

**NZAX LISTING RULE REVIEW**  
Summary and Initial Exposure Draft of restated  
NZAX Listing Rules

29 November 2006



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This document contains a summary of changes proposed to the NZAX Listing Rules arising from recent consultation on the NZAX Market, together with the text of the proposed restated NZAX Listing Rules.

NZX will be accepting comments on the drafting of the exposure draft, or any practical issues arising for NZAX Issuers, up until **5:00pm 15 December 2006**. Please address any comments to

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Following consideration of comments on the drafting of the amendments, NZX will finalise the amendments for submission to the Minister of Commerce in accordance with the Securities Markets Act 1988.

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## SUMMARY OF PROPOSED CHANGES TO THE NZAX LISTING RULES

### Background

New Zealand Exchange Limited (NZX) established the NZAX Market three years ago with the express objective of making it easier and cheaper for small to medium-sized companies to raise capital through the public markets. Since its establishment the NZAX Market has grown from 12 to 29 companies currently.

### Consultation Feedback on NZAX market relating to the NZAX Listing Rules

In the run-up to the NZAX's third birthday, NZX took stock of the market via extensive consultation with its stakeholders including NZAX Listed Issuers and NZX Sponsors. The results of the consultation were announced to the market by NZX on 31 August 2006. The results of the consultation feedback relevant to the NZAX Listing Rules included the following observations:

- All NZAX Listed Issuers have chosen to list as a means of initial and subsequent capital-raising. Consultation found that relatively few have a clear understanding of the distinctions between the NZAX rule structure and that of the NZSX rules. How Listed Issuers can use that rule structure to better meet their business objectives has not been made sufficiently clear to Listed Issuers by NZX, the NZX Sponsor network, and the current rule set.
- NZAX Listed Issuers are largely comfortable with the main tenets of the NZAX Listing Rules as they stand, and there is little support for change of these. The belief is that they provide the right level of investor protection and corporate governance standards that should be afforded by public markets.

### Proposed re-ordering of NZAX Listing Rules to better demonstrate differences with NZSX Listing Rules

To more clearly demonstrate the differences between the NZAX Listing Rules and the NZSX Listing Rules, NZX has determined to re-order the NZAX Listing Rules to follow the structure of the NZSX Listing Rules. This should be of particular assistance to those market participants more familiar with the NZSX Listing Rules. The Appendix to this document contains a comparison table listing the restated NZAX Listing Rule, the equivalent current NZAX Listing Rule (before the changes referred to below) and any equivalent NZSX Listing Rule.

In conjunction with the re-ordering of the NZAX Listing Rules, NZX has omitted existing NZAX provisions dealing with unit trusts. NZX established a working group in 2005 to review the NZSX Listing Rules relating to unit trusts and other managed funds, and intends to shortly consult on a number of changes to those rules. Proposed restated NZAX Listing Rule 1.1.8 (currently NZAX Listing Rule A1.2) contains sufficient flexibility for NZX to specify which of the NZSX Listing Rules relating to unit trusts or other managed funds would apply to a unit trust or managed fund seeking to list on the NZAX.

NZX has also omitted existing NZAX provisions dealing with equity warrants, as they simply repeat provisions of the NZSX Listing Rules, and those provisions contain sufficient flexibility to extend to any equity warrants issued in respect of underlying Issuers Quoted on the NZAX market.

Restated NZAX Listing Rule 1.8.4 is intended to preserve the effect of any waivers granted by NZX prior to introduction of the restated NZAX Listing Rules.

### Replication of relevant May 2006 NZSX Listing Rule changes

In May 2006 the NZSX Listing Rules were modified to reflect consultation taken on certain policy proposals circulated for public comment in September 2005. It had been proposed that similar changes would be made to the NZAX Listing Rules, but in December 2005 NZX determined to delay the NZAX changes while the NZAX Market stock take was undertaken.

With the review of the NZAX Market concluded, and no major rules changes considered necessary, NZX has now drafted the relevant changes to the NZAX Listing Rules to replicate relevant amendments made to the NZSX Listing Rules on 10 May 2006. These changes are marked-up in the exposure draft. The following table summarises the changes. The table is intended only as a guide, and NZX recommends that the actual amendments are viewed to have a full understanding of the amendments.

