



# Guidance Note

Spread

Spread review – Consultation version

10 December 2020



This ~~g~~Guidance ~~n~~Note has been prepared to provide guidance to issuers as to the spread requirements of the NZX Listing Rules (~~Rules~~) that take effect from 10 December 2020 (~~rules~~) and in particular when NZX Limited (~~NZX~~) is likely to consider that an applicant for listing has an appropriate spread of security holders so as to ensure that a “sufficiently liquid market” will exist in relation to a class of securities.

~~This guidance note replaces the previous guidance note issued on January 2020, ‘Spread’.~~

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

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**Important Information:** Issuers should note that this guidance note is not intended to be a definitive statement of the application of the rules in every situation and is only a guide to NZX’s policy and practice. This guidance note does not limit NZX’s discretion under the rules. This guidance note reflects the rules and law as at ~~10 December 2020~~, 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. Background ~~What is spread?~~

## 1.1. What is spread?

~~Spread refers to the manner in which ownership of securities is distributed, between people~~  
~~persons~~ who hold securities in an issuer. ~~Meeting the spread requirements at the time an issuer lists on an exchange demonstrates that there is support for that entity to list and liquidity (or the number of orders entered and trades undertaken) in the securities is generally expected to be higher (everything else being equal).~~

Under the Rules, NZX generally will not generally quote classes of a Class or Classes of Equity Securities, or Fund Securities that are not offered on a continuous basis, unless certain spread requirements are met (referred to as **Spread Requirements**).

~~The spread requirement is~~ Spread Requirements are an eligibility requirement for listing, ~~and is~~ not an ongoing obligation.

Meeting the Spread Requirement demonstrates that:

- (a) where an entity is seeking to list by way of an initial public offering, there is support for that entity to list; and
- (b) there will be sufficient liquidity (the number of orders entered, and trades undertaken) in the Issuer's securities upon Listing.

Sufficient liquidity upon Listing also gives confidence to the market that there is support for the Issuer which can further drive liquidity in the long term. A sufficient spread also reduces the risks of market manipulation associated with concentrated ownership, improves price discovery, reduces price volatility, and maintains market integrity.

## 1.2. Who must meet the Types of securities that must meet the **S**spread **R**requirements?

~~For Spread Requirements must be met by an applicant seeking applying to be Listed on the Main Board with NZX as its Home Exchange, who is seeking to listing as an equity issuer, or as a fund issuer that is not a continuous issuer (**Eligible Applicants**), NZX must be satisfied, upon quotation, that:~~

- have its Equity Securities Quoted, or
- where the applicant is not a Continuous Issuer,<sup>1</sup> have its Fund Securities Quoted,  
(together referred to as **Applicants**).

Spread Requirements are *not* required to be met by an applicant:

- seeking to have its Equity or Fund Securities Quoted on the Main Board as an NZX Foreign Exempt Issuer;
- seeking to solely have its Debt Securities Quoted on the NZX Debt Market; or

<sup>1</sup> The Listing Rules adopt the Financial Markets Conduct Act 2013 (**FMC Act**) definition of continuous issuer, being an issuer that in the ordinary course of business continuously offers financial products.

- that is a Continuous Issuer seeking to have its Fund Securities Quoted.

Debt Securities are not typically subject to the same level of trading as Equity Securities, and NZX is satisfied that introducing minimum spread requirements at the time of Listing is not necessary for this product type of Financial Product.

Investors in Fund Securities of a Continuous Issuer receive protection as a result of the continued application of the safeguards that attach to the primary issuance as set out in the relevant Governing Document, and the ability for unitholders to have their Fund Securities redeemed. Introducing a spread requirement at Listing for Fund Securities of these types of Issuers would limit the ability of these funds to come to market at the appropriate point in their life cycle, and would fail to recognise the particular nature of these funds.

### 1.3. How can Applicants meet the Spread Requirements?

The Rules provide that an Applicant can satisfy the Spread Requirements by ensuring NZX is satisfied that on Quotation:

- (a) at least 20% of the number of securities on issue will be~~are~~ held by at least 100 Non-Affiliated Holders each holding or having a beneficial interest in at least a Minimum Holding (referred to as the free float criteria),<sup>2</sup> or
- ~~(b) an Applicant will have an applicant has~~ an appropriate spread of Equity Security holders, or Fund Security ownership, to ensure a sufficiently liquid market in the relevant class of securities.<sup>3</sup>
- (b)

We have provided further guidance on how to satisfy these requirements below pursuant to rules 1.1.1(b)(ii) and 1.4.1(b)(ii), respectively.

