



Guidance Note

Issuer Engagement with NZX Regulation

November 2014



The purpose of this guidance note is to provide guidance to issuers in relation to engaging with NZXR on applications made under the NZX Main Board/ Debt Market and NZAX Listing Rules (the “rules”). This guidance includes information as to the content of applications and the process for engaging with NZX Regulation (“NZXR”), including the timeframes required to process applications.

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1. Introduction

Issuers may need to engage with NZXR when making an application for a waiver or ruling under the rules, or when seeking NZXR's approval to a document that requires approval under the rules. This guidance note provides information for issuers regarding the information that needs to be included in an application made to NZXR. This guidance also sets out NZXR's approach to reviewing applications.

Part I of this guidance note contains information that is relevant to all applications made to NZXR.

Part II of this guidance note contains specific considerations relevant to waiver and ruling applications, listing applications and applications for approvals of notices of meeting.

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 NZXR's discretion under the rules. This guidance note reflects the listing rules and law as at 25 November 2014, which are subject to change. NZX takes no responsibility for any error contained in this guidance note. NZXR may replace guidance notes at any time and issuers should ensure that they have the most recent version of this guidance note by checking NZXR's website at www.nzx.com.



Part I

This section of the guidance note explains the requirements and considerations that are relevant to all types of application made to NZXR.

2. Content requirements

NZXR expects all applications to contain complete and accurate information in all material respects. Any decision made by NZXR will be void if it is based on information that was incorrect or was misleading because a material piece of information was omitted.

You should set out in your application the following general information:

- **Contact Details:** If your application is provided to us via a third party (such as your lawyer) we will ask them to provide us with a contact person for you. This allows us to copy correspondence to you, so that you are kept informed on the progress of your application.
- **Details of the application:** You should set out the relevant facts relating to your application.
- **Rules:** You should include a reference to the rules in respect of which your application is being made, and explain the application of the rules to the facts relating to your application.
- **Timetable:** Your application should include a timetable of all dates that are relevant to the application (for example: printing deadlines, the date of a shareholder meeting). In particular, you should state when you are aiming to receive NZXR's decision or approval of a document.
- **Whether urgency is requested:** If your application is urgent, please specify the date by which a determination is needed and the reasons why you require the application to be considered on an urgent basis (see section 4 below headed "Urgency").
- **Whether confidentiality is requested:** If you require your application or any specific information contained in your application and/or NZXR's decision in relation to your application to be kept confidential you should specify this in your application and provide reasons for that request.

Part II of this guidance note sets out additional matters that are relevant to specific types of application made to NZXR.

3. Engaging with NZXR

We encourage issuers to engage with us as early as possible in relation to the application process. For example, if you are aware that a waiver on which you rely is due to expire, we would expect to receive a renewal application well in advance of the expiry date. As a general rule all applications, other than listing applications, must be submitted to NZXR at least 10 business days prior to the issuer requiring a determination. NZXR's ability to complete a review of an application within this timeframe will ultimately depend on:

- the quality and completeness of the application;
- the issues raised by our review; and

- the timeliness within which any comments or requests for further information are addressed.

You can expect the following, in relation to your application:

- The NZXR solicitor who is leading the review of your application will acknowledge receipt within one business day after it is received by NZXR.
- The NZXR solicitor may ask you to provide further information to assist NZXR to consider the application. For example, NZXR may request further explanation of the facts relevant to the application or request underlying documents relevant to the application. If NZXR needs further information, the NZXR solicitor will request that information from you within 5 business days of the receipt of your application.
- If the NZXR solicitor has asked you for further explanation or information, NZXR will consider that information and provide you with any further comments within 5 business days of receiving that information. For some complex applications or where the explanation or information provided needs further clarification or raises additional issues that need to be addressed, NZXR may ask for further information after the initial request.

The fees payable in respect of applications made to NZXR are set out in the listed issuer fee schedule at: http://www.nzx.com/services/listing_fees

4. Urgency

In certain circumstances, NZXR may be able to consider an application more quickly than within the timeframes set out above. However, whether an application can be considered under urgency is at NZXR's discretion.

NZXR will usually only consider applications under urgency where events have arisen that are outside of your control, or where the lack of an urgent decision by NZXR will have a significant impact on your security-holders, your commercial interests, or the market generally. NZXR expects issuers to ensure NZXR has adequate time to consider an application by incorporating the timeframes described above into the timetable for any matter requiring NZXR approval.

If NZXR considers your application under urgency, the additional rates set out in the listed issuer fee schedule at: http://www.nzx.com/services/listing_fees will be payable.

5. How to contact NZXR

All applications should be emailed to regulation@nzx.com and addressed to the Head of NZX Market Supervision.

