



Guidance Note

Appraisal Reports

[XX]

Consultation Version



The purpose of this Guidance Note is to provide guidance to Issuers on their obligations when engaging an appraiser to prepare an Appraisal Report for the purposes of the NZX Listing Rules (**Rules**).

Under Rule 9.15.1, NZX may act by and through NZX Regulation Limited (**NZ RegCo**) in performing any function or discharging any power set out in the rules. References in this Guidance Note to NZX therefore also include NZ RegCo in relation to any regulatory activity or discretion.

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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 NZX's policy and practice. This Guidance Note does not limit NZX's discretion under the Rules. This Guidance Note reflects the Rules and law as at [XX], 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

1. When is an Appraisal Report required?

In certain circumstances the Rules require an Issuer to prepare an Appraisal Report to accompany documentation relating to a proposed transaction, including where a notice of meeting contains a resolution in relation to:

- (a) an issue, acquisition, or redemption by a non-Code Company of Financial Products that is significantly likely to result in any person, or group of Associated Persons, immediately or in the future, either:
 - (i) increasing their percentage control over the total Votes attaching to financial products above one of the key control thresholds,¹ or
 - (ii) materially increasing their ability to exercise effective control of that Issuer;² or
- (b) an issue where more than 50% of the Financial Products to be issued are intended or likely to be acquired by Directors or Associated Persons of Directors,³ or
- (c) an acquisition or redemption where more than 50% of the Financial Products to be acquired or redeemed or the financial assistance to be given is intended or likely to go to Directors or Associated Persons of Directors;⁴ or
- (d) a Material Transaction if a Related Party is, or is likely to become:
 - (i) a direct party to the Material Transaction, or
 - (ii) a beneficiary of a guarantee or other transaction which is a Material Transaction;⁵ or
- (e) a back door or reverse listing transaction.⁶

Appendix 3 (Takeover Provisions) to the Rules also contains requirements for the Directors of an Issuer of Quoted Equity Securities that is not a Code Company to commission an Appraisal Report where the Directors receive notice of a Restricted Transfer being made to an insider.

An Appraisal Report ensures that Financial Product holders have the benefit of an independent assessment of the transaction to make a fully informed decision.

The Rules relevant to Appraisal Reports are set out in Appendix 1 to this Guidance Note.

2. Who can act as an appraiser?

2.1 Appraiser criteria

An appraiser can be either an individual or a firm that meets the criteria in the Rules to prepare an Appraisal Report.

The Rules require an Appraisal Report to be prepared by a person who, in relation to the transaction for which the Appraisal Report is required, is independent, appropriately qualified,

¹ With control thresholds being 20%, 25%, 50%, 75% or 90%.

² Rule 7.8.5(a).

³ Rule 7.8.5(b)

⁴ Rule 7.8.5(c)

⁵ Rule 7.8.8(b).

⁶ At page 8 of the [NZX Backdoor and Reverse Listings Guidance Note](#) NZX considers that an Appraisal Report must be prepared in relation to a backdoor or reverse listing transaction to satisfy Rule 7.8.2.

and has sufficient expertise and resources (referred to as the **appraiser criteria**).

It is the responsibility of the Issuer to ensure that the appraiser it engages to prepare an Appraisal Report meets the appraiser criteria.

The Directors that are not themselves, and are not associated with, Relevant Associated Persons must certify to NZX the basis on which they have determined an appraiser meets the appraiser criteria.⁷ This certification should include the reasons for the Directors determining why the appraiser meets the appraiser criteria. The certification must be provided to NZX alongside other relevant documentation relating to the notice of meeting, and then distributed to Financial Product holders alongside the relevant notice of meeting and Appraisal Report.

2.2 Independence

An Issuer is required to ensure that an Appraisal Report is prepared by a person who, in relation to the transaction for which the Appraisal Report is required, is independent. NZX expects that the appraiser should be independent from both the Issuer and the transaction.

The requirement that an appraiser is independent provides confidence that the appraiser is not conflicted and is able to provide an unbiased report in relation to the fairness of the transaction to which the Appraisal Report relates.