#### Types of securities that are not subject to the spread requirement

~~If an applicant is seeking listing as a fund issuer that is a continuous issuer, or as a debt issuer, there is no spread requirement.~~

~~Debt securities are not typically subject to the same level of trading as equity securities, and NZX is satisfied that introducing minimum spread requirements at the time of listing is not necessary for this product type.~~

~~Investors in continuous issuers receive protection as a result of the continued application of the safeguards that attach to primary issuance, and the ability for unitholders to have their securities redeemed. Introducing a spread requirement at listing would limit the ability of these funds to come to market at the appropriate point in their life cycle, and would fail to recognise the particular nature of these funds.~~

## **2. Non-Affiliated Holders and Minimum Holdings**

The free float criteria provides that Applicants can meet the Spread Requirement by having at least 20% Rules of the Class of Equity or Fund Securities held by at least 100 Non-Affiliated Holders, with each holding at least a Minimum Holding of the relevant Class of securities. 1.1.1(b)(ii)(A) and 1.4.1(b)(ii) refer to non-affiliated holders holding minimum holdings.

<sup>2</sup> Rule 1.1.1(b)(ii)(A) for Equity Securities or Rule 1.4.1(b)(ii) for Fund Securities.

<sup>3</sup> Rule 1.1.1(b)(ii)(B) for Equity Securities or Rule 1.4.1(b)(iii) for Fund Securities.

A **Non-Affiliated Holder** is defined in the **Rules** as any person other than:

- (a) a person who holds, or is one of a group of **Associated Persons** who together hold, 10% or more of a **Class of Financial Products**;
- (b) a person who has, or is one of a group of **Associated Persons** who together have, the power (whether contingent or not) to appoint one or more **Director** of the **Issuer**; or
- (c) any other person or group of persons whom NZX in its discretion declares not to be a **Non-Affiliated Holder** for the purposes of the **Rules**.

As at the date of this **Guidance Note**, NZX has not declared any persons or groups of persons **not** to be non-affiliated holders. Any subsequent declarations to this effect can be found [here](#).

If an **eligible Applicant** is seeking to rely on the ~~first limb of the spread requirement~~ **free float criteria**, it will need to establish what proportion of its security holders will **not** fall into any of the categories above.

In order to count these security holders towards ~~the overall spread calculation~~ **meeting the free float criteria**, they must be holding a **Minimum Holding**. A **Minimum Holding** is a holding of a **Class of Financial Products** having a value of at least \$1,000 calculated, prior to **Quotation**, at the issue or sale price of the **Financial Products** specified in any offer document (including **Profiles** in respect of compliance listings). When counting the 100 **Non-Affiliated Holders**, beneficial owners can be counted when the shares are held through a custodian.

### 3. Appropriate spread and sufficiently liquid market

~~NZX understands there are some~~ **may be** circumstances where an **Eligible Applicant** cannot meet the ~~strict test set out in Rules 1.1.1(b)(ii)(A) and 1.4.1(b)(ii)~~ **free float criteria**. In particular, Applicants seeking to undertake a direct listing (rather than undertaking an initial public offering) may not be in a position to meet the free float criteria prior to Quotation. In those circumstances, an **Eligible Applicant** can instead seek to demonstrate that it will have an “appropriate spread” of security holders to ensure a “sufficiently liquid market in its Quoted Securities.” ~~in the class of securities under Rules 1.1.1(b)(ii)(B) and 1.4.1(b)(iii).~~

#### 3.1. Attributes of a sufficiently liquid market

NZX considers that key features that are likely to result in a “sufficiently liquid market” would include a reasonable bid/offer spread with adequate market depth in the order book. These features are likely to allow investors to efficiently change their investment position.

