



Guidance Note

Continuous Disclosure

April 2017



The purpose of this guidance note is to provide guidance to NZX Issuers which are subject to continuous disclosure obligations. This guidance note replaces the previous Continuous Disclosure guidance note issued in December 2014.

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This guidance note applies to the continuous disclosure obligations contained in the NZX Main Board/ Debt Market Listing Rules, NZX Alternative Market Listing Rules and the FSM Rules (together the “rules”). 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 April 2017, 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. Introduction

Continuous disclosure is a disclosure framework which seeks to ensure the timely release of material information by issuers.

Timely disclosure of material information is essential to maintaining the integrity of the market and:

- ensures that the market is informed of relevant information in a timely manner;
- promotes equality of access to information so that investors can make informed investment decisions; and
- plays a critical role in promoting fair, orderly and transparent markets.

NZX's Main Board, Debt Market, Alternative Market and the Fonterra Shareholders' Market operate within a continuous disclosure framework and the listing rules for each of these markets impose continuous disclosure obligations on the issuers listed on these markets.

Further information relevant to continuous disclosure is set out in the appendices to this guidance note:

- Appendix 1 sets out the NZX Main Board/ Debt Market Listing Rules, NZX Alternative Market Listing Rules and the FSM Rules (the “**rules**”) relating to continuous disclosure;
- Appendix 2 sets out a flowchart for considering whether information is material and whether immediate disclosure is required.
- Appendix 3 provides some working examples to show the operation of the continuous disclosure rules in practice;
- Appendix 4 sets out a number of guidelines for disclosure of material information that issuers may use to assist them to comply with their continuous disclosure obligations.

2. The continuous disclosure rules

The continuous disclosure rules are set out in Section 10.1 of the rules (and Section 9.1 of the FSM Rules). These sections of the rules are set out in Appendix 1 of this guidance note. All issuers must comply with the continuous disclosure rules, except for overseas listed issuers (which must instead comply with the listing rules of their home exchange). Issuers which only have debt securities quoted are exempt from rules 10.1.2 and 10.1.3 (which require disclosure of specific arrangements involving related parties) but must otherwise comply with the continuous disclosure rules.

Issuers are required to comply with the continuous disclosure rules when entering into business with a company or other entity that is not subject to the rules. For example, if an issuer enters into an agreement containing confidentiality provisions with an entity that is not subject to the rules, the confidentiality provisions in that agreement will not override the issuer's continuous disclosure obligations contained in the listing rules.

The obligation to disclose material information immediately is a fundamental obligation placed on issuers under the rules. NZX Regulation (“**NZXR**”) may refer breaches of the continuous disclosure rules to the NZ Markets Disciplinary Tribunal, which may impose penalties on issuers in respect of such breaches. In addition, the Financial Markets Authority (“**FMA**”) has power

under securities legislation to take action against issuers which breach the continuous disclosure rules.

3. What is material information?

3.1 The material information test

The most important consideration in relation to continuous disclosure compliance is whether information is “material”, and is therefore required to be disclosed immediately.

“Material information” means information in relation to an issuer that:

- a **reasonable person** would expect, if it were generally available to the market, to have a **material effect** on the price of the issuer’s quoted securities; and
- relates to particular securities, a particular issuer, or particular issuers, rather than to securities generally, or issuers generally (“**particular information**”).

The meaning of material information, including the concepts of a “reasonable person”, “material effect” and “particular information” are explained below. Issuers need to consider each of these concepts to determine whether information is “material”. While there can be no definitive list of the type of information that is material, some examples of the type of information that is likely to be material are set out in the footnotes to the relevant rules. Copies of these rules and footnotes are provided in Appendix 1 to this guidance note.

When considering whether information is material, issuers should be guided by the principle that if in doubt, they should disclose the information (see footnote 10 to rule 10.1). As noted above, the obligation to disclose material information immediately is a fundamental obligation and NZX may take disciplinary action against issuers for non-compliance. Therefore, NZXR encourages issuers to take a cautious approach when determining whether information is “material information”.

3.2 Reasonable person

The reasonable person test is an objective test and is potentially difficult to apply in practice because issuers need to assess whether, if a reasonable person was in possession of the relevant information, that person would consider the relevant information to have a material effect on the price of the issuer’s quoted securities.

“Reasonable person” is not defined in the rules, but in NZXR’s view, a “reasonable person” is a person who commonly invests in securities, and holds such securities for a period of time, based on their view of the inherent value of the securities.

3.3 Material effect

“Material effect” is not defined in the rules and whether or not a particular price movement constitutes a “material effect” will vary depending on the specific characteristics of the security and the issuer of the security. For example, whether or not a security is liquid or illiquid and the size of the issuer concerned.

In monitoring issuers’ compliance with continuous disclosure, NZXR will consider price movements in securities when determining whether information has had a material effect on the price of an issuer’s quoted securities:

- A price movement of 10% or more in a quoted security will generally be treated by NZXR as evidence that information has had a material effect on the price of those quoted securities.
- A price movement of 5% or less in a quoted security will generally be treated by NZXR as evidence that information has not had a material effect on the price of those quoted securities.

Whether price movements between 5% and 10% are evidence of a material effect will depend on the specific facts and circumstances. A price movement of 5% may not be considered a “material effect” in respect of an illiquid security, but for issuers with large market capitalisations and highly liquid securities, price movements of this magnitude may be considered evidence of a “material effect”. NZXR will consider all available evidence when analysing a particular price movement, including price movements in the market generally or within a particular index or sector and any other information relevant to an issuer that could have contributed to a price movement.

NZXR would generally expect any price movement attributable to the release of information to occur soon after the announcement (i.e. within one trading day) following the release of that information. NZXR will therefore also consider the time period between release of information and a price movement when analysing whether that information has had a material effect on the price of a security. NZXR will also consider whether any price movement occurred prior to the release of information (for example, due to information leak or rumour) and, if appropriate, take that price movement into account when considering whether the price movement is attributable to the release of the relevant information.

It is important to note that the guidance set out above does not alter or replace the definition of “material information” contained in the rules or its application to any particular set of facts. As explained above, the material information test is based on what a reasonable person would expect to happen upon the release of information. It is not a hindsight test based on the degree of price movement which *actually* occurs upon release of information. Therefore, the price movement guidance set out above is only a guide as to the level of price movement that is likely to be considered by NZXR as evidence that information has had a material effect on the price of an issuer’s quoted securities. It does not preclude NZXR (or any other regulatory body) from taking a different approach in a particular case. In any investigation, NZXR will consider all available evidence of the impact of information on traded price. NZXR encourages issuers to take a cautious approach when determining whether information will have a material effect on the price of its quoted securities.

3.4 Particular information

In order to be material information, information must be ‘particular’ in the sense that it must relate to a particular security or securities or to a particular issuer or issuers. Information will not be material if it only relates to securities or issuers generally. For example, an agricultural company should not be required to announce general changes in the price of wheat although there may be a requirement for an issuer to disclose the effect of such a change on that issuer if it is going to have a material effect on the price of that issuer’s quoted securities.

Information does not necessarily have to originate from the issuer in order to be material and may instead originate from a third party (for example, a regulatory body such as the Commerce Commission or a rating agency).

If information is material to an issuer or to an issuer’s quoted securities, the issuer has an obligation to immediately disclose that information upon becoming aware of it, regardless of where the information originated.

Where information has originated from a third party, it may be necessary for an issuer to apply for a trading halt, to allow the issuer time to formulate an announcement responding to the information. The use of trading halts in the context of continuous disclosure is discussed in more detail in part 5.3 below.

3.5 Is the material information test the same for both equity and debt securities?

The material information test set out above applies in relation to all quoted securities - including both equity and debt securities. However, information that is considered material in relation to equity securities may not always be considered material in relation to debt securities, and vice versa. This is because equity securities and debt securities have different characteristics and so information which may have a material effect on the price of a quoted debt security, such as a bond, is usually quite different from the type of information which may have a material effect on the price of an equity security, such as an ordinary share.

