs. For example, we recommend the NZX conducts a review of capital raising approaches, including the pros and cons of utilising pre-approvals at the AGM and encouragement of pro-rata issuance over placements

- **Board quality and composition:** The NZX Code should require companies to report on the skills required to deliver the strategy and where these sit within the Board and Management team. The LRs should require some of the directors to be independent. Independence is particularly important for the audit committee. Small and medium sized companies may take time to develop their boards and the NZX could consider a grace period via waivers or differentiated rules.

- **One share, one vote*:*** Shareholders votes must be counted by the company. Internationally, NZ's shareholder protections on this issue are considered weak. The NZX Code recommendation does not provide sufficient protection for shareholders as can be seen by major NZX companies still counting AGM votes by a show of hands, including with respect to Director remuneration. The LRs should require companies to count votes according to poll, and should require companies to provide

[1] For example the QFP exclusion allowing reliance on continuous disclosure.

postal (electronic) voting rather than requiring shareholders or their proxy to physically attend the AGM.

- **Differentiation for SMEs.** It is not sufficiently clear that changing the LRs will improve the likelihood of SMEs listing on the NZX given the number of factors that influence the decision to list. Another option to differentiation is simply to fold this segment back into one market with the same rules. A third option may be a grace period for some rules via NZX rule waivers or exemptions – however it would need to be clear to shareholders what waivers were in place. The quality of the NZX market must be maintained and therefore companies over a certain market capitalisation should meet the full rules. We do not support Boards self-certifying capital raising in place of shareholders (as is proposed for SMEs).

- On the points concerning Corporate Governance and SMEs, the survey conducted by NZX (referenced in the consultation document) actually shows that 9 out of the 15 surveyed small & medium companies supported strong corporate governance.

- *We recommend that the NZX conducts detailed analysis of the barriers and solutions to SMEs listing on the NZX and clearly relate these to any proposed LR changes.*

NZX Main Board/Debt Market Rule Review Discussion Document

Questions 1 - 79 Question

Part 1 - Context to Review

1.	Do you agree with the stated objectives of the review? If not, why not? (page 6)
	We agree with the objective to reduce complexity of the current market structure and to enhance investor protections to increase confidence and participation in our markets which will reduce the cost of capital for issuers. See section 1 "introduction" above.
2.	Do you agree with the proposed timetable and process for review? If not, why not? (page 6)
	Yes we agree with the two stage process. However, given our recommendation of further fact finding on the issues relating to SMEs, IPOs and liquidity in the market we believe the NZX should ensure there is sufficient time between this discussion paper and producing draft LRs.

Part 2 — Proposed structure of updated rules

Market Structure

3.	Do you agree that NZX should retain the current requirements under the Listing Rules (subject to addressing drafting issues) as the basis for the updated rules? (page 8)
	To the extent we support the current requirements, yes.
4.	Do you agree that NZX should adopt a modular approach to updated rules? If not, why not? (page 8)
	We only support a modular approach if NZX can demonstrate that this will solve the problem it is trying to address – namely to encourage SME issuers to list, and building scale in the Main Board.

Differential standards for equity issuers

5.	Do you agree with NZX's preferred approach of delivering an updated market structure via a single rule set with differential standards for equity issuers? If not, why not? (page 10)
	There are different rules (and therefore standards) within the broader set of LRs for equity issuers. However, we are largely supportive of bringing NXT and NZAX into the Main Board. We do not support deterioration in standards on the Main Board particularly for larger and existing issuers or foreign issuers. To support a relaxation in shareholder rights and protections, and changes to eligibility, the NZX should provide supporting evidence that this would encourage SME listings. A potential alternative is to give SME issuers a grace period to comply with some rules, for example on independence, providing it is clear to investors when companies are in a grace period or had been granted a time-bound waiver.

