

8 June 2018

NZSA Submission to NZX Listing Rule Review.

Relationship of Submitter

The New Zealand Shareholders Association is the only nationwide organisation representing the “buy side” of the market. Our submission is written from the perspective of a retail or smaller investor. This view is important. A set of market rules that is fit for purpose has a direct effect on public perception of, and investor confidence in the New Zealand Stock Exchange.

5. Feedback sought

1. Do you agree with the proposed updated market structure? **Yes.**
2. Do you agree with the proposed updated structure of the Listing Rules? **Yes.**
3. Please provide feedback on the proposed minimum listing and ongoing listing obligations described above. **See below.**
4. Please provide feedback on the process for the remainder of the review. **We agree with the proposed process.**
5. Please provide feedback on transition arrangements. **See below.**

Eligibility for listing

We agree with the proposed spread requirements for equity issuers of 300 financial product holders and 20% free-float.

We agree that the minimum market capitalisation requirement should be increased to \$15 million to ensure that companies are of a reasonable scale and have sufficient investor support to list.

Governance

We agree with the intention to retain a requirement for at least three directors and minimum rotation and independence requirements.

We would prefer to retain a requirement in the Listing Rules for at least one director who is ordinarily resident in New Zealand, rather than allow this residency requirement to be met by an Australian resident director. We believe this is not an unreasonable commitment for a company and in fact desirable if the Board are to have the appropriate oversight of local activities.

We agree with the proposal to retain a minimum mandatory requirement for two independent directors.

We agree that companies should have a majority of independent directors.

We believe there should be a mandatory requirement for equity issuers to have an audit committee.

Disclosure and reporting

We agree that issuers no longer be required to publish a separate half-year report and instead be required to publish preliminary financial statements for their half year, as well as publish preliminary financial statements and an annual report for their full financial year.

We agree with the proposal to enhance issuers' continuous disclosure obligations, to extend to constructive knowledge as well as actual knowledge and enable NZX to consider the information that a reasonable director or senior manager ought to have known, when determining whether an issuer has complied with its continuous disclosure obligations.

We agree with the statement that "Disclosure to the market does not need to be limited to the information that is required by the Listing Rules, and issuers should be considering their investor relation function as part of a broader disclosure approach. Communication with shareholders is vital for providing updates on the issuer's business and financials and should not be considered solely a compliance obligation."

Voting rights and dilution

We agree that the placement threshold should be 15%.

We believe all voting should be by poll and that this should be mandatory.

We agree to the proposals regarding shareholder approval for major transactions.

We agree to the proposals regarding related party transactions.

NZX Foreign Exempt listings

We agree with the proposal to remove the Dual Listed Issuer regime and retain a single standard for all issuers already listed on recognised exchanges overseas, regardless of whether they are incorporated in New Zealand or elsewhere, as Foreign Exempt issuers (renamed from the current term Overseas Listed Issuer).

DEBT

We agree with the proposal to retain a small minimum market capitalisation requirement of \$15 million.

We agree with the proposal to remove the requirement for NZX Regulation review and approval of QFP debt offer documents.

FUNDS

We agree with the proposal to have specific rules for funds.

We agree with the proposal to apply the same spread, free-float and minimum market capitalisation requirements as will apply to equity issuers.

We agree with the proposal for a 15% limit for new issues of units without unitholder approval for closed-ended funds and that open-ended funds will not be subject to a limit under the Listing Rules.

Transition arrangements

We agree with the proposed transitional arrangements.

7. Appendix 2 – explanatory notes and specific feedback sought

GLOSSARY

To the extent possible definitions have been aligned with those in the Financial Markets Conduct Act 2013 (the FMC Act). We have proposed to update the definition of Average Market Capitalisation to mean in relation to an issuer, the Average Market Price multiplied by the number of Equity Securities carrying votes. Under this definition Average Market Price must be calculated over both a 20-business day period and over a 5-business day period and the lesser value applied. This calculation has been proposed to reduce potential for manipulation or aberration results.

1. Is this an appropriate way to measure Average Market Capitalisation and Average Market Price of an issuer?

Yes.