In respect of debt securities, any information that relates to the ability to pay interest on, and repay the principal on maturity of, a debt security is likely to be material information. Similarly, any change to, or review of, the credit rating of an issuer with debt securities quoted, or to the credit rating of quoted debt securities themselves is also likely to be material information (whether or not that credit rating has been solicited by the issuer).

Examples of the types of information that are likely to be material in relation to debt securities include:

- Material changes in the overall level and nature (eg, ranking) of debt being serviced by an issuer of debt securities.
- Material changes in sources of funding available to an issuer of debt securities.
- Material changes in the asset quality, including significant defaults and arrears and default concentrations of an issuer of debt securities.
- Breach of material banking covenants or credit rating changes.

In contrast to the above, an increase in sales by an issuer with only debt securities quoted is less likely to be material information because it may not have any effect on the ability of that issuer to pay interest on, or to repay the principal on maturity of, the debt security. However, it is important to note that the range of debt securities quoted on the NZX Debt Market has become increasingly complex with the introduction of securities that have both debt and equity characteristics (including “hybrid” securities). The more closely a debt security resembles a traditional equity security, the more likely it is that a wider range of information may have a material effect on the price of that security, and therefore be material information. Note also that, if debt securities start to trade at a distressed yield instead of at a normal yield, a wider range of information will potentially be material information.

If, after considering the material information test discussed above, information is determined to be “material”, that information must be immediately disclosed - unless an exception applies. Exceptions to the obligation to disclose material information immediately are discussed below in section 7.

3.6 Dealing with incomplete information and upcoming events

In some situations an issuer may receive information about an event over time. The issuer may not be able to make a determination regarding the materiality of the information based on the initial or piecemeal information alone. In such cases, no immediate disclosure obligation will be triggered. However, if an issuer requires further information in order to determine whether or not

initial information is material information, the additional information must be sought as soon as possible. An issuer will have a disclosure obligation upon further information being received by the issuer allowing a determination that the information is material to be made.

If an issuer is able to determine that it holds material information based upon initial or incomplete information alone, that information must be immediately disclosed to the market, regardless of the fact that there may be additional information to follow. The issuer cannot simply wait until they have received all information concerning a material event before a disclosure obligation will arise.

There may also be situations where an issuer becomes aware that a material event is going to occur but the event has not yet actually occurred. An issuer will be required to immediately disclose the event upon becoming aware that the event will occur instead of waiting until the event has occurred. For example, if an issuer becomes aware that it will breach a financial covenant, and the fact of such prospective breach is information that a reasonable person would expect to have a material effect on the price of that issuer's quoted securities (i.e. the fact of the prospective breach is material information) the issuer must disclose this information immediately, regardless of the fact that the breach has not actually yet occurred. The types of factors that issuers may need to consider in determining whether a particular breach or pending breach is material include:

- The nature of the covenant;
- The particular loan or facility involved;
- The impact of the breach or pending breach;
- Discussions with the lender; and
- The issuer's current financial position.

Lastly, some information will only become material once it is signed off by the issuer's board. For example, if the chief financial officer of an issuer puts forward a proposal to write down the carrying value of an asset, that proposal may only be considered complete if and when it is approved by the issuer's board. No disclosure obligation would arise until board sign-off has occurred.

3.7 Changes in an issuer's financial forecast or expectation

It is important for investors to understand an issuer's financial position.

An issuer's financial position can change gradually due to a number of events that, viewed individually, may not require disclosure. However, if the combined effect of all of the events reveals a pattern or trend that is material, disclosure will be required. For example, a review of an issuer's monthly management accounts over a six month period could reveal patterns, trends or changes, such as a gradual decrease in revenue or profitability. The impact of the decrease may not be material if it is only considered on a month-to-month basis, but may be material if the cumulative decrease over the six month period is considered.¹

¹ In a public censure of Energy Mad by the NZ Markets Disciplinary Tribunal ("the tribunal") released on 14 October 2013, the tribunal found that Energy Mad did not release Material Information in relation to a change in its forecast EBITDA for the FY2012 promptly enough, as required by NZX Main Board Listing Rule 10.1.1. The tribunal noted that "financial projects and forecasts can be inherently commercially difficult, particularly for new issuers. However, it is vitally important that all Issuers [regularly] assess their financial performance against any announced projections, forecasts or expectations and keep the market fully informed of any matters which [are] material to their progress in achieving them." See the full statement from the tribunal for further detail.

For this reason, it is important that all issuers regularly assess their financial performance against any announced financial projections, forecasts or expectations and keep the market fully informed of any matters that are material to their progress in achieving them. NZXR expects an issuer to immediately disclose where the issuer believes that, based on one or more of its regular assessments, there is a material risk that the actual results of the issuer will materially differ from an announced projection, forecast or expectation.

In addition, if issuers provide financial information to the market on a regular and frequent basis, it is likely that the market will react less dramatically than it may if, for example, a loss is reported at the end of a long period. Some NZX listed issuers choose to release financial information, such as monthly metrics, on a regular basis to manage this. NZXR encourages issuers to consider whether this approach is appropriate.

3.8 Correcting information published by analysts

A number of issuers listed on NZX's markets are covered by analysts or other third parties, who publish earnings forecasts or estimates that may shape the market's expectations of the issuer's earnings or, conversely, may reflect the market's expectations. Issuers who are subject to this coverage, and who do not publish their own forecast earnings or estimates, should have reference to the following guidance.²

It is normal business practice to track financial performance on an ongoing basis throughout the year against a set of internal performance metrics. This information is likely to be confidential to the issuer and generated for internal management purposes. Accordingly, if the issuer continues to satisfy the other requirements of Rule 10.1.1, that information will be subject to a safe harbour and is not required to be published to the market.

Ongoing internal monitoring of financial performance means that issuers will be aware of how their actual performance is tracking against third party forecasts or estimates, on an ongoing basis.

NZX reiterates that it does not consider that issuers have a general obligation under the Listing Rules to:

- Correct analyst's earnings forecasts or consensus estimates which do not align with an issuer's internal earnings projections; or
- publish their internal earnings projections solely because they do not align with earnings forecasts or consensus estimates.

However, NZX considers that, if an issuer has not published its own forecasts, market expectations in respect of the issuer's performance will be influenced by public information, including forecasts published by analysts, and that the market will generally price in those performance expectations. Issuers should consider how the market may react if an issuer discloses actual performance that materially deviates from the market's expectations, and if an issuer has not published its own forecasts or guidance, this consideration will necessarily include the effect of forecasts and estimates published by third parties on market expectations, and the degree to which those forecasts and estimates reflect broader market expectations.

Issuers may experience a material effect on their share price where they release financial results that materially deviate from market expectations. In these circumstances, NZX considers

² Issuers that do publish their own earnings guidance should have reference to the guidance set out in section 3.4, above. All issuers, including those that do not publish their own forecasts, and are not subject to third party forecasts or estimates, should refer to section 3.9, below.

that information relating to that expected deviation may itself be “material information” for the purposes of the Listing Rules, and trigger the obligation to disclose under Rule 10.1.1(a).

NZX considers that for a disclosure obligation to arise under Rule 10.1.1(a), the issuer will need to be sufficiently certain that the deviation will arise – that is, the issuer needs to be reasonably certain of its actual performance and that the deviation from market expectations will be material. A material deviation from expected results that an issuer anticipates has the potential to arise as a result of actual performance earlier in the reporting period is less likely to require disclosure, as there is still a significant opportunity for the deviation to reduce (either as actual results change, or expectations change). An obligation to disclose a material deviation is therefore most likely to arise near the end of the reporting period.

If, once it is sufficiently certain that its actual results will deviate from expectations informed by, or reflected in, a third party forecast or estimate, an issuer subsequently determines that the information regarding the deviation is material information (for the purposes of Rule 10.1.1):

- The issuer must promptly, and without delay, disclose that the issuer’s performance for the reporting period is expected to materially deviate from market expectations, and give an indication of the order of magnitude of that deviation; and
- NZX expects that the issuer will consider why the deviation between forecasts and estimates and the actual performance of the issuer has arisen. NZX encourages issuers to monitor analyst coverage that relates to it and, if appropriate, clarify any issues with that analysis proactively.

