Guidance Note

SME Issuers

Consultation Version

This guidance note seeks to assist issuers to comply with their governance obligations.

Under Rule 9.15.1 of the NZX Listing Rules (**Rules**), NZX Limited (**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: This guidance note applies to the differential obligations contained in the NZX Listing Rules that apply to SME Issuers. SME Issuers should also refer to NZX's Guidance Notes in relation to the broader Listing Rule requirements that apply to both SME Issuers and standard Issuers.

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 [xx] 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.

Introduction

The NZX Listing Rules (**Rules**) allow an Issuer of Quoted Equity Securities, or Listing applicant which meets certain eligibility criteria to voluntarily apply to become a small-medium enterprise issuer (**SME Issuer**).

The Rules recognise that different considerations apply to SME Issuers due to their size and proximity to their shareholder base. The Rules therefore apply differential requirements to SME Issuers including in relation to:

- **Governance**: SME Issuers are required to have one resident and Independent Director (rather than two of each), and are not required to have an Audit Committee,

- **Capital Raising**: SME Issuers have a 25% rather than 15% placement capacity, and more permissive share purchase plan settings, and

- **Related Party Transactions**: SME Issuers are able to utilise a pre-break announcement regime in relation to Material Transactions with Related Parties.

This Guidance Note provides guidance as to how these differential obligations should be interpreted, along with guidance as to an Issuer's eligibility to become and remain an SME Issuer.

In addition to these differential obligations, SME Issuers are subject to certain standard obligations under the Rules, including in relation to continuous disclosure and major transactions. NZX's Guidance Notes provide further guidance in relation to these obligations.

In some cases the interpretation principles contained in NZX's Guidance Notes will be equally applicable to the differential obligations that apply to an SME Issuer where the considerations relating to interpretation are unchanged despite the application of modified settings.

SME Issuers are therefore encouraged to also refer to NZX's standard Guidance Notes when interpreting their obligations under the Rules, in particular the:

- Spread Guidance Note
- Continuous Disclosure Guidance Note
- Governance Guidance Note
- Major and Related Party Transactions Guidance Note
- Capital Raising Guidance Note

1. Eligibility, Designation and Transition

1.1 SME Eligibility Criteria

An Issuer, or an applicant seeking a Listing, is eligible to become an SME Issuer where its Average Market Capitalisation is $125 million or less, assessed as at the balance date of each of its two most recent accounting periods (**SME Eligibility Criterion**). The SME Issuer regime is available in relation to the Quotation of Equity Securities (rather than Fund or Debt Securities).

Where an entity meets the SME Eligibility Criterion it is eligible to apply to become an SME Issuer, by making an application in accordance with Rule 1.2.1. NZX has complete discretion as to whether or not to accept an application for Listing, Quotation, or designation as an SME Issuer.

An existing Issuer who meets the SME Eligibility Criteria will not automatically be accredited as an SME Issuer, as it may wish to continue to be subject to the standard obligations under the Rules.

Assessment period

Whether an entity has an Average Market Capitalisation that is $125 million or less, will be assessed as at the balance date of each of the entity's two most recent accounting periods (e.g. for a 31 March balance date, as at 31 March 2025 and 31 March 2024).

This approach aligns with the methodology used to determine whether an entity is a 'large listed issuer' under the climate-related disclosure framework contained in the Financial Markets Conduct Act 2013 (**FMC Act**).

1.2 Designation and warning statement

Where an entity's application to become an SME Issuer is accepted by NZX, it will be designated as an SME Issuer under Rule 1.24.2 and its Quoted Equity Securities will be designated as SME Equity Securities under Rule 1.23.1.

An SME Issuer is required to ensure that it refers prominently to its SME designation in any advertisement, Offer Document, Profile or annual report, and must also include the warning statement in its announcements that is set out in Rule 1.5.5.

These requirements are designed to ensure that there is transparency for investors and other stakeholders that the SME Issuer is subject to differential obligations from those that apply to standard issuers.

1.3 Transition requirements

The SME Issuer regime is designed to provide relief for SME Issuers, acknowledging that smaller entities may have more limited financial and human resources than larger listed entities. This can affect an Issuer's ability to comply with certain governance, disclosure and transactional requirements that are calibrated for Issuers with larger internal teams, broader access to external advisers, and more complex organisational structures.