Please do not send applications to individual members of the NZXR team, as this may delay the progress of your application.

All applications should be clearly marked: Not for Public Release.

Part II

This section of the guidance note explains the requirements and considerations that are relevant to common types of application that are made to NZXR, being applications for:

- listing and quotation;
- waivers and rulings; and
- approvals of notices of meeting and accompanying appraisal reports;

6. Listing and quotation applications

6.1 New issuers

If you wish to apply to become listed on a NZX Market you may have had informal discussions in relation to your proposed application with NZX's Markets team. Once you are ready to formally apply for listing, you should make your formal application to NZXR a minimum of 20 business days prior to your intended listing date. Early engagement with NZXR is encouraged, in particular if the application is unusually complex or novel, or if significant or unusual waivers are to be sought.

The application should include the draft offering document (including all financial information) and the other information required by rules 5.1 and 5.2.

6.2 Existing issuers

If you are already listed on a NZX Market and wish to offer and subsequently quote another class of securities (for example, a new class of debt securities), your application should include the draft offering document and the other information required by rule 5.2.

If you are already listed on a NZX Market and wish to offer and subsequently quote securities that are of the same class as your quoted securities your application should include the draft offering document required by the rules.

6.3 Engaging with NZXR

Once NZXR has approved your offering document you will receive a formal letter confirming NZXR's approval. If your offering document is subject to a legislative post-lodgement consideration period, NZXR's approval will be subject to you confirming that you did not receive any correspondence from the Financial Markets Authority ("FMA") relating to the offering document during the consideration period.

7. Waiver and ruling applications

7.1 Additional content requirements

An application for a waiver or ruling must include all material information in relation to the application including the information set out in Part I of this guidance note. In addition you should include the following information in your application:

- **Full details of the matter:** You should set out the full details of the transactions or circumstances relevant to the waiver or ruling sought, including details of the relationships between any relevant parties. Where the transaction and/or relationships to which the application relates are complex, the application should, if possible, present this information diagrammatically.

- **Policy grounds behind the rule:** Your application should set out:
 - the policy objective behind the rule concerned;
 - why compliance with the rule is not possible, unnecessary or inappropriate in your particular circumstances;
 - how the relief sought is consistent with the policy objective behind the relevant rules; and
 - why you consider granting the relief sought strikes an appropriate balance between avoiding the hardship or mischief that will result if the relief sought is not granted and providing adequate protection to security-holders, and your reasons for that view.
- **Effects on security-holders:** You should explain the effect of the relief you are seeking, including the costs and benefits of that relief, on the interests of security-holders and other stakeholders.
- **Proposed conditions:** You should identify any conditions that you propose should apply to the relief sought, in particular to address the policy objective behind the rule/s you are seeking a waiver from, along with an explanation as to why you consider the proposed conditions to be appropriate.
- **Precedents:** You should identify any existing waiver or ruling decisions which are similar to the waiver or ruling sought and which may provide a precedent for your application. You should also state how the existing decisions are similar to, and different from, the waiver or ruling you are seeking.
- **Draft decision:** Please include a draft of the waiver or ruling decision for which you are applying, following the template set out in Appendix 1 to this guidance note.

7.2 Engaging with NZXR

NZXR will often make further enquiries in relation to waiver and ruling applications, in order to ensure that NZXR fully understands the circumstances giving rise to the need for the waiver or ruling that has been sought.

NZXR may consider in some cases imposing a condition that the directors provide a certificate confirming that a proposed transaction is in the best interests of the issuer and its shareholders (this is particularly common in relation to waivers from the requirement to obtain shareholder approval for entry into a related party transaction). In those circumstances, NZXR is likely to make enquiry as to the basis for the directors providing such a certificate.

NZXR releases all final waiver and ruling decisions to the market, subject to limited exceptions. Where NZXR determines that it is appropriate for an application, or particular information contained in an application, to remain confidential, NZXR will either redact the confidential aspects of the decision or will defer the release of the decision to the market, until such time as agreed with you.

NZXR will provide you with a draft decision for comment before the final decision is released to the market. The NZXR lead solicitor will provide you with a copy of the final decision at least half a business day prior to releasing the decision to the market. Once the decision is released

to the market it will appear against your ticker code on nzx.com and under the NZXR code, to denote that the decision is an NZX Regulation announcement.

7.3 Waivers from continuous disclosure

If you are applying for a waiver or ruling in relation to any of the rules contained in section 10 of the rules (the continuous disclosure provisions), then under the Securities Markets Act 1988 and the Financial Markets Conduct Act 2013, NZXR must consult with the FMA in relation to the application and have regard to any submissions made by FMA.