6.	Do you agree that NZX should have differential requirements for equity issuers? (page 11)
	We support encouraging SME listings. It is not clear that the Main Board Rules are a disincentive to list. For example, on the points concerning Corporate Governance and SMEs, the survey conducted by NZX (referenced in the discussion document) actually shows that 9 out of the 15 surveyed small & medium companies supported strong corporate governance requirements and only 3 were strongly against. If there are differential requirements these should only apply to SMEs meeting certain characteristics – size in particular. As in 6. above SMEs could also be given a transition period to meet certain Main Board LRs as an alternative to differentiation.
7.	What criteria should be used to determine whether differential requirements should apply (e.g. options 1 or 2 above or something else)? (page 11)
	We oppose Option 2 as this will lead to deterioration in the quality of the Main Board. If differentiation is put in place, then size should be the main differentiator. As companies grow they will transition to the Main Board and could be given a grace period to comply with the Main Board rules.
8.	What do you consider is an appropriate cut off to be considered a smaller issuer? (page 11)
	NXT is currently $10-100m. The average market capitalisation of the UK AIM market was GBP82m (Grant Thornton 31 December 2015). We would expect the NZ SME market to have a smaller average market cap.
9.	What branding should NZX use for the separate equity listing categories? (page 11)
	Branding should denote a Small or Medium Enterprise. We do not think "standard" does this and it could be potentially misleading if requirements offer weaker shareholder protections than the "norm".

Debt & Funds

10.	Do you agree that it is appropriate to have separate rule settings for debt and funds? (page 12)
11.	Do you have any feedback on how to promote and facilitate the listing of funds (including MIS structures)? (page 12)
12.	Do you have any feedback on how to promote and develop NZX's listed debt market? (page 12)
13.	What steps should NZX take to promote and facilitate the issuing of green bonds in New Zealand? (page 12) (a) In addition, should NZX have a role: certifying green bond issuers, certifying certifiers of green bond programmes, or should NZX leave this to external bodies and standards?
	Many NZ businesses have a natural advantage in issuing climate-related bonds due to NZ's low-carbon grid and established renewable energy industry. Certification should be paid for by the issuer using a credible certifier rather than by the NZX given the specialised nature of the work – but the NZX should play a role in reviewing that: i) best practice green bond standards, and disclosures, have been applied, and ii) raise international awareness of NZ's green bond market. Clearly the certifying agency should be credible and the FMA or NZX could provide an oversight role.

Part 3 — Specific Rules Settings

Equity – Premium Issuers

18.	Do you agree with our proposal to no longer review and approve constitutions for new listings? (page 15)
	A solicitor's confirmation that the constitution complies with the LRs is sufficient if this is the only purpose of NZX's review and approval. This places the onus on the LRs to properly protect shareholders and be clearly interpreted. We would suggest NZX retains the authority to conduct reviews and have a quality control process in place (or the FMA could provide oversight).
19.	Do you agree with our proposals to: a. Reduce the spread requirement to 300 holders for Premium Issuers? b. Reduce the free float requirement to 20% for Premium Issuers? (page 15)
	We would support this on the basis it is the same as the ASX and would not be a major change.
20.	Should NZX amend the current minimum holding sizes outlined in appendix 2 of the Listing Rules? If so, how? (page 15)
	Yes - The ASX requirement is for 300 non-affiliated holders with holdings valued at $2000 each. The NZX Appendix 2 seems overly complicated. However, lack of liquidity is a disincentive to listing and investing in the NZ market for smaller and risker companies - which is applicable to Q41.
21.	Should NZX introduce additional eligibility requirements for Premium Issuers? If so, what requirements should we introduce? (page 15)
	Yes, we suggest the ASX Profits or Assets test or a market capitalisation test (achieved at IPO). We note that the ASX also requires 3 years' financial reports.
22.	Do you have any suggestions on amendments to the minimum director and director rotation requirements under the rules? (page 16)
	We oppose the weakening of independence requirements for premium issuers as proposed by these amendments. For "premium" issuers, the requirement for 2 Independent Directors and 2 New Zealand Directors[2] should remain in the LRs to provide adequate access and recourse for shareholders. Recommendations for majority independence and an independent chairman should be part of the NZX Code. The LRs should require disclosure of Board member biographies. The NZX Code should recommend a skills matrix, which includes skills required to deliver the business strategy at Board level and in the executive team. We support strengthening the definition of independence and suggest the NZX considers whether the introduction of annual re-elections for directors with tenures of 10 years and over should be added to the NZX Code. As NZ currently has staggered Board re-elections, it is particularly important to ensure directors have the correct skills set and independence and Boards have a succession plan.

[2] Access to the board and ease of legal action are reasons for NZ based directors – it may be suitable to allow one to be an Australian as there is an agreement between Australia and NZ which would allow legal action against that director.