There may be legitimate reasons why analyst coverage may not align with an issuer’s own expectations, such as errors in the analysis or insufficient understanding of an issuer’s strategies or business plans. In addition, the issuer may have factored in information, or made assumptions, that remain confidential to it and which are not subject to any disclosure obligation and therefore cannot have been considered by the analyst. That engagement with analysts may indicate to an issuer that the market does not have all of the information it needs to inform its expectations of an issuer’s performance, or that the market has not properly understood the importance of information previously released to the market, in which case issuers should consider what additional information they are able to release. If issuers are to release additional information, this must be released via NZX’s market announcements platform.

If issuers do engage with analysts, they are reminded to ensure they do not inadvertently breach their disclosure obligations under the Listing Rules by selectively disclosing Material Information to analysts which is not otherwise available to the market. In addition, issuers should carefully consider before approving or supporting forecasts or estimates provided by third parties. NZX considers that statements by issuers that could be construed as supporting third party estimates or forecasts are likely to be treated as de facto guidance by the issuer. This, in turn, increases the onus on issuers to address discrepancies that arise between that guidance and actual results.



3.9 Monitoring market expectations

Issuers should consider how to manage the market's expectations regarding their results on an ongoing basis during the year (including expectations that may arise as a result of performance in prior comparable periods), in order to avoid surprises when announcing their financial results. Issuers may choose to manage this by educating the market about, for example, the issuers' particular business models and how that may impact an issuer's financial performance, earnings and cashflow profile, as part of their usual stakeholder and investor relations efforts.

Issuers might also consider whether publishing forecasts of key performance metrics to the market would be beneficial. In NZX's opinion, this allows issuers to better manage market expectations, and may reduce the likelihood of earnings surprises. NZX acknowledges that this will not be a viable option for some issuers.

In addition, issuers may identify that additional information may need to be disclosed in order to provide further context in relation to the issuer's business or performance, or to support the market to understand previous announcements made by the issuer. Issuers could consider providing financial information to the market on a regular and frequent basis to avoid earnings surprises.

3.10 Intervention by NZX

As part of its monitoring and surveillance functions, NZX may identify situations where information in the market, which has not been released by an issuer, appears to be having a material effect on the price of the issuer's securities. In such circumstances, NZX will contact the issuer and seek its view on whether the market is fully informed.

In extreme cases, if it appears that a false market has arisen, NZX may exercise its powers to place an issuer's securities in a trading halt, while the issuer takes the necessary steps to release a market announcement.

In these circumstances, NZX will seek to understand:

- the degree of awareness the issuer has about information relating to it that is in the public arena;
- the degree of awareness the issuer has about the effect of that information on the price of its securities; and
- whether the issuer has considered its disclosure obligations under Rule 10.1.1(c).

3.11 Release of periodic financial reports and dividend information

In relation to release of periodic financial reports (such as preliminary announcements and annual and half year reports), NZXR would expect such announcements to be released to the market on or prior to the scheduled reporting date (regardless of when the board may have formally signed off such reports prior to this date). However, an issuer may need to release particular information contained within a proposed report, or the report itself, earlier if that information is material information and the issuer becomes aware of that information prior to the scheduled reporting date. For example, if an issuer becomes aware that it will not meet its full year earnings forecast by a material amount that information must be immediately released to the market regardless of the scheduled reporting date.

Information relating to payment of a dividend may also be released together with the periodic financial report, except if the dividend information is material information, in which case, it should be released immediately following board sign-off.

4. When does an issuer become aware of information?

4.1 When directors and executive officers become aware of information

Rule 10.1.1 states that an issuer becomes “aware of information” if a director or an executive officer of the issuer (and in the case of a managed fund, a director or executive officer of the manager) has come into possession of the information in the course of the performance of his or her duties as a director or executive officer. A rule of thumb has been to define “executive officer” as a person who reports directly to a board of directors or a person who reports directly to a person who reports directly to a board of directors.

A director or executive officer of an issuer who becomes aware of information, must consider, immediately, whether that information is “material information” (by considering the material information test discussed in sub-section 3.1 above) and must therefore be disclosed. Issuers must implement appropriate systems and procedures to ensure that material information is promptly identified and decisions as to whether disclosure is required are made (refer to ‘Compliance procedures’ in section 6 below for further information).

5. The requirement to disclose “immediately”

5.1 What does “immediately” mean?

Once an issuer becomes aware of material information, it must be immediately released to the market. In NZXR’s view, “immediately” means “promptly and without delay”.

There will inevitably be a period of time between a director or executive officer of an issuer becoming aware of material information and the release of that information to the market. This does not mean, by default, that an issuer has failed to release information immediately. How promptly an issuer is able to release an announcement will depend on the particular circumstances and the particular nature of the material information. NZXR will consider these factors when determining whether an issuer has complied with the requirement to release material information immediately (or ‘promptly and without delay’). For example, it may depend on:

- The nature, amount and complexity of the information concerned;
- Where the information originated from and whether the information needs to be checked or verified; and
- How long it takes the issuer to draft the necessary announcement, including to ensure the announcement is complete, accurate and not misleading.

Issuers need to have appropriate systems and procedures in place to meet their continuous disclosure obligations. This point is discussed further below under the ‘Compliance Procedures’ section of this guidance note. Note also the interaction with the use of trading halts in this area, as discussed in section 5.3.

Board oversight

Issuers must disclose material information as soon as they become aware of it, regardless of when the next board meeting is scheduled. For example, where an issuer becomes aware that it has breached a material financial covenant, the issuer must disclose this information as soon

as it becomes aware of it, and may not wait until the next scheduled board meeting to address the issue.

Where a decision or recommendation is incomplete until it is signed off or approved by an issuer's board, the issuer should prepare an announcement in advance, so that it can be released immediately after board sign-off. NZXR considers that an issuer will generally meet the requirement to release information immediately (or 'promptly and without delay') by releasing it immediately after the conclusion of the relevant board meeting.

Board oversight of continuous disclosure is important, but issuers need to balance the requirement to disclose material information "immediately" with the practical issues relating to the operation of a board. That means that arrangements need to be in place to ensure timely disclosure, and it may not be possible for the board as a whole to be involved in decision making in relation to disclosure where the issuer has unexpectedly become aware of material information. Please refer to the section 6 below titled, 'Compliance Procedures' for further commentary in relation to board oversight of continuous disclosure.

5.2 Release of information outside of NZX hours

Issuers have an obligation to release material information immediately, however in some situations this may fall outside of NZX's operating hours.

Where there is a need for an issuer to make an announcement to the public or to another stock exchange outside of NZX's operating hours, the issuer must provide the announcement to NZX via the market announcement platform at the same time as it is released publicly or, if that is not practicable in the circumstances, as soon as reasonably practicable after that time, provided that the announcement is provided for release prior to next market open. Where an announcement is submitted to NZX outside of NZX's operating hours, NZX will not acknowledge receipt until the next business day.

The fact that a public announcement is made outside of NZX's operating hours in these circumstances would not be a concern to NZXR provided that the announcement is provided to NZX prior to the next market open.

5.3 Trading halts

An issuer may need to request a trading halt to meet its continuous disclosure obligations in certain circumstances. Although the listing rules require an issuer to release material information immediately upon becoming aware of it, subject to limited exceptions, the circumstances may require an issuer to request a trading halt until such time as an announcement can be prepared and released.

A trading halt may also be necessary if there is information in the public arena that an issuer needs to respond to because it needs to confirm, deny or clarify information of a material nature that has been released by another party or explain the impact of that information on the issuer. In situations where an issuer must respond to information released by a third party it may need time to consider the likely impact before a response can be provided. This is particularly the case if the issuer needs to respond to a sudden or unexpected event. In these cases a trading halt may be necessary to ensure there is not a false or disorderly market prior to the issuer releasing a material announcement.

However, an issuer should not request a trading halt simply as a tactic to delay release of information and therefore NZXR will consider all requests for trading halts on a case-by-case basis. NZXR encourages early engagement on such requests. Issuers should refer to NZX's guidance note 'Trading Halts and Suspensions' for guidance about requesting a trading halt.