7.4 Right of referral

The NZ Markets Disciplinary Tribunal ("**NZMDT**") is a special function body independent of NZX. NZMDT is required to hear matters without bias and to give the parties fair consideration.

NZMDT has authority under the NZMDT Rules, to review waiver and ruling decisions made by NZXR under the listing rules on referral. You may refer a waiver or ruling decision to NZMDT for review on the basis that NZXR's decision:

- was irrational having regard to the evidence available to NZX and the circumstances at the time NZX made the decision;
- was made in circumstances where NZX did not observe the rules of procedural fairness; or
- was made in circumstances when NZX refused to consider information submitted by the applicant.

If you wish to refer a waiver or ruling decision made by NZXR to NZMDT, you can find more information about this in the User Guide to the NZ Markets Disciplinary Tribunal Rules which is available here: <https://www.nzx.com/NZMDT/rules-publications>

8. Applications for approval of notices of meeting and accompanying appraisal reports

You must obtain NZXR's approval of a notice of meeting where the matters to be considered at that meeting are matters other than:

- a declaration of a dividend;
- the consideration of financial statements and reports of directors or auditors;
- the election of directors or the fixing of their remuneration;
- a change in name of the issuer;
- the appointment of auditors and the fixing of their remuneration; or
- a resolution required or permitted under the Takeovers Code.

This section of the guidance note sets out the content requirements and other considerations that are relevant to applications for approval of a notice of meeting, that are in addition to the matters described in Part I of this guidance note.

8.1 Content Requirements

You must ensure that a notice of meeting contains or is accompanied by sufficient explanation to enable a reasonable person to understand the effect of the resolutions proposed in the notice of meeting, and the consequences if a resolution is not passed. In addition, there are specific matters that the rules require a notice to include, in relation to particular resolutions, as set out below.

Resolutions to consider the issue, acquisition or redemption of securities

The rules¹ prescribe specific contents for a notice of meeting that contains a resolution:

- to issue equity securities, in accordance with rule 7.3.1;
- to acquire or redeem equity securities, or to provide financial assistance, in accordance with rule 7.6.5; and/ or
- to issue, acquire, or redeem securities that is significantly likely to result in a group of persons materially increasing their ability to effectively control the issuer, in accordance with rule 7.5.

In the circumstances set out above, the following information must be included in the notice of meeting:

- **Number of securities:** The number of securities that will be issued, acquired or redeemed. If there is no fixed number, the maximum number or the formula that will be used to determine the number of securities that will be issued, acquired or redeemed.
- **Purpose:** Details as to why the securities are being issued, acquired or redeemed. If the purpose is to raise cash, you should explain the specific purpose for raising the cash.
- **Price / consideration:** The issue, acquisition or redemption price of the securities. If there is no fixed price, you should state the formula that will be used to determine the price.
- **The parties involved:** You should name the persons to whom the securities will be issued to or acquired from. If they will be issued to or acquired from any director or associated person, state the names of the directors or their associated persons.
- **Timing:** When the issue, acquisition or redemption will be made.
- **Ranking:** The ranking of the securities to be issued, acquired or redeemed.
- **Financial assistance:** If financial assistance is being proposed, describe the amount and full terms of the financial assistance. Also, state the parties to whom the assistance will be given. If assistance will be given to any director or associated person of a directors include the names of those persons.

Resolutions relating to changes to trust deeds and constitutions

Where an issuer wishes to amend its trust deed or constitution, it must first seek NZXR's approval to the proposed amendments and provide a solicitor's opinion that meets the requirement of the rules². NZXR will need to approve the proposed changes to a Trust Deed or

¹ NZX Main Board/ Debt Market Listing Rule 6.2.1; NZAX Listing Rule 6.2.1.

² NZX Main Board / Debt Market Listing Rule 6.1.3; NZAX Listing Rule 6.1.2.

Constitution, prior to an issuer preparing its notice of meeting seeking holder approval to the proposed changes.

The notice of meeting will also be subject to NZXR's review and approval and must include explanatory notes that enable a holder to understand the effect of the resolution without the need to refer back to the trust deed or constitution itself.

Resolutions where issuer is obliged to buy out dissenting shareholders

Where a resolution is included in a notice of meeting where shareholders who have voted against the resolution have the right to be bought out by the issuer, under either section 110 or section 118 of the Companies Act 1993, the notice must include a prominent statement to that effect. This is usually attached as a schedule to the notice that sets out the procedure in relation to the buyback by the company of a dissenting shareholder's shares.

8.2 Appraisal reports

Under the rules (other than the NZAX Listing Rules), an appraisal report is required to accompany notices of meeting in the circumstances set out in NZX Main Board /Debt Market Listing Rule 6.2.2 or in relation to a resolution made pursuant to NZX Main Board /Debt Market Listing Rule 9.2.1.