	A number of jurisdictions have annual re-elections rather than staggered boards. The NZX should conduct a review of the pros and cons of either approach.
23.	Should Managing Directors and directors appointed by shareholders with constitutional power be excluded from the director rotation requirements? Why/why not? (page 16)
	No – shareholders should be able to vote on all directors of the company – unless constrained from doing so under the LRs. Shareholders that have appointed a representative(s) cannot then vote on independent directors. Votes for a Managing Director provide a good signal to the Board as to shareholder confidence. Also a CEO does not have to be a director.
24.	Do you agree NZX should align its NZ residential director requirement with legislation i.e. a requirement to have at least one NZ resident director? (page 16)
	No – the Companies' Act is not focused on additional requirements to protect the shareholders of publicly listed companies, and therefore is not a substitute for the LRs. Publicly listed companies must have Boards who can be held accountable and who are accessible to shareholders. Requiring 2 resident directors improves this protection and accessibility.
25.	Should NZX retain a requirement to have a minimum number of independent directors within its mandatory rules or, alternatively, introduce a "comply or explain" recommendation (potentially for majority independence) within the NZX Corporate Governance Code? (page 18)
	See 22. NZX should retain a mandatory requirement for a minimum number of independent directors. In addition, the NZX Code should have a recommendation for majority independence.
26.	If you support inclusion within the NZX Corporate Governance Code, should NZX recommend that boards are majority independent (noting that companies will be able to explain why they may not meet such a recommendation)? a. If not, should NZX retain the current minimum independence requirements within the rules? If not, why not? (page 18)
	See 22 & 25. This is not an either/or. NZX should retain the minimum requirement in the mandatory rules for a minimum of 2 independent directors. It should also encourage best practice via the NZX Code by recommending majority independence. The NZX should also revise its definition of independence to be more comprehensive – see the NZCGF Guidelines for a starting point.
27.	Do you agree that NZX should move to a more principles based test of independence? (page 18)
	Boards and investors need clear guidance on independence, not a principles based test. The NZX should refer to the NZCGF guidelines which set out clear criteria the NZX and companies should consider when determining independence.
28.	If not, should NZX delete Listing Rules 1.8.3, 1.8.4 and 1.8.5 in their entirety? (page 18)
	No but we support simplification and updating of the Associated Persons test to reflect best practice.
29.	Do the auditor rotation requirements within the Listing Rules achieve outcomes that could not be met by auditing standards? (i.e. are these valued by investors)? (page 18)
	Yes potentially the LRs could apply additional requirements. For example the auditing standards do not require rotation of the audit firm itself.

30.	If submitters support retention of these requirements, should NZX make any further amendments to respond to the current XRB review — for example, to ensure greater alignment with Australia? (page 18)
	NZX cannot pre-empt the outcome of XRB review in this LR review. However it is an area for further discussion.
31.	Should the additional audit committee requirements within the Listing Rules (i.e. to have an audit committee, its composition and role) be moved into the NZX Corporate Governance Code? Why/why not? (page 18)
	No – the audit committee is fundamental to shareholder protection. We recommend retaining audit committee requirements in the LRs and to bring NZX Code 3.1, including commentary, into the LRs.
32.	Should NZX make any amendments to the current disclosure requirements within the rules? (page 19)
	LRs should require a report from issuers to their shareholders on their strategy that is clear and presented each year in their Annual Report and at the AGM, and the key risks to achieving that strategy, to the extent this reporting does not compromise competitive advantage. The company should also be required to report results against the strategy. This would bring the NZ market closer to the requirements of other markets, for example, the ASX requirement for a Management Analysis and Operation report, the UK's requirement for an overarching Strategic Report (which includes ESG reporting) and the NYSE (SEC) risk reporting requirements. Companies should set out capital raising intentions at the AGM including how these will achieve the strategy and add value. Actual capital raising should report against previously stated intentions in the Annual Reports (as well as via NZX announcements). Financial data improvements and requirements should include: • It should be presented in a way that fairly represents the company; • It should be accurate, adequate, relevant and comparable over time; • If boards change the way financial data is presented, then previous year's numbers should be reworked so they are comparable over time and an explanation given as to why the change was made; • Companies should be required to provide guidance with core assumptions. If they don't they should explain why not (via a comply or explain in the NZX Code). The NZX Code should include a recommendation to report on remuneration utilising the Shareholder Association's template. Companies should publicly report on any LR waivers received and still in place. Ideally the companies would maintain a register on their company website of waivers received over time and the company's NZX announcements.
33.	Should NZX update the content requirements for periodic reports? (page 19)
	We are supportive of the current regulatory requirements, plus the additional disclosures above (Q32) which should be part of an Annual Report.
34.	What additional tools should NZX consider introducing to assist issuers to meet their disclosure obligations under the rules? (page 19)
	NZX could improve its guidance on IPO process, corporate disclosures (the FRC in

