



# Guidance Note

Approval of appraisers

December 2014



The purpose of this guidance note is to provide guidance to candidates seeking approval from NZX Regulation (“**NZXR**”) to act as an appraiser, and to provide an appraisal report under the NZX Main Board/Debt Market Listing Rules (“**rules**”). It is intended to increase certainty and transparency by describing NZXR’s expectations as to:

- the content of an application to provide an appraisal report;
- the factors NZXR will consider when exercising its discretion to provide approval for a candidate to act as an appraiser, in accordance with rule 1.7 of the rules; and
- the ongoing obligations of an appraiser.

This guidance note replaces the previous guidance note issued on 30 April 2012, ‘Approval of persons to provide appraisal reports’.

## Contents

Contents .....	2
1. When is an appraisal report required? .....	3
2. Who can act as an appraiser? .....	3
3. What information should be included in an application? .....	3
4. Factors that NZX will take into account .....	5
5. Ongoing Obligations .....	6
6. Form of Approval .....	6
7. Contact us .....	6
Appendix 1: Relevant Listing Rules .....	7
Appendix 2: Confirmation of Independence and Qualifications .....	10

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 rules and law as at 1 December 2014, 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. When is an appraisal report required?

The rules relevant to appraisal reports are set out in appendix 1 to this guidance note.

Appraisal reports are required in certain situations to ensure that security-holders have the benefit of an independent assessment of a transaction so as to make a fully informed decision.

The rules require an appraisal report to be prepared in the following situations:

- where an issuer's directors receive notice of a restricted transfer being made to an insider (Rule 4.5.8); *Note: This only applies to issuers who are not code companies under the Takeovers Code.*
- where a notice of meeting contains a resolution that requires approval under rule 7.5 ("issues and buybacks of securities affecting control"), or a resolution to approve an issue intended or likely to result in more than 50% of the securities to be issued being acquired by directors or associated persons of directors of the issuer (rule 6.2.2); and
- where a notice of meeting contains a resolution to approve a transaction with a related party (rule 9.2.5).

## 2. Who can act as an appraiser?

An appraiser may be either an individual or a firm. A reference in this guidance note to a "candidate" or "appraiser" is a reference to the individual person or persons seeking to provide the appraisal report and, where applicable, to the firm or organisation which employs that person.

NZXR must be satisfied that a candidate wishing to act as an appraiser has appropriate qualifications and is sufficiently independent to provide an opinion as to the fairness of the transaction for the benefit of non-associated shareholders.

## 3. What information should be included in an application?

The information provided to NZXR in support of an application to provide an appraisal report will need to relate to both an individual and/or your firm (depending on who is seeking accreditation). Where the application is made by a firm it should include detail of the individuals who will be preparing the appraisal report. Accordingly, your application should include your specific qualifications and relationship with the issuer, as well as information about your firm or organisation.

You will need to address the following matters in your application:

- **Independence:** Your application will need to explain your independence from the issuer, and should include:
  - a. a description of your and your firm's proposed, current and past relationship (professional or otherwise) with each of the parties to the transaction;

- b. whether any fee or benefit is payable to you, that is contingent on the success or implementation of the relevant transaction or any transaction complementary to or dependent on it;
  - c. the number and nature of appraisal reports in respect of the issuer that you and/or your firm has prepared in the five year period prior to the date of the application ("**5 year period**");
  - d. a description of all business transacted between you and/or your firm and the issuer, over the 5 year period;
  - e. if you have been engaged by the issuer within the 5 year period, you should include a description of the nature of the engagement including, as applicable:
    - the date of the activity;
    - the type of transaction; and
    - the fees paid to you by the issuer and the percentage of your revenue that the business represented in each year (where revenue figures are calculated in relation to your individual total revenue in a given year, as well as the revenue of the firm or organisation for which you work).
  - f. a description of your involvement in the transaction or series of transactions up to the date of the application;
  - g. the names of all individuals who will be contributing to the preparation of the appraisal report; and
  - h. a statement that you believe each contributor is independent of the issuer and the other parties associated with the transaction (including any related party of an issuer).
- **Details of the transaction:** Your application will need to describe the transaction, and should include:
    - a. the name of the issuer seeking to commission the appraisal report and the relevant rule that requires an appraisal report to be prepared;
    - b. a description of the transaction or series of transactions to which the appraisal report will relate, using diagrams where appropriate; and
    - c. the names of the parties to the transaction, and whether any of the parties to the transaction or series of transactions is a related party of the issuer. Please note in the application whether you would like NZX to keep this information confidential.
  - **Information about you:** You will need to provide:
    - a. your contact details;
    - b. the qualifications that you consider are relevant to your ability to provide an appraisal report;