2. Do you agree with the proposed change to the definition of Associated Person to align with the FMC Act.?

Yes.

We propose to update the definition of Minimum Holding to holdings with a minimum value of \$1,000.

3. Do you agree with the proposed approach to Minimum Holdings?

Yes.

We propose to introduce a new definition of Senior Manager, aligned with the meaning given in section 6 of the FMC Act, namely a person who is not a director but occupies a position that allows that person to exercise significant influence over the management or administration (for example, a chief executive or a chief financial officer). We propose to use this definition within the rules to place the current term Officer. We note a broader group than Senior Managers tends to be used for diversity reporting currently so NZX is amending that requirement to ensure comparable diversity reporting in future.

4. Do you agree with the proposed use of the term Senior Manager?

Yes.

Security – This now has the meaning given in section 6 of the FMC Act. The former NZX definition of security has been deleted in favour of aligning with the terminology relating to “financial products” in the FMC Act.

5. Do you agree with the proposed use of Security?

Yes.

Listing Rule Review 14 Disqualifying Relationship – The definition of “Disqualifying Relationship” has been amended to remove the current deeming provisions and retain an overarching test. The updated definition of a Disqualifying Relationship now covers any direct or indirect interest, position, association or relationship that might influence or could reasonably be perceived to influence in a material way the Directors capacity to bring an independent view to decision making. There is also be a new recommendation in the NZX Code (2.8) director independence to support this change. Additional commentary has been included within recommendation 2.4 which will be used to assess whether there is a disqualifying relationship.

6. Please provide feedback on the definition of a Disqualifying Relationship and the commentary under recommendation 2.4 of the NZX Code which will be used to assess independence.

The definition should be able to cover all real and actual situations and not provide any loop holes that can be used to evade the intent of the Rule. In some cases, too much prescription can lead to an unforeseen circumstance allowing evasion.

ELIGIBILITY AND LISTING

We have proposed spread and free float requirements for equity and funds issuers of 300 holders and 20%, respectively and a minimum market capitalisation requirement of \$15m.

7. Do you agree with the proposed updated eligibility requirements for equity (rule 1.1) and funds (rule 1.4)?

Yes.

REVERSE/BACKDOOR LISTING PROVISIONS

A new definition of Reverse or Backdoor Listing has been included in the rules and is broadly like ASX’s approach. In the event of a backdoor listing, NZX may: Require the Issuer to re-apply for listing/quotation; Suspend quotation of its securities, and/or; Require a new profile to be prepared.

8. Do you agree with the proposed updated approach to Backdoor Listings (rule 1.11.1)?

Yes.

GOVERNANCE

The director rotation requirements have been amended to align with ASX so a director qualifying for rotation is any Director who has held office (without re-election) past the third annual meeting following the Director's appointment or 3 years, whichever is longer. An Issuer may continue to rely on the Executive Director exception, but we are proposing to remove the separate exception relating to a Special Office.

9. We propose deleting the special office exception. Do you agree with the proposed amendments to the director rotation requirements under rule 2.7?

Yes.

10. Currently there is no cooling off period for audit partners under NZX's rules. Should there be a cooling off period of 5 years so that the transition period for NZX listed issuers aligns with Australia/ ASX under proposed update auditing standards?

Yes.

11. What is an appropriate time frame to allow issuers to update Governing Documents in response to amended rules?

6 months.

DISCLOSURE

Immediate Disclosure of Material Information – An issuer has an obligation to release information to NZX promptly and without delay, including where it has constructive knowledge (in line with the ASX definition Listing Rule Review 15 of 'Aware'). This means issuers will be subject to continuous disclosure obligations where a Director or Senior Manager has, or ought reasonably to have, come into possession of material information in the course of the performance of their duties.

12. Do you agree with the proposal to introduce a concept of constructive knowledge in respect of the continuous disclosure (rule 3.1.1) requirement?

Yes.

13. Do you agree with the proposal to remove the requirement for half year reports (rule 3.5 and 3.6) and the amendment of "immediately" to "promptly and without delay"?

Yes.

14. Do you have any feedback on the proposed updates to timing requirements within section 3 of the rules?

No.