6. Compliance procedures

As indicated above, all issuers should put systems and processes in place to enable release of material information as soon as they become aware of it. These systems and processes should deal with the following matters:

- Enabling identification of price sensitive information in different areas of the business;
- Considering information generated by the issuer as a matter of routine, such as monthly trading metrics, to determine whether a market update is required;
- Responding to sudden or unexpected events in a timely manner;
- Enabling issues and incidents to be appropriately escalated so that disclosure obligations are considered by responsible individuals;
- Identifying individuals who have authority to agree and sign off urgent market announcements;
- Identifying individuals who have responsibility for discussing disclosure issues with NZX i.e. individuals with sufficient knowledge of the business and sufficient authority to agree the release of an announcement or to request a trading halt where necessary;
- Preparation of draft announcements in advance of board meetings or other planned events, such as entering into agreements;
- Enabling appropriate board oversight of issuers' compliance with continuous disclosure.
- Where possible, releasing material information prior to market open. However, NZXR notes that an issuer's ability to release prior to market open will partly depend on where the material information originates from (i.e. whether information originates from the issuer itself or in response to information from a third party) and does not negate the requirement to disclose all material information immediately.

Systems and processes will likely vary depending on the size and available resources of the issuer but they need to be adequate to enable the issuer to meet its obligations - for example, some issuers may have a disclosure committee to consider some of the matters identified above but this will not be the case for all issuers. Issuers should ensure that internal policies and procedures are designed to enable prompt disclosure, e.g., a disclosure committee should be composed of members who can be quickly and easily convened.

Issuers can also take other steps to meet continuous disclosure obligations by scheduling of board meetings or the execution of legal agreements. For example, a material proposal will generally be complete at the time the parties sign an agreement to implement or give effect to the transaction (and therefore disclosure would be required immediately following signing of the agreement). Issuers should therefore prepare an announcement in advance so that they are able to make an immediate release following signing. Refer to section 7.3 for further information about incomplete negotiations and proposals.

If an issuer needs to respond to information to be released by a third party, it may be possible to obtain an embargoed copy of the information in advance of release so that the issuer has an opportunity to consider and prepare a response for immediate release following publication by the third party. However, the issuer must be satisfied that an exception to immediate disclosure applies in the meantime. Examples of the types of processes that an issuer may choose to

implement to deal with the matters raised in the list above are set out in Appendix 4 of this guidance note.

6.1 Content of announcements

There is no prescriptive list of information that issuers need to include in their market announcements. The level of detail that should be included in an announcement will vary depending on the content and the reason for the announcement. Issuers should ensure that announcements contain sufficient information for investors to understand and assess the implications of the announcement and to assess the potential impact on the price or value of the issuer's securities. However, it is important that proper emphasis is given to key items and these are not buried in the details.

Footnote 2 to rule 10.1.1 provides the following guidance on information that should generally be disclosed in respect of entry into a material transaction:

- *a description of the assets or securities acquired or disposed of;*
- *the amount, composition, and method of payment of the consideration;*
- *where securities are acquired or disposed of, the percentage of the total issued securities of each class represented and the percentage of each class of security held following the acquisition or disposition; and*
- *the nature of any material conditions which may result in the transaction not proceeding and the dates on which the transactions:*
 - a. are to become unconditional; and/or*
 - b. are to be settled by payment:*

7. Exceptions to the Rules

There are a number of exceptions to the continuous disclosure rules, which are known as the "safe harbour" provisions. The "safe harbour" provisions permit material information to be withheld from immediate disclosure if certain criteria are met. Material information will not need to be released under rule 10.1.1 when:

- (i) a reasonable person would not expect the information to be disclosed; and
- (ii) the information is confidential and its confidentiality is maintained; and
- (iii) one or more of the following applies:
 - (A) the release of information would be a breach of law; or
 - (B) the information concerns an incomplete proposal or negotiation; or
 - (C) the information comprises matters of supposition or is insufficiently definite to warrant disclosure or;
 - (D) the information is generated for the internal management purposes of the Issuer; or
 - (E) the information is a trade secret.

Issuers must release material information unless all of sub clauses (i), (ii) **and** (iii) apply. Material information cannot be withheld on the basis that just one or two of the sub clauses apply.

7.1 Reasonable person

The first sub clause of the safe harbour provision applies when a reasonable person would not expect the information to be disclosed.

Footnote 3 to rule 10.1.1 notes that “a reasonable person” would not expect information to be disclosed if the release of the information would:

- a) unreasonably prejudice the issuer; or
- b) provide no benefit to a person who commonly invests in securities.

This sub clause requires an objective assessment of the circumstances relating to the information concerned to determine whether a reasonable person would expect the information not to be disclosed.

If a reasonable person would expect the information to be disclosed, the information must be disclosed immediately, regardless of whether the other sub clauses discussed below apply.

NZXR considers that this reasonable person sub clause of the “safe harbour” provision has a narrow application in practice because, generally, information which falls within one of the prescribed categories set out in sub clause (iii) and which also satisfies the confidentiality requirement set out in sub clause (ii), will also satisfy the reasonable person sub clause. Therefore, it is likely that the question of whether a reasonable person would not expect disclosure would follow the determination of whether the other sub clauses apply (i.e. whether the information remains confidential and falls within one of the specific exemptions outlined in sub-paragraph 10.1.1(a)(iii) of the rules).

The first part of the test identified above requires consideration of the prejudice that disclosing information could have to the issuer and, by extension, to investors. This does not mean that issuers can simply choose to withhold unfavourable news from the market.

7.2 Confidentiality

The second sub clause of the safe harbour provision requires the information to be confidential and its confidentiality must be maintained.

For this sub clause to apply, the information must be kept in confidence. Whether information is kept in confidence is a question of fact. The information cannot be in the public domain.

Where an issuer is involved in confidential negotiations, the other party must also keep the fact of, and content of, those negotiations in confidence for the exception to apply. Once information is received by a person who is not bound by an obligation of confidence, or is unlikely to keep the information in confidence, the exception no longer applies and the information must be disclosed to NZX (refer to footnote 5 to rule 10.1.1). For example, the exception will not apply where there has been a breach of a written confidentiality agreement. Please see examples 3 and 4 within appendix 3 for further guidance on the application of the rules in this area,

Media speculation about a matter does not necessarily mean that information has not been kept in confidence (see footnote 9 to rule 10.1.1 and the comments under section 9 titled “False markets” below).

An assessment of whether information has been kept in confidence needs to be made on the particular facts of each situation. For example, media speculation on a matter may not require disclosure if those privy to the information have not breached confidence and the speculation is inaccurate, lacking in specific detail and from a source which does not lend substantial credence to the speculation.

NZXR notes that issuers may disclose material information to related parent or subsidiary companies (or other similar entities) in the course of their decision-making and reporting processes. Where the disclosure of information to parent or subsidiary companies will not, in itself, result in confidence being lost, this may satisfy the confidentiality sub clause. However, in order to fall within the exception in rule 10.1.1, the information must also meet one of the other requirements for exception set out in the third sub clause – for example, the information concerns an incomplete proposal. If the third sub clause does not apply, the fact that the information is confidential will not be enough to bring the information within the exception and therefore the information must be immediately disclosed to the market. Please refer to footnote 7 to rule 10.1.1 and our comments on “Other requirements for exception” below in this regard.

7.3 Other requirements for exception

As well as meeting the reasonable person and confidentiality sub clauses discussed above, at least one of the matters in sub-paragraph 10.1.1(a)(iii) of the rules must apply.

In particular, sub clause (a) (iii) (A) enables companies to withhold information where the **release of information would be a breach of law**. To satisfy this limb of the exemption, NZXR considers that it would require more than simply a breach of a contractual obligation, such as a confidentiality provision, otherwise a party could seek to contract out of its obligation to disclose material information immediately.