	the UK plays this role) including examples of good practice or templates. The NZCGF guidelines on reporting, the Shareholders Association remuneration template and international ESG frameworks are helpful examples.
35.	Should NZX reduce the current headroom for further issues to 15%? Why/why not? (page 21)
	Dilution and thresholds: Pro-rata capital raising is fairer to existing shareholders than equity placements. Companies should have regard to the principle of pre-emptive rights – both the NZ and UK Companies Acts require shareholder approval for dilution, unless these rights are dis-applied by the constitution (NZ) or shareholders (UK). The current threshold of 20% new shares per annum for placements is too high and encourages significant dilution of existing shareholders. Capital raising by placements has been double the number using pro-rata share issuance over the last 10 years. The proposed 15% threshold only brings the threshold back to pre-2008 (actual) levels. Issuing shares pro-rata has improved over the years to be relatively fast and cost effective, particularly using a two phase approach where institutional investors respond according to a quicker timetable than retail investors. We recommend: • Given the advances in pro-rata share issue procedures, non- pro-rata share issuance should be limited to 5-15% dilution per annum without shareholder approval. In setting the threshold the NZX should take into account: i) the greater flexibility now available under the FMCA[3] making for faster and lower cost issuance for pro-rata exercises, reducing the need to do placements; ii) the option companies have to put a resolution to the AGM for pre-approval to increase the share issue capacity under LR 7.3.1(a); and iii) the average threshold actually used by issuers over the previous 10 years. • The NZX could also review the pros and cons of using pre-approval similar to the UK pre-emption approach in place of thresholds. To provide some control on serial dilutions, requiring pre-approval for placements in subsequent years could also be considered. • Decisions to issue shares other than pro-rata should be subject to a comply or explain in the NZX Code and spoken to at the AGM. There is a range of views amongst members of NZCGF on where the threshold should sit – there is some benefit in matching the ASX 15% threshold, however the risk of dilution of ownership is also a concern, especially given this can be repeated year on year. In addition, lower thresholds can be increased by approval at the AGM and companies have on occasion taken this approach. **Capital raising and allocation:** All major capital raising and allocations should require a clear public explanation (see Q32) including how each fits the company's strategy and how and when each will add value. If the board is an acquiring board then it should be asking for shareholder approval to spend a percentage of the total value of the business within a time frame. In providing Boards and management with flexibility, thresholds and pre-approvals for capital raising and allocation, there should be evidence that this is for the benefit of long-term shareholder return.

[3] For example the QFP exclusion allowing reliance on continuous disclosure,

36.	Do you agree that the major transactions approval requirement should apply to a broad range of transactions which might affect a company? (e.g. acquisitions or disposals, leases, borrowing, lending, issues of securities) (page 21)
	Yes it should. Major transactions should include issue of shares (pro-rata, non-pro-rata) and net debt as well as acquisitions, mergers, disposals, leases and lending; or a transaction which materially changes the nature of the business. Major transactions conducted through subsidiaries should continue to be included. In addition, where this requires an independent report, shareholders should be able to see and discuss the "scope of work" and have a choice on who provides the independent report.
37.	Do you have any comments on how "transaction" might be defined in the rules in order to capture the appropriate transactions? (page 21)
	Any of the transactions above based on size – market cap (or potentially multiples of EBITDA for example), but also a transaction which changes the nature of the company's business to a significant degree. See Q39.
38.	Should NZX reduce the threshold for shareholder approval of major transactions to 25% of the size of a transaction? (page 21)
	Yes it should. We support the reduction in threshold for shareholder approval of major transactions to 25% of market capitalisation. The existing threshold in the LRs provides very little control to shareholders over major changes to their company (which a transaction of such a size indicates). The current situation where a company can significantly change the nature of the company or enter into transactions of significant scale without the approval of its shareholders is detrimental to the market. We believe this is an essential improvement.
39.	How should NZX measure the size of a transaction? (page 21)
	The size of the transaction relative to market cap is simple and effective. The measure should reflect the enterprise value of the company.
40.	Should NZX make any amendments to the related party transaction thresholds? (page 21)
	Related party transactions: We support the NZX commitment not to relax existing shareholder protections in this area. We believe the 10% per annum limit is too high and suggest 3-5% is appropriate. To allow a (potentially) majority non-independent board to conduct a transaction with a related party (a company potentially connected with its directors) of up to 10% of the market cap each year without shareholder scrutiny seems far too large (or potentially issue stock to a related party). We also suggest clarifying and simplifying the definition of size i.e. especially to clarify that the average net value is gross of debt.