CHANGES IN CAPITAL

Is it proposed that Equity Securities issued under a Share Purchase Plan (SPP) Equity Securities does not exceed 5% of fully paid and Vote carrying Equity Securities already on issue - see updated definition within the glossary. We have also proposed to reduce the placement threshold to 15% under rule 4.1.2.

15. Do you agree with the new SPP threshold and placement thresholds?

Yes.

MAJOR TRANSACTIONS

In response to feedback it is proposed that the Major Transaction threshold will remain at 50% of the Average Market Capitalisation (see amended definition) of an Issuer. However, in response to investor feedback, we have introduced an amended rule 5.1.1(a), which will align with the equivalent ASX requirement in this area.

16. Do you agree with the proposed treatment of Major Transactions?

Yes.

NZX FOREIGN EXEMPT ISSUERS

The current Overseas Listed Issuer regime will be renamed the NZX Foreign Exempt regime - see rule 1.6.1. If a company is a New Zealand incorporated company, it will no longer be prohibited from applying to be a Foreign Exempt issuer if it has a primary listing on a Recognised Stock Exchange and wishes to apply for a secondary listing on the NZX Main Board.

17. Do you agree with the updated scope for NZX Foreign Exempt Issuers?

Yes.

DEBT

Current spread and free float requirements are proposed to be removed. We also have proposed to remove the requirement for NZX Regulation approval of QFP debt offer documents.

18. Do you agree with the changes to settings for Debt?

Yes.

We have proposed to introduce a new regime for the listing of Wholesale Debt Securities (see new defined term and rule 1.8). This will allow for the listing (but not quotation of) wholesale debt, similar to the approach in other jurisdictions.

19. Do you agree with the proposal to introduce a listing regime for Wholesale Debt Securities?

Yes.

FUNDS

20. Do you agree with the proposed \$15m minimum market capitalisation for new listings of funds for both open and closed ended funds?

Yes.

21. Do you agree with the proposal that Major transaction and Related Party Transaction provisions in the rules do not apply to funds given the operation of legislation?

Yes.

NZX REVIEW OF DOCUMENTS

We propose to no longer review and approve constitutions for new listings although solicitor opinions will continue to be required. We also propose not to review QFP offer documents under schedule 1 of the FMC Act - see rule 7.1.2. (b)

22. Do you agree with these proposed changes?

Yes.

CHANGE TO NZX CORPORATE GOVERNANCE CODE (NZX CODE)

There is a proposed new recommendation 2.8 that a majority of the board should be independent directors.

Factors which may influence independence have now been added to the NZX Code within the commentary to recommendation 2.4. These criteria are based on guidance used within the ASX Corporate Governance Council's principles and guidelines and it is proposed that these criteria are used to consider the test for Disqualifying Relationships within the Listing Rules

Factors that may impact director independence are:

- recently being employed in an executive role by the issuer or any of its subsidiaries;
- recently holding a senior role in a provider of material professional services to the issuer or any of its subsidiaries
- a recent or current material business relationship (e.g. as a supplier or customer) with the issuer or any of its subsidiaries;
- a substantial product holder of the issuer, or an officer of, or person otherwise associated with, a substantial product holder of the issuer;
- a recent or current contractual relationship with the issuer or any of its subsidiaries, other than as a director;
- having close family ties with anyone in the categories listed above;
- having been a director of the entity for a length of time that may compromise independence.

In each case, the materiality of the interest, position, association or relationship needs to be assessed to determine whether it might interfere, or might reasonably be seen to interfere, with the director's capacity

to bring an independent judgment to bear on issues before the board and to act in the best interests of the issuer and its security holders generally.

23. Do you have any feedback on the proposed criteria for considering independence outlined in recommendation 2.4?

We agree with the list of factors as they appear to cover all relevant circumstances.

Recommendation 8.5 - The number of days that a board should post the notice of Annual Meeting on that company's website is amended from 28 days to 20 business days to align with terminology used in legislation. Listing Rule Review 17

24. Should this recommendation be broadened beyond Annual Meetings to cover Special Meetings as well?

Yes.
