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Issued Date December 2005

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## Disclaimer

This Guidance Note has been issued to promote commercial certainty and assist market participants. The Guidance Note sets out NZX's general approach to the subject, but is not to be regarded as a definitive statement of the application of the Rules in every situation. Guidance Notes do not constitute legal advice and are only a guide to NZX's policy and practice. NZX recommends that Issuers take advice from qualified professionals.

NZX may replace Guidance Notes at any time. Issuers should ensure that they have the most recent version of any Guidance Note. Guidance Notes may be viewed on NZX's website at [www.nzx.com](http://www.nzx.com).

# GUIDANCE NOTE – WAIVERS AND RULINGS

## Introduction

NZX has the power to make rulings or grant waivers from the NZSX and NZDX Listing Rules and the NZAX Listing Rules<sup>1</sup> (together the "Rules"). This power is administered by NZX Regulation ("NZXR"), a division of NZX.

The most commonly asked questions about seeking a waiver or ruling from NZXR, and answers to them, are detailed below together with a format for applying for a waiver or ruling.

## What Rules can NZXR grant a waiver from?

Issuers may apply to NZXR for a waiver from any provision in the Rules. In the foreword to the Rules there is a section entitled "Waivers and Dispensation" which states:

*"The Rules necessarily cast a wide net. If that were not the case the Rules (and securities traded on NZX) would fall into disrepute because of unintended avoidance. On the other hand NZX does not wish the necessarily broad scope of the Rules to constrain the form or development of commercial transactions which do not undermine the objectives of NZX. Exceptions and qualifications are therefore necessary to reflect the balance of competing interests. They unavoidably create opportunities for exploitation of loopholes. For that reason NZX has reserved wide powers of waiver and dispensation. Issuers are encouraged to make use of those powers in circumstances in which NZX can be satisfied that the proposals for which dispensation is sought are innocuous. Exercise of these powers cannot affect rights of investors arising under the constitutional documents of an issuer in relation to matters in which those documents do not leave a discretion to NZX."*

However, where waivers are granted, they will usually have conditions attached to ensure that the policy behind the Rules will not be adversely affected.

Some general points worth noting are:

- In the case of an application which relates to general matters on an ongoing basis rather than a particular defined transaction, NZXR will look very carefully at the terms and conditions on which such a waiver is to be granted.
- NZXR refers all waiver applications in relation to Continuous Disclosure requirements in the Rules to the Securities Commission pursuant to section 36ZM of the Securities Markets Act 1988. Waiver applications from Listing Rule 10 and any of the Continuous Disclosure Rules are unlikely to be successful in all but the most exceptional cases.

<sup>1</sup> Specifically, see NZSX Listing Rule 1.6 and 1.7 (or NZAX Listing Rule A1.7.1 and 1.8)

- NZXR will only consider retrospective waivers in exceptional circumstances where a minor or inadvertent breach by an Issuer would incur severe consequences for the Issuer if the application were not considered by NZXR and there are no practical means to address the failure to comply with the Rules.

### **When is a waiver or ruling required?**

NZXR does not provide legal opinions on how the relevant securities law or Rules apply or whether in given circumstances a waiver or ruling is required. Issuers should make their own interpretation of the law when deciding whether to apply for a waiver or ruling (this should be set out in their application as suggested in the Application Format section below, where an application for a waiver or ruling is made).

NZXR considers that its power to grant rulings applies in situations where the Rules provide a discretion to NZXR. NZXR may make a ruling consistent with the wording of a rule. Regardless of whether policy objectives might not apply, NZXR will not make a ruling that is inconsistent with the wording of a rule. Where an Issuer desires certainty it may wish to approach NZXR to obtain this in the form of a waiver.

Where an application seeks to achieve something distinct from what is provided in the Rules, a waiver must be sought from NZXR.

### **Do I need a lawyer to apply for a waiver or ruling?**

Compliance with the Rules more often than not involves complex issues surrounding interpretation and application of the Rules. While NZXR often receives applications directly from an Issuer, in many cases Issuers will benefit from seeking advice before making an application.

### **Who do we apply to for a waiver or ruling?**

Your application should be in writing and addressed to the Head of NZX Regulation. Our postal and facsimile addresses are listed below. If you prefer you can send your application by email to [waiversandrulings@nzx.com](mailto:waiversandrulings@nzx.com) but a hard copy of your application should also be forwarded to NZXR.

All applications should be clearly marked: Not for Public Release.

Head of NZX Regulation  
NZX Regulation  
P O Box 2959  
**WELLINGTON**  
Facsimile: +64 4 473 3181

### **What is required in an application for a waiver or ruling?**

Set out below is a suggested format for a waiver or ruling application. It is not mandatory that the below format be used, however, we recommend that you follow the format to ensure that all the necessary information is provided and delays caused by an incomplete application are avoided.

You should bear in mind that the purpose of the application is to clearly establish and document the necessity for the waiver or ruling sought. In preparing a waiver or ruling application you should clearly state:

The Listing Rules concerned

The full details of the transactions or circumstances in relation to which the waiver or ruling is sought

The application of the Listing Rules without the waiver or ruling;

The hardship or mischief that will result from that application;

The policy objective behind the Listing Rule concerned;

The basis upon which that policy objective continues to be addressed by or is not affected by the waiver or ruling sought;

The manner in which the interests of shareholders and other stakeholders are protected or preserved by the proposed waiver or ruling;  
Any other reasons the applicant considers relevant to consideration of the application;  
Any application for confidentiality or limits on publication of the waiver application or the decision.