Equity – Standard Issuers

41.	Do you agree with the proposal for a spread requirement of 100 holders and free float requirement of 20% for Standard Issuers? (page 22)
	The ASX has an IPO pipeline and does not differentiate on eligibility requirements. Investors are concerned about liquidity at the small cap end of the market so we would advise the NZX to test the spread requirement more thoroughly in both the NZ and the Australian market. Otherwise we do not oppose this requirement if it is

	separated into an SME market.
42.	Should there be any other eligibility requirements for Standard Issuers, including a minimum market capitalisation? (page 22)
	Yes – similar to the ASX – a Profits or Assets test or a market capitalisation test (achieved at IPO). ASX also requires 3 years financial reports.
43.	Do you agree with the proposal to allow more flexibility in governance requirements for Standard Issuers? Why/why not? (page 23)
	New listings could be given a grace period to meet the minimum independence requirements (e.g. 24 months). The NZX needs to provide more evidence that a reduction in the governance requirements (including those on shareholder approvals) is the solution to the problem it is trying to resolve. ***We recommend that the NZX conducts a root and branch evaluation of the barriers to an NZX IPO by SMEs and clearly relate these to any proposed LR changes***. There are 3 options – i) same rules for all participants (no differentiation); ii) same rules but with a grace period for SMEs; iii) differentiation. We do not support removal of shareholder approvals for major transactions. There could be some flexibility on thresholds. We do not believe Boards should self-certify their decisions on behalf of shareholders.
44.	What should the minimum governance requirements be for Standard Issuers? (page 23)
	NZX has not provided much evidence that corporate governance and shareholder rights requirements should be weakened for SMEs compared to "Premium" issuers. A grace period (or a time-bound waiver) could be introduced for Board composition and for reporting against the NZX Code. It should be clear to shareholders or potential investors that such waivers or grace periods are in place.
45.	Should Standard Issuers be required to report against the NZX Corporate Governance Code or a tailored version of this? (page 23)
	Yes they should report against the NZX Code as this improves understanding of SMEs amongst shareholders – it is expected that being small or early growth will be one of the explanations for not meeting NZX Code recommendations. A grace period could be given to new issuers before they commence being required to report against the full NZX Code.
46.	Should NZX allow more relaxed time frames for periodic reporting obligations under the rules? (page 24)
	See Q43. We would need to see the detail and be convinced that this would not undermine protection of shareholders or credibility of market information.
47.	Should NZX introduce quarterly cash flow reporting for Standard Issuers? Should this apply to apply to all new Standard Issuers (or a subset) and for how long? (page 24)
	The NZX could compare requirements with the ASX. However, additional requirements should not place additional burden on new SME issuers if they are already meeting the reporting requirements of premium issuers.
48.	Should NZX require reporting of Key Operating Metrics for Standard Issuers? Should this apply to all new Standard Issuers (or a subset) and for how long? (page 24)
	The NZX could compare requirements with the ASX. However, additional requirements need to be low on burden for new SME issuers if they are already meeting the reporting requirements of premium issuers.
49.	Should NZX make any other amendments to the reporting and disclosure requirements for Standard Issuers? (page 24)

