



NZX Regulation Decision

NZX Regulation (NZXR)

Rulings on NZX Listing Rule 2.13.3

14 May 2019



Background

1. This Ruling applies to the NZX Listing Rules (the **Rules**) dated 1 January 2019.
2. Capitalised terms that are not defined in this decision have the meanings given to them in the Rules.
3. Rule 2.13.3 provides that the responsibilities of an Issuer's Audit Committee include as a minimum:
 - a. ensuring processes are in place and monitoring those processes so that the Board is properly and regularly informed and updated on corporate financial matters;
 - b. recommending the appointment and removal of the independent auditor;
 - c. meeting regularly to monitor and review the independent and internal auditing practices;
 - d. having direct communication with and unrestricted access to the independent and any internal auditors or accountants;
 - e. reviewing the financial reports and advising all Directors whether they comply with the appropriate laws and regulations; and
 - f. ensuring that the Key Audit Partner is changed at least every five years.

Ruling on Rules 2.13.3(b) and 2.13.3(f) in respect of Public Audit Issuers

Decision

4. Subject to the condition in paragraph 5 below, NZX Regulation (**NZXR**) rules that the Audit Committee of an Issuer that is also an entity specified in either Schedule 1 or Schedule 2 of the Public Audit Act 2001 (**Public Audit Issuer**) is deemed to comply with the responsibilities of Rules 2.13.3(b) and 2.13.3(f).
5. The ruling set out in paragraph 4 above is provided on the condition that the Public Audit Issuer clearly and prominently discloses in its Annual Report and any Offer Document that under the Public Audit Act 2001, either:
 - a. the Controller and Auditor-General (**Auditor-General**) is the independent auditor of the Public Audit Issuer; or
 - b. the Auditor-General appoints the independent auditor of the Public Audit Issuer and ensures that the Key Audit Partner is changed at least every five years.

Reasons

6. In coming to the decision to provide the ruling set out in paragraph 4 above, NZXR has considered that:

- a. the Auditor-General acts as the statutory auditor of Public Audit Issuers, or otherwise has statutory responsibility for the appointment of the independent auditor and Key Audit Partner responsibilities in respect of Public Audit Issuers;
- b. Rules 2.13.3(b) and 2.13.3(f) do not contemplate application of the Public Audit Act 2001 on listed Issuers;
- c. shareholders of Public Audit Issuers are not disadvantaged by the Auditor-General undertaking these functions instead of the Audit Committee; and
- d. any attempt to comply with Rules 2.13.3(b) and 2.13.3(f) by the Audit Committee of Public Audit Issuers would be ineffective because of the statutory oversight of the Auditor-General.

Ruling on Rule 2.13.3(f)

Decision

7. NZXR rules that the definition of Key Audit Partner in Rule 2.13.3(f) shall be interpreted and applied as “*the engagement partner, the individual responsible for the engagement quality control review, and other audit partners, if any, on the engagement team who make key decisions or judgments on significant matters with respect to the audit of the financial statements on which the firm will express an opinion*”.
8. NZXR intends to deliver a longer term solution through an amendment to Rule 2.13.3(f) in due course.

Reasons

9. In coming to the decision to provide the ruling set out in paragraph 7 above, NZXR has considered that:
 - a. the purpose of Rule 2.13.3(f) is to ensure that the Issuer’s Audit Committee maintains oversight of the external auditor rotation requirements in the Rules;
 - b. the definition of Key Audit Partner in the Rules has the meaning given in the External Reporting Board Professional and Ethical Standard 1 (Revised): Code of Ethics for Assurance Practitioners (**PES 1**);
 - c. the scope of the PES 1 definition is wide, and includes “*other audit partners, which may include, for example, audit partners responsible for significant subsidiaries or divisions*”;
 - d. applying the current definition of Key Audit Partner to Rule 2.13.3(f) would require an Issuer’s Audit Committee to ensure that external auditors of certain of its subsidiaries are rotated every five years. This would be particularly problematic with the coordination and undertaking of group audits of Issuers operating in a number of jurisdictions, where component auditors are appointed by the Issuer’s auditing firm, rather than by the Issuer’s Audit Committee; and
 - e. this Ruling provides clarity on NZXR’s interpretation and application of Rule 2.13.3(f), and to address the unintended consequences of using the PES 1 definition while not undermining the underlying policy rationale of the Rule.