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Disclaimer

This guidance note has been issued to promote commercial certainty and assist market participants. It provides guidance to Issuers and their advisors on NZX's interpretation of the Listing Rules. This 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 & practice.

NZX may replace Guidance Notes at any time. Issuers should ensure that they have the most recent version of the Guidance Note. Guidance Notes are posted to NZX's website at www.nzx.com

GUIDANCE NOTE – BACKDOOR AND REVERSE LISTING TRANSACTIONS

Introduction

This Guidance Note has been prepared to assist issuers and their advisors to comply with the listing rules obligations when participating in reverse, or backdoor listings on NZX's markets.

In order to participate in a reverse or backdoor listing, a listed Issuer is required to obtain shareholder approval under NZSX Listing Rule 9.1 (NZAX Listing Rule 9.1), as the acquisition of the target company will result in either:

- a change in the essential nature of the business of the Listed Issuer; and/or
- a purchase of an asset of which the gross value is in excess of 50% of the Average Market Capitalisation of the Listed Issuer.

A Notice of Meeting will be prepared to approve the transaction, and must be approved by NZX in accordance with NZSX Listing Rule 6.1.2 (NZAX Listing Rule 6.1.1).

From June 2008, as a condition of that approval NZX has required that the Notice of Meeting be accompanied by:

- A Profile that complies with the requirements of the Securities Act and Regulations, as if the arrangement were an offer of securities by the company targeted for acquisition made to the shareholders of the Listed Issuer; and
- An independent report in relation to the transaction.

A certificate from the promoters and proposed directors of the post-transaction entity as to the accuracy and completeness of the Profile must be included in the Profile.

This Guidance Note provides guidance as to NZX's expectations regarding the content of the Profile, report and certificate.

Compliance listings are similar to reverse and backdoor listings, in that the listing is usually completed without the need to complete disclosure documents under the Securities Act. An applicant is however required by NZSX Listing Rule 7.1 to prepare a Profile, or by NZAX Listing Rule a Disclosure Document (as the case may be). While not the subject of this Guidance Note, NZX will apply a similar policy to documents prepared under those Rules.

What is a Backdoor or Reverse Listing?

A backdoor listing occurs when a NZX listed company (“NZX Issuer”) without an existing business activity purchases a private company or its business (“Target Company”) in order to list an entity that incorporates an existing business of the Target Company (“Post Transaction Issuer”). Where the NZX Issuer has previously traded but no longer has an identifiable business activity, the transaction is commonly called a backdoor listing. Where the NZX Issuer has never carried on a business activity, but was listed for the purpose of completing such a transaction, the transaction is commonly called a reverse listing.

NZSX Listing Rule 9.1.1 and NZAX Listing Rule 9.1.1 require that these transactions be approved by shareholders of the NZX Issuer passing a resolution to acquire the Target Company (or its business). This resolution is put to shareholders in a Notice of Meeting.

Some examples of backdoor and reverse listings that have been completed on NZX’s markets are:

- Australasian Property Holdings Limited’s purchase of all the assets of ICP Biotechnology Limited;
- Spectrum Resources Limited’s purchase of all of the shares in Charlie’s Group Limited; and
- RetailX Limited’s purchase of all the shares in Plus SMS Limited.
- Vistron Limited’s acquisition of all the shares in MFS New Zealand Limited. The company then transferred to the NZSX

Background and Policy

While a reverse listing provides private companies with a time and cost efficient method of listing on a NZX market, NZX wishes to ensure that adequate disclosure standards are maintained.

NZX is issuing this Guidance Note to provide companies intending to complete a reverse, backdoor or compliance listing with guidance as to the information NZX Regulation will require when considering whether to approve documents relating to the transaction. NZX Regulation’s requirements will be assessed on a case by case basis in order to achieve an appropriate standard of disclosure for each proposal.

The purpose of these requirements is to ensure that sufficient information is provided to the market about the Target Company and the Post Transaction Issuer. NZX believes that the standard of information should be equivalent to that which would otherwise be available if the Target Company were offering securities in the Post Transaction Issuer by way of an IPO.