RESTATED NZAX RULE	DESCRIPTION OF RULE	AMENDMENT MADE	COMMENTARY
1.1.2	Definition of “Average Market Capitalisation”	“Average Market Capitalisation” has been defined as being the Volume Weighted Average Price (VWAP) of the Security for the previous 20 Business Days. The definition is used to measure thresholds in Rules 7.6.5 (Permitted Financial Assistance), 9.1 (Major Transactions) and 9.2 (Transactions with Related Parties).	The calculation of Average Market Capitalisation takes into account volume and price which will provide a more accurate reflection of the materiality of a transaction or event when calculating the relevant thresholds. This will ensure the relevant rules apply when and only when they are required to.
1.1.2	Definition of “Equity Security”	A minor amendment has been made to the cross reference to Rule 7.3.1 to address the potential circularity.	This amendment improves the operation of the Rules and clarifies their application. This should reduce the necessity for some ruling applications in relation to the definitions.
1.1.2	Definitions of “Material Information” and “Relevant Interest”	The definitions of “Material Information” and “Relevant Interest” have been slightly amended.	The amendments reflect the changes to be made in the Securities Markets Amendment Act 2006 and should improve the clarity of application of the continuous disclosure rules.
3.2.2	Director nominations	The Rule has been amended as follows: 1. References to the opening date have been removed and left at the discretion of the Issuer. 2. The notice requirements only relate to the announcement of the	Now Issuers are only required to announce the closing date for Director nominations which will simplify planning for annual meetings and provide Issuers with greater flexibility for meeting timing.

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		closing date. Under the amended Rule, the only announcement required by an Issuer is of the closing date for Director nominations together with relevant contact details for making nominations, and this announcement must be made at least 10 business days prior to the closing date – which must be no more than two months prior to the meeting date.	
4.5.4 & 4.5.8	Section 4 Takeover Provisions – Appraisal Reports	These Rules have been amended so that a change in the nature of consideration offered requires the relevant Appraisal Report to be updated.	This amendment will ensure that Investors will have the benefit of an updated appraisal report if there is a change in the nature of the consideration offered.
4.5.11(b)	Compliance with disclosure obligations	The Rule has been amended so that Directors of the Issuer provide notice to NZX of the Issuer’s compliance with Rule 10.1.	This amendment provides consistency and improves the operation of the Rules.
4.7.3 & 4.7.6	Exercising default powers and limitation of remedies	These Rules have been amended so that the Issuer has the power of exercise under this Rule instead of the Directors.	This amendment provides consistency and improves the operation of the Rules.
6.2.5	Proxy forms	A footnote has been inserted to allow Issuers the option of providing further choices for proxy discretion and/or abstention in the proxy form for a Notice of Meeting.	Clarifies the position for proxy directions other than “for” and “against” to align the rules with current practice in respect of these.
7.3.4(ba), 7.3.4(c)	Pro rata and \$5,000 offers to existing holders	The amendment to Rule 7.3.4(ba) requires Issuers to extend a \$5,000 offer to beneficial owners of securities held through a custodian,  Additionally, Rule 7.3.4(c) has been amended to impose a 3 month limit on placing shares under this Rule.	This aligns the Rule with the Securities Act (Share and Unit Purchase Plans) Exemption Notice 2005 which allows Issuers to issue shares without a prospectus. Again this will simplify compliance and remove costs generated by Rule mismatches.

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7.3.4(g), 7.3.8(e)	Exceptions to offering to all Security holders	This amendment allows pro-rata, \$5,000 offers, and dividend reinvestment plan offers, to exclude overseas shareholders if the laws of that jurisdiction would make the offer there unduly onerous.	Issuers are saved the costs of having to apply for a waiver where they fall within the policy of the exception that was previously set out in the footnote to the Rule. This should simplify processes when companies who have overseas shareholders undertake these actions.
7.3.6	Employee share issues	Under Rule 7.3.6, an Issuer may issue to employees up to 5% of the Securities on issue per year without shareholder approval with no 5 year cap.	Issuers will be able to issue shares to employees without seeking shareholder approval. NZX believes that this will provide greater opportunities for Issuers to provide share based incentives and remuneration to.
7.6	Buybacks and redemptions	The amendments combine the limitations on buybacks and redemptions into a single rule.	This amendment clarifies the application of the Rules and avoids the need for Issuers to make waiver applications in relation to the interaction of those Rules.
7.6.5	Limit on financial assistance	The threshold test for financial assistance has been amended in the exposure draft from 5% of Shareholders Funds to 5% of the Issuer's Average Market Capitalisation.	This aligns the measure of the threshold for financial assistance with the rest of the Rules.
7.6.6	Time in which financial assistance, redemptions and buybacks must be completed	The timeframes for completing financial assistance, redemptions and buybacks has been aligned with the timeframes for issuing shares in a new rule 7.6.7 and amendments to 7.6.6.	The timeframe for providing financial assistance, redemptions and buybacks has been aligned with other Rules. NZX expects this amendment to reduce the number of waivers sought from this Rule in relation to employee shares schemes, reducing compliance costs for Issuers.
7.10.1	Time for allotment	The amendment clarifies that Issuers are required to allot securities within 5 business days of the close of an offer.	This amendment improves the operation of the Rules and clarifies Issuers obligations.
7.10.4	Require Issuers to create and link CSNs	The new insertion requires Issuers to arrange the allocation of CSNs on allotment of Securities.	This amendment will help ensure that all holders of securities have CSNs. This will ensure that an Issuer's

