

22 August 2017

NZSA Comment on Market Migration Waivers

The New Zealand Shareholders Association has read the various documents relating to the proposed waivers to allow initial migration of NZAX and NXT issuers to the main NZX board and comments as follows.

1. Given the underwhelming performance of NXT, the moratorium on NZAX listings and the small size of the listed markets, we believe it makes sense for a consolidation of markets to occur. The proposal to fast track this while a comprehensive submission process is undertaken in regard to making appropriate changes to the listing Rules seems reasonable.

We note criticism that the waivers process should not be used and that a full review should be undertaken and approved by the regulator. We do not consider this argument has merit because the intent of the waivers is simply to maintain the status quo while the review proceeds. We note also that any rule changes will need input from and sign-off by the regulator.

NZSA notes that at least one commentary has strongly condemned the intention to develop a two-tier main board based on market capitalisation. This commentator claims that such a proposal was akin to NZSA's earlier opposition to the registering of an unregulated market. This is a misrepresentation of the NZSA position – which was opposed to effectively legalising insider trading and market manipulation, something that is not contemplated in this current proposal.

NZSA has no objection to a “two tier” market providing the final format makes it very clear for retail and non-expert investors to see what category each issuer falls into.

We do have some limited concerns that are detailed below.

2. We note and approve the various fee relief measures proposed. However, we consider that as it is NZX driving this consolidation of the markets, then should an issuer wish to leave rather than be migrated, they should be able to do so at any stage without a fee being payable. The practice note covering waiver of fees appears to allow this at the initial migration stage. However the proposals are silent on whether delisting fees would apply if a company migrates and then wishes to leave once it sees what new listing rules are to be instituted further down the track. It does seem inherently unfair to force a company to decide – before new rules are actually available – whether they migrate for free, but face delisting fees later, versus one which delists for free now. There needs to be consistency.
3. NZSA favours issuers having to meet the updated NZX Corporate Governance Code from December 2018. We note some commentary that this will be a significant burden, but disagree. A key aspect of the new Code is that many requirements are “comply or explain”. The code specifically comments that *“if a particular recommendation is not appropriate for an issuer given its size or stage of development, the issuer can explain why it has chosen not to adopt the recommendation...”* and further on *“the Code therefore seeks to balance a desire to promote strong corporate governance while remaining flexible so*

that boards and issuers can determine the appropriate corporate governance standards for their businesses". In our view the Code is flexible enough to work for issuers of all size.

4. In regard to independent director requirements, NZSA is comfortable that the initial waivers allow this. In our view it is a simple mechanism to maintain the status quo while a comprehensive rule set is worked out. We think the note is clear that this may change when new rules are implemented.
5. The same comments as #4 apply to the possibility that spread requirements may change.
6. NZSA considers that any NZAX or NXT companies that take advantage of the waivers and list on the main NZX board must be clearly and boldly noted as such. A "check the differences" explanation page link should also be boldly displayed for each issuer. While all NZX regulated issuers are subject to restrictions on insider trading or market manipulation, (unlike unregulated markets), some of the other differences are not so well understood. The use of the waiver process would not be appropriate unless the different categories within the "new" single NZX board are clearly and easily visible to "intelligent, but non expert" investors.
7. There also needs to be clear processes specifying how an issuer migrates from one tier to the other during the transition period if any issuer reaches the \$100m threshold before the implementation date. It appears from the documentation that this possibility is either not covered or that the expectation is that no migration will be required prior to the implementation date following the rules review. If that latter interpretation is the intention, this needs to be completely clear.
8. Should the intention be to allow migration to the main board during the transition (and certainly after the implementation date), NZSA thinks once in the "high cap" segment, it should not be possible to revert to the "lower cap" group. Unless this is prohibited, some issuers that are performing poorly could drop into a less regulated area which potentially makes the position even worse for their investors. An alternative would be to ban any migration prior to final rules being agreed regardless of circumstances. We are less enthusiastic about this possibility as rule reviews are notoriously lengthy and a ban may limit options for several companies in the \$60m - \$90m range that are listed on NZAX or NXT.
9. NZSA would be happy to discuss any aspect of this commentary, or any other aspect of the proposal with NZX should this be necessary.

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