Backdoor or reverse listings can take place on both the NZSX and NZAX markets, and following the event it is not unusual for the Post Transaction Issuer to change from one market board to the other. In light of this NZX has determined that a Profile will need to be prepared regardless of the market that the NZX Issuer is initially listed on or will continue to be listed on. The Profile

will be required to have the content required by NZSX Listing Rule 7.1.3 or NZAX Rule 7.1.1, modified as specified in this Guidance Note.

In addition NZX will require the Profile prepared by an NZSX Issuer or an NZAX Issuer for a backdoor or reverse listing to be accompanied by an independent report on the transaction.

NZX is also concerned that those involved in reverse and backdoor listings do not bear the same responsibility for the accuracy and completeness of documents as they would if an offer of securities were being made. To address this NZX has decided to require the proposed directors of the Post Transaction Issuer and other persons promoting the proposal to provide a certificate in the Profile relating to the accuracy and completeness of the Profile. By including the certificate, NZX's intention is that persons issuing the document may be liable for breach of section 11 of the Securities Markets Act 1988 for misstatements in the Profile in a similar way that a person could be liable under section 56 of the Securities Act 1978 for misstatements in a registered prospectus.

Finally NZX is concerned that the current listing fee structure provides an incentive to utilise the back door or reverse listing structure. Accordingly NZX has determined that the fee structure will be revised to remove this incentive.

NZSX & NZAX Listing Rules

NZSX Rule 9.1.1 provides:

“Approval of Resolution: An Issuer shall not (subject to Rule 9.1.3) enter into any transaction or series of linked or related transactions to acquire, sell, lease, exchange, or otherwise dispose of (otherwise than by way of charge) assets of the Issuer or assets to be held by the Issuer:

- (a) which would change the essential nature of the business of the Issuer; or*
- (b) in respect of which the gross value is in excess of 50% of the Average Market Capitalisation of the Issuer;*

except with the prior approval of an Ordinary Resolution of the Issuer or a special resolution if that Issuer must obtain approval of the transaction or transactions by a special resolution under section 129 of the Companies Act 1993.

NZAX Rule 9.1.1 is identical to NZSX 9.1.1, except that it allows the transaction to be completed in accordance with the Pre-Break procedure set out in NZAX Rule 10.2.

NZSX Rules 6.1.1 and 6.1.2 (d) provide:

Approval: *The documents listed in Rule 6.1.2 shall be subject to the approval of NZX, and shall not be circulated to holders of Securities, executed, or otherwise given effect to in any way, until the written approval of NZX is obtained.*

Documents: *The documents referred to in Rule 6.1.1 are:*

(d) *any notice of a meeting of holders of Quoted Securities to consider any matter other than declaring a dividend, the consideration of financial statements and reports of Directors or auditors, the election of Directors, the fixing of the remuneration of Directors, a change of name of the Issuer, or the appointment of, and fixing of remuneration of, auditors, or a resolution required or permitted under the Takeovers Code; and*

NZAX Rules 6.1.1 and 6.1.1(b) provide:

Approval: The documents listed below shall be subject to the approval of NZX, and shall not be circulated to holders of Securities, executed, or otherwise given effect to in any way, until the written approval of NZX is obtained.

(b) *any notice of a meeting of holders of Quoted Securities to consider any matter other than declaring a dividend, the consideration of financial statements and reports of Directors or auditors, the election of Directors, the fixing of the remuneration of Directors, a change of name of the NZAX Issuer, or the appointment of, and fixing of remuneration of, auditors, or a resolution required or permitted under the Takeovers Code; and*

NZSX Rule 7.1.3 provides:

Contents of Profile: *Every Profile shall:*

(a) *comply with, and contain all information required to be contained in a registered prospectus under, the Securities Act 1978 and regulations made under that Act (with such modifications as may be rendered necessary by the circumstances) as if references in that Act or those regulations to the issuer were a reference to the Issuer, and references to the registered Prospectus were a reference to the Profile, and the Securities of the Issuer were being offered to the public for initial flotation, whether or not they are already allotted provided that NZX may determine (in its sole discretion) that some or all of the information referred to above may be omitted from the Profile; and*