	Yes – to the extent it does for Premium issuers. As with Premium issuers, a SME issuer should also provide a statement on its business strategy and key business risks and how these are managed. The information should be readily available internally in any event as it will be part of reporting to the Board, with the main test for release being one of commercial sensitivity and competitiveness.
50.	For which types of transactions should shareholder approval be required for Standard Issuers? (page 24)
	We believe SME (Standard) issuers should have the same shareholder approval requirements as Premium issuers for types of transactions. Potentially some thresholds could be adjusted.
51.	What should the relevant approval thresholds be? (page 24)
	The NZX should undertake some market analysis to determine if there is a case for introducing different thresholds for SMEs. It should focus on costs, including opportunity cost to the company, control by shareholders and dilutions of shareholders.
52.	Do you agree NZX should allow a pre break regime in relation to shareholder approval requirements for Standard Issuers? (page 24)
	Pre break agreements remove from shareholders the right to vote on material transactions of the company. We do not agree that the pre break regime is appropriate for the Main Board including for standard issuers. However, due to the size and stage of growth it may be appropriate to consider more flexible thresholds for approvals – although the case needs to be proven. See 51.

Corporate Actions Timetable

67.	What amendments should be made to the current corporate action timetables under the rules? (page 29)
68.	Should the time frame under Listing Rule 7.12.2 to be reduced? If so, by how much? (page 29)
69.	Should NZX introduce a mandatory latest date for acceptances of DRP elections of the record date plus 1 business day to align with Australia? (page 29)

Reverse and Backdoor Listings

70.	Do you agree with the proposals above in relation to reverse/backdoor listings? Why/why not? (page 30)
	We support NZX's proposal to treat these as a new listing.
71.	Do you have any other feedback in relation to reverse/backdoor listings? (page 30)
	The NZX should consider if these serve a useful purpose in reducing listing costs.
72.	Should NZX facilitate the listing of SPACs/SPVs? What are the appropriate shareholder protections for these vehicles? (page 30)
73.	Do you agree with the proposals above in relation to settings for overseas listed issuers?
	Overseas listed issuers should have to comply with the LRs for reverse or backdoor listings. See Q74.

Other

74.	Do you have any other feedback in relation to settings for overseas listed issuers? (page 31)
	We do not support exempt overseas listings unless it can be validated that the shareholder protections and disclosure of these listings are to the same, or higher standard, than the NZX. We suggest that the FMA should approve equivalent exchanges and maintain a list of such exchanges[4]. Additional LRs could apply where there are gaps. The risk to the market is poor quality listings with reduced shareholder rights, limited access to legal redress or poorer disclosure requirements. We believe the FMA should similarly oversee any overseas listing regime.
75.	Should NZX introduce any additional requirements in relation to the conduct of Annual Meetings? (page 32)
	Yes. As addressed in the NZCGF Guidelines, we support the proposal for the LRs to require voting by poll (move this from the NZX Code to the LRs), and the issue of the Notice of Meetings 28 days prior to the AGM. The NZX could also encourage postal (electronic) voting which allows straight through instructions rather than instructing the proxy via the Chair. Currently a person with the proxy must attend the meeting in person or appoint the Chair as proxy. In addition, AGMs could be held closer to the release of the annual results.
76.	What amendments should NZX make to Listings Rules 5.1 and 5.2? (page 32)
	We do not support dual class listings and the LRs should support the principle of one share = one vote.
77.	Are any specific amendments needed to the rules to address requirements of co-operatives or other structures? (page 32)
78.	Do any of the key definitions under the rules need to be amended? (page 32)
	Yes – the definition of independence should be strengthened. Please refer to the NZCGF guidelines as a starting point.
79.	Please provide any feedback on other areas of the rules which you think should be amended and the reasons for requesting such amendments. (page 32)
	Our amendments are proposed throughout this submission but can be summarised as: • Improved disclosure on strategy and risks; • Ensuring voting by poll at shareholder meetings; • More stringent shareholder approval requirements for share issuances, material transactions and related party transactions; • Strengthening the definition of independence; • Remuneration and skills reporting template recommendations in the NZX Code. Please see the response to Q.35 where we discuss capital raising and allocations. Companies should explain why they have opted for dilutive capital raising e.g. placements over pro-rata capital raising. Companies should report on how capital raising and allocation fits with their strategy. These recommendations could be included in the NZX Code.

[4] For example, UKLA maintains a list of overseas approved exchanges.