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NZX

By email: Kristin.brandon@nzx.com

Dear Kristin

NZX Consultation on Director Independence

Introduction

Thank you for the opportunity to make submissions in response to the May 2023 consultation paper relating to Director Independence.

The Listed Companies Association Inc. ('**LCA'/'Association'**) has since 1981 existed as a forum for listed companies to discuss and exchange views and to provide a collective voice them around regulatory changes and developments. The LCA understands the importance of good governance practices and the linkage to the sustainability and depth of the New Zealand capital market. We are especially conscious of our members' desire for a balance between the regulatory burden, market integrity and investor confidence.

While our specific submissions are attached, we take this opportunity to outline some themes contained within them.

General themes

<u>Negative connotations associated with non-independent status</u>

By and large our members have not expressed concerns over the current settings around director independence. Listed companies seem to be managing within the existing rules and guidance, and we also don't detect any outcry from investors for any significant changes.

But it is possible to draw the inference that independent directors are perceived to have greater integrity and importance. Page seven of the consultation paper supports this inference where it states that 'directors with an independent perspective are more likely to constructively challenge each other and executives'. This might be correct with respect to a narrow range of specific matters – for example an independent director will naturally push harder on executive remuneration and incentive issues than will an executive director. But, such matters represent only a small minority of decisions and deliberations that Boards deal with. In our experience most decisions are reached by consensus where all directors' views, whether independent, executive or non-executive, are given due consideration.

It could be as a consequence of this kind of discussion that there are negative, and pejorative, connotations associated with being a non-independent director and the associated sensitivities around being classified as such. Without wanting to downplay the importance of independent directors, we would strongly support a narrative, whether in any purpose statement, guidance on the Listing Rules, or otherwise, that attempts to walk back some of the negative connotations that go

with non-independence. It could be that a director who is not independent is simply described as a 'non-executive director' rather than a 'non-independent non-executive director' (a mouthful anyway), with an independent director being better described as an 'independent non-executive director'. In other words there is a presumption of non-independence, unless stated otherwise.

A balanced focus on skills and integrity

We question whether there is undue focus on independence settings as opposed to skills, experience and, sometimes, adequate training and competency. That is, there are clear rules and guidance of the nature that the consultation paper covers about director independence and disclosure. Certain decisions under the listing rules are reserved for independent directors, and some committee roles are reserved for the independents. But there is no similar tension around skills and experience, and competency, despite these probably being more important indicators of a director's ability to contribute.

In this regard, directors self-identify the skills that they consider the Board requires and then self-assess against that matrix and publish a collective result. In neither case is there any shareholder input as to the accuracy and completeness of the matrix, or whether the directors have the skills that they themselves claim to have. In the absence of a strong Chair, it is possible for the skills matrix to be skewed towards the skill then around the table, and for directors to overstate their own capabilities.

Regulatory alignment

We note that the NZX is conducting a desktop benchmarking exercise of comparative director independence settings of foreign exchanges, which we support. We are concerned with new rules in this space that differ materially from competitor exchanges, especially where the nature of the change makes another exchange more attractive to prospective issuers.

Query value of research on links to performance

We are sceptical that credible research will show any meaningful correlation between director independence and issuer financial performance, if in fact it is even possible to differentiate issuer performance as between different board composition, given the wide range of issuer industries, regulatory settings, and the many other factors affecting financial performance.

We are wary about drawing conclusions from academic research in jurisdictions outside New Zealand/Australasia, given the much larger issuers, and much more widespread share registers, of issuer listed on say, the FTSE, NYSE or SGX.

We also suspect that in the New Zealand context, those boards with strong support from founder directors might outperform boards with only independence.

Regulatory tweaks

We suggest that the following minor tweaks to the rules around independence:

- Increase the director shareholding threshold factor in the Appendix 1 Code from 5% to 15%, with guidance as to the circumstances that Boards could consider when forming a view on independence where a director holds between 10% and 15%.
- If a shareholder nominates a director for election, that shareholder should be required by the rules to be named as such in the Notice of Meeting for the sake of transparency and completeness.

- Any personal and professional relationships between a new director on the one hand, and current or recent directors and senior managers on the other, should be disclosed at the time of appointment, in the same way is independence is disclosed.
- Issuers should be encouraged to pay particular attention to director interest disclosures to the Board, and to use these periodically to consider independence.