Independence from the Board and management of an Issuer provides confidence for Financial Product holders that the appraiser is acting free of any actual or reasonably perceived conflicts of interest, and provides Financial Product holders with an independent opinion to support decision making in relation to the proposed transaction. A reasonable person should have no reason to question the appraiser's independence in providing the Appraisal Report.

Where a firm is engaged as an appraiser, individuals representing the firm who do not meet the appraiser criteria on an individual basis should not take part in preparing the Appraisal Report.

Factors that may impact independence

The Rules prohibit appraisers from receiving remuneration that is contingent, either directly or indirectly, on the success or implementation of the relevant transaction.⁸ NZX considers that such remuneration structures inhibit the appraiser's ability to bring an independent view as to the fairness of a transaction.

Other factors that may impact an appraiser's independence from an Issuer in relation to a transaction include where the appraiser:

- (a) has had an ongoing professional advisory role with the Issuer in the past five years;
- (b) will, directly or indirectly, derive personal financial benefit from the success or otherwise of the relevant transaction;
- (c) has provided strategic corporate advisory services to the Issuer or its associates in the last 12 months;
- (d) has prepared an Appraisal Report for the Issuer at least once each year in the preceding

⁷ Rule 7.10.3.

⁸ Rule 7.10.4(a).

three year period; and/or

- (e) has derived 5% or more of its total revenue in the five year period from business connected to the Issuer.

We note that factors impacting independence should be considered in light of the relevant circumstances. An Issuer will need to holistically consider the nature of its relationship (if any) with the appraiser as part of their independence assessment, as well as any connection the appraiser has with the transaction.

Where an Issuer is a Code Company under the Takeovers Code, NZX considers that a person that has been approved by the Takeovers Panel to act as an independent adviser for a transaction is independent for the purposes of the appraiser criteria.

Example

Issuer X is required to engage an appraiser to prepare an Appraisal Report in relation to a proposed transaction in accordance with the NZX Listing Rules. The proposed transaction involves Issuer X acquiring 100% of the shares in Company Y.

Issuer X has determined that Firm A meets the appraiser criteria to prepare the Appraisal Report and has engaged their services.

Robin is an employee of Firm A. As an individual, Robin is appropriately qualified and has sufficient resources and expertise. However, Robin owns 50% of the shares in Company Y, and therefore Robin is not independent from the proposed transaction.

Issuer X must ensure that Firm A does not involve Robin in the preparation of the Appraisal Report as she does not meet the appraiser criteria as an individual.

Maintaining independence

Once an appraiser has been appointed to prepare an Appraisal Report, an Issuer should set clear conduct expectations for its Directors and employees to follow when engaging with the appraiser, to ensure that independence is maintained. Some actions Issuers can take to maintain independence include:

- ensuring the appraiser directs and leads all relevant meetings and discussions, and
- taking minutes for meetings and retaining files worked on in discussions with the appraiser.

If there is a change in circumstances that results in the appraiser no longer being independent, the Issuer should promptly appoint a new appraiser that meets the appraiser criteria.

We note additionally that NZX expects Issuers to ensure the appraiser does not provide material information (for example, the valuation range) to the Issuer prior to the final terms of the transaction being agreed.

2.3 Appropriate qualifications

In order to satisfy the appraiser criteria an Issuer is required to ensure that an appraiser is appropriately qualified to prepare an Appraisal Report. Examples of appropriate qualifications may include where the appraiser:

- (a) is a member of the Chartered Accountants Australia and New Zealand (**CA ANZ**); or
- (b) has successfully completed the Chartered Professional Accounting (**CPA**) programme; or
- (c) has successfully completed Level III of the Chartered Financial Analyst (**CFA**) programme.

There are a wide range of circumstances where an Appraisal Report is required under the Rules, and the engagement could relate to a wide range of transaction types and fact scenarios. A board may appoint an appraiser with alternative qualifications to the above, provided that the board is satisfied that the appraiser has appropriate qualifications relevant to the transaction so that an Appraisal Report will contain fair and accurate information.

2.4 Sufficient expertise and resources

An Issuer is required to ensure that an appraiser has sufficient expertise and resources to prepare an Appraisal Report. In assessing whether this requirement is met, a board should consider whether the appraiser:

- has adequate resources to undertake and complete the Appraisal Report;
- complies with any applicable professional or industry codes;
- has demonstrable expertise that related to the transaction and/or providing an opinion on the matters required by the Rules;
- has any relevant experience in preparing reports for comparable transactions;
- if the appraiser is a firm, whether its main business is relevant to the transaction, and
- can meet the required timeframe to publish the Appraisal Report.