The regime also reflects that SME Issuers will typically have a smaller and more proximate shareholder base. In many cases, there is a closer alignment between management and shareholders, including through founder involvement or concentrated ownership. This can alter the nature of the risks that the Rules are designed to address, reducing the separation between ownership (shareholders) and control (management) that underpins a number of standard governance settings.

It is inappropriate for entities to retain the ability to rely on these more permissive requirements as their resources and shareholder base evolve.

Rule 1.7 therefore imposes transition requirements on SME Issuers who no longer meet the SME Eligibility Criterion.

In accordance with Rule 1.7.1 where an SME Issuer ceases to qualify as an SME Issuer it must transition to a standard Issuer status, within 6 months from the date it ceased to qualify as an SME Issuer. On becoming aware that it is required to transition, an SME Issuer must make an announcement via MAP in accordance with Rule 1.7.3 of its intended transition date, and the date by which transition is required. That announcement must also include information as to the consequences of the transition for holders of its Quoted Financial Products (for example: in relation to governance changes, and other material changes that the SME Issuer will need to make in order to comply with its obligations as a standard Issuer).

2. Governance

The Governance Guidance Note provides guidance in relation to the standard Rule requirements relating to governance that apply to SME Issuers, in addition the specific obligations that apply to SME Issuers are explained in more detail below.

2.1. Board composition – independent and resident Directors

A standard Issuer must comply with Rule 2.1, which requires that its Board comprise two Directors who are ordinarily resident in New Zealand and two Directors who must be Independent Directors.

This requirement is reduced for an SME Issuer, so that it is required to ensure that its Board includes:

- one Director who is ordinarily resident in New Zealand, and

- one Director who must be an Independent Director.

NZX has provided guidance as to how the test for residency applies in section 3.1.6 of the Governance Guidance Note.

NZX has also provided guidance as to how the test for an Independent Director should be interpreted in section 3.1.1 to 3.1.3 of the Governance Guidance Note. This includes guidance as to how the factors set out in Table 2.4 of the NZX Corporate Governance Code (**Code**) should be interpreted.

2.2. Board composition – accounting or financial background

Unlike standard Issuers, an SME Issuer is not required to have an Audit Committee, although this is recommended by Code recommendation 3.1. Where an SME Issuer elects not to have an Audit Committee, the role of the Audit Committee (as specified in Rule 2.13.3) will be performed by the SME Issuer’s board, and Principle 7 of the NZX Corporate Governance Code will apply to the SME Issuer’s board in respect of the SME Issuer’s relationship with the auditors.

As a result an SME Issuer is required to ensure that its board includes a Director who has an accounting or financial background (this is a composition requirement for a standard Issuer’s Audit Committee). Section 3.2.1 of the Governance Guidance Note provides guidance as to how this requirement should be interpreted.

Code recommendation 3.1 recommends that an SME Issuer has an Audit Committee comprised of one member who is both an Independent Director and has an accounting or financial backgrounds, and a Chair who is an Independent Director.

3. Disclosure

The Continuous Disclosure Guidance Note provides guidance in relation to the standard Rule requirements relating to disclosure that apply to SME Issuers, in addition the specific obligations that apply to SME Issuers are explained in more detail below.

3.1. Periodic Reporting timeframes

Rule 1.4.1(e) provides relief for an SME Issuer by extending the period within which a Results Announcement must be released through MAP, from 60 days after the end of each financial year or half year, to 75 days.

In addition Rule 1.4.1(f) extends the time within which an annual report must be prepared from three months after the end of a financial year, to four months.

While the SME Issuer regime is designed for entities with Quoted Equity Securities, where an SME Issuer also has Quoted Debt Securities these lengthened timeframes will continue to apply. This recognizes that the SME Issuer will be reporting on an entity basis and that were the standard timeframes apply in relation to its Quoted Debt Securities, that it would not be able to utilise the extended timeframes to provide reporting relief associated with its SME Issuer status.

3.2. Annual report disclosures

Governance reporting

A standard Issuer of Quoted Equity Securities is required to include in its annual report either a corporate governance statement that meets the requirements of Rule 3.8.1 or the URL of the page on its website where such a statement is located. This statement must include the extent to which the Issuer has followed the recommendations in the NZX Code, and where it has not followed a recommendation the reasons for not doing so. This is known as the 'comply or explain' regime, which is a widely adopted international standard for corporate governance disclosure.