- c. your experience in preparing appraisal reports (including references to any appraisal reports that you have prepared); and
  - d. if you work for a firm, a description of the main business of the firm, and details on the size and structure of the firm.
- **Your relationship with the issuer and the transaction:** You will need to provide a description of the work, including any ongoing advice, that you expect to provide to the issuer or other parties in connection with the transaction or series of transactions after the date of the application.
  - **Confirmation:** You will need to include an acknowledgment in your application, in the form set out in Appendix 2, that:
    - a. you consider that you (and, if applicable, your firm) are independent of the issuer and the proposed transaction and are appropriately qualified to provide the appraisal report; and
    - b. you will reconfirm your acknowledgment of independence at the time you provide the appraisal report to NZXR for review.
  - **Issuer confirmation:** Your application should include information provided by the Issuer, including:
    - a. a written confirmation from the issuer that the issuer has requested that you seek approval to provide an appraisal report, and will pay the fees associated with NZXR's review of your application; and
    - b. a description from the issuer of the transaction or series of transactions to which the appraisal report will relate.

## 4. Factors that NZX will take into account

NZXR has complete discretion as to whether to approve an application to act as an appraiser under rule 1.7 and will assess each application on a case-by-case basis.

As to independence, NZXR will determine whether, in the circumstances, there would be a reasonable apprehension or suspicion of bias on the part of a fair minded and informed security holder of the issuer. The existence of a past or present relationship will not necessarily preclude NZXR approving you to act as an appraiser. By way of example, NZXR may approve you to provide an appraisal report, where you have been engaged in a single non-strategic consulting assignment unrelated to the matter to be reported. By comparison, NZXR is unlikely to approve you to provide an appraisal report in the following circumstances:

- if you have had an ongoing significant professional advisory role with the issuer over the 5 year period (including in respect of auditing engagements);
- if you will receive remuneration that is contingent on the success or failure of the proposed transaction;
- if you recently provided strategic corporate advisory work to the issuer or its associates; or

- where a significant portion of your revenue in recent years has been connected to engagements with the issuer.

If approval of an independent adviser is required under the Takeovers Code, NZXR will not consider an application until the independent adviser has first been approved by the Takeovers Panel.

## 5. Ongoing Obligations

If there is a change in circumstances that would change the nature of your engagement or independence between the time of your application and the final release of the appraisal report you must promptly notify NZX.

Example: You are expected to advise NZXR if you have provided any advice or assistance in connection with the transaction which is not solely connected with the provision of the appraisal report.

If NZX becomes aware that you are no longer sufficiently independent, NZXR may revoke its approval for you to act as an appraiser and provide the appraisal report.

At the time that the appraisal report is finalised, or provided to NZX in draft with the relevant notice of meeting, you should:

- provide NZXR with detail as to the nature and scope of your involvement in the transaction (and in particular details of any change in the nature of the engagement described in your application under rule 1.7), to enable NZXR to ascertain whether you remain independent; and
- re-confirm to NZXR that your independence has not been compromised.

## 6. Form of Approval

If NZX approves you to act as an appraiser, NZXR will provide you with a formal letter of approval.

## 7. Contact us

If you have any questions on the matters in this guidance note please direct all queries to [regulation@nzx.com](mailto:regulation@nzx.com).

## Appendix 1 – Relevant Listing Rules

### NZX Main Board/ Debt Market Listing Rule 1.7.1

1.7.1 An appraisal report for the purposes of the rules shall be made by an independent appropriately qualified person previously approved by NZX. If the report states that the appraiser relies on information provided, or an opinion expressed, by another party (other than the Issuer in question or its Directors or employees) that other party shall also be approved by NZX. NZX may refuse to approve any person to provide an appraisal report or may revoke any prior approval given if NZX is not satisfied that the person is independent and appropriately qualified.

1. Appraisal reports are required by Rule 4.5.8, Rule 6.2.2 and Rule 9.2.5
2. NZX approval required of the person proposed as the appraiser, or a person on whom the appraiser relies, will be on a case by case basis, so that NZX can be satisfied as to the “independence” of the person in question in relation to the circumstances of each case.
3. As to independence, NZX should be advised when approval is being sought:
  - (i) as to whether the person proposed has had or will have any relationship with the parties to the transaction; and
  - (ii) as to whether any fee or benefit is payable to that person contingent on the success or implementation of the relevant transaction or any transaction complementary to or dependent on it; and
  - (iii) of the number and nature of appraisal reports in respect of the Issuer prepared by the person proposed in the past five years; and
  - (iv) of the business transacted with the Issuer by the person proposed in the past five years and, where the proportion of the proposed person’s total revenue that business represented in the financial year that business was transacted exceeded 5% of the proposed person’s total revenue, the actual amount of revenue that business represented; and
  - (v) as to whether the proposed person has had any part in the formulation of the proposal of the transaction or any aspect thereof.
4. At the time a draft appraisal report is provided to NZX under Rule 6.1.5, an appraiser should advise NZX of any change in the information provided under Footnote 3.