The realities of director duties and behaviour

The primary duties for directors arise under the Companies Act 1993 – duties to act in the best interests of the company, for a proper purpose etc. These apply regardless of independence. The experience of our members is that directors, especially NEDs whose reputations are on the line, take these duties very seriously, whether independent or not.

Shareholder democracy

There already exists a regime by which shareholders can voice concerns and effect change in the form of the director rotation requirements, as well as the Companies Act provisions that allow for shareholders of substance to call meetings and put resolutions. Where minority shareholders have concerns with a director's independence, for the most part they already have rights of recourse.

Further, LCA members report that directors generally are acutely sensitive to shareholder concerns or criticism and are equally uncomfortable with publicity that draws negative attention to them.

Professional investors/institutions and the like have various ways of wielding soft power where they consider there to be an issue with a NED – especially in the larger issuers. We would expect that in a case where a group of professional investors consider a director to be incorrectly classified as independent, were they to engage with the issuer about the matter (directly or otherwise) and threaten a vote, publicity in the financial press or something similar, then that objection or view would be taken very seriously.

Minority protection for independent directors in certain circumstances

We are aware of suggestions of some kind of enhanced independence regime for independent directors, with independence status being determined by the minority shareholders.

We have set out in our submissions a variation on this theme which is based around shareholders having de facto control at less than 50%, particularly for recently listed issuers, and the desirability of protecting the integrity of the independent directors in those situations.

General

We note that two of the Association's current Executive members have recused themselves from participation in this submission due to their roles with other organisations that are also involved – Rachel Dunne (NZX Corporate Governance Institute) and Sarah Miller (NZX Corporate Governance Institute and NZX Board). In addition, LCA members and Executives may make separate submissions in their own capacities.

Finally, thank you for the extension granted for making this submission. As a small industry organisation the absence of just a couple of personnel can impact our ability to respond as quickly as we might want to.

We welcome the opportunity to contribute to the discussion on director independence settings and we would be very happy meet to discuss anything further with you.

Yours sincerely

Charles Bolt
Chair
Listed Companies Association Inc.

Submission on Consultation Paper – Director Independence

Your name and organisation

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Responses to consultation document questions

Purpose of the Requirements	
1.	***Do you consider that a clearer articulation of the purpose of the director independence requirements would assist issuers in assessing a director's independence?*** • A clearer articulation could help issuers to make more informed assessments of independence. It may also lead to more consistency and accountability around these assessments and help to align decisions and appointments with the intended goals of the rules. • But a 'clearer articulation 'should not be misinterpreted as suggesting the adoption of an overly specific or prescriptive articulation of purpose. These assessments should be contextual and holistic, rather than treated as a box-ticking exercise. • Non-independent status has become more pejorative as a term than we think is intended or desirable. NZX could assist in educating the market by clarifying that non-independence does not necessarily render a director less capable, less aligned or less integral to the issuer. • Personal interests - while we understand the argument around independence potentially being compromised if a director derives a significant portion of their income from a listed entity, the challenges in regulating this could outweigh any benefits. For example, directors will understandably not wish to share their private personal income information with management and fellow directors. If other income were to unexpectedly fall in a year (for example, were another company they are a director of be taken-over) a prescriptive proportionate revenue test could result in their independence being compromised for reasons largely outside their control.
2.	***What do you consider an appropriate purpose statement to be?*** • A purpose statement would presumably recognise the reasons for NZX requiring minimum levels of independence, and the benefits of independence. We haven't proposed a particular formulation at this very early stage of your consultation, and assume NZX will do so if NZX concludes it worthwhile to do so. • However we do think that any purpose statement should also recognise the equal importance of an issuer appropriate skills matrix, and the need for directors whose