After making a holistic assessment of the factors above, the board should be confident in the appraiser's ability to provide a well-informed and comprehensive opinion on the transaction.

3. Content of Appraisal Report

The Rules contain requirements for the content of Appraisal Reports.⁹ Issuers need to ensure that their appraisers are aware of these requirements and should review the contents of an Appraisal Report before it is provided to NZ RegCo alongside the relevant notice of meeting.

As a general guide, an Appraisal Report should be drafted in a way that is clear, concise and effective to provide Financial Product holders with easy to understand information relating to a transaction.

The Appraisal Report should discuss the relative impact on Financial Product holders, including value transfer, dilution, and any distribution of benefits. The Appraisal Report should also discuss the transaction structure and terms.

⁹ Rule 7.10.5.

3.1 General

An Appraisal Report must be addressed to Directors of the Issuer who are not themselves, and are not associated with, Relevant Associated Persons,¹⁰ and must be expressed to have been prepared for the benefit of Financial Product holders that are not associated with any Relevant Associated Persons.¹¹

3.2 Content requirements

Required statements and disclaimers

An Appraisal Report must include:

- a statement that the appraiser has no conflict of interest that could affect the appraiser's ability to provide an unbiased Appraisal Report;¹²
- a statement of the relevant qualifications and expertise of the appraiser;¹³
- a statement of whether or not the appraiser obtained all information needed to prepare the Appraisal Report;¹⁴ and
- a disclaimer that NZX does not endorse or support any opinion expressed or information contained in the Appraisal Report.¹⁵

An Appraisal Report must not contain a disclaimer of liability that purports to absolve the appraiser from liability for an opinion expressed recklessly or in bad faith.¹⁶

Assessments of fairness and valuation

The Appraisal Report must state the appraiser's opinion as to whether or not the terms and conditions of the proposed transaction are fair to the Financial Product holders not associated with Relevant Associated Persons.¹⁷ Discussion in the Appraisal Report should also cover information asymmetry and any process factors that may safeguard Financial Product holders (such as independent Board committee or external advice sought by the Board).

The Appraisal Report must also include the appraiser's opinion on whether the information provided by the Issuer in relation to the transaction is sufficient to enable Financial Product holders to make an informed decision on the transaction.¹⁸

An Appraisal Report should include a clear explanation as to what is meant by fairness in the context of the transaction, to ensure it is clear to Financial Product holders the criteria against which the appraiser has made their assessment. Fairness is an investor protection concept focused on relative economic treatment of affected Financial Product holders. The Rules do not define "fairness" due to the need for it to be considered by the appraiser in the context of the matter at hand.

¹⁰ Rule 7.10.5(a).

¹¹ Rule 7.10.5(b).

¹² Rule 7.10.5(c)(i)

¹³ Rule 7.10.5(c)(ii)

¹⁴ Rule 7.10.5(f).

¹⁵ Rule 7.10.5(j).

¹⁶ Rule 7.10.5(k).

¹⁷ Rule 7.10.5(d).

¹⁸ Rule 7.10.5(e).

It may be helpful for an appraiser's assessment of fairness to provide further context for their opinion, including (where relevant):

- market conditions,
- control premiums or minority discounts,
- liquidity, certainty of value, and form of consideration, or
- any other transaction specific factors relevant to the appraiser's assessment.

An Appraisal Report should include a valuation analysis and an assessed valuation range of the transaction, along with the appraiser's assessment of whether the consideration in relation to the transaction falls within the assessed valuation range. Valuations should be accompanied by an explanation as to methodologies selected and used, sensitivity analysis, and any cross-checks undertaken. The valuation should also be accompanied by any material assumptions made by the appraiser.¹⁹

Where an appraiser considers that the transaction has been structured wholly or partly to confer a benefit on Relevant Associated Persons, the appraiser may mention alternative courses of action available to the Issuer. Any indications by the Directors that those alternative courses are not acceptable to them or that they would not propose to pursue them must be disregarded by the appraiser if there is reason to suspect that these are motivated, in whole or in part, by concerns for the interests of Relevant Associated Persons in distinction to the interests of the other Financial Product holders.