Rule 1.3.1(b) disapplies Rule 3.8.1(b)(iii) to (v) for SME Issuers, this in effect disapplies the 'comply or explain' regime, and creates an 'apply and disclose' regime. In essence an SME Issuer is required to include in its annual report a corporate governance statement or URL of the page on its website where such a statement is located that explains whether it has adopted a Code recommendation. However, an SME Issuer is not required to explain the reasons for adopting alternative corporate governance practices where it has not adopted a Code recommendation.

Warning statement

Rule 1.5.5 requires an SME Issuer to include in its annual report a statement as follows:

> *The Issuer is an SME Issuer. Investors should be aware that differential NZX Listing Rule requirements apply, including in relation to governance, capital raising and related party transactions.*

This alerts investors and other stakeholders that differential governance obligations apply to the SME Issuer under the Rules.

SME Eligibility Criterion

Rule 1.6 introduces an additional annual report disclosure for SME Issuers, by modifying Rule 3.8.1 with a new limb (h) that requires disclosure as to whether the SME Issuer considers that it continues to meet the SME Eligibility Criterion, such that it is not required to transition to standard Issuer status under Rule 1.7.

3.3. Disclosures relating to director independence

SME Issuers are subject to the standard obligations in relation to director independence disclosures.

These include the requirements of under Rule 3.8.1(f) that the annual report include additional disclosures, where one of the factors listed in table 2.4 of the Code applied to a director who the SME Issuer has determined to be an Independent Director.

These include a description of:

- the basis upon which the relevant factor was triggered, and
- why the board determined that the application of the factor did not cause the director to have a Disqualifying Relationship.

SME Issuers must also make a determination under Rule 2.6.1 as to whether a director is an Independent Director. The outcome of that determination must be released through MAP no later than 10 Business Days after any director's initial appointment. Rule 2.6.3 requires any changes to that determination to be released through MAP. Rule 2.6.4 requires the matters described above to be included in that announcement where a Code factor applies to a Director determined to be an Independent Director, with Rule 7.8.3(b) requiring similar disclosures being required in a notice of meeting to consider a resolution to elect or re-elect a Director.

Further guidance in relation to these requirements is contained in section 3.1.4 of the Governance Guidance Note.

4. Capital Raising

The Capital Raising Guidance Note provides guidance in relation to the standard Rule requirements relating to capital raising that apply to SME Issuers, in addition the specific settings that apply to SME Issuers are explained in more detail below.

4.1. Placement capacity

Rule 1.4.1(g) provides additional flexibility for SME Issuers by modifying the placement capacity available under Rule 4.5.1. It increases the permitted threshold for non pro rata issuances from 15% (which applies to standard Issuers) to 25% within any rolling 12 month period.

This enables an SME Issuer to issue up to 25% of its existing Equity Securities without the need to obtain prior approval from holders of Equity Securities, provided the issuance falls within the parameters of Rule 4.5.1.

This higher threshold reflects the policy recognition that SME Issuers have different capital-raising needs and constraints relative to larger Issuers. In particular:

- SME Issuers may be more likely to require timely access to capital and may have more limited access to a broad institutional investor base, and
- the costs and execution risks associated with pro rata offers or seeking shareholder approval can be proportionately higher for smaller issuers.

Code recommendation 8.4 applies to SME Issuers which recommends that offers should be made on a pro rata basis and on no less favourable terms to existing holders of Equity Securities. As noted in section 3.2 of this Guidance Note, this requires disclosure on an 'apply and disclose' basis.

Further guidance in relation to the Rule requirements in relation to Placements is contained in the Capital Raising Guidance Note, in particular sections 4.2.4.3 and 4.3.1.

4.2. Share Purchase Plans

Rule 1.4.1(a) provides further flexibility for SME Issuers by amending the definition of a Share Purchase Plan (**SPP**) to increase the number of Equity Securities that can be issued through an SPP from 10% to 30%.

In order to assist with reducing the dilutive effect on an SPP for larger shareholders, the per shareholder participation limit is reduced from $50,000 to $20,000. This is intended to mitigate concerns that small holders can participate in an SPP at an amount that is significantly above their pro-rata entitlement.