	skills objectively address what the matrix requires. • For the most part, Board decisions will focus on issues where there is no conflict of interest for any of the directors. In any commentary, we feel it would be very useful to recognise this, as it could also help to address the pejorative inference that non-independent directors are somehow lesser than their independent counterparts.
3.	***Are there any disadvantages with including a clearer articulation of the purpose of the requirements in the Code?*** • There could be variances in interpretation between issuers with a purposive approach. • If the purpose statement is too prescriptive or specific, there is a risk of box ticking or over-reliance on the statement in a way that constrains flexibility and critical judgment, with issuers focused on meeting stated requirements rather than taking the more desired holistic view and/or also focusing on skills, expertise, diversity and overall board composition.
4.	***Do you agree that the conflicts of interest articulated above reflect the concerns that the director independence settings are designed to address?*** • Page 8 of the Consultation Paper under the heading 'Inter-board' notes that 'a lack of independent perspectives can arise where directors have personal or professional relationships with one another such as cross directorships'. We note that this is not currently a factor in the Disqualifying Relationship definition. While we agree that this can be a compromising factor on Boards in rare situations, we think that it goes as much to the question of skill, capacity and most importantly, diversity of thought, or the process of appointment. Directors merely knowing each other, or on more than one board together, *per se*, doesn't seem to be a bad thing. • A simple useful tweak to the rules could be to require that when an announcement is made as to a director's independence, that the issuer also disclose any current or recent relationship between the new director and a current or recently departed director or senior manager. This could at least give the market visibility of the potential for the group-think that the consultation paper raises as a potential issue. Investors could then form their own view on whether it has any significance, or affects their decision on whether or not to re-elect a particular director.
5.	***Should any of the interests or relationships set out be articulated differently?*** • Some interests or relationships tend to be more significant than others. Specifically, the conflict of interest as between management and the Board is a very real one that exists in largely all circumstances and that members of the Executive considered the most significant and potentially problematic. • Accordingly, directors who are sufficiently skilled and independent of management are very important. On the other hand, if a former partner of the issuer's audit firm is classified as non-independent even if they have not have been an audit partner or had any relationship with the issuer, the executive considers this should be less of an ongoing issue in terms of a compromise to independence than the more narrow situation of the former partner being an audit practitioner and particularly one

	previously involved with the relevant issuer audit.
6.	***Are there additional purposes that should be reflected in the Code?*** Consistent with our submission above, we feel that independence is part of a broader consideration around Board makeup in that integrity and accuracy in the both the skills matrix and in the measurements against it are equally important factors.
Benefits of Director Independence	
1.	***What benefits do independent directors bring to a board?*** • For smaller, or newly listed issuers, independent directors can provide experience and skills that the organisation has lacked as a private and unlisted company. We note that these benefits arise often because of the director's non-executive status, as opposed to broader independence per se. • In the case of companies with executive directors, or directors with close relationships with management, independent directors have a particularly important role in managing the inherent tension and information imbalance that exists from an executive connection. • Non-executive directors often have other interests in the form of advisory or governance roles, and connections into other parts of the capital markets universe. This can make them more attuned to the market related concerns, developments and practices, that they can bring to the Board table, rather than less. • Investor confidence is important in terms of the role of independent directors. If and for so long as the investment community regards independence as important, it can be an important factor in order to access capital.
2.	***How important do you consider a director's independence is to enable the director to fulfil the director's duties, compared to other factors?*** • It's about having a balanced board. Non-independence does not necessarily, or even generally, affect a director's ability to bring significant skills and experience to the table. When considering a board's skills and attributes ensuring that a number of the board are independent is important, but this analysis should not be conducted in isolation of consideration of other important attributes and skills. • All directors have the same core legal duties under companies and other legislation that imposes legal duties (such as work and safety duties of care). • Acting rationally, we expect investors would prefer a non-independent but highly and relevantly skilled director over an impeccably independent one with no relevant industry knowledge or experience. In this regard, it is difficult to have a discussion about the importance of independence without also discussing the required skills and experience, and the need for tension around those elements, as well. • Independence as an enabler for the fulfilment of duties will also not always be the same for every company. With some issuers, independence will be more critical, perhaps because of the ownership structure and other commercial arrangements and representations on the Board. But in a large NZX10 company, with a broad range of shareholders all under 10%, professional and well incentivised management, no critical supplier or customer contracts, independence is likely to count for less than skill, experience and industry knowledge.