3.3 Other disclosure requirements

The Rules require certain things to be disclosed in an Appraisal Report where they are relevant, including:

- (a) if any material change has been made to the Report at the suggestion of the Issuer, including an explanation as to why the change was made;²⁰ and
- (b) any term of reference that may have materially restricted the scope of the Appraisal Report.²¹

These requirements are intended to ensure that Financial Product holders can consider the content of the Appraisal Report in the context it was prepared, including where there were restrictions or Issuer-led changes.

In addition to the above disclosures, Issuers should ensure that the terms of engagement with an appraiser requires the appraiser to promptly notify the issuer of any material change occurring after an Appraisal Report has been distributed to Financial Product Holders, but before the meeting for which the Appraisal Report has been prepared, where that material change affects the information or opinions contained in that Appraisal Report.²² This ensures that the information and opinions contained in an Appraisal Report are current and valid at the point of Financial Product holders considering, and voting on, the relevant transaction.

¹⁹ Rule 7.10.5(g).

²⁰ Rule 7.10.5(i).

²¹ Rule 7.10.5(h).

²² Rule 7.10.4(b).

4. Summary of Appraisal Report

The Rules allow an Issuer to circulate a summary of the Appraisal Report to its Financial Product holders instead of providing the Appraisal Report in full. Where an Issuer chooses to circulate a summary, the summary must:

- (a) include all the information required by Rule 7.10.5;
- (b) be accompanied by a certificate from the appraiser attesting that the summary is accurate and not misleading; and
- (c) include a statement that the Appraisal Report in full will be provided to Financial Product holders on request.²³

The above requirements ensure that, where a summary report is circulated rather than a full report, Financial Product holders are being provided with all the material parts of the report.

Where an Issuer provides a summary of an Appraisal Report it must provide the Appraisal Report in full to Financial Product holders promptly on request.²⁴

5. Role of NZ RegCo

NZ RegCo will monitor situations where an Appraisal Report is required for the purposes of the Rules, however will not comment on the opinion of an appraiser. NZ RegCo (and NZX) do not express views on the fairness or otherwise of transactions.

Where an Appraisal Report is required to accompany a notice of meeting, a draft is expected to be submitted to NZ RegCo as part of the notice of meeting review. NZ RegCo will engage with the Issuer to ensure the Appraisal Report, and appointment of the relevant appraiser, meets the requirements of Rule 7.10.

[Contact us](#)

If you have any questions on the matters in this Guidance Note please direct all queries to issuer@nzregco.com.

²³ Rule 7.10.6.

²⁴ Rule 7.10.7.

Appendix 1 – Relevant Listing Rules

NZX Listing Rule 7.10

7.10 Appraisal reports

7.10.1 For the purposes of this Rule 7.10, "**Relevant Associated Person**" means a person who is:

- (a) an Associated Person whose association or connection with the Issuer or its Directors, or with parties to the transaction, or whose likelihood of acquiring Financial Products as a result of the transaction, is such that an Appraisal Report must be obtained; and
- (b) a holder of a Relevant Interest in 10% or more of a Class of Equity Securities of the Issuer carrying Votes, where that holding is the reason that an Appraisal Report must be obtained under Rule 7.8.8.

7.10.2 An Appraisal Report for the purposes of the Rules must be prepared by a person who, in relation to the transaction for which an Appraisal Report is required, is independent, appropriately qualified, and has sufficient expertise and resources.

7.10.3 Directors of the Issuer who are not, and are not associated with, Relevant Associated Persons must provide a certification to NZX outlining the basis on which they have determined an appraiser meets the requirements of Rule 7.10.2. This certification must be distributed to Financial Product holders alongside the notice of meeting and Appraisal Report that are required under Rule 7.8.5 or Rule 7.8.8.

7.10.4 An Issuer who engages an appraiser to prepare an Appraisal Report must ensure that the terms of the engagement:

- (a) do not provide for the appraiser's remuneration to be contingent, directly or indirectly, on the success or implementation of the transaction to which the Appraisal Report relates; and
- (b) require the appraiser to promptly notify the Issuer of any change that materially affects the information required under Rule 7.10.5 to be included in the Appraisal Report, that occurs after the Appraisal Report has been distributed to Financial Product holders but prior to the meeting to consider the transaction to which the Appraisal Report relates.