Further guidance in relation to the Rule requirements in relation to SPPs is contained in the Capital Raising Guidance Note, in particular sections 4.2.4.4 and 4.3.4.

5. Related Party Transactions

The Major and Related Party Transactions Guidance Note provides guidance in relation to the standard Rule requirements relating to major transactions and Material Transactions with Related Parties that apply to SME Issuers, in addition the specific settings that apply to SME Issuers are explained in more detail below.

5.1. Transaction Announcement

Rule 5.2.1 sets out the standard obligations in relation to Material Transactions with Related Parties, which requires an Issuer to obtain shareholder approval for the transaction by Ordinary Resolution.

Rule 1.4.1(h) provides more flexibility for SME Issuers who are looking to undertake a Material Transaction with a Related Party, by providing an alternative to the requirement to obtain shareholder approval.

The alternative mechanism is set out in Rule 1.5.2. It allows an SME Issuer to issue a Transaction Announcement, and proceed with the Material Transaction so long as no meeting has been requested by 5% of shareholders to consider the Material Transaction, within 10 Business Days of the announcement. Shareholders who are prohibited from voting on a resolution to approve the transaction by virtue of the voting restrictions that are contained in Rule 6.3 are not eligible to be counted within the 5%.

This is a type of pre-break mechanism, that in essence allows an SME Issuer to notify the market of the transaction, and then pause to assess whether shareholders consider that they wish to convene a meeting to consider the transaction. Notably, it removes the requirement under Rule 7.8.8 for the SME Issuer to obtain an Appraisal Report in relation to the transaction, unless a shareholder meeting is convened.

The information that is required to be included in a Transaction Announcement is specified in Rule 1.5.3. This Rule requires the announcement to include details of the precise terms and conditions of the proposed transaction and sufficient information to enable a reasonable person to understand the transaction and whether the terms and conditions (including the consideration) are fair. NZX considers that this information may include:

- identification of the Related Parties who are parties to the Material Transaction, and why the SME Issuer considers that a Material Transaction with those Related Parties is appropriate,
- an assessment of the financial effect of the transaction on the SME Issuer and on the interests of shareholders,
- in the case of an acquisition, details of how the SME Issuer intends to pay for the acquisition,
- in the case of a disposal, details of what the SME Issuer intends to do with the proceeds of the disposal,
- the consequences for the SME Issuer if the Material Transaction does not proceed
- the timetable for implementing the transaction.

The Transaction Announcement must also include a certificate from the non-interested Directors that confirms whether they consider the transaction to be in the interests of each of (i) the SME Issuer, (ii) all of the SME Issuer's shareholders, and (iii) the SME Issuer's shareholders who are not prevented from voting on the transaction under Rule 6.3 (i.e. those shareholders who are not associated with the Related Parties to the transaction). The grounds for each of these certifications must also be included in the Transaction Announcement.

The Transaction Announcement must also note the interest of any Director in the Material Transaction, and specify the shareholders' rights under the Rules to require the SME Issuer to call a meeting to seek approval for the Material Transaction.

The Transaction Announcement must be provided to NZX prior to being released in accordance with the requirements of Rule 1.4.1(i) and Rule 7.1.2. The Transaction Announcement should include a statement that NZX takes no responsibility for the content of the Transaction Announcement.

5.2 Shareholder meeting requisition

In the event that shareholders holding at least 5% of the Votes entitled to be exercised on an Ordinary Resolution to approve the Material Transaction under Rule 5.2.1 request a meeting to consider the transaction, the SME Issuer must obtain approval for the Material Transaction in accordance with Rule 5.2.1.

This requires approval by an Ordinary Resolution of persons who are not restricted from voting on the resolution under Rule 6.3.

In order to obtain this approval the SME must issue a notice of meeting seeking approval for the resolution, which must be accompanied by an Appraisal Report. Section 3.5 of the Major and Related Party Transaction Guidance Note provides further guidance as to the requirements for notice of meeting materials.

6. Contact us

If you have any questions on the matters in this guidance note, please contact NZ RegCo at issuer@nzregco.com or (04) 495 2825. However, it is the issuer's obligation to comply with the Rules and any assistance from NZ RegCo should not be taken to constitute legal advice on the issuer's obligations.