



# Guidance Note

## Backdoor and Reverse Listing Transactions

1 January 2019



The purpose of this guidance note is to provide guidance to NZX Issuers which are subject to the NZX Listing Rules. This guidance note replaces the previous Guidance Note ‘Backdoor and Reverse Listing Transactions’ issued in August 2008.

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This guidance note applies to the obligations contained in the NZX Listing Rules, relating to backdoor and reverse listings. Issuers should note that this guidance note is not intended to be a definitive statement of the application of the rules in every situation, and is only a guide to NZXR’s policy and practice. This guidance note does not limit NZX’s discretion under the rules. This guidance note reflects the listing rules and law as at 1 January 2019 which is subject to change. NZX takes no responsibility for any error contained in this guidance note. NZX may replace guidance notes at any time and Issuers should ensure that they have the most recent version of this guidance note by checking NZX’s website at [www.nzx.com](http://www.nzx.com).



# 1. Introduction

A backdoor or reverse listing is defined as a transaction, or series of related transactions, entered into by an Issuer which would result in a significant change: (a) in the ownership of a majority of the Equity Securities carrying Votes, and (b) either directly or indirectly, in the nature or scale of its activities, including through the acquisition of a new business.

In the simplest version of such a transaction, the Issuer will be a “shell” company, with no existing business activity (either because it has wound up its previous operations or because it was listed as a shell for the purpose of completing a reverse listing). The Issuer then purchases a private company or its business (**Target**), and in doing so the Target effectively lists on the NZX market. The shareholders of the Issuer are now shareholders of the combined entity (the **Post-Transaction Issuer**). The shareholders of the Target will usually be issued shares in, and become shareholders of, the post-transaction Issuer.

NZX does not permit companies to list on its markets as a shell. In most instances, a backdoor listing is effected via companies that listed on an NZX market with an existing business proposition that have subsequently become a shell.

To effect a backdoor or reverse listing, there are several key requirements:

- The Issuer and the Target will need to prepare a Profile on the Post Transaction Issuer, for review by NZXR;
- The Issuer will need to prepare a Notice of Meeting and seek an Independent Appraiser Report, for review by NZXR;
- The Target may need to seek NZX approval of the listing of the Post Transaction Issuer company via the backdoor or reverse listing, should NZX exercise this discretion under Rule 1.11.1. If this is provided, it will be conditional on shareholder approval; and
- The Issuer will likely need to seek shareholder approval of the transaction under Rule 5.1.1.

This guidance note provides more information about these requirements and the process to follow.



## 2. Overview of process

The following table provides an example of the process for a reverse or back door listing. The actual process will depend on the complexity of the proposed transaction, the quality of the documents and the degree of engagement from the Issuer and Target. The Takeovers Panel and FMA may also both have an interest in the transaction.

Description
Issuer/Target engage with NZXR and provide timetable for transaction
Issuer releases information to the market as required under Rule 3.1.1
NZXR confirms whether suspension of trading will be required
Issuer/Target provide information to NZXR to inform its approval of the listing
Issuer provides Profile, Notice of Meeting, proxy forms, and Independent Appraiser Report to NZXR for review
NZX provides confirmation of acceptance of listing by Post Transaction Issuer (subject to Issuer shareholder approval)
NZX issues non-objection notice in relation to Notice of Meeting
Issuer/Target confirms to NZX whether a name change, ticker change or other corporate action will be required
Notice of Meeting printed
Notice of Meeting released via MAP and sent to shareholders
Trading halted (if not already suspended)
Shareholder Meeting held
Outcome of voting released to market
Name change and corporate actions effected
Reverse or back door listing completed



### 3. Disclosure and Trading

If an issuer proposes to undertake a back door or reverse listing, NZX will seek to ensure that the market remains fair, orderly and transparent by requiring quality disclosure and monitoring of trading.

#### Disclosure

The Issuer involved in a potential reverse or back door listing will have obligations to disclose particular information under the Listing Rules. This includes an obligation to release Material Information via the Market Announcements Platform promptly and without delay.

In the context of a back door or reverse listing, there will be a period of negotiation between the Issuer and the Target where information will become known to the Issuer that may amount to Material Information. The Issuer should carefully monitor whether this is the case, and if so, the use of any of the exceptions set out in Rule 3.1.2.

When the negotiation between the parties is no longer incomplete, disclosure should be made to the market in accordance with Rule 3.1.1. Further guidance about the disclosure of material transactions is set out in section 7.1 of NZX's Guidance Note [Continuous Disclosure](#).

