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# New Zealand Exchange Announces Changes to Climate/ESG-Related Governance Requirements

April 18, 2023



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Effective April 1, 2023, the New Zealand Exchange (NZX) has updated the [NZX Corporate Governance Code](#) (Code) and the [NZX ESG Guidance Note](#) (ESG Note). There are eight principles that underlie the Code: (1) ethical standards; (2) board composition and performance; (3) board committees; (4) reporting and disclosure; (5) remuneration; (6) risk management; (7) auditors; and (8) shareholder rights and relations. The Code uses a “comply or explain” approach, encouraging issuers to adopt the Code, but requiring them to explain why not if they choose not to. The ESG Note is not a separate disclosure requirement or expectation, but rather, “outlines good ESG practices, and accepted frameworks for issuers to consider adopting when making their ESG disclosures” under the Code. Issuers with financial years that start on or after April 1, 2023 must use the updated version of the Code, while those with financial years that started prior to April 1, 2023 can continue to report for this year using the June 17, 2022 version of the Code or voluntarily use the updated Code, so long as they clarify which version they are using.

One of the biggest changes in the updated Code involves **Principle 4 (Reporting & Disclosure)**, with the addition of a new recommendation 4.4, which requires an issuer to provide non-financial ESG disclosure at least annually. Recognizing that it is impossible to provide an exhaustive list of ESG issues a company should consider, the ESG Note draws from the FTSE Russell ratings model and the United Nations Principles for Responsible Investment guidance to provide a non-exhaustive list of ESG reporting considerations. These include biodiversity, water security, land degradation, labor standards, safe development of medicines, tax transparency, and succession planning. The Code now encourages issuers to disclose “the process by which an issuer has ensured that its non-financial reporting disclosures are materially accurate,” and provide the disclosures in an easily accessible and understandable format.

The Code addresses “Climate-related Disclosure,” noting that: “NZX is a member of the Sustainable Stock Exchanges Initiative, and acknowledges the importance of disclosures relating to an issuer’s climate change risks and opportunities” and “NZX considers that these disclosures will be informative for investors wishing to understand an issuer’s environmental practices, risks and opportunities. NZX’s ESG Guidance Note provides further guidance in relation to making climate-related disclosures.”

Some of the other key changes to the Code and ESG Note are summarized below.

- **Principle 1 (Ethical Standards):** The Code now encourages issuers to “explain[] why ethical behaviour is important to an issuer’s purpose.” It also encourages issuers to consider adopting formal whistleblowing procedures “in light of the nature of the size and composition of its business” and whether “to provide access to employees to confidential third-party agencies for whistleblowing / speak-up purposes.”
- **Principle 2 (Board Composition & Performance):** NZX has expanded disclosure requirements for directors, including by requiring information on the board’s assessment of the director’s independence, and stating that not only must the chair of the board be independent, the chair and CEO cannot be the same person to prevent conflicts of interest. Additionally, issuers in the S&P/NZX 20 Index “should have a measurable objective for achieving gender diversity in relation to the composition of its board, that is to have not less than 30% of its directors being male, and not less than 30% of its directors being female, within a specified period.”
- **Principle 3 (Board Committees):** In order to prevent conflicts of interest, NZX now recommends that executive directors do not sit on remuneration committees. If an issuer does appoint an executive director to a remuneration committee, it should have “robust conflict management arrangements in place” and should not allow the executive director to participate in any consideration of his or her own remuneration.
- **Principle 5 (Remuneration):** The Code provides that an issuer should have publicly available remuneration policies for executive and non-executive directors. Further, an issuer “should disclose how its executive remuneration arrangements align with its strategy and performance objectives and should disclose generic eligibility and vesting hurdles for any long-term incentive scheme that forms part of its remuneration arrangements.”
- **Principle 6 (Risk Management):** NZX now requires that a summary of an issuer’s risk management framework be included in its annual report.
- **Principle 7 (Auditors):** Although the Code already required disclosure of an issuer’s internal audit functions, NZX has added commentary to emphasize the importance of internal audits. According to NZX, “[i]nternal audit provides objective assurance about internal controls and risk management and may assist an issuer in evaluating and improving the effectiveness of its risk management, internal control and governance processes.”
- **Principle 8 (Shareholder Rights & Relations):** Noting the importance of shareholder participation in meetings, the Code encourages issuers to facilitate participation by hosting fully virtual or hybrid meetings based on the circumstances.

