



# NZX Regulation Decision

NZX Regulation (NZXR)

Class Waiver and Ruling in relation to Section 4 of the NZX Listing Rules

19 March 2020



# Class Waiver and Ruling in relation to Section 4 of the NZX Listing Rules

## Background

1. This waiver applies to the NZX Listing Rules dated 1 January 2020 (the **Rules**).
2. Capitalised terms that are not defined in this decision have the meanings given to them in the Rules.
3. Section 4 of the Rules governs the requirements for changes to capital, including for placements, Rights issues and Share Purchase Plans.
4. The Rules and relevant definitions to which this decision relates are set out in Appendix One.

## Ruling – definition of Share Purchase Plan

5. NZX Regulation (**NZXR**) rules that the definition of Share Purchase Plan will read (changes are underlined below for ease of reference):

“means an offer of Equity Securities to all holders of existing Equity Securities of the Issuer carrying Votes (subject to Rule 4.4.1(e)) where:

- (a) the consideration payable for the Equity Securities issued does not in any 12 month period exceed \$50,000 per registered holder (or, in the case of Equity Securities held through a custodian, each beneficial owner),
- (b) the number of Equity Securities to be issued does not exceed 30% of the class of Equity Securities already on issue at the time the offer is made which are fully paid and entitle the holder to Vote, and
- (c) the Offer Document contains a term to the effect that, if the offer is oversubscribed, oversubscriptions will be accepted (subject to paragraph (b) above or such lower limit as contained in the Offer Document) or acceptances will be scaled having regard to the number of Equity Securities carrying Votes held by those accepting the offer either on the Record Date or the closing date of the offer (and which date is relevant must be specified in the Offer Document).”

6. The ruling set out in paragraph 5 above will apply until the earlier of:
  - a. 31 October 2020; and
  - b. the date that NZXR specifies (by giving not less than 10 Business Days’ notice to the market) the ruling set out in paragraph 5 above shall cease to apply.

## Ruling on Rule 4.5

7. NZXR rules that Rule 4.5.1(a), (b) and (d) will read (changes are underlined below for ease of reference):

- (a) “25% of the Equity Securities of that Class on issue at the beginning of that period, and
  - (b) 25% of the Equity Securities of that Class issued during that period under any of Rules 4.2.1, 4.3, 4.4.1(a), 4.6, 4.8.1 and 4.9, and
  - ...
  - (d) 25% of Equity Securities of that Class which have been acquired or redeemed by the Issuer during that period (other than Equity Securities held as Treasury Stock),”
8. The ruling set out in paragraph 7 above will apply until the earlier of:
- a. 31 October 2020; and
  - b. the date that NZXR specifies (by giving not less than 10 Business Days’ notice to the market) the ruling set out in paragraph 7 above shall cease to apply.

### Waiver from Rule 4.17.2

9. Subject to the conditions set out in paragraph 10 below, NZXR grants a waiver from Rule 4.17.2 to the extent that Rule requires an Issuer undertaking a Rights issue to ensure the closing date for applications is at least 12 Business Days (or 7 Business Days as applicable) after the last letter of entitlement is sent.
10. The waiver set out in paragraph 9 above is provided on the conditions that:
- a. the only means by which holders of Rights are able to accept the offer is electronic means, and
  - b. the closing date for applications under the Rights issue must be at least 3 Business Days after the last letter of entitlement is sent.
11. The waiver set out in paragraph 9 above will apply until the earlier of:
- a. 31 October 2020; and
  - b. the date that NZXR specifies (by giving not less than 10 Business Days’ notice to the market) the ruling set out in paragraph 9 above shall cease to apply.

### Waiver from Rules 4.17.6(a) and 4.17.7

12. Subject to the conditions set out in paragraph 13 below, NZXR grants a waiver from Rules 4.17.6(a) and 4.17.7.
13. The waiver set out in paragraph 12 above is provided on the conditions that the Issuer must:
- a. provide the information required by Rule 4.17.6(a) or Rule 4.17.7 (as applicable) to NZXR (not for public release) at least 5 Business Days before the Ex Date for the Rights issue (to the extent that such information is available); and
  - b. release through MAP the information required by Rule 4.17.6(a) or Rule 4.17.7 (as applicable) no later than the Ex Date for the Rights issue.
14. The waiver set out in paragraph 12 above will apply until the earlier of:

- a. 31 October 2020; and
- b. the date that NZXR specifies (by giving not less than 10 Business Days' notice to the market) the ruling set out in paragraph 12 above shall cease to apply.

## Ruling on Section 4

15. NZXR rules that an Issuer shall not be in breach of Section 4 of the Rules if the Equity Securities issued by it prior to a waiver or ruling set out herein ceases to apply exceed the aggregate permitted by Section 4 of the Rules in circumstances where the Issuer issued those Equity Securities in compliance with this class waiver and ruling.