Sub clause (a)(iii)(B) enables companies to withhold information about **incomplete proposals or negotiations**. In NZXR’s view, a proposal or negotiation can generally be considered complete when both parties sign an agreement to implement or give effect to the transaction. This will also be the case in relation to signed conditional agreements, which are unlikely to be “incomplete proposals” for the purpose of the exceptions within the rules.³ Issuers should also note that a proposal or negotiation can be complete for the purposes of sub clause (a)(iii)(B) before it becomes legally binding and even if it is conditional.⁴

NZXR also notes sub clause (a)(iii)(C), which enables companies to withhold **matters of supposition or matters insufficiently definite to warrant disclosure**, and sub clause (a)(iii)(D) which provides an exception from disclosure where information is generated for **the internal management purposes** of the issuer. For example, a listed issuer that is a subsidiary may involve its parent in its business planning processes and be required to provide financial information on a regular basis to its parent for this purpose. These processes are for the issuer’s internal business planning and management purposes. NZXR does not consider that the fact of the involvement of the parent company necessarily places the information outside this exception. Whether information falls within the exception will depend on the facts and the particular involvement of the parent company in the internal management of the subsidiary.

³ An agreement entered into for the purpose of facilitating the negotiation of a transaction would generally not be expected to be disclosed (unless the existence of that option or arrangement was material information in its own right) and can be distinguished from an agreement which gives effect to a transaction.

⁴ In a public censure of Rakon Limited by the NZ Markets Disciplinary Tribunal (“tribunal”) released on 5 March 2014, the tribunal determined that “a proposal or negotiation can be complete for the purposes of Rule 10.1.1(a)(iii)(B) before it becomes legally binding” and that, generally, the appropriate point at which a proposal ceases to be an incomplete proposal or negotiation is “when both parties sign an agreement” See the full statement from the tribunal for further detail.

8. Disclose to NZX first

This section is intended to provide guidance on the release of announcements to NZX. For NZX's approach to announcements that need to be released to the public or another stock exchange outside of NZX operating hours, please refer to sub-section 5.2. Rule 10.1.1(b) provides that issuers shall not disclose any material information to the public, other recognised stock exchanges (except as provided for under the rules) or other parties (except those parties to whom the proviso to rule 10.1.1(a) applies):

- (i) prior to disclosing that material information to NZX; and
- (ii) prior to an acknowledgement from NZX of receipt of that material information.

If an issuer is required to make disclosure under the rules, no information should be made public about the matter until the information has been provided to NZX. Announcements are required to be made to NZX via the Market Announcement Platform (“**MAP**”) or in some other manner permitted by the rules. Disclosure is required to be made to NZX first, even where the issuer chooses to release to the media on an embargoed basis.

Issuers should allocate responsibility to a particular individual (or individuals) for making announcements through MAP. No further public statement should be made about the matter which is the subject of release unless or until confirmation of release has been acknowledged by NZX.

To avoid a breach of this rule, directors and officers of the issuer should be particularly careful about what they say when speaking publicly (including at analyst or institutional investor briefings) about the issuer. NZXR notes that it is best practice for issuers to release to NZX any information that will be discussed at an analyst or investor presentation no later than the time of commencement of that presentation. They should only talk about information that has already been disclosed, or information that is not material.

Rule 10.2.3(c) (and rule 10.3.3(c) in the case of the NZX Alternative Market Listing Rules) provide that all announcements for public release by NZX shall be released to NZX:

- (i) in the case of an issuer listed on a recognised stock exchange, before or at the same time as it releases the announcement to the other exchanges on which it is listed, and in any event at least 10 minutes prior to its public release (other than to the extent a recognised stock exchange releases the information to the public); and
- (ii) in the case of every other issuer, 10 minutes prior to its public release.

The rules prohibit release of material information to any other party before release to NZX. These rules are designed to ensure the efficiency and effectiveness of release of market information by NZX. MAP is the central collection point for price sensitive information. Traders have access to the information provided via MAP to allow them to re-price bids or offers as a consequence of an announcement. By using MAP, risks of unequal distribution of information are reduced because NZX data is widely disseminated via this platform.

Where an issuer is also listed on another recognised stock exchange, the rules provide for disclosure to NZX at the same time as disclosure to that other exchange. NZX encourages issuers to work with NZX to co-ordinate release of significant announcements where that issuer is also listed on a recognised stock exchange.

9. False Markets

In certain circumstances issuers are required to prevent development of a false market for the issuer's shares influenced by false or misleading rumours in the media. These circumstances are prescribed in rule 10.1.1(c). Under this rule, issuers are required to release material information to NZX to the extent necessary to prevent development or subsistence of a market for its quoted securities which is materially influenced by false or misleading information emanating from:

- (i) the issuer or any associated person of the issuer; or
- (ii) other persons in circumstances in each case which would give such information substantial credibility,

and which is of a reasonably specific nature, whether or not rule 10.1.1(a) applies.

If an issuer does not have material information with which to respond to the rumour then it can simply confirm that it is in compliance with its continuous disclosure obligations.

9.1 Material influence on market

For rule 10.1.1(c) to apply, the rumours need to have a material influence on the market price or traded volumes of an issuer's quoted securities. The meaning of material in this context is likely to include where rumours are likely to influence the market in trading the securities. In considering whether the market has been materially influenced by false or misleading information, it may assist to consider the effect of the rumours on the price of the issuer's securities.

9.2 Persons who give the information substantial credibility

For rule 10.1.1(c) to apply, the information must come from the issuer or its associates, or other persons who give the information substantial credibility. This may include members of the media, particularly the financial media. It may depend on who the media is quoting. However, the rule specifies that whether the person disseminating the information would give the information substantial credibility depends on the circumstances in each case. NZXR notes that mere speculation, disseminated by the media, without being backed by a credible source would not have the requisite degree of substantial credibility.

9.3 Release information

Where the rule applies, the issuer should release material information to NZX to the extent necessary to prevent development or subsistence of a market that is materially influenced by false or misleading information. Footnote 9 to rule 10.1.1 notes that the duty to correct false information in the market is limited so that parties cannot force information out of an issuer simply by generating a false rumour. The market's interest in requiring correction of false rumours is intended to be limited to those which are of a reasonably specific nature and from a source which lends substantial credibility to them.

The following are suggested responses for compliance with rule 10.1.1(c):

1. The issuer to respond, via standard language that "[The issuer] is in full compliance with its continuous disclosure obligations".
2. If further clarification is needed the issuer should approach NZXR with additional information for NZXR to review. If approached, NZXR may consider making a statement as to whether, on the basis of the information provided, it considers that the issuer has complied with the Rules.

3. Alternatively, the issuer may release such clarification to the market as is needed.
4. If necessary, the issuer may request a trading halt under rule 5.4.1 to prevent development of a false market.

These suggestions are intended to enable issuers to comply with rule 10.1.1(c) obligations as appropriate, while avoiding the problem noted above.

If the rumours are true, an issuer will need to consider whether disclosure of material information is required due to loss of confidentiality. We suggest that issuers consider using the suggested responses outlined above (where they are not required under the rules to respond fully).

Where NZX becomes aware of rumours in the media, we may contact the relevant issuer for an explanation. In appropriate cases, NZXR may consider imposing a trading halt to prevent a false market developing.

10. Additional information

In each case, rule 10.1.1 is supported by rule 10.2.5 (and rule 10.3.5 in the case of the NZX Alternative Market Listing Rules) which provides that NZX may, following receipt of an announcement, in consultation with the issuer, require any amendment, addition or alteration to the announcement (for example, to correct an announcement that may be false or misleading), or require the issuer to disclose such further material information following release of the announcement as NZX determines.

This rule enables NZXR, in discussion with the issuer, to require that additional information be disclosed to the market to correct an announcement that may be false or misleading. NZXR has powers of inspection under rule 2.3.1, which empowers NZXR to request any document, or require the issuer to appear for an interview for the purpose of ascertaining whether an issuer is complying or has complied with the rules.

11. Price enquiries

NZXR will from time to time make formal price enquiries of issuers if trading prices or volumes are not adequately explicable by reference to information considered generally available to the market.