The requirements for appraisal reports are set out in the rules and NZXR has published a guidance note in relation to the appointment of appraisers which is available here: <https://www.nzx.com/market-regulation/rules/guidance-notes>.

Where an appraisal report is required to accompany a notice of meeting, NZXR will not commence its review of the notice until it has also received the appraisal report.

8.3 Proxy forms

A notice of meeting must be accompanied by a proxy form, for NZXR review. A proxy form:

- should provide for two-way voting (for or against) on each resolution;
- should enable a shareholder to appoint a proxy to cast their vote on their behalf; and
- should not be sent with any name of an officer, or position (e.g. chair) filled in as proxy holder.

A proxy form may also provide for shareholders to abstain from voting on each resolution and/or for the proxy to exercise a discretion to vote for or against each resolution. NZXR will require a shareholder to take an active step to appoint a discretionary proxy to vote on that shareholder's behalf. A proxy form should include notes that state that persons who are prohibited under the rules from voting on a resolution are also unable to act as a discretionary proxy.

8.4 Engaging with NZXR

Once NZXR has approved your notice of meeting you will receive a formal letter confirming NZXR's approval. Once approved, the rules require you to send your notice to NZXR for release to the market no later than the time at which you send it to your security-holders.

Appendix 1: Draft Waiver Template

As noted in section 7.1 of this Guidance Note please complete this template and provide it with your application, including the italicised information, if applicable.

Decision

1. *[On the condition in paragraph [x] below]* and on the basis that the information provided by [Name of Issuer] [“(Issuer’s Ticker Code”)] is complete and accurate in all material respects, NZX Regulation (“**NZXR**”) grants [“(Issuer’s Ticker Code”)] a waiver from [NZX Main Board/ Debt Market/NZAX Listing Rule] (“**Rule**”) [*include rule number*] to the extent this rule prohibits [describe action that would otherwise be prohibited by the Rule)].
2. *[The waiver in paragraph [x], above, is provided on the condition that [include a description of the condition(s)].*
3. The material information on which this decision is based is set out in Appendix One to this decision. This waiver will not apply if that information is not, or ceases to be, full and accurate in all material respects.
4. The Rules to which this decision relates are set out in Appendix Two.

Reasons

5. In coming to the decision to provide the waiver set out in paragraph [x] above, NZXR has considered that: [list the reasons for the decision]

Confidentiality

6. *[“(Issuer’s Ticker Code”)] has requested that this application and any decision be kept confidential until [describe the event that will terminate the confidential status of the application].*
7. *In accordance with [Footnote 1 to Rule 1.11.2 (NZX Main Board / Debt Market) / Footnote 1 to Rule 1.10.2 (NZAX)] NZXR grants [“(Issuer’s Ticker Code”)]’s request.*

Appendix One

8. [“(Issuer’s Ticker Code”)] is a Listed Issuer with Securities Quoted on [the NZX Main Board / Debt Market / NZAX].
9. [Include a statement of the facts that are material to the waiver.]

Appendix Two

10. [Set out the Rules that are relevant to the application.]

Appendix 2: Draft Ruling Template

As noted in section 7.1 of this Guidance Note please complete this template and provide it with your application, including the italicised information, if applicable.

Decision

1. On the basis that the information provided by [Name of Issuer] [{"Issuer's Ticker Code"}] is complete and accurate in all material respects, NZX Regulation ("NZXR") grants [{"Issuer's Ticker Code"}] a ruling that [NZX Main Board/ Debt Market/NZAX] ("**Rule**") [*include rule number*] that [describe ruling].
2. The material information on which this decision is based is set out in Appendix One to this decision. This waiver will not apply if that information is not, or ceases to be, full and accurate in all material respects.
3. The Rules to which this decision relates are set out in Appendix Two.

Reasons

4. In coming to the decision to provide the waiver set out in paragraph [x] above, NZXR has considered that: [list the reasons for the decision]

Confidentiality

5. [{"Issuer's Ticker Code"}] has requested that this application and any decision be kept confidential until [describe the event that will terminate the confidential status of the application].
6. In accordance with [Footnote 1 to Rule 1.11.2 (NZX Main Board / Debt Market) / Footnote 1 to Rule 1.10.2 (NZAX) /] NZXR grants [{"Issuer's Ticker Code"}]'s request.

Appendix One

7. [{"Issuer's Ticker Code"}] is a Listed Issuer with Securities Quoted on [the NZX Main Board / Debt Market / NZAX].
8. [Include a statement of the facts that are material to the ruling.]

Appendix Two

9. [Set out the Rules that are relevant to the application.]