3.	***In what specific circumstances is the independence status of a director particularly important (for example consideration of takeover proposals, or the determination of a particular offer structure)?*** • Consistent with the response to the question immediately above, the importance of independence depends on the nature of the issuer – including factors such as breadth and makeup of the register, the maturity of their listed status, the extent of any major supply or customer contracts, the quality of management and the extent to which they are regulated outside of the NZX/FMA. • Broadly speaking though, members have seen non-executive directors – independent and otherwise - add real value in areas such as: mergers and acquisitions; related party transactions; ethics and compliance matters including overseeing whistle blower situations; crisis management; audit and other committees needing independent challenge and oversight; management remuneration and incentive arrangements; senior management appointments; capital raising; and material compliance issues, especially around judgments on disclosure.
4.	***In relation to the consideration of takeovers, what is the importance of a director being an Independent Director under the Rules (i.e. not an Employee and having no Disqualifying Relationship) compared to independence from the bidder?*** Independence from the bidder is of greater importance than independence under the Takeovers Code, in a takeover context. For example, interests of a director appointed by a majority shareholder (which would ordinarily be considered to have a disqualifying relationship under the Takeovers Code/ Listing Rules) are likely to be aligned with those of a minority shareholder in a takeover context, provided that the director appointed by a majority shareholder is independent of the bidder.
5.	***What are your views as to the necessary levels of director independence to enable a board to operate effectively? Are these levels affected by the size or complexity of an issuer (e.g. for issuers in the S&P / NZX 20 Index, or S&P/NZX 50 Index)?*** • Please see our response to 'Benefits Question 1' above with respect to non-executive directors independent and otherwise adding particular value at the smaller end of the market and with newly listed companies. • The rules around levels of director independence should apply uniformly, and not be based on placement in the NZX 20 or NZX 50. Amongst other reasons, this could be problematic for issuers that slip in or out of these indices from time to time. Further, our members do not report the current settings around independence levels to be overly problematic, and the market has adjusted to them quite well. • Independence is important, but a one-sized fits all approach is not suitable. Some considerations for taking a flexible approach: - ***Industry-specific considerations*** – certain industries such as healthcare or finance have their own unique challenges (e.g: regulatory requirements, ethical considerations) so these issuers would argue for more flexibility in the levels of director independence given that skills and capability are likely to be more important than whether a director is classified as independent or not. - ***Shareholder expectations*** (e.g a high number of institutional shareholders on the register tend to prefer a greater number of independent directors)

	- ***Shareholdings*** a shareholding in an issuer per se may not have a large bearing on independence but rather may better align issuer and shareholder interests, in the absence of related party transactions between the issuer and shareholder. It seems odd that the Related Party transaction threshold is a 10% or more shareholding and the independent director factor is simply a 5% shareholding. Depending on the profile of the register a 10-15% shareholding may not compromise independence where there are much larger shareholdings.
6.	***Do you consider that issuers whose boards have a larger number of independent directors perform better?*** The LCA does not have any sense or data on of whether large numbers of independent directors cause better financial or other performance. And there is a danger of dealing with this question by way of anecdote as there will always be examples of issuers with long tenured and non-independent directors performing well, and vice versa.
7.	***Do you consider that the benefits of independent directors are affected by the size and complexity of an issuer (e.g. for issuers in the NZX 20, or NZX 50)?*** • Smaller companies can tend to have less management resource (legal, financial and secretarial) to support them around things like ensuring compliance with director duties, conflict management and statutory and listing rule compliance. This is where more hands on non-executive directors (independent or otherwise) can add significant value in supporting management, especially where they bring those skills and experiences that is lacking within senior management. • On the other hand, larger issuers can face a broader range of business complexity, operational, financial, legal and regulatory risks; have greater stakeholder engagement obligations; and often operate in highly regulated industries which benefit from independent director perspectives. Larger issuers can also experience greater complexity in decision-making, which can be supported by independent judgement and critical thinking. • We consider that these issues point more to questions of skill and experience, and the need for non-executive directors, as opposed to independent directors alone.
8.	***Do you consider the current hybrid regulatory model to be appropriate whereby the Rules contain mandatory director independence requirements, and the Code contains settings which issuers may elect to adopt on a voluntary basis?*** • If we had a more black and white mandatory rules-based regime, it could be more challenging for issuers to adopt an approach suitable to their particular circumstances – which we consider to be the more important consideration. Essentially the Association feels that the current settings are working appropriately. • As covered in earlier responses, our view is that an issuer's need for independent directors can differ depending on its stakeholder base or the regulatory complexity of the industry in which it operates, and shareholder democracy can steer this decision. • We have seen problems arise where one or more of an issuer's independent directors resign suddenly (for whatever reason), and the issuer is left scrambling to fill the gap. This is not always easy, given the limited availability of appropriately skilled and immediately available independent directors in New Zealand. A rushed appointment process, merely in order to ensure compliance, can lead to sub optimal outcomes.