In-depth analysis is undertaken by the Surveillance team of anomalous market conduct, which may include analysis of activity by security, by participant or by client. The team uses market-monitoring software, market information from NZX's trading platform and other trading and market information including from third parties and from NZX's historical databases. There is not one automatic trigger that would result in a price enquiry being issued, rather it is a more holistic view of other factors that may be relevant, if NZX considers it to be appropriate in the circumstances. This is not a strictly formal approach, and NZX will take into account changes in price and volume, in the context of the liquidity of the stock. Where NZX does make a price enquiry, this will be released to the market together with the issuer's response to the price enquiry.

12. Contact us

If you have any questions on the matters in this guidance note, please contact NZXR at 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

NZX Main Board/ Debt Market Listing Rule 10.1.1 and NZX Alternative Market Listing Rule 10.1.1

(NZX Alternative Market Listing Rule references are in brackets. For equivalent FSM Rules, refer to FSM Rule 9.1.1):

“Without limiting any other Rule, every Issuer [or NZAX Issuer] shall:

- (a) once it becomes aware of any Material Information concerning it, immediately release that Material Information to NZX, provided that this Rule shall not apply when:
 - (i) a reasonable person would not expect the information to be disclosed; and*
 - (ii) the information is confidential and its confidentiality is maintained; and*
 - (iii) one or more of the following applies:
 - (A) the release of information would be a breach of law; or*
 - (B) the information concerns an incomplete proposal or negotiation; or*
 - (C) the information comprises matters of supposition or is insufficiently definite to warrant disclosure; or*
 - (D) the information is generated for the internal management purposes of the Issuer; or*
 - (E) the information is a trade secret.***

In this Rule 10.1.1 an Issuer is aware of information if a Director or an executive officer of the Issuer (and in the case of a Managed Fund, a Director or executive officer of the Manager) has come into possession of the information in the course of the performance of his or her duties as a Director or executive officer.

- (b) not disclose any Material Information to the public, other Recognised Stock Exchanges (except as provided for in Rule 10.2.3(c)(i)) [or 10.3.3(c)(i)] or other parties except those parties to whom the proviso to Rule 10.1.1(a) applies:
 - (i) prior to disclosing that Material Information to NZX; and*
 - (ii) prior to an acknowledgement from NZX of receipt of that Material Information.**
- (c) release Material Information to NZX to the extent necessary to prevent development or subsistence of a market for its Quoted Securities which is materially influenced by false or misleading information emanating from:
 - (i) the Issuer [or NZAX Issuer] or any Associated Person of the Issuer; or*
 - (ii) other persons in circumstances in each case which would give such information substantial credibility,**

and which is of a reasonably specific nature whether or not Rule 10.1.1(a) applies.

1. The following information is likely to be Material Information under this Rule 10.1.1:
 - *a change in the Issuer's financial forecast or expectation.*
 - *the appointment of a receiver, manager, liquidator in respect of any loan, trade credit, trade debt, borrowing or securities held by the Issuer or any of its Subsidiaries.*
 - a transaction for which the consideration payable or receivable is a significant proportion of the written down value of the entity's consolidated assets. Normally, an amount of 5% or more would be significant, but a smaller amount may be significant in a particular case.
 - a change in the control of the Manager of a Managed Fund, or a change of trustee of a Listed trust.
 - a proposed change in the general character or nature of a Listed trust.
 - a recommendation or declaration of a dividend or distribution.
 - a recommendation or decision that a dividend or distribution will not be declared.
 - undersubscription or oversubscription to an issue.
 - a copy of a document containing market sensitive information that the entity lodges with an overseas stock exchange or other regulator which is available to the public. The copy given to NZX must be in English.
 - giving or receiving a notice of intention to make a takeover.
 - any proposed change in the general nature of the business of an Issuer or its group.
 - a disposal or acquisition (including entering into any agreement or option to do so) of Quoted Securities of another Issuer carrying 5% or more of the Votes attaching to any Class of Securities of that Issuer.
 - the acquisition or disposition of Securities in the Issuer carrying 5% or more of the Votes attaching to any Class of Securities of that Issuer.
 - acquisition or disposition, by whatever means of assets of any nature (including entering into any agreement or option to do so) where the gross value of those assets, or the consideration paid or received by the Issuer, represents more than 10% of the Average Market Capitalisation of the Issuer.
2. Where an Issuer discloses a transaction as Material Information, Rule 10.1.1 will generally require disclosure of all material details of the transaction, including:
 - a description of the assets or securities acquired or disposed of;
 - the amount, composition, and method of payment of the consideration;
 - where securities are acquired or disposed of, the percentage of the total issued Securities of each Class represented and the percentage of each Class of Security held following the acquisition or disposition; and
 - the nature of any material conditions which may result in the transaction not

proceeding and the dates on which the transactions:

- a. are to become unconditional; and/or
- b. are to be settled by payment:

3. For the purpose of Rule 10.1.1(a)(i), a “reasonable person” would not expect the information to be disclosed if the release of the information would:
 - (a) unreasonably prejudice the Issuer; or
 - (b) provide no benefit to a person who commonly invests in securities.
4. It is a requirement of the exception to this Rule 10.1.1 that the information is confidential. In this context “confidential” has the sense “secret”
5. Once the information is received by any person who is not bound by any corresponding obligation of confidentiality with which that person is likely to comply the exception no longer applies and the information must be disclosed to NZX. This is the case even if the Issuer has entered into confidentiality arrangements and/or the information has come from a source other than the Issuer.
6. NZX accepts that information provided by the Issuer to:
 - (a) a professional advisor;
 - (b) a party negotiating on the Issuer’s behalf;
 - (c) a third party negotiating with the Issuer; or
 - (d) a regulatory authority,

does not lose its confidentiality, provided that in each case the information was provided with an obligation to maintain its confidentiality and such information is used by the party to whom it was provided solely for the purpose for which it was provided.

7. NZX also accepts that information provided by the Issuer to a holding company for the purposes of enabling that holding company to comply with its financial reporting obligations does not lose its confidentiality, provided that the information is provided subject to an obligation to maintain its confidentiality and use the information solely for financial reporting purposes, and such information is used by the party to whom it was provided solely for the purpose for which it was provided and is kept confidential.
8. The duty to disclose to NZX is not intended to supersede any desirable communication directly with holders of Securities, whether by way of letter or otherwise. However Issuers must appreciate that disclosure to holders in bare compliance with any legal obligations is not sufficient for an Issuer.
9. The duty to correct false information in the market is limited so that antagonists cannot force information out of an Issuer simply by generating a false rumour. The market’s interest in requiring correction of false rumours is intended to be limited to those which are of a reasonably specific nature and from a source which lends substantial credence to them.

10. In deciding whether or not to release information, Issuers should have regard to:
- (a) Rule 1.6.6, the effect of which is to aggregate a group of entities for disclosure purposes;
 - (b) section 178 of the Companies Act 1993, dealing with the rights of shareholders to require the provision of information by a company;
 - (c) Part 1 of the Securities Markets Act 1988, dealing with insider trading; and
 - (d) the Fair Trading Act 1986, and in particular the sections dealing with the supply of information that is or is likely to be misleading or deceptive.

An Issuer should also be guided by the principle that if in doubt it should disclose the information.