Where an issuer does not meet the free float criteria strict spread requirement and wishes to instead demonstrate an appropriate spread that will ensure a sufficiently liquid market, they should provide information about other factors that will contribute to that outcome. For example:

- Planned capital raisings that are intended to result in the issue of securities to persons who are not existing security holders;
- The timing of any sell downs by major security holders and how this is intended to be managed to promote an increase in spread (including, for example, by way of a liquidity facility; and
- Liquidity support facilities that will allow existing shareholders to trade regardless of demand or supply or demand from other shareholders

### 3.2. Establishing a liquidity facility to demonstrate a sufficiently liquid market

An Applicant that doesn't meet the free float criteria may elect to establish a liquidity facility to demonstrate to NZX that it will have an appropriate spread of security holders to ensure a sufficiently liquid market in its Quoted Securities.

#### What is a liquidity facility?

A liquidity facility is a commercial arrangement whereby an Applicant engages a third-party provider to be available to sell (and buy, if relevant) the Applicant's Quoted securities, thereby ensuring liquidity in the securities is maintained and allowing holders to trade regardless of supply (or demand) in the wider market.

Where a liquidity facility is being relied upon to meet the Spread Requirements, the purpose of that liquidity facility should include increasing the number of holders of, and promoting liquidity in, the Applicant's Quoted Securities.

#### What should a liquidity facility agreement contain?

Where an Applicant is seeking Quotation of its Equity or Fund Securities, and is seeking to meet the Spread Requirements by having a liquidity facility in place, NZX would expect to see the agreement between the Applicant and liquidity facility provider to ensure that the basis on which the liquidity facility will be operated will ensure a sufficient liquidity market in the Applicant's Quoted Equity or Fund Securities.

In particular, NZX expects that any liquidity facility agreement would:

- (a) provide (at a minimum) liquidity to investors seeking to buy the Applicant's Quoted Equity or Fund Securities where liquidity is not otherwise available (thereby supporting the increase in the number of holders of the Applicant's Quoted Securities);
- (b) operate for a period of at least 6 months from the date of Quotation, and/or ensure the liquidity facility is of sufficient size, to ensure sufficient opportunity for the number of holders of the Quoted securities to increase;
- (c) provide for appropriate conflict management arrangements, including that the:
  - o provider of the liquidity facility must not involve or consult the Applicant on any decisions to sell or buy the Applicant's Quoted securities;
  - o Applicant must not influence in any way the trading decisions of the liquidity facility provider; and
  - o liquidity facility provider must keep appropriate records of all transactions undertaken in accordance with the liquidity facility; and
- (d) contain terms that require the operation of the liquidity facility to comply with relevant legislative requirements, including (but not limited to) the Financial Markets Conduct Act 2013 (FMC Act) and Financial Markets Conduct Regulations 2014.

#### Legal requirements for a liquidity facility

It is the responsibility of an Applicant to ensure that the operation of any liquidity facility in relation to its Quoted Securities complies with legislative requirements. These requirements may include (depending on the structure of the facility):

- on-selling restrictions in the FMC Act where offers of financial products for sale may be subject to disclosure requirements;<sup>4</sup> and
- market manipulation prohibitions in the FMC Act, including provisions deeming wash trades in Quoted Financial Products of a Listed Issuer as contravening this prohibition (regardless of intent).<sup>5</sup>

There may be other legislative requirements relevant to the operation of an Applicant's liquidity facility, and NZX encourages Applicants to seek specific legal advice if intending to meet the Spread Requirements through the operation of a liquidity facility.

#### Disclosure of a liquidity facility in a Profile

Where an Applicant is relying on a liquidity facility to meet the Spread Requirements and is seeking a direct listing, NZX expects the operation of the liquidity facility to be disclosed in its Profile.<sup>6</sup> Disclosure should include key terms of the liquidity facility, including:

- how the liquidity facility provider will be facilitating liquidity in the Applicant's Quoted securities (i.e., whether the provider will be providing sell-side only liquidity or whether it will be both sell and buy side);
- the term of the engagement with the liquidity facility provider (including whether there is an option for the Applicant to extend this term, and how any extension will be announced if taken up); and
- any key parameters of the liquidity facility, for example whether transactions will be undertaken on-market through the Trading System and whether there are volume limits in relation to the liquidity facility.