	Perhaps there could be some NZX guidance that the NZX will consider a grace period or readily grant a waiver in such circumstances to allow a considered search and appointment process to take place, albeit with some restraints on decisions that can be made by the Board in the interim. • Alternatively, Listing Rule 2.9.1 (which allows a board time to appoint an additional director if the number falls below the minimum, of 3 or higher number required by a Governing Document) could be extended to also cover situations if the number of independent directors fell below 2.
Nature of Director Independence	
1.	***Do you consider that the definition of an Independent Director should be expanded to include a director who is able to conduct themself in an independent manner and exercise an independent judgment, as well as having no Employee relationship or Disqualifying Relationship?*** • One of the themes of this submission is the view that skills, experience and integrity need to be considered equally with independence when thinking about Boards and Board conduct. We have noted that under the Credit Contracts and Consumer Finance Act 2003, finance company directors and senior managers must be confirmed by the Commerce Commission as being fit and proper persons. The stated aim is to 'set a high standard of personal and professional integrity for those involved in providing a lending or mobile trading service' by ensuring that appointees are 'financially sound, honest, reliable, reputable and competent to do the job'. ASX Listing Rules also require directors of ASX listed issuers to satisfy good fame and character tests. • We question whether shareholders in a listed entity should be provided similar levels of comfort and protection around the capability and integrity of the directors and senior managers who are stewarding their investment, through declarations as to being fit and proper. However, we would not support a role for NZX approving directors.
2.	***How would the change to the definition of Independent Director referred to in question 1 change the manner in which the board of an issuer assesses a director's independence?*** A change of the nature discussed in question 1 would require an equal focus on skill, reputation, integrity and relevant experience as much as just 'independence'.
3.	***Do you consider that the purpose of the requirements needs to be better reflected in the definition of an Independent Director in the Rules, for example by referring to independence from the interests of management and substantial holders?*** • Yes. Given the rules are not black and white, a clearer articulation of the purpose will help issuers make a more informed assessment of a director's independence. This will bring more consistency across issuers, with benefits to investor confidence. This may also lead to greater accountability for director independence decisions, with issuers better aligning their assessment process with the intended goals of the rules. • The rules must also remain practical and flexible though, to ensure that a broad range of qualified individuals can still serve on the relevant board. For this reason, we don't

	recommend referring specifically to independence from the interests of management and substantial holders as this may encourage issuers to put undue emphasis on these points where it is not necessarily appropriate, given that a contextual assessment is required.
4.	***Do you have any comments around the advantages and disadvantages of tailoring the director independence composition settings so that an assessment of a director's independence is tied to the conflict of interest that a factor indicates?*** This looks as though it would be unduly complex, and become distracting for Boards and management without necessarily providing greater integrity in decision making or transparency.
5.	***Should a director's shareholding in an issuer be considered as a factor that indicates nonindependence? If so, what level of shareholding or relevant interest in shares should trigger this as a consideration?*** • We favour directors having a shareholding in an issuer, given that it aligns long term interests. But any impact that a shareholding has on a director's independence needs to be at a significant level to override this important base line. • As discussed above, a 5% shareholding seems much too low a threshold to trigger non-independence. If there is an open share register, a director with a shareholding of (say) 7% will in all likelihood have interests that are totally aligned with the rest of the shareholders. In this regard, we note that the Related Party definition applied in section 5 of the listing rules does not regard a person as being a 'Related Party' until their shareholding exceeds 10 %. • We suggest that something closer to a 15% bright line threshold would be more appropriate as a factor, given the 10% threshold for related party transactions is already in the rules in that narrower context. Boards should also be encouraged in the commentary to look at a range of factors where the director holds between 10% and 15% that might suggest non independence.
	If so, what level of shareholding or relevant interest in shares should trigger this as a consideration? Please see the response immediately above.
7.	***How do you consider the benefits of long tenure should be weighted against the effects of long tenure on a director's independence, when considering the effects on board and director performance?*** • Tenure can be assessed in a similar way to diversity on a board. It is good governance to get a range of views and perspectives around the board table, including those that come from strong institutional knowledge, industry expertise, historical knowledge of the business and relationships/networks, and continuity, that longer standing directors bring. Equally, new directors bring independent challenge, fresh skills and competencies and can improve board diversity. • The perceived 'risks' of having a director with over 12 years tenure are counterbalanced by certain benefits, and can be mitigated by having other, newer members on the board through a regular refreshment/rotation programme. Additionally, we consider that the skills, experience and competence of a director

