Bell Gully

NZX Tiered Compliance Consultation Paper

Submission from Bell Gully

28 August 2026

Background

We refer to NZX's consultation paper titled "Tiered Compliance" dated July 2026 (the **Consultation Paper**). Bell Gully welcomes the opportunity to submit on this topic, and supports NZX's initiative to offer a more streamlined setting for various issuers.

We provide some general comments on the next page, then respond in the rest of this paper to the questions set out in the Consultation Paper (adopting the same numbering used in the Consultation Paper).

The views expressed in our submission are those of Bell Gully members involved in the review of the Consultation Paper. They do not represent the views of our clients.

We have no objection to NZX releasing our submission in whole or in part.

If you wish to discuss any aspect of our submission, please do not hesitate to contact us.

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General comments

A global trend is the growth in private capital and the reduced number of companies looking to list. Higher compliance costs and stricter regulation for listed companies are significant factors contributing to this trend.

NZX is also facing significant competitive pressure from the ASX.

We believe that it is timely to revisit NZX's listing settings and consider whether they remain appropriate, in particular for smaller issuers.

NZX cannot compete on the basis of having greater liquidity or access to deeper pools of capital. An important part of NZX's comparative advantage needs to be having a more flexible regulatory environment, where compliance costs are right-sized for the particular company.

NZX has an important role to play in the New Zealand capital markets ecosystem, but it needs to provide an offering that makes companies want to list, and remain listed, on NZX. A key factor in that is ensuring that the settings under the NZX Listing Rules are appropriate for issuers, in particular for smaller issuers.

Section 1: Eligibility and transparency

Question no.	NZX Question	Bell Gully's response
1	*Is the SME Eligibility Criterion appropriate?*	No - we believe that the proposed $125 million Average Market Capitalisation threshold is too low. The appropriate threshold should be determined by the level at which NZX's standard compliance requirements become proportionate to an issuer's size. The threshold at which an issuer on Catalist is required to move from that market is not relevant. We believe that a threshold of $250 million is more appropriate. We note that increasing the threshold to $250 million would not significantly expand the numbering of qualifying issuers (46 to 64 as at 20 August 2026). We support the proposed "opt-in" approach and agree that assessing eligibility based on Average Market Capitalisation over two balance dates is an appropriate method. However, we consider that the relevant period for calculating the average market capitalisation should be 6 months rather than 5/20 business days under the definition of Average Market Capitalisation. The policy should be that the market capitalisation of the issuer has consistently exceeded the threshold. The 5/20 business day test is susceptible to market fluctuations during a point in time period that is not reflective of the true market capitalisation of the issuer.
2	*Should alternative or additional SME Eligibility Criteria apply?*	No - we believe that Average Market Capitalisation over two balance dates is the best metric. It provides a better proxy for a company being likely to have the right infrastructure to comply with the standard listing requirements. For example, a company with particular retail appeal could have more than a 1,000 shareholders even if it had a relatively low Average Market Capitalisation. Similarly, index status focuses more on relativity to other issuers rather than being of a sufficient size that the issuer is more likely to have relevant resources to meet standard compliance requirements.
3	*If so, do you consider that it would be appropriate for NZX to also impose a 'ceiling' to prevent larger Issuers who may fall within one of the SME Eligibility Criteria from becoming SME Issuers? If so, what do you consider the nature of the ceiling should be?*	If alternative criteria were adopted, we do not consider it appropriate to also impose an Average Market Capitalisation 'ceiling' that would cause an issuer to lose SME status. The adoption of alternative criteria would itself acknowledge that market capitalisation is not the only determining factor and it would be inconsistent to then allow a market capitalisation ceiling to override those criteria.

Section 1: Eligibility and transparency (cont.)

Question no.	NZX Question	Bell Gully's response
4	*Do you consider that the SME Designation and proposed warning statement will ensure that investors and other stakeholders are appropriately informed of the differential treatment of an SME Issuer under the Rules?*	We believe there is no need to attach an "SME" designation or require a prescribed warning statement for eligible issuers. The position should simply be that different Listing Rule requirements apply above and below certain thresholds (subject to an opt in election being made which below the relevant threshold). Our concern is that the proposed designation and warning statement may create a stigma associated with that status and create a negative investor perception that acts as a disincentive to electing into the regime. The different listing structures should use neutral terminology. "SME" should not be used. Instead, NZX should publish a list on its website of which rules apply to each issuer – such as the list ASX publishes each month of which listing regime applies to foreign issuers (https://www.asx.com.au/listings/listing-considerations/listing-requirements/foreign-entity-data). This would also ensure that the list was up to date (in contrast to inclusion in an annual report).
N/A	N/A - 1.2 Spread	We support the proposed changes to the spread requirements set out in section 1.2 of the Consultation Paper.

Section 2: Transition

Question no.	NZX Question	Bell Gully’s response
5	*Do you consider the six month transition period to allow an appropriate amount of time for an SME Issuer to ensure that it is able to meet the requirements of the Rules (particularly in relation to the standard governance and board composition requirements)?*	We consider six months to be an appropriate transition period for non-governance requirements. However, in our view, six months may not provide enough time for an issuer to meet standard board composition requirements. In particular, appointing an additional independent director. We believe a 12-month transition period should apply to governance requirements to reflect the importance of getting the right people in place.
6	*Do you consider that any additional information should be included in the transition announcement?*	No. However we consider that the timing requirement to make the release “(…promptly and without delay”…) under Listing Rule 1.7.3 is unnecessarily short. In practice, this would require an announcement before open of markets the day following the relevant balance date. We suggest a time period of “within 10 Business Days” to allow an issuer to firm up its intended transition date. If SME Issuers satisfy Listing Rule 1.7.3(a) by stating “by {insert longstop date]”, we consider that there should be an obligation to update the “intended” transition date if it changes.