NZX Main Board/ Debt Market Listing Rule 10.2.3 and NZX Alternative Market Listing Rule 10.3.3

(NZX Alternative Market Listing Rule references are in brackets. For equivalent FSM Rules refer to FSM Rule 9.2.3):

All announcements for public release to the market by NZX shall be:

- (a) *sent to NZX on a Business Day during market trading hours or half-an-hour before or after market trading hours. Announcements received up to half an hour after market trading hours will be released to the market and media on the day of receipt. Announcements received after that time will be held over until the following Business Day and shall not be released by the Issuer [or NZAX Issuer] to any other party, including the media, until half-an-hour before the market opens on the following Business Day; and*
- (b) *in the case of long or complex documents or announcements, prefaced by a summary of salient points. The summary shall be in a form suitable for immediate transcription and dissemination by NZX without substantial editing, specifically drawing attention to the features by reason of which the information is required to be disclosed pursuant to the Rules; and*
- (c) *released to NZX:*
 - (i) *in the case of an Issuer [or NZAX Issuer] listed on a Recognised Stock Exchange, before or at the same time as it releases the announcement to the other exchanges on which it is listed, and in any event at least 10 minutes prior to its public release (other than to the extent a Recognised Stock Exchange releases the information to the public); and*
 - (ii) *in the case of every other Issuer [or NZAX Issuer], 10 minutes prior to its public release.*

1. *Documents will not be accepted by NZX which are too indistinct to be readily copied or transmitted by facsimile in legible form.*

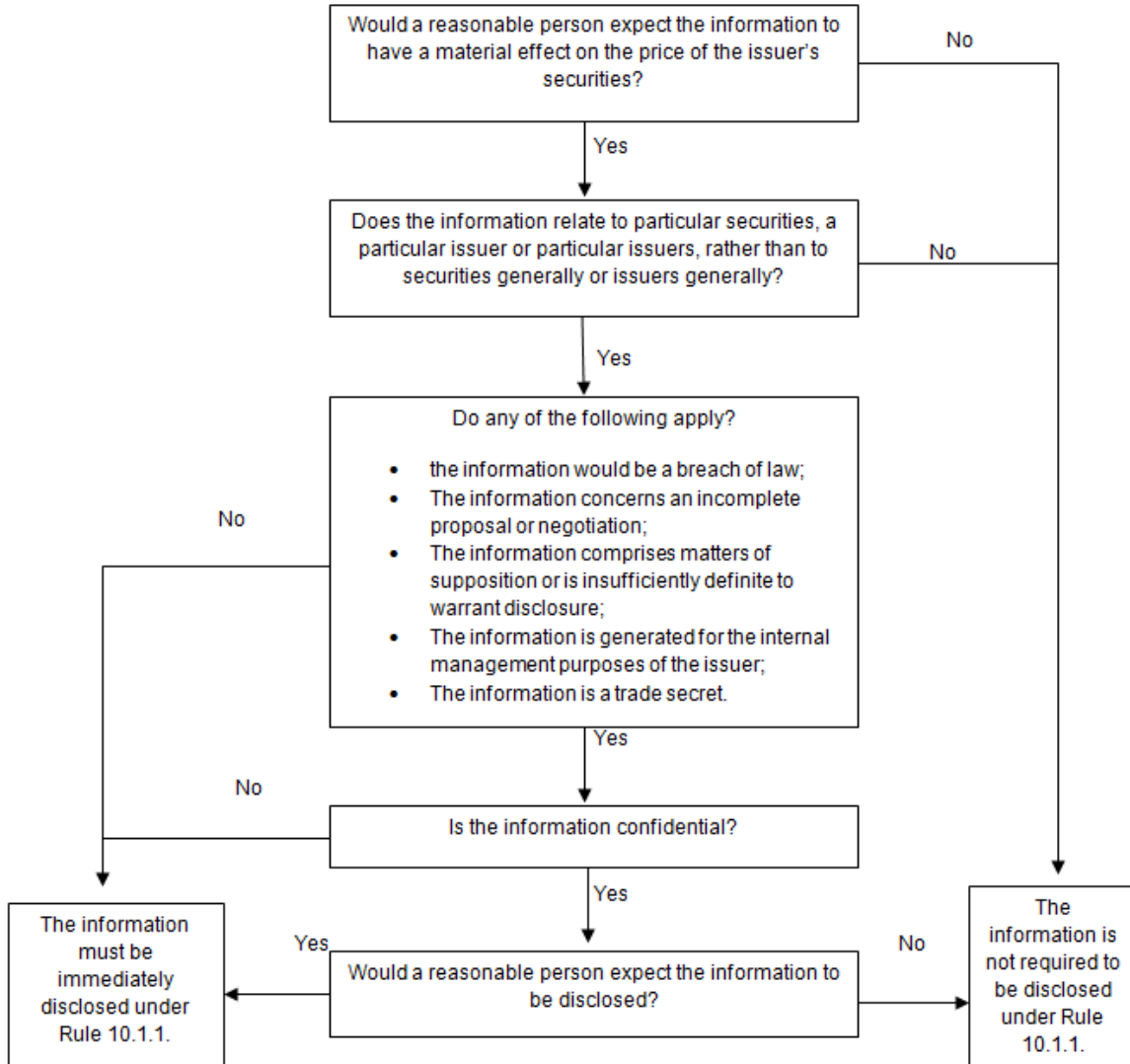
2. *Documents that will require to be accompanied by a summary before acceptance will*

include:

- Preliminary statements released in accordance with rule 10.4;
 - Takeover documents generated in accordance with the requirements of the Takeovers Code
 - Presentations containing Material Information
3. *An Issuer that is dual listed should release information to NZX before or at the same time as it releases information to the other exchanges on which it is listed.*



Appendix 2 – The continuous disclosure process



Appendix 3: Examples

The following examples are illustrative only and relate only to the obligations of an issuer under the Rules. These examples should not be regarded as having any effect on the Rules.

For the purposes of this working example we have developed the following fact scenario, concerning an issuer, X Limited.

NZX Listed Issuer	Since January 2002	
Market Capitalisation	\$500 million	
Shareholders' Funds	\$200 million	
Current Share Price	\$1.00	
Shareholder Information	Y Limited – an infrastructure investment firm.	51%
	Members of the Public	49%
Balance date:	30 June	

X Limited is an NZX Main Board Listed Issuer, engaged in the business of running airports that connect major centres in New Zealand and around the world.

X Limited has achieved considerable success by providing luxurious airport environments.

X Limited has interests in airports based in Auckland, Christchurch, Wellington, Sydney, Canberra, Hong Kong and New York.

A large part of the success of this Issuer is due to the utilisation of new technology enabling aircraft to land and take off on very short runways. Coupled with development in whisper technology, X Limited has been able to place airports in prime locations closer than usual to the central business district in cities.

X Limited is used by wealthy business people and travellers who are willing to pay a premium to arrive and depart from locations that are convenient.

Example 1

X Limited is considering expanding its operations and has determined to do so via acquisition. It has identified 3 airport businesses, A, B and C that may be suitable. X Limited decides to hire a consultancy firm to take the lead role in reviewing the suitability of the 3 targets. If X Limited comes to a positive view on the project the likely acquisition cost could see \$50 million being paid by X Limited for the target. X Limited and the consultancy firm enter into a contract. Confidentiality is maintained.

Is the signing of the consultancy contract material information?

The project is non-public. Is X Limited required to disclose the consultancy contract?

This question can be broken into separate parts: (i) entry into the consultancy contract and) the fact that X Limited is considering acquiring an airport business with an approximate value of \$50m.

The fact of entry into the consultancy contract itself is unlikely to be material information because it is simply a contract to get advice on a proposal that is currently insufficiently definite or incomplete and which remains confidential. The fact that X Limited is considering acquiring an airport business with an approximate value of \$50m is also unlikely to be required to be disclosed because the proposal is currently incomplete or insufficiently definite and remains confidential.

Example 2

After receiving positive advice from the consultancy firm concerning C Limited, X Limited decides to proceed with the plan to acquire C Limited subject to negotiating appropriate terms. X Limited commences negotiations with C Limited and due diligence is underway. X Limited expects to pay \$55 million although a number of important issues remain outstanding that could affect X Limited's decision to proceed. The negotiations have not yet been made public.

Is this information material?

When should the information be disclosed?

Clearly, the fact of the acquisition, which at a cost of \$55 million is over 10% of the company's market capitalisation, is likely to be material information.

If, however, the negotiations are confidential and that confidentiality is maintained, NZXR considers that disclosure would be unlikely to be required as a reasonable person would be unlikely to expect the information to be disclosed while the negotiations are incomplete.

Example 3

The same facts as in Example 2 apply except that a respected and widely read business column contains specific information from a credible source that X Limited and C Limited have been in discussions and X Limited is about to acquire C Limited and that this will have a positive impact on the financial results of X Limited.

Disclosure of the fact that negotiations are taking place would be required. While the proposal is clearly one that is incomplete, it is apparent that the negotiations have not remained confidential and X Limited would be expected to confirm to the market that it is in discussion with C Limited, but that no decision has been made whether or not to proceed.