In addition, the Rules require the Issuer to provide a Notice of Meeting, Profile and Independent Appraiser Report to shareholders as part of the transaction. The quality of the disclosure in these documents is a particular focus for NZX.

#### Trading

NZXR will suspend the quotation of an issuer if details in relation to a proposed Backdoor or Reverse Listing had been announced by the Issuer, or leaked, but there has not yet been sufficient information in relation to the proposed transaction disclosed to the market to allow investors to trade on a properly informed basis.

Once details of a potential transaction are announced investors will seek to trade on the basis that the transaction may proceed. This is likely to include making certain assumptions on the outcome of the transaction, including the size and operations of the Post Transaction Issuer. In some instances, there will be insufficient information in the market on the proposed outcome of the transaction so as to allow trading to proceed on an informed basis, in particular where the information available in respect of the Target is incomplete.

NZX would generally expect the level of information contemplated by a Notice of Meeting or Profile to be disclosed before trading can continue on an informed basis. NZX encourages issuers who are contemplating backdoor or reverse listings to engage with NZX Regulation in relation to these matters.



## 4. Obligations of Issuer and Target

A back door or reverse listing will trigger obligations under the Rules. The transaction is likely to be a major transaction under Rule 5.1.1. This will be the case where it is a transaction which will significantly change the nature of the Issuer's business and/or involve the acquisition or disposal of assets with a gross value above 50% the Average Market Capitalisation of the issuer. This triggers an obligation to seek shareholder approval.

Under Rule 1.11.1 NZX will generally exercise its discretion to require the issuer to seek approval as a new listing. Accordingly, NZX will require certain documents and confirmations in order to inform its decision whether or not to approve the listing.

### Seek shareholder approval

In order to get shareholder approval of the transaction, the Issuer will need to:

- Prepare a Notice of Meeting, Profile and proxy form for NZXR review;
- Provide the final documents to shareholders at least 10 business days in advance of the meeting date (and preferably at least 20 business days);
- Hold a meeting on a date that permits any remaining operational changes to take effect in advance of the proposed back door or reverse listing date (at least 5 business days in advance).

Further guidance on the content of a Notice of Meeting and the accompanying Independent Appraiser Report is provided in section 5 of this guidance note.

### Approval of listing

NZX must approve the listing and quotation in respect of the Post Transaction Issuer. This will usually reflect information prepared jointly by the Issuer and Target (and their respective advisers).

NZX has considered the requirements for an application for listing and quotation set out at Rules 1.12.2 and 1.13.2, in the context of the specific nature of a back door or reverse listing. A full application is not required, but certain information will be needed in order to inform NZX's decision as to whether or not to approve the listing.

Requirement	Comments
A listing agreement	The listing agreement previously entered into by the Issuer will continue to have effect following the transaction.
A copy of the Governing Document	A copy will be required only if the Governing Document is amended as a result of the transaction.
Confirmation that any fees will be paid	The confirmation provided by the Issuer at the time of its listing will continue to have effect following the transaction.
Copy of certificate of incorporation	Not required.
Confirmations relating to bond	A confirmation will be required only if the Issuer did not have a bond with NZX at the time of the transaction.

Requirement	Comments
Number and details of class of financial product on issue for which quotation is sought; number and details of any issue or allotment intended prior to listing	NZX already has details of the Issuer's existing quoted financial products. The application should clearly describe any changes to this that will arise as a result of the transaction (for example, the issue of additional financial products to shareholders in the Target company).
Contact details of the applicant	Should be confirmed in respect of the Post Transaction Issuer
Copies of the applicant's annual reports for the past five years	Not required.
A draft Offer Document or Profile	A Profile is required. Further detail is provided in this guidance note.
Details of arrangements to ensure an opportunity to trade	Not required.
Confirmation of any name or ticker changes sought	This is additional. Back door or reverse listings commonly result in changes to the Issuer's name and ticker. These should be provided to NZX as soon as possible and in any case no later than 5 days prior to listing.



## 5. Documents for NZX Review

The purpose of the disclosure requirements relating to back door and reverse listings is to ensure that sufficient information is provided to the market about the Target Company and the Post Transaction Issuer. NZX believes that the standard of information should be equivalent to that which would otherwise be available if the Target Company were offering securities in the Post Transaction Issuer by way of an IPO.