	(which often comes with longer tenure) are more important to shareholders and are more indicative of a director's ability to steer a company towards success than a director's independence per se. • This relates to our point above and a broader theme of our submission that director independence shouldn't necessarily be weighted more heavily than skills, experience and integrity – especially as there is a shortage of skilled and experienced directors in New Zealand. Therefore, we would advise against imposing any prescriptive Rules relating to levels of tenure (or ideal lengths of tenure). See also our suggestion below under 'disclosure' regarding presumptions around tenure.
8.	***Are there any additional matters that should be considered in relation to the definition of director independence?*** We recommend caution before hardwiring anything into the Rules or Code regarding the definition of director independence, or applying a test that is too simple, formulaic or prescriptive. Context is important in determining whether a director is independent, and the issuer's corporate structure, including the tenure of the rest of the Board and senior management, needs to be taken into account. Therefore, the definition of independence should retain some flexibility.
Minority Shareholder Interests	
1.	***Do you consider that the current director independence requirements do not appropriately protect the role of minority shareholders?*** • We think minority shareholder interests are already well addressed by the duties owed by directors under the Companies Act, the requirement for there to be two independent directors and the ability of shareholders to vote on the appointment of directors, and related party transaction disclosure and shareholder approval listing rules. • The strength of two independent voices around a Board table should not be underestimated, provided that they have the industry knowledge, skill and integrity to perform their role, and can do so free from the perceived or real threat of removal by a controlling shareholder.
2.	***Should issuers be encouraged to engage with minority shareholders in relation to the assessment of a director's independence?*** Issuers may choose to engage with minority shareholders in the interests of transparency and improved engagement. We do not, however, support imposing further rules on issuers in relation to specific engagement with minority shareholders. It will be difficult meaningfully to engage with all minority shareholders in relation to a heavily nuanced independent director assessment. Directors are approved by shareholders, and so if shareholders have an issue with a particular director, they already have a remedy. The ability of minorities to engage in Annual Shareholder meetings via hybrid models and ask questions and challenge boards already provides a genuine level of tension. In other words, where a minority shareholder has a concern about independence, they have a basis for openly challenging it already.
3.	***What benefits and disadvantages would arise if minority shareholders were able to veto a board's assessment as to the independence of a director?*** • Shareholders already approve directors and if they are unhappy with the assessment