Section 3: Governance

Question no.	NZX Question	Bell Gully's response
7	*Do you consider the director independence settings to be appropriate? Should Code recommendation 2.8 continue to apply to SME Issuers?*	Yes, we support the proposal to require one independent director for SME Issuers. However, we do not consider that Code recommendation 2.8 should continue to apply to SME Issuers. If an SME Issuer is not required to have a majority of independent directors, it should not be required to report against a recommendation to do so. In that case, there is a risk that the position under the Code will still be perceived as best practice, and issuers who do not adopt that recommendation will be seen as falling short of that standard. Requiring disclosure against a recommendation that is not appropriately targeted to the issuer creates a perception of non-compliance where none exists.
8	*Do you consider the remaining proposed board composition settings for SME Issuers to be appropriate?*	Yes. We consider that lighter, proportionate governance requirements would be appropriate.
9	*Should Code recommendation 3.1 continue apply to SME Issuers (such that it is recommended that one member of its Audit Committee has an Independent Director who has a financial and accounting background, and an Independent Director as Chair), or should this be modified to recommend that the Audit Committee comprises one Independent Director and one Director with a financial or accounting background (consistent with current Rule 2.13)?*	We consider the latter option is more appropriate. Code recommendation 3.1 should be modified for SME Issuers so that the composition of an SME Issuer's Audit Committee aligns with the composition requirements of Rule 2.13.

Section 4: Disclosure

Question no.	NZX Question	Bell Gully's response
10	*Do you consider that the 'apply and disclose' regime will create greater flexibility for SME Issuers in relation to their reporting practices by simplifying the information that is required to be reported?*	Yes we do. We suggest that the reporting could be simplified even further by having a standardised template for issuers to complete on a tick-box basis where they indicate which Code recommendations they have or have not adopted.
11	*Do you agree that the lack of an explanation where an SME Issuer has not adopted a Code recommendation is appropriate, because users of the disclosures can naturally infer that this will be due to the SME characteristics of the SME Issuer?*	Yes. Again, requiring an explanation presupposes that the recommendation is appropriate for the relevant Issuer. It creates a perception of non-compliance that needs to be justified rather than a legitimate choice based on the issuer's size. As a practical point, requiring an explanation would likely lead to standardised and meaningless disclosures. Most issuers are likely to say something along the lines of "because of our size we did not consider this recommendation appropriate", which does not provide the market with any useful information.
12	*Do you agree that the 'apply and disclose' regime appropriately balances compliance burden concerns with the need for users to receive meaningful disclosures in relation to corporate governance practices?*	Yes, for the reasons set out in our submissions to Question 10 and 11 above.
13	*Are there any specific Code recommendations that you consider an SME Issuer should report against on a 'comply or explain' basis, if so please identify these recommendations and explain why 'comply or explain' basis reporting would be appropriate.*	No, for the reasons set out in our submission to Question 10 above.

Section 5: Capital raising

Question no.	NZX Question	Bell Gully's response
14	*Do you consider that it is appropriate to provide more certainty and flexibility for SME Issuers by increasing the placement capacity from 15% to 25%, or would it be more appropriate for shareholders to endorse a headroom uplift by ordinary or special resolution?*	Yes we think the increased placement capacity for SME Issuers is appropriate. It reflects the scale of smaller issuers where a 15% threshold may not be enough to raise meaningful capital. We do not consider requiring shareholders to endorse the uplift by resolution to be appropriate as this would impose an unnecessary cost on smaller issuers. It should be available automatically.
15	*Do you support the changes to the SPP settings? Is the reduction in the per shareholder participation amount appropriate?*	Yes.

Section 6: Related party transactions

Question no.	NZX Question	Bell Gully's response
16	*Do you consider it appropriate for SME Issuers to be able to enter into a Material Transaction with a Related Party in reliance on a pre-break regime?*	Yes, we consider the pre-break regime appropriate. However, in our view, the threshold of 5% for shareholders to call a meeting is too low. The threshold should recognise the significant cost and disruption of holding a shareholder meeting for an SME Issuer. On that basis, we believe a threshold of at least 20% would be more appropriate.
17	*Do you consider it appropriate that the Transaction Announcement would not be required to be accompanied by an Appraisal Report, noting the requirement for a Directors' certificate to confirm the fairness of the transaction, considering the reduced compliance and resource burden effects on the SME Issuer against the impacts on investors?*	Yes. We believe the directors' certificate provides enough assurance in this context. An issuer can still obtain an Appraisal Report on a voluntary basis if they consider one necessary. However, requiring an Appraisal Report for all transactions would impose a cost that is disproportionate to the size of many SME Issuers.

Section 7: Additional proposals

Question no.	NZX Question	Bell Gully's response
18	*Do you agree that the de minimis Related Party Transaction approval threshold should be lifted from $250,000 to $500,000?*	Yes.
19	*Do you agree that issuers should look through all custodial holdings (not just those of NZ CSD) when determining their largest shareholders, and number of shareholders for reporting purposes?*	No. One of the reasons shareholders use custodial arrangements is to keep their identities private. The proposed look-through expansion is inconsistent with that purpose with no real market benefit. Shareholders with material holdings are already required to give SPH notices and those holdings are further disclosed in an issuer's annual report. We do not see a benefit in expanding the look-through requirements beyond this.
20	*What practical difficulties may arise if Issuers were required to look through custodial holdings to identify the underlying shareholders for the purposes of the Rules?*	Identifying shareholders who do not meet the SPH threshold would require a separate exercise that imposes an additional compliance cost for no meaningful benefit. If a shareholder does not have a large enough holding to trigger the obligation to give an SPH notice, it is unclear why the issuer would be required to look-through the custodian to identify the holder.

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