NZX will review these documents and, if satisfied, will issue a notice of non-objection.<sup>1</sup>

### Notice of Meeting

Rule 7.8.2 requires a Notice of Meeting to contain or be accompanied by sufficient explanation, reports, valuations, and other information, as to enable a reasonable person entitled to vote to understand the effect of each resolution proposed.

NZX considers that in order to meet this standard, a Notice of Meeting in relation to a backdoor or reverse transaction must include an independent appraisal report prepared in accordance with Rule 7.10. That report, and the proxy form, should be sent to NZX at the same time as the Notice of Meeting is provided for review.

NZX has prepared a [Practice Note](#) that sets out checklists to assist Issuers in the preparation of Notices of Meeting.

### Independent report

As noted above, a Notice of Meeting to approve a backdoor or reverse listing will need to be accompanied by an independent report in respect of the Target in accordance with Rule 7.8.2.

That report should comply with the requirements for an Appraisal Report under Listing Rule 7.10. It should be addressed to the shareholders of the NZX Issuer and include:

- A statement of whether there are any possible alternative courses for the NZX Issuer other than the proposed transaction; and
- A statement whether or not, in the opinion of the authors of the report, the terms of the transaction are fair and reasonable to shareholders and in the best interests of the NZX Issuer.

### Profile

Under Listing Rule 7.3.1 an issuer or applicant for listing must prepare and issue an Offer Document, where required by law, in respect of Financial Products Quoted or to be Quoted on the Main Board or the Debt Market or a Profile (if no new Financial Products are being issued).

The content requirements for a profile are outlined at Listing Rule 7.4. In particular, Issuers should note that a Profile should include all the information that would be required in a Product Disclosure Statement (**PDS**) under the Financial Markets Conduct Act 2013 (**FMCA**), subject to NZX's discretion.

In particular, clause 38 of Schedule 3 of the Financial Markets Conduct Regulations 2014 requires a PDS to include prospective financial information, unless the issuer considers that

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<sup>1</sup> This review does not amount to an approval of the documents or a confirmation that the documents comply with relevant legal requirements. Issuers and Targets should ensure they seek legal advice and undertake quality due diligence on any documents they provide to investors.



the prospective financial information would be likely to mislead or deceive with regard to any particular that is material to the offer of the equity securities. Issuers should pay particular regard to these requirements and provide specific comments to NZXR as to the application or non- application of this requirement when the Profile is submitted for review.

The content of Schedule 3 of the Financial Markets Conduct Regulations 2014 is drafted in contemplation of an offer of securities by way of a regulated offer, rather than the type of transaction that is effected via a reverse listing or back door listing. Accordingly, NZX has provided some interpretive rules for the purpose of general guidance only. The exact content of the documentation for each proposed transaction will need to be discussed with NZX during the approval process. NZX will generally apply the following approach to the content of a Profile:

- The “Issuer” will be the Post Transaction Issuer and will be treated as offering securities to the shareholders who receive the notice of meeting to approve the Transaction. In relation to historical financial statements and past financial returns the “Issuer” should be treated as being the Target Company or business of the Target Company to be acquired.
- The proposed Directors of the Post Transaction Issuer will be treated as “Directors of the Issuer”.
- The securities being offered will be the securities in the Post Transaction Issuer, as if it was a new company distinct from the Issuer into whose shell it will be listing. References to the “issue of financial products” or “offer of financial products” should be read as the entry into the proposed transaction.
- Information required in relation to the activities of the Issuer, holders of securities in the Issuer, issues of securities or options by the Issuer, subsidiaries of the Issuer, the directors of the Issuer and their rights and powers, should be read as information in relation to the proposed position immediately following completion of the Transaction.
- The Post Transaction Issuer should be treated as having acquired the Target Company immediately prior to the date of the Notice of Meeting.
- A requirement to refer to historical financial statements of the Issuer should be read as a requirement to disclose or refer to the financial statements of the Target Company.
- A requirement to refer to or provide information in respect of plans, prospects or future trading prospects of an Issuer should be read as a requirement to refer to or provide information in respect of plans, prospects or future trading prospects of the Post Transaction Issuer.
- All material matters or other terms relating to the proposed Transaction, the process of creation of the Post Transaction Issuer and the proposed business of the Post Transaction Issuer should be disclosed.
- References to subscription, payment or how an investor can get their money out should be disregarded, except to the extent that the Profile explains what securities will be traded on the NZX Board immediately following the Transaction.

References to the offer register should be disregarded.