**Taking The Temperature: New Zealand has been on the forefront of ESG and climate-related reporting. As explained in the ESG Note, issuers on the NZX must navigate requirements imposed by the Sustainable Stock Exchange, the UN Sustainable Development Goals, the Paris Agreement, the Climate Change Response (Zero Carbon) Amendment Act of 2019, the United Nations Universal Declaration on Human Rights, as well as the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021. Updates to the Code and the guidance provided in the ESG Note help companies model their corporate governance and disclosure practices to the various developing ESG reporting standards.**

As we have previously discussed, in our view it is not possible to separate climate or other ESG issues from the obligations owed by companies' boards and management. Other regulators and organizations are similarly promoting the integration of ESG-related and corporate governance issues. The Task Force on Climate-Related Financial Disclosure's ("TCFD") governance pillar emphasizes the importance of board and management focus on climate-related issues. Earlier this year, the FCA published its [discussion paper](#) on sustainability-related governance, which considered whether regulated firms (banks, insurers, and asset managers) should be required to incorporate sustainability into their governance strategies. Last fall, the Institutional Shareholder Services (ISS) [reported](#) on the "different changes taking place in the corporate governance landscape in light of increasing awareness of sustainability issues," including a 60% increase of S&P 500 companies that had at least one director with ESG skills, and highlighted "the importance of traditional corporate governance dimensions such as shareholder rights and board attributes to address [environmental and social] issues." Similarly, we have also discussed the 2023 voting guidelines [published](#) by proxy advisory firms Glass Lewis and ISS, which included enhanced board accountability for climate-related issues and oversight of environmental and social issues. Boards looking to adopt or revise governance policies to better integrate ESG-related issues should look to these recommendations and other reports addressing this important issue.

# International Accounting Standards Board to Explore Improvements to Climate-Related Disclosure in Financial Statements

April 18, 2023



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On March 23, 2023, the International Accounting Standards Board (IASB) **commenced** a new **“maintenance” project** to “explore whether and how financial statements can better communicate information about climate-related risks.” The IASB is one of the two bodies within the **IFRS Foundation**, which is a not-for-profit organization established to develop globally accepted accounting and sustainability disclosure standards (“IFRS Standards”) and to promote and facilitate adoption of the standards, that develops standards focused on providing information to support investment decision-making. The IASB sets the IFRS Accounting Standards, which provide guidance on how companies prepare their financial statements, and the International Sustainability Standards Board (“ISSB”) sets the **IFRS Sustainability Disclosure Standards**, which provide guidance on how companies disclose information about “sustainability-related factors that may help or hinder a company in creating value.”

The project will seek to:

- research the causes of stakeholders’ concerns about inconsistent application and insufficient information;
- research whether the IFRS Foundation’s educational material on the **effects of climate-related matters on financial statements** and the **application of the ISSB's future standard on climate-related disclosures** help to address these concerns; and
- consider whether and what actions might be needed.

The maintenance project was launched in response to concerns raised by stakeholders about potentially inconsistent application of the IFRS Accounting Standards to climate-related risks and insufficient disclosures in financial statements. In response to this feedback, the IASB is exploring whether it should “do more” to build on its existing guidance on incorporating climate-related risks into its financial statements. The IASB will evaluate whether its standards are unclear or insufficient and the extent to which companies are able to comply with the current requirements in order to assess whether amendments to the current requirements should be adopted.

**Taking the Temperature: IFRS Accounting Standards already require companies to consider climate-related matters in their financial statements when the effect of those**

matters is “material information to investors.” But applying these standards **can be challenging** in the context of climate-related disclosures given the lack of consistent data, terminology, methodologies, and reporting on climate-related information. As a result, it is not surprising that investors have raised concerns about the sufficiency of the “qualitative and quantitative information” being disclosed concerning “climate-related risks on the carrying amounts of assets and liabilities.” The consistent application of the IFRS accounting standards (and other climate-related disclosure standards) will likely remain a priority for standard-setters. The **IFRS Foundation Annual Report for 2022** reaffirmed that “continuing to improve” and the “consistent application” of the IFRS Accounting Standards continue to be priorities of the IASB.

# Financial Conduct Authority Calls for Improvements in ESG Benchmarks

April 18, 2023



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Last month, the Financial Conduct Authority (FCA) **announced** that, after conducting a “preliminary review” of ESG benchmarks, “the overall quality of ESG-related disclosures made by benchmark administrators was poor” and improvements were necessary to ensure that the benchmarks were based on quality, consistent, and reliable data. On March 23, 2023, the FCA sent a **letter** to benchmark administrators explaining that it expected the administrators to develop, and be prepared to explain upon request, their strategies to address a number of issues raised in the letter, which address deficiencies concerning benchmark statements, benchmark methodologies, low carbon benchmarks regulations, and the robustness and reliability of ESG benchmarks. The key deficiencies identified include:

- Not enough detail on the ESG factors considered in benchmark methodologies;
- Not ensuring that the underlying methodologies for ESG data and ratings products used in benchmarks are accessible, clearly presented and explained to users;
- Not fully implementing ESG disclosure requirements; and
- Benchmark administrators failing to implement their ESG benchmarks’ methodologies correctly – for example, using outdated data and ratings or failing to apply ESG exclusion criteria.

For any administrators who fail to develop strategies to address these deficiencies, the FCA intends to “deploy [its] formal supervisory tools and, where appropriate, consider enforcement action[.]”