7.10.5 An Appraisal Report must:

- (a) be addressed to those Directors of the Issuer who are not, and are not associated with, a Relevant Associated Person and, where there are no such Directors, to NZX, which at the expense of the Issuer will oversee the distribution of the Appraisal Report,
- (b) be expressed to be for the benefit of those Financial Product holders who

are not associated with any Relevant Associated Persons,

- (c) include:
 - (i) a statement that the appraiser has no conflict of interest that could affect the appraiser's ability to provide an unbiased Appraisal Report, and
 - (ii) a statement outlining the relevant qualifications and expertise of the appraiser,
- (d) state the appraiser's opinion, with supporting reasons, as to whether or not the terms and conditions of the proposed transaction are fair to Financial Product holders, other than those associated with the Relevant Associated Persons,
- (e) state the appraiser's opinion, with supporting reasons, as to whether the information to be provided by the Issuer is sufficient to enable Financial Product holders to make an informed decision, in respect of the question referred to in (d) and the grounds for that opinion,
- (f) state whether the appraiser has obtained all the information needed to prepare the Appraisal Report,
- (g) state any material assumptions on which the appraiser's opinion is based,
- (h) state any term of reference which may have materially restricted the scope of the Appraisal Report,
- (i) state where there has been a material change to the Appraisal Report at the suggestion of the Issuer, including the appraiser's supporting reasons for the material change,
- (j) include a disclaimer that NZX does not endorse or support any opinion expressed or information contained in the Appraisal Report, and
- (k) not contain a disclaimer of liability that purports to absolve the appraiser from liability for an opinion expressed recklessly or in bad faith.

7.10.6 An Issuer may circulate to Financial Product holders a summary of an Appraisal Report rather than the Appraisal Report in full. The summary must:

- (a) include all the information required by Rule 7.10.5,
- (b) be accompanied by a certificate from the appraiser attesting that the summary is accurate and not misleading, and
- (c) include a statement that the full Appraisal Report will be provided to Financial Product holders on request.

- 7.10.7 Where an Issuer has circulated a summary of an Appraisal Report in accordance with Rule 7.10.6, it must provide the Appraisal Report in full to Financial Product holders promptly on request.

NZX Listing Rules - Appendix 3 - 1.4.5

- 1.4.5 The Directors must, promptly and without delay upon a notice being given under paragraph 1.4.1 in respect of that Restricted Transfer or notice being given paragraph 1.4.2 in respect of that Restricted Transfer where the change relates to a change in the nature of the consideration offered, commission an Appraisal Report in respect of that Restricted Transfer. That report may contain such reasonable qualifications and limitations as are needed to recognise the deadlines within which it is required to be produced. That report must be:
- (a) delivered to NZX for release to the market at least two Business Days before expiration of the relevant notice, accompanied by a summary (approved by the appraiser) suitable for release to the market; and
 - (b) copied to the Issuer and to any holder of Quoted Equity Securities of the Issuer upon request; and
 - (c) dispatched to all holders of Equity Securities to whom the offer may be made at least three Business Days before the expiration of the relevant notice.

NZX Listing Rule 7.8.5

- 7.8.5 A notice of meeting to consider a resolution of the nature referred to in Rule 7.8.4 (other than a resolution to permit an issue under Rule 4.7.1) must be accompanied by an Appraisal Report if:
- (a) the resolution is required by Rule 4.13,
 - (b) more than 50% of the Financial Products to be issued are intended or likely to be acquired by Directors or Associated Persons of Directors, or
 - (c) more than 50% of the Financial Products to be acquired or redeemed or the financial assistance to be given is intended or likely to go to Directors or Associated Persons of Directors.

NZX Listing Rule 7.8.8

- 7.8.8 A notice of meeting for the purposes of Rule 5.2.1 must:
- (a) be reviewed by NZX in accordance with Rule 7.1,
 - (b) be accompanied by an Appraisal Report, and
 - (c) contain such other material as is necessary to enable the holders of Financial Products entitled to Vote to decide whether the transaction price and terms are fair.

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