## Reasons

16. In coming to the decision to provide the waivers set out above, NZXR has considered that:
  - a. a significant number of Issuers and other capital markets participants are being adversely affected by the 2019/2020 coronavirus pandemic (**COVID-19**). The potential adverse impacts include capacity constraints in Issuers' working capital positions;
  - b. NZXR seeks to ensure that Issuers are able to access sufficient equity capital urgently should the need arise, in addition to any existing debt facilities;
  - c. NZXR considers this class waiver is appropriate, as:
    - i. the waiver will mitigate some of the impacts of the COVID-19 pandemic in relation to Issuers' ability to access sufficient equity capital by providing greater capacity and more readily facilitating urgent equity capital raisings, which is considered reasonable given the current situation in respect of COVID-19;
    - ii. other than the increased headroom capacity for both placements and Share Purchase Plans, and the timing relief outlined above for Rights issues, Issuers will be required to fully comply with the Rules and the FMC Act in all other respects, including compliance with their ongoing continuous disclosure obligations and financial reporting obligations;
    - iii. the rulings and waivers set out in paragraphs 5, 9 and 12 support participation in any equity capital raising by retail shareholders, and seek to mitigate dilutionary effects; and
    - iv. Issuers are still subject to recommendation 8.4 of the NZX Corporate Governance Code, under which Issuers should seek to offer further equity securities to existing equity security holders on a pro rata basis, by favouring capital raising methods that provide existing equity security holders with an opportunity to avoid dilution by participating in the offer.

# Appendix One

## NZX Listing Rules

### Part A - Definitions

#### Share Purchase Plan

means an offer of Equity Securities to all holders of existing Equity Securities of the Issuer carrying Votes (subject to Rule 4.4.1(e)) where:

- (a) the consideration payable for the Equity Securities issued does not in any 12 month period exceed \$15,000 per registered holder (or, in the case of Equity Securities held through a custodian, each beneficial owner),
- (b) the number of Equity Securities to be issued does not exceed 5% of the Class of Equity Securities already on issue at the time the offer is made which are fully paid and entitle the holder to Vote, and
- (c) the Offer Document contains a term to the effect that, if the offer is oversubscribed, oversubscriptions will be accepted (subject to paragraph (b) above or such lower limit as contained in the Offer Document) or acceptances will be scaled having regard to the number of fully paid Equity Securities carrying Votes held by those accepting the offer either on the Record Date or the closing date of the offer (and which date is relevant must be specified in the Offer Document).

#### 4.5 15% Placements

4.5.1 An Issuer may issue Equity Securities provided the number to be issued, together with all other Equity Securities of the same Class issued under this Rule 4.5.1 over the shorter of the previous 12 months or the period since the Issuer was Listed, will not exceed the aggregate of:

- (a) 15% of the Equity Securities of that Class on issue at the beginning of that period, and
- (b) 15% of the Equity Securities of that Class issued during that period under any of Rules 4.2.1, 4.3, 4.4.1(a), 4.6, 4.8.1 and 4.9, and
- (c) any Equity Securities of that Class issued under this Rule 4.5.1 during that period, the issue of which has been ratified by an Ordinary Resolution (such resolution being subject to the voting restrictions in Rule 6.3), less
- (d) 15% of Equity Securities of that Class which have been acquired or redeemed by the Issuer during that period (other than Equity Securities held as Treasury Stock),

provided that:

- (e) Employees and Directors of the Issuer, and Associated Persons of a Director of the Issuer may participate only if:

- (i) all Directors voting in favour of the resolution to issue the Equity Securities sign a certificate that the participation of such persons is in the best interests of the Issuer and fair to other Equity Security holders,
  - (ii) the terms of issue are the same for all persons participating in the issue and such persons are not exclusively Employees and / or Directors of the Issuer and / or Associated Persons of a Director of the Issuer, and
  - (iii) the level of participation of any Employee, Director or Associated Person of a Director, is determined according to criteria applying to all persons participating in the issue, and
- (f) Financial Products which may Convert to Quoted Equity Securities are deemed to be of the same Class as the Quoted Equity Securities into which they may Convert, and
- (g) the Financial Products referred to in paragraph (f) are deemed to be of the same number as the Quoted Equity Securities to which they may Convert, except that for the purpose of this calculation:
- (i) in relation to the conversion ratio or conversion price, any reference to the market price (however described) of the underlying Quoted Equity Securities will instead be to the Average Market Price, and
  - (ii) any provisions for early Conversion at the option of a holder exercisable in limited circumstances (such as due to an event of default or change of control or similar) using a different formula or method will be disregarded.

#### **4.17 Rights Issues and Share Purchase Plan additional requirements**

4.17.2 Without limiting Rule 4.17.1, the closing date for applications under Rights issues (whether or not Renounceable) must be at least:

- (a) 12 Business Days after the last letter of entitlement is sent, or
- (b) 7 Business Days after the last letter of entitlement is sent, provided that holders of Rights are able to accept the offer using electronic means.

4.17.6 For an application to NZX for Quotation of Rights under a Rights issue of Equity Securities, notice in a manner and form required NZX must be completed and supplied to NZX through MAP including any QFP notice (unless the QFP notice has already been released through MAP). If such Quotation is granted:

- (a) such notice must be released through MAP no later than 5 Business Days before the Ex Date for the Rights Issue,
- (b) the Quotation of Rights will commence on the Ex Date for that Rights issue or such other date approved by NZX,
- (c) the Head Security under the Rights issue will be quoted ex rights on the Ex Date for that Rights issue, and
- (d) Quotation of Rights for a Renounceable Rights issue will cease at the close of trading on the day 4 Business Days before the closing date for receipt of acceptances and renunciations.

4.17.7 Where a Rights issue is to be made but Quotation of the Rights is not sought, the Issuer must provide, in the manner and form required by NZX, full details of the issue for release through MAP including any QFP notice (unless the QFP notice has already been released through MAP). This must be provided promptly and without delay after the issue decision has been made and at least 5 Business Days before the Ex Date to consider entitlements