### Financial information

As a general rule, the Profile will need to include the following financial information:



- In respect of the Target: audited consolidated financial statements for the most recently completed financial period and the two prior comparable periods;
- In respect of the Post Transaction Issuer: pro forma financial statements (to the extent applicable) for the most recently completed financial period and the two prior comparable periods for the Target group (rather than the Issuer). This provides a basis for any forecasts. The Issuer and Target must ensure that the Profile properly explains these financial statements. For example, if one subsidiary earns 95% of the revenue of the group this should be made clear; and
- In respect of the Post Transaction Issuer: prospective financial information for the next two years (except where this would be misleading, under the Financial Markets Conduct Act and Regulations).

The nature of back door and reverse transactions is such that there is significant variation in the approach and effect of the transactions. Accordingly, there is likely to be some degree of variation in the financial information that would best assist investors, and FMA and NZXR will provide guidance to each Issuer on a case by case basis on the best approach to adopt.

#### Director's certification

NZX will require a certification from any proposed directors of the Post Transaction Issuer that are not directors of the Issuer that:

- All Material Information<sup>2</sup> relating to the Post Transaction Issuer, the proposed transaction outlined in the Profile and the Notice of Meeting, the process of creation of the Post Transaction Issuer and the proposed business of the Post Transaction Issuer is set out in the Profile and the Notice of Meeting;
- All the information contained in the Profile and Notice of Meeting is complete and accurate in all material respects, and neither the Profile nor the Notice of Meeting contain any material that is false, or untrue, or is likely to deceive or mislead, with regard to any particular that is material to the proposed transaction;
- In the period between the date of the latest statement of financial position contained in this Profile and the date of this certification, there have not, in their opinion, arisen any circumstances that materially affect –
  - The trading or profitability of the Issuer; or ii.
  - The value of its assets; or iii.
  - The ability of the Issuer to pay its liabilities due within the next 12 months.



## 6. Contact us

If you have any questions on the matters in this guidance note, please contact NZXR at [regulation@nzx.com](mailto:regulation@nzx.com) or (04) 495 2825. However, it is the issuer's obligation to comply with the continuous disclosure rules and any assistance from NZXR should not be taken to constitute legal advice on the issuer's obligations



## Appendix 1: Relevant Listing Rules

Listing Rule 5.1.1 provides:

*“An Issuer must not enter into any transaction, or a related series of transactions, to acquire, sell, lease (whether as lessor or lessee), exchange, or otherwise (except by way of charge) dispose of assets where the transaction:*

- (a) would significantly change, either directly or indirectly, the nature of the Issuer’s business, or*
- (b) involves a Gross Value above 50% of the Average Market Capitalisation of the Issuer,*

*unless:*

- (c) approved by an Ordinary Resolution, or a special resolution if approval by way of special resolution is required under section 129 of the Companies Act 1993, or*
- (d) the agreement is conditional upon such approval required by paragraph (c) above.”*

Listing Rule 7.1.1 provides:

*“The documents listed in Rule 7.1.2 must not be circulated to holders of Financial Products, executed or otherwise given effect to in any way, until NZX provides written confirmation that it does not object to the document.”*

Listing Rule 7.4.1 provides:

**Contents of Profile:** Every Profile must:

- (a) contain the information required in a PDS as if the offer was regulated under the FMC Act, unless NZX determines otherwise,*
- (b) contain all information required by the Rules, and*
- (c) contain, or incorporate by reference, all other information NZX, in its sole discretion, might require.*

Listing Rule 7.8.2 provides:

*7.8.2 Each notice of meeting must contain or be accompanied by sufficient explanation, reports, valuations, and other information, as to enable a reasonable person entitled to Vote to understand the effect of each resolution proposed, including:*

- (a) the consequences if the resolution in question is not passed (unless such resolution concerns a matter listed in Rule 7.1.2(a)(i) to (vii)), and*
- (b) a statement outlining who is subject to voting restrictions in relation to such resolution.*

Listing Rule 9.9.3 provides:

*9.9.3 NZX may at its absolute discretion at any time, without giving any reasons and without prior notice to the Issuer:*

- (a) cancel the Listing of any Issuer,*
- (b) cancel, halt or suspend for such period as NZX thinks fit, the Quotation of any or all of an Issuer's Quoted Financial Products, or*
- (c) refer the conduct of any Issuer, or Director or Associated Person of any Issuer, to the Tribunal or any statutory or governmental authority.*