### NZX Main Board/ Debt Market Listing Rule 1.7.2

1.7.2 An appraisal report shall:

- a) be addressed to the Directors of the Issuer not associated with any relevant Associated Persons or, if there are no such Directors, to NZX, which at the expense of the Issuer will oversee the distribution of the report to holders of Securities of the Issuer. For this

purpose “relevant Associated Persons” means the Associated Persons whose association or connection with the Issuer, or the Directors of the Issuer, or with the parties to a transaction or the anticipated acquirers of the Securities of an issue, results in a requirement that an appraisal report be obtained under the rules; and

- b) be expressed to be for the benefit of the holders of Equity Securities of the Issuer not associated with any relevant Associated Persons (as defined in (a)); and
- c) state whether or not in the opinion of the appraiser the consideration and the terms and conditions of the relevant proposed issue or other transaction are fair to the holders of Equity Securities other than those associated with the relevant Associated Persons (as defined in (a)) and the grounds for that opinion; and
- d) state whether or not in the opinion of the appraiser the information to be provided by the Issuer to holders of its Securities is sufficient to enable holders to understand all relevant factors, and make an informed decision, in respect of the question referred to in (c) and the grounds for that opinion; and
- e) state whether the appraiser has obtained all information which the appraiser believes desirable for the purposes of preparing the report, including all Material Information which is or should have been known to any Director of the Issuer and made available to the Directors; and
- f) state any material assumptions on which the appraiser’s opinion is based; and
- g) state any term of reference which may have materially restricted the scope of the report; and
- h) if it contains a disclaimer of liability, not purport to absolve the appraiser from liability for an opinion expressed recklessly or in bad faith.

If the appraiser forms the opinion that the relevant issue or other transaction has been structured wholly or partly with a view to conferring a benefit on the relevant Associated Persons (as defined in (a)), the appraiser may have regard to, and mention, any alternative courses for acquisition or disposition of assets or services, or subscription for an issue, as the case may be, which seem to the appraiser to be reasonably available to the Issuer. The appraiser shall disregard any constraints arising from indications by the Directors that such alternative courses are not acceptable, or that they would not propose to pursue them, if any such reasons may be wholly or partly attributable to concerns about the interests of the relevant Associated Persons in distinction to the interests of the other holders of Equity Securities.

### **NZX Main Board/ Debt Market Listing Rule 1.7.3**

1.7.3 An Issuer may, if it so elects, circulate to holders of its Securities a summary of an appraisal report, rather than the report in full. If the Issuer elects to circulate a summary then that summary shall be accompanied by a certificate from the appraiser that the summary is accurate and not misleading to the beneficiaries of the report in all the circumstances likely to be generally known by the beneficiaries.



### **NZX Main Board/ Debt Market Listing Rule 4.5.8**

4.5.8 If any Transferee under a Restricted Transfer is an Insider, then (subject to Rule 4.5.9) the Directors shall, forthwith upon a notice being given under Rule 4.5.2 in respect of that Restricted Transfer or notice being given under Rule 4.5.4 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 shall:

- a) be 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) be copied to the Issuer and to any holder of Quoted Equity Securities of the Issuer upon request; and
- c) be dispatched to all holders of Securities to whom the offer may be made at least three Business Days before the expiration of the relevant notice.

### **NZX Main Board/ Debt Market Listing Rule 6.2.2**

6.2.2 A notice of meeting to consider a resolution of the nature referred to in Rule 6.2.1 shall be accompanied by an appraisal report if;

- a) the resolution is required by Rule 7.5; or
- b) in the case of an issue, the issue is intended or is likely to result in more than 50% of the Securities to be issued being acquired by Directors or Associated Persons of Directors of the Issuer; or
- c) in the case of an acquisition or redemption or the giving of financial assistance, it is intended or likely that more than 50% of the Securities to be acquired or redeemed will be Securities held by Directors or Associated Persons of Directors of the Issuer, or that more than 50% of the total financial assistance to be given will be given to such persons.

### **NZX Main Board/ Debt Market Listing Rule 9.2.5**

9.2.5 The text of any resolution to be put to a meeting of an Issuer for the purposes of Rule 9.2.1 shall be set out in the notice of the relevant meeting. That notice shall:

- a) be approved by NZX in accordance with Rule 6.1; and
- b) be accompanied by an appraisal report; and
- c) contain such other material as is necessary to enable the holders of Securities of the Issuer to decide whether the transaction price and terms are fair.

## Appendix 2: Confirmation of Independence and Qualifications

- i. I consider that I am independent of [*Issuer*] and the proposed transaction.
- ii. I am appropriately qualified to provide an appraisal report in respect of the proposed transaction.
- iii. I acknowledge that I will reconfirm my representation as to independence from [*Issuer*] at the time of providing the appraisal report to NZXR for review.