



# NZX Regulation Decision

NZX Regulation (NZXR)

Ruling on NZX Listing Rule 4.11.1(e)

5 July 2019



## Background

1. This Ruling applies to the NZX Listing Rules dated 1 January 2019 (**Rules**).
2. Capitalised terms that are not defined in this decision have the meanings given to them in the Rules.
3. Rule 4.11.1 provides that if:
  - a. an Issuer proposes to issue Equity Securities carrying Votes, or Financial Products which are Convertible into Equity Securities carrying Votes, under Rule 4.3.1(c), Rule 4.5.1 or Rule 4.6.1 (the “Affected Securities”), and
  - b. the issue price of an Affected Security is less than 85% of the Average Market Price, then
  - c. before issuing the Affected Securities, all Directors who voted in favour of the resolution must sign a certificate that the consideration for the Affected Securities is fair and reasonable to the issuer and to other Equity Security holders,provided that:
  - d. if the Issuer has more than one Class of Equity Securities Quoted, the Quoted Equity Securities in Rule 4.11.1(b) refers to the Class most like the Affected Securities or, in the case of Convertible Financial Products, the Equity Securities into which the Affected Securities Convert, and
  - e. in the case of Convertible Financial Products, any consideration payable on Conversion is at least 85% of the Average Market Price of the Equity Securities into which the Affected Securities Convert.
4. Under the previous equivalent provision (Rule 8.1.3(e) of the 1 October 2017 NZX Listing Rules (**Old Listing Rules**)) that applied before the coming into force of the Rules, Issuers were only subject to minimum pricing for consideration payable on the conversion of Convertible Securities if that consideration was fixed by reference to the market price of existing Securities.

## Ruling on Rule 4.11.1(e)

### Decision

5. NZXR rules that Rule 4.11.1(e) reads “*in the case of Convertible Financial Products where the consideration payable on Conversion is fixed by reference to the market price of existing Equity Securities, any consideration payable on Conversion is at least 85% of the Average Market Price of the Equity Securities into which the Affected Securities Convert.*”

### Reasons

6. In coming to the decision to grant the ruling set out in paragraph 5 above, NZXR has considered that:
  - a. Without this Ruling, Rule 4.11.1(e) would effectively restrict Convertible Securities being issued on Conversion if any consideration payable on such Conversion was less than 85% of the Average Market Price of the relevant existing Equity Securities. This

may inadvertently prevent Issuers from utilising a number of current and prospective issuance structures (for example, employee incentive schemes) where any Consideration payable is fixed otherwise than by reference to the market price of existing Securities;

- b. The restriction noted in (a) above is inconsistent with the policy underpinning Listing Rule 4.11.1(e) and its predecessor, Old Listing Rule 8.1.3(e); and
- c. The change in application between Rule 4.11.1(e) and Old Listing Rule 8.1.3(e) was an unintended consequence of the review of the Rules undertaken in 2018.