Example 4

X Limited and C Limited are close to reaching agreement, but have yet to resolve one outstanding aspect of the transaction. It is expected that this could take up to 24 hours. The following day, a daily newspaper publishes an article stating that X Limited is about to make a significant acquisition and comments on the effect of the proposal.

Disclosure would be required. While the proposal is still one that is incomplete, it is clear that the negotiations have not remained confidential. In circumstances where entry into the agreement is imminent, it would be appropriate for X Limited to apply for a trading halt, pending the release of an announcement concerning the outcome of the negotiations.

Example 5

The negotiations between X Limited and C Limited reach a stalemate and the parties determine that the proposed acquisition will not proceed. Discussions have been terminated. The Securities of X Limited are still in a trading halt.

Disclosure would be required. An announcement of the fact that the negotiations with C Limited have collapsed would be required to lift the trading halt that is currently in place, given the market expectation that agreement was about to be reached.

Example 6

X Limited has completed negotiations with C Limited to purchase its business. The terms of the agreement between X Limited and C Limited are finalised and the agreement is executed. At C Limited's insistence the finalised agreement contains confidentiality provisions under which the terms of the acquisition cannot be disclosed.

Disclosure of the main terms of the finalised agreement would be required. The confidentiality provisions of the agreement do not override the disclosure obligation of X Limited in the Listing Rules. In this instance disclosure of the following would be required.

- Details about C Limited's business, including the type of business, length of operation, financial history, numbers of staff and details of directors or owners;
- The total consideration paid; and
- Composition and method of payment.

X Limited must immediately disclose the main terms of any agreement that it has entered into that is material under the Rules.

Example 7

On reviewing management accounts part way through a half year period, the CFO and CEO of X Limited (i.e. executive officers of X Limited) become aware that actual revenues and profits for the period will vary from one or more of the following to a material extent:

- The financial results for the previous corresponding period;
- Prospective financial information such as forecasts or projections previously provided to the market.

Disclosure would be required because the information is material and a reasonable person would expect disclosure, such that the safe harbour provisions do not apply. In making such disclosure, the entity must provide some details, however qualified, of the extent of the variation. For example a statement by an entity may indicate that based on internal management accounts, its expected net profit or EBIT will be an approximate amount (e.g. approximately \$10m) or alternatively within a stated range (e.g. between \$9m to \$11m). Alternatively, the entity may indicate an approximate percentage movement (e.g. “up (or down) by 25% on the previous corresponding period”). NZXR accepts that this information may not be precise and may be changed or amended on completion of the final accounts.

The disclosure required would be limited to information known to the issuer – for example, close to or following the end of the reporting period.

Example 8

On reviewing management accounts part way through a half-year period, the CEO and CFO of X Limited (i.e. executive officers of X Limited) become aware that X Limited will incur a large trading loss for the half year. Due to projected revenues from a new airline taking up landing rights in the second half year, X Limited still expects to achieve full year results broadly in line with that of the previous full year.

Disclosure would be required because the information is material and a reasonable person would expect disclosure, such that the safe harbour provisions do not apply. As the half-year result differs materially from the previous corresponding period, the market would not be expecting that result and must be immediately informed. X Limited should confirm to the market that despite this result it still expects to achieve full year results broadly in line with that of the previous full year.

Example 9

During the second half of its financial year, and due to unforeseen circumstances, X Limited becomes aware that the new airline will not be able to land as previously expected in the second half of the year and that the revenues expected from the landing rights will now be received in the next accounting period. As a result X Limited will not achieve its expected full year result and the variation is expected to be material.

Disclosure would be required.

Example 10

It is two weeks prior to the due date for lodgement of a preliminary annual report. While the trading results for X Limited are broadly in line with the previous corresponding period, year end adjustments and write-downs will result in a significant reduction in the company's result.

Immediate disclosure would be required. It is not appropriate for X Limited to delay the release of this information until the time of lodgement of the preliminary final report.

Example 11

X Limited now proposes to acquire D Limited, a listed entity in the same industry. Although the acquisition has been contemplated by the board of X Limited for some time no formal approach has previously been made. X Limited and D Limited have just begun confidential negotiations with a view to X Limited effecting a "friendly" takeover of D Limited. Information about the negotiations is strictly limited to the parties and their advisors. Coincidentally a small item appears in the Financial News speculating about rationalisation in the industry, and mentioning both X Limited and D Limited among others, as potential targets.

NZXR would normally not require a response. The comment appears to be speculative and based on generally known circumstances about the industry and industry analysis of that information rather than the specific circumstances of X Limited.

Example 12

Discussions between X Limited and D Limited proceed as before but are significantly advanced. Only one significant issue remains unresolved. After a few days of intense discussions it becomes apparent that neither party will concede and the proposal is abandoned. A day or so later, two of D Limited's advisers are in a lift discussing the failed proposal. Only part of their conversation is overheard by a senior reporter with the Business Herald and on the following day, that paper features an article about a proposed deal between the parties under the headline "X Limited to make bid for D Limited".

Both entities should confirm to the market that following negotiations there is no intention to proceed with a bid. In the absence of any clarification from the entities, the inaccurate media comment would be likely to create a false market in the securities of both entities, as investors would not know whether the comment is accurate or not.

Example 13

After a number of months and a change in circumstances relating to the “road-block” issue, the discussions between X Limited and D Limited are resumed. After working late one night, two of X Limited’s advisers go to a Wellington city bar and restaurant, and over several drinks discuss a number of key details of the negotiations. They are overheard by a freelance analyst and author of a popular securities newsletter available by subscription only. Early the next morning, the analyst prepares a report on X Limited which includes details of the negotiations and circulates the report to his subscribers by e-mail. Both X Limited and D Limited are alerted to the existence of the report by enquiries from shareholders. The price of X Limited’s securities decreases by 5% and the price of D Limited’s securities increases by 10% immediately upon the market opening.

NZXR would require both entities to disclose the fact that negotiations are taking place. Such disclosure would be required as the negotiations are no longer confidential and their existence has been disseminated to a sector of the market. It is irrelevant who disclosed the details of the negotiations or how dissemination occurred. Details of the terms of the proposed takeover need not be revealed until they are finalised.

It would be appropriate for both entities to request a trading halt pending the release of announcements by the entities.

Appendix 4 – Guidelines for disclosure of material information

- 1) Issuers to develop processes to keep under review whether:
 - a) it is aware of material information in terms of the rules (which will involve identifying who the executive officers of the company are); and
 - b) the exceptions in rule 10.1.1(a) apply.
- 2) Designate a “communications point” person through whom disclosures should go.
- 3) All staff to be aware of the rules and should be made aware that they should approach a “communications point” person where they think there may be material information.
- 4) Institute a policy that others are not authorised to speak on behalf of the issuer without specific authorisation.
- 5) In the course of weekly management meetings, management to consider whether any matters need to be put to the board.
- 6) Review monthly accounts to consider if they show any material changes that should be disclosed to the market.
- 7) Staff to send recommendations to directors with board papers as to what should be disclosed under the rules.
- 8) Fixed board agenda item to consider whether any matters should be disclosed in terms of the rules.
- 9) Minutes for board meetings should record reasons for disclosing or not disclosing specific matters.
- 10) Ensure appropriate confidentiality agreements are in place where the company enters into material negotiations.
- 11) Where possible, release material announcements prior to market opening. However, NZXR notes that an issuer’s ability to release prior to market open will partly depend on where the material information originates from (i.e. whether information originates from the issuer itself or in response to information from a third party) and does not negate the requirement to disclose all material information immediately.

12.1 Guidelines – Disclose to NZX first

- 1) Assign a person to make announcements to NZX.
- 2) Get confirmation from NZX that the information has been received before speaking to the press or analysts.

12.2 Guidelines – prevent false market

- (a) Keep media comments and own announcements under continuous review.
- (b) Keep trading of its shares under review.

- (c) Inform the appropriate person where it is possible that a false market is developing to ensure assessment of the situation.