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	for all new issues of Securities.		shareholders are able to freely trade their securities and will deliver Issuers competitive benefits in fulfilling their statutory registry obligations.
9.1.3(a)	Exceptions to Rule 9.1.1	The exceptions to Rule 9.1.1 have been amended so that the takeover exception in Rule 9.1.3(a) is extended to include takeovers of Issuers that were not Code Companies.	This amendment improves the operation of the Rules, and removes the need to obtain waivers when making offers in respect of non-code Issuers.
9.1.3(b)	Exceptions to Rule 9.1.1	This amendment deletes the reference to the Issuer having recourse to the credit risk of the bank.	Transactions with Banks in the ordinary course of banking business will not require shareholder approval. This will reduce the compliance costs for Issuers involved in either convening meetings or seeking waivers.
9.2.3	Definition of “Related Party”	<p>There were several amendments to the definition of “Related Party”.</p> <ol style="list-style-type: none"> <li>1. The definition of officer has been amended to “executive officer”.</li> <li>2. The holding deemed to make someone a related party is increased to 10%.</li> <li>3. The insertion of an exception for common directors. The exception applies where: the only relationship is the common directorship; no more than one third of the Directors are also Directors of the other party; and there are no other material direct or indirect economic interests in the other party.</li> <li>4. The insertion of an exception for subsidiaries and joint ventures where no Related Party has any interest in the subsidiary or incorporated joint venture or unincorporated joint venture participant and where the Issuer is entitled to participate in at least half of the income or profits of the subsidiary, joint venture or joint venture participant.</li> </ol>	These amendments represent significant changes for related party transactions. NZX expects that the applications for Rulings and Waivers under this Rule will decrease with the new exceptions, significantly reducing compliance costs for Issuers.

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9.2.4 (a)	Exceptions to Related Party Transactions	The Rule has been amended to delete the reference to the “credit recourse of the bank” which leaves the exception applicable to transactions undertaken in the “normal course of banking business”.	NZX expects that the amended exception will reduce the number of waivers sought from Rule 9.2.1 in relation to banking transactions conducted in the normal course of business, saving costs for Issuers.
9.2.4(c)	Exceptions to Related Party Transactions	The exception has been amended to no longer require NZX approval of executive remuneration arrangements. Instead these transactions will be automatically exempt where certification is provided by Independent Directors to NZX that the terms were set on an arms length and commercial basis.	Issuers are no longer required to seek approval for executive director remuneration packages where the remuneration exceeds the applicable threshold. NZX expects this to significantly benefit many small to mid-cap Issuers by reducing compliance costs that would have been incurred in applying for NZX approval of the remuneration.
10.1.1	Continuous Disclosure	A new footnote 7 has been inserted to address the sharing of financial information of an Issuer with holding companies for the purpose of enabling the holding company to comply with its own financial reporting obligations.	NZX expects this clarification to significantly reduce the level independent advice needing to be sought by Issuers in relation to compliance with continuous disclosure obligations, thus, reducing compliance costs for Issuers.
10.1.2	Disclosure of related party transactions perceived to be favourable	This Rule has been amended by including a reference to Material Information.	This amendment improves the operation of the Rules, and avoids the cost involved in monitoring for and disclosing information that is not material. The amendments to Rule 10.1 overall bring clarity to the continuous disclosure obligations and introduce a single standard for the disclosure requirement.
10.2.1	Form of Disclosure and Communication	Several amendments were made to this Rule to cover the format of announcements provided to NZX for release.	These amendments are intended to improve the timeliness and accuracy of disclosures and facilitate lower cost delivery methods.
10.4	Preliminary announcements	This Rule has been amended to enable a more flexible approach to be taken to the content of preliminary announcements. As	Issuers will be able to present their accounts in a format that is consistent with their other financial reporting needs and



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		mentioned earlier, this amendment will come into effect on 1 July 2006.	avoids the need to complete a specialised presentation of information for NZX disclosure purposes..
10.5.3	Disclosure of waivers in annual reports	The Rule has been amended to give Issuers the choice of publishing the waivers in the annual report or providing a cross reference.	This amendment will allow Issuers to cross reference waivers in their annual report, reducing compliance costs for Issuers in preparing annual reports.
10.5.4	Appointed Directors	This Rule has been amalgamated with Rule 10.5.3 to provide a more comprehensive content Rule for annual reports.	This amendment improves the operation of the Rules and clarifies Issuers obligations.
10.7.2	Copies of communications to be provided to NZX	The Rule has been amended to require electronic copies to be provided to NZX.	This allows for more efficient release of the documents to the public and allows Issuers to adopt lower cost means of delivery.
Appendix 1	Preliminary full year/half year announcements	Appendix 1 has been amended to a new format.	This will provide Issuers with flexibility in this disclosure and enables use of information in a format that is consistent with information prepared to comply with their other financial reporting needs. This will avoid the cost of duplicating the presentation of information.