You should also ensure that you address any express policy requirements set out in the notes to the Listing Rule concerned.

It is also worth noting that:

- (1) Waivers and rulings are granted on the basis of the information provided and on the assumption that the information is full and accurate in all material respects.
- (2) Under Rule 1.7.3 of the NZSX and NZDX Rules any waiver granted may be rendered void from the outset if NZX considers it was granted on the basis of incorrect information.

### **What are the charges?**

The Issuer Fee Schedule, as amended from time to time, sets out NZXR's fees. At the date of this Guidance Note, the standard regulatory fees are \$250.00 per hour (plus GST) for NZXR personnel. For "urgency", NZXR personnel charge \$400.00 per hour (plus GST). Urgency rates apply when a decision is required from NZXR in less than 10 Business Days.<sup>2</sup> Different hourly rates may also apply in respect of any professional advisors who may be engaged by NZXR.

There is a minimum fee of \$250.00 (plus GST) for each matter. This includes any request for a policy interpretation made to NZXR personnel.

In addition an administration fee is charged. This is calculated as 15% (plus GST) of all NZXR personnel time billed.

Issuers will be sent an account for costs at the conclusion of NZXR work, or on a monthly basis where necessary.

### **How long does it take?**

All applications for waivers and rulings should be submitted to NZXR at least 10 Business Days prior to the Issuer requiring a determination.<sup>3</sup> If a determination is required in less than 10 Business Days an Issuer may apply to have the application dealt with on an urgent basis.

Timing may be influenced by the quality of the application and the thoroughness with which it has been prepared. If an application is urgent a timeframe should be provided within which determination is needed accompanied by the reasons for the request for urgent consideration. While NZXR will always endeavour to meet an applicant's timeframe, the ability to meet urgent timetables will be subject to NZXR resource availability.

### **What steps are involved?**

- The application is considered by NZXR personnel, who meet in divisions of three. Communication with the applicant will take place through a lead solicitor who will be identified to the applicant.
- After an initial appraisal, the applicant may be asked to provide further information.
- Where other parties are affected, NZXR may consult with those parties.
- The lead solicitor will draft a decision which is agreed and finalised by the NZXR division. In some complex cases the applicant and other interested parties may be provided with a draft decision for comment.

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<sup>2</sup> (See Footnote 2 to Rule 1.7.2 and Footnote 2 to Rule 1.6.2 of the NZSX and NZDX Listing Rules, and Footnote 2 to Rule 1.7.2 and Footnote 2 to Rule A1.8.2 of the NZAX Listing Rules)

<sup>3</sup> Refer footnote 2 to NZSX Listing Rule 1.6.2 and footnote 2 to NZSX Listing Rule 1.7.2.

- Applicants are given notice before the decision is announced to the market. Unless confidentiality has been applied for pursuant to Rule 1.6.2, and NZXR accepts those reasons, the decision will be announced after half a business day's notice to the applicant.

### **Where can we get a copy of the decision?**

Decisions are announced to the market and are available on MAP and i-Search.<sup>4</sup> Decisions are also available through those entities licensed to distribute NZX Data.

How to contact us:

New Zealand Exchange Limited  
Level 2  
NZX Centre  
11 Cable Street  
P O Box 2959  
**WELLINGTON**

Telephone: +64 4 472 7599  
Facsimile: +64 4 473 3181  
Email: [waiversandrulings@nzx.com](mailto:waiversandrulings@nzx.com)  
Web page: [www.nzx.com](http://www.nzx.com)

### **Format of an application for a waiver or ruling:**

When applying for a waiver or ruling, give the full name, address and corporate status of the person(s) seeking the waiver or ruling and provide any relevant documents to support your application. The application should contain all information material to the matter.

#### **Background**

Describe the background to the matter in respect of which the waiver or ruling is sought. This should include the full details of the relevant transactions or circumstances. It is helpful to include the generic background to the situation or events in question followed by the material details, e.g., the type of securities, details of third parties, details of transactions, etc.

#### **Waiver or ruling sought**

Give the specific rules for which the waiver or the ruling is sought and any conditions of the waiver or ruling which you consider appropriate.

#### **Reasons for seeking the waiver or ruling**

Explain for each provision of the Rules from which the waiver or ruling is sought why the waiver or ruling is needed giving full reasons which may justify the waiver or ruling. This should include a discussion of:

- the application of the Listing Rules without the waiver or ruling, the hardship or mischief that will result from that application; and
- The policy objective behind the Listing Rule concerned and the basis upon which that policy objective continues to be addressed by or is not affected by the waiver or ruling sought;

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<sup>4</sup> i-Search is an NZX Data product which provides comprehensive searching functionality for past NZXR decisions. For enquiries regarding i-Search, please contact NZX Data on (04) 472 7599.

**Precedents**

Identify any existing waiver or ruling decisions which are similar to the waiver or ruling sought and which may provide a precedent for your application. State how the existing decisions are similar to, and different from, the waiver or ruling you are seeking.

**Effects on shareholders**

Describe how your proposed waiver or ruling protects or preserves the interests of shareholders and other stakeholders, including any costs and benefits to them and the Issuer.

**The timeframe**

If your application is urgent, specify the date by when a determination is needed and the reason/s why you require the application to be considered on an urgent basis.

**Confidentiality**

If you consider that any decision from NZXR should not be approved when it is made, you should give good reasons for this. NZXR will often consent to matters being held confidential where a waiver relates to a transaction that has not been finalised and is not yet public. However, NZXR would release the decision at the time the transaction is announced.