**Taking the Temperature: The FCA has made it clear that it is and will remain focused on ensuring accurate and reliable disclosures, particularly with respect to ESG-related data. As the FCA has recognized, benchmark administrators, as users of ESG data, bear responsibility for ensuring that the data and methodologies used to formulate their benchmarks are accurate and reliable. In September 2022, the FCA sent a **letter** to benchmark administrators detailing its “supervisory priorities” in, among other areas, disclosure and quality of data and data controls. In that letter, the FCA detailed the risks associated with each area and the expectations for administrators in addressing those risks. For example, with respect to disclosure, the FCA highlighted the growth of the ESG sector, and how “the subjective nature of ESG factors, and how ESG data and ratings are incorporated into benchmark methodologies, give rise to an increased risk of poor disclosures in ESG benchmark statements,” which could result in a misalignment between the quality of the benchmark and investor expectations. In a related**

development, the FCA recently **extended** the publication date for its sustainability disclosure requirements in order to review and consider the approximately 240 responses it received during the consultation period on its proposals. In its announcement, the FCA reiterated that “[t]o create a UK market that functions competitively and effectively for the benefit of consumers, those consumers must be able to trust sustainable investment products” and that their proposals aim to “build confidence and to help consumers navigate the market and make better informed decisions.” As **we have observed**, however, including with respect to ESG ratings, the potential for inconsistencies and inaccuracies in the source data, methodologies and weightings of the various aspects of ESG-related benchmarks continues to be an issue.



## US Patent Office Launches Green Energy Award

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On March 6, 2023, the U.S. Patent and Trademark Office (USPTO) announced the addition of a new category for its **Patents for Humanity** Awards Program: **Green Energy**. The Green Energy category accepts any U.S. patent or patent application directed to green energy technologies, such as wind, solar, green hydrogen, hydropower, geothermal, and biofuel technologies. The program is open to all types of patent holders, patent applicants and licensees.

The Patents for Humanity Awards Program was established in **2012** with the aim of highlighting inventors who are at the forefront of developing innovative methods to provide cost-effective, scalable, and sustainable solutions for the underprivileged. The Green Energy category was newly added in 2023. The award is considered the USPTO's "**top honor**."

**To qualify**, applicants must describe how their invention is providing an environmental benefit by making energy renewable, sustainable, cleaner, or greener. Applicants are encouraged to tell their invention story and may include a short video or published academic articles.

Applications will be evaluated based on **three criteria**: subject matter (*i.e.*, the technology's effectiveness in addressing climate change by providing an environmental benefit and producing renewable, sustainable, cleaner, or greener energy), commercialization (*i.e.*, applicant must be taking meaningful actions to make the technology available to the public), and impact (*i.e.*, the invention's downstream impacts and its overall benefit to the environment in providing renewable, sustainable, cleaner, or greener energy). Submissions for the Green Energy category of the Patents for Humanity Awards Program will be accepted until **June 1**,

**2023.** The USPTO intends to determine and publicly announce the winner and honorable mentions within **90 days** of the submission deadline.

A strong dedication to greener technology is not unique to the United States. The United Kingdom's Intellectual Property Office has had its **Green Channel** program up and running continuously since 2009. The Green Channel's mission is essentially identical to the USPTO's Green Technology and Climate Change Mitigation Pilot Programs, providing accelerated patent application review to applicants whose technology is environmentally beneficial. Green Channel applicants must submit a written request detailing how their invention is environmentally friendly in order to be considered for accelerated review. Qualifying inventions are not limited to overtly environmentally-friendly ones, like solar panels, but also include less obvious but still beneficial inventions, such as manufacturing processes that use less energy. The program is quite popular, with **ten written requests** for Green Channel review already submitted in 2023 and thousands having been submitted throughout the program's lifetime.

And now, inventors and manufacturers from around the globe can collaborate to bring green technology to life. In 2022, the World Intellectual Property Organization (WIPO)—the United Nations agency dedicated to promoting intellectual property initiatives across international borders—partnered with the USPTO on its **WIPO GREEN** platform, a database that connects individuals and corporations who are looking for green solutions. For example, a U.S.-based construction company can use WIPO GREEN to connect with a Swedish inventor who creates **technology** designed to remove dust and contaminants from a construction site. Companies without the means to invent these technologies themselves can locate inventors with whom they can coordinate the commercialization of an invention. This free database is available worldwide, and inventors need not have patented their technologies in order to participate, opening the door to broadly promote green technology.

At last September's Global Forum on Intellectual Property in Singapore, USPTO director Kathi Vidal **emphasized** the commitment that innovators are making and must continue to make towards creating a more sustainable society, referencing Patents for Humanity, the Climate Change Mitigation Pilot Program, and WIPO GREEN. But this begs the question of what's next for patents and climate change. We look forward to seeing how the current initiatives will bolster green innovations and what new programs may be in store.

**Taking the temperature: This new award category will serve two purposes. First, the award provides **business incentives** to support innovative work on the part of those seeking to address climate change. Specifically, winners will receive an **acceleration certificate** to expedite select USPTO proceedings (e.g., a patent application, an *ex parte* re-examination, or an *ex parte* appeal to the Patent Trial and Appeal Board). Moreover, **winners may leverage their certificate to obtain funding or sell it to third parties**. Second, the award will showcase success stories, which will hopefully **inspire others to harness innovation** and address the challenges of climate change.**