	of a director as independent, they are free to vote against the appointment of that director. Providing minority shareholders with a veto right on independence assessments would have the following challenges: - Disruption and delay of board matters and inefficient board decision making - Practicality around executing a veto mechanism for minorities - A veto opens up the possibility of strategic interference by minorities - Introduces further complexity to a listed regime, which makes listing less attractive. - Companies could find themselves suddenly in breach of the requirement to have two independent directors. - It would support a notion that independence is more important than skills and experience. In other words, minorities would not have a right to veto a director as having the skills that they claim to have.
4.	***Are there alternative or additional changes that you consider should be made to the director independence settings more appropriately address the conflicts between majority and minority shareholders?*** • While there has not been a unanimous view reached on the subject by the Association Executive, there is some support for exploring the merits of a regime that in certain circumstances places a decision on the removal or election/re-election of an independent director in the hands of the minority. • This would be different from a determination of independence by the minority. Whether it applied in all circumstances, or only in respect of new/compliance listings with one or more dominant shareholders would need discussion. • The suggestion has come about as a reaction to what occurred with a recently listed entity in 2022, where a 45% shareholder was able to force out all of the independent directors and nominate their replacements. In that scenario investors will naturally be more sceptical that directors can truly be considered independent when they effectively serve at the pleasure of a shareholder with the ability and preparedness to remove them at any point? • At the very least, we think there should be a tweak to the listing rules so that if a shareholder nominates a director for appointment, the Notice of Meeting and other announcements should identify the shareholder who has made such nomination. While many issuers will include this information, as a matter of good practice, disclosure of the identity of the nominator(s) is not currently a listing rule requirement. • For existing listed companies it is difficult for a shareholder to end up between 20% and 50%, because to get there they need to go through a process that is well regulated and overseen by the High Court and/or Takeovers Panel. The Takeovers Code reflects a policy that discourages someone having effective control in the no fly zone of 20% to 50% without either paying a premium for it or in some way getting approval from the other shareholders. • Shareholders therefore know what they are getting themselves into when they accept an offer, or vote in favour of some proposal that will given effective control to a 45% shareholder, and in doing so they will be independently informed of the de

	facto control risks in professionally prepared materials and reports. • This could be addressed by limiting voting rights on independent director appointments/removals where there is a shareholding of between 20% and 50%. The limitation could be total, or it could allow the shareholder to exercise just 19.9% of the votes so that they retain some influence (that being the level they would hold without going through some kind of Code offer). • There could be variations on this theme, including that it is not applied retrospectively to current issuers, but will apply as a condition of any new compliance listing or listing following IPO where larger holdings might be expected in the early days of listing ahead of a selldown, and if the purpose of the listing is liquidity. Such a rule could have a sunset date so the issuer was regulated more like other seasoned issuers after a point in time. The views of our members also diverge on whether such a rule is appropriate at all, but it may be worth exploring further as a concept.
Disclosure	
1.	***Do you consider that there are changes to the Rules or the Code that should be made to enhance the quality of director independence assessment disclosures?*** One possible change that could prove beneficial to shareholders could be to create a presumption that, if a director has held tenure for over 12 years, such director is not independent, unless an issuer discloses why it has nevertheless decided to determine that director is independent (e.g., if it regularly rotates other board members, or has had recent changes in key senior management, thus reducing a director/management 'capture' or 'group think' risk). This would be preferable to prescribing anything into the Rules around length of tenure per se.
2.	***Should further disclosures be required by Rule 2.6.2. within 10 business days of a director's initial appointment, beyond the determination of a director's independence?*** No. Consistent with some discussion in relation to other answers, skills and experience that aligns with what the listed business requires are probably more important that independence per se when shareholders consider the extent to which the board can and will direct long term value creation. For this reason it is arguable that a Board should be encouraged on announcement to explain the particular skills and experience that the appointee brings, and how that links with any skills matrix.
3.	***Should the Rules require an issuer to disclose the reasons for its assessment of a director's independence in a notice of meeting that contains a resolution to elect or re-elect a director?*** As a general rule, no - issuers would simply replicate each of the disqualifying factors and state that none apply. This would not meaningfully assist shareholders. However, it is appropriate that such an explanation should be given where a director has been determined to be independent despite the existence of a disqualifying relationship.
4.	***Should the Rules place more direct obligations on issuers to ensure that directors provide updated information in relation to changes to interests and relationships that are relevant to an assessment of whether the director has a Disqualifying Relationship?*** • In our experience section 140 of the Companies Act works quite effectively to encourage directors to disclose their interests, and proper functioning Boards tend to

	have this as a standing agenda item. • Perhaps in the commentary to the Corporate Governance Code this could be noted as best practice, encouraging issuers to adopt this practice to the extent that they don't already. • We also note that the Companies Act already requires disclosures of interest to the board and other entries in the "interests register" during an accounting period to be included in the Annual Report for that period.
5.	***Should the Rules place more direct obligations on issuers to re-assess a director's independence when the issuer becomes aware that a director's interests or relationships that relate to the independence assessment have changed?*** The Rules already require an issuer's board to update the market if its determination as to a director's independence changes, which we think is sufficient. Our comment in response to question 4 immediately above is equally relevant here.