## 4. NZ RegCo Engagement

NZX encourages Applicants to engage with NZ RegCo early in the Listing process to ensure that the Applicant understands its regulatory requirements. While NZ RegCo can provide guidance in relation to an Applicant's obligations under the Rules, any assistance from NZ RegCo should not be taken to constitute legal advice on the Applicant's obligations.

NZX retains complete discretion under the Rules to refuse an application for Listing and will consider Applicants for listing on a case-by-case basis.<sup>7</sup>

If you have any questions on the matters contained in this Guidance Note, please contact the NZ RegCo Issuer Regulation team at [issuer@nzregco.com](mailto:issuer@nzregco.com) or (04) 495 2825.

~~Where an issuer does not meet the strict spread requirement and wishes to instead demonstrate an appropriate spread that will ensure a sufficiently liquid market, they should provide information about other factors that will contribute to that outcome. For example:~~

- ~~• Planned capital raisings that are intended to result in the issue of securities to persons who are not existing security holders;~~
- ~~• The timing of any sell downs by major security holders and how this is intended to be~~

<sup>4</sup> Refer to part 2 of schedule 1 of the FMC Act.

<sup>5</sup> Section 267 FMC Act.

<sup>6</sup> Rules 1.13.2(c) and 1.15.2(e).

<sup>7</sup> Rule 1.19.1.

~~managed to promote an increase in spread; and~~

- ~~• Liquidity support facilities that will allow existing shareholders to trade regardless of demand or supply from other shareholders~~



## Appendix 1: Relevant Listing Rules

### 1.1 Eligibility for Listing as an Issuer of Equity Securities and Quotation of Equity Securities

1.1.1 For an applicant to be Listed on the Main Board, with NZX as its Home Exchange and its Equity Securities Quoted:

- (a) the applicant must have a Governing Document consistent with Rule 2.18 and Rule 2.20 and applicable legislation, and
- (b) a Class of Equity Securities will not generally be considered for initial Quotation unless:
  - (i) the anticipated market capitalisation of the applicant's Equity Securities to be Quoted is at least \$10 million, and
  - (ii) NZX is satisfied that:
    - (A) at least 20% of the Class of Equity Securities are held by at least 100 Non-Affiliated Holders (being the registered holder or, in the case of Equity Securities held through a custodian, the beneficial owners of the Equity Securities), each holding (or having a beneficial interest in) at least a Minimum Holding, or
    - (B) the applicant has an appropriate spread of Equity Security holders to ensure a sufficiently liquid market in the Class of Equity Securities.

### 1.4 Eligibility for Listing as an Issuer of Fund Securities and Quotation of Fund Securities

1.4.1 For an applicant to be Listed on the Main Board, with NZX as its Home Exchange and its Fund Securities Quoted:

- (a) the applicant must have a Governing Document consistent with Rule 2.18 and Rule 2.22, and applicable legislation,
- (b) a Class of Fund Securities will generally not be considered for initial Quotation unless:
  - (i) the anticipated market capitalisation of the applicant's Fund Securities to be Quoted is at least \$10 million, and

if the applicant is not a Continuous Issuer, NZX is satisfied that, upon Quotation:

- (ii) at least 20% of the Class of Fund Securities will be held by at least 100 Non-Affiliated Holders (being the registered holders or, in the case of Fund Securities held through a custodian, the beneficial owners of the Fund Securities), with each such Non-Affiliated Holder holding (or having

a beneficial interest in) at least a Minimum Holding, or

(iii) the applicant will have an appropriate spread of Fund Security ownership to ensure a sufficiently liquid market in the Class of Fund Securities.

**Minimum Holding**

means a holding of a Class of Financial Products having a value of at least \$1,000 calculated:

- (a) prior to Quotation, at the issue or sale price of such Financial Products specified in any Offer Document (and, if expressed as an indicative price range, the mid-point of that range), or
- (b) at any other time, at the Average Market Price.

**Non-Affiliated Holder**

means any person other than:

- (a) a person who holds, or is one of a group of Associated Persons who together hold, 10% or more of a Class of Financial Products, or
- (b) a person who has, or is one of a group of Associated Persons who together have, the power (whether contingent or not) to appoint one or more Directors of the Issuer, or
- (c) any other person or group of persons whom NZX in its discretion declares not to be a Non-Affiliated Holder for the purposes of the Rules.