(b) *contain all other information required by the Rules; and*

(c) *contain all other information NZX, in its sole discretion, might reasonably require.*

NZSX & NZAX Rule 9.1.2 provides:

“Contents of Notice: The notice of meeting containing the resolution to approve any transaction referred to in Rule 9.1.1 shall contain or be accompanied by such information, reports, valuations, and other material as are necessary to enable the holders of Securities to appraise the implications of the transactions”.

NZSX & NZAX Rule 5.3.2 provides:

“Additional Conditions: NZX may at any time or times impose conditions (whether or not additional to the Rules) that must be fulfilled by any Issuer in order to obtain or maintain Listing, or Quotation of all or any of its Securities, if NZX in its absolute discretion considers such conditions are necessary or desirable to maintain a properly informed market or to ensure compliance with, or achieve the intent of, any of the Rules.”

Application of Rules to a Backdoor or Reverse Listing Transaction

Where a reverse or backdoor listing requires shareholder approval of the shareholders of a Listed Issuer under Rule 9.1, as a condition of approving the Notice of Meeting in accordance with Rule 6.1.2, and in accordance with Rule 5.3.2 and 9.1.2, NZX will generally require:

- Delivery to shareholders (and the market) of a Profile that complies with the requirements of Rule 7.1.2 (NZAX Rule 7.1.1), as if the arrangement were an offer of securities by the Target Company to the shareholders of the NZX Issuer of securities in the Post Transaction Entity; and
- Delivery to shareholders (and the market) of an independent report in relation to the transaction;
- Inclusion within the Profile of a certification from the proposed directors of the Post Transaction Issuer (and any other persons who would be a “Promoter” for the purposes of the Securities Act and Regulations if the arrangement were an offer of securities by the Target Company to the shareholders of the Issuer of securities in the Post Transaction Issuer) in relation to the accuracy and completeness of the Profile and the notice of meeting in the form set out in the Appendix to this Guidance Note.

NZX believes that this information is necessary to enable the shareholders of the NZX Issuer to appraise the implications of the proposed transaction, and to adequately inform the market in relation to the business and operations of the Post Transaction Issuer that will maintain its listing on the relevant NZX Market.

For the avoidance of doubt, not all notices of meeting to approve a Rule 9.1 transaction will involve a reverse or backdoor listing. Some may be cases of an NZX Issuer acquiring an additional asset to complement or expand its existing business.

Contents of a Profile

NZSX Rule 7.1.3 requires that a Profile shall contain all information required to be contained in a registered prospectus under the Securities Act 1978 and Regulations made under that Act. Where the content of that document would be modified by any current exemption granted under section 5(5) of the Securities Act, that exemption will be taken into account. This will include the Securities Act (NZX-NZAX Market) Exemption Notice 2005.

In interpreting the requirements of the Securities Act and Regulations, NZX will generally apply the following approach:

- The “Issuer” will be the Post Transaction Issuer and will be treated as offering securities to the shareholders who receive the notice of meeting to approve the Transaction. In relation to historical financial statements and past financial returns the “Issuer” should be treated as being the Target Company or business of the Target Company to be acquired.
- The proposed Directors of the Post Transaction Issuer will be treated as “Directors of the Issuer”. The NZX Issuer and the Target Company (and each of their Directors) will be treated as “Promoters”.
- The securities being offered will be the securities in the Post Transaction Issuer, as if it was a new company distinct from the NZX Issuer into whose shell it will be listing. References to the “issue of securities” should be read as the entry into the proposed transaction.
- Information required in relation to the activities of the Issuer, holders of securities in the Issuer, issues of securities or options by the Issuer, subsidiaries of the Issuer, the directors of the Issuer and their rights and powers, should be read as information in relation to the proposed position immediately following completion of the Transaction.
- The Post Transaction Issuer, should be treated as having acquired the Target Company immediately prior to the date of the Notice of Meeting.
- A requirement to refer to historical financial statements of the Issuer should be read as a requirement to disclose or refer to the financial statements of the Target Company. Where only part of the business of the Target Company is being acquired, the financial statements of that business should be disclosed in accordance with clause 11 of Schedule 1 of the Securities Regulations 1983 or clause 23 of the Securities Act (NZX-NZAX Market) Exemption Notice 2005.
- A requirement to refer to or provide information in respect of plans prospects or future trading prospects of an Issuer should be read as a requirement to refer to or provide information in respect of plans prospects or future trading prospects of the Post Transaction Issuer.
- Clause 10 of Schedule 1 of the Securities Regulations should be treated as applying to all backdoor or reverse listings on the NZSX, and disclosure should be made as if the transaction were an initial public offering.
- A reference to “material matters relating to the offer of securities” or “other terms of offer of the securities” should be read as material matters or other terms relating to the proposed Transaction, the process of creation of the Post Transaction Issuer and the proposed business of the Post Transaction Issuer.
- A reference to material contracts or pending proceedings should be read as a reference to contracts or proceedings binding on the Post Transaction Issuer immediately following completion of the Transaction, regardless of the party who originally entered in to the contract or obligation.
- The Director’s certificate required by clause 41 of Schedule 1 of the Securities Regulations or clause 28 of the Securities Act (NZX-NZAX Market) Exemption Notice 2005 is to be replaced by a certification referred to in this guidance note. The Profile will need to be

signed by all the proposed Directors of the Post Transaction Issuer (and any other persons who would be a “Promoter” for the purposes of the Securities Act and Regulations if the arrangement were an offer of securities by the Target Company to the shareholders of the Issuer of securities in the Post Transaction Issuer).

- The “Specified Date” should be date of distribution of the notice of meeting and Profile to the shareholders of the existing Listed Issuer.

Note that these interpretive rules are set out for the purpose of general guidance only. Where a different approach is required in order to achieve the policy adopted by NZX, that approach will be substituted. The exact content of the documentation for each proposed transaction will need to be discussed with NZX during the approval process.

Independent Report

As noted above a notice of meeting to approve a Rule 9.1 Transaction comprising a reverse or backdoor listing will need to be accompanied by an independent report in respect of the Target Company in accordance with Rule 9.1.2.

That report should comply with the requirements for an Appraisal Report under NZSX Listing Rule 1.2 and be addressed to the shareholders of the NZX Issuer and include:

- A statement of whether there are any possible alternative courses for the NZX Issuer other than the proposed transaction; and
- A statement whether or not, in the opinion of the authors of the report, the terms of the transaction are fair and reasonable to shareholders and in the best interests of the NZX Issuer.

Certification from directors and promoters

Also as noted above NZX will require that all the proposed Directors of the Post Transaction Issuer (and any other persons who would be a “Promoter” for the purposes of the Securities Act and Regulations if the arrangement were an offer of securities by the Target Company to the shareholders of the Issuer of securities in the Post Transaction Issuer) provide certification in the Profile in the form set out in Appendix 1 to this Guidance Note.

The purpose of the certification is to ensure that those preparing the Profile will be liable to those who have suffered loss or damage because of a contravention of section 11 of the Securities Markets Act 1988 by reason of the Profile or the notice of meeting containing false or misleading information. Similar liability arises under the Securities Act 1978 in relation to statements made in prospectuses and investment statements relating to offers of securities.

Backdoor or Reverse Fees

The following fees will be payable by an NZX Issuer wishing to complete a reverse listing:

Allotment fees

Where not more than 75% of the listed Issuers pre-transaction equity is issued in the course of

the transaction, the standard Subsequent Issue fees will be payable.

Where more than 75% of the listed Issuers pre-transaction equity is issued in the course of the transaction, the greater of:

- the standard Subsequent Issue fees; or
- an Initial Issuer Fee taken from the time of the final allotment in relation to the backdoor or reverse listing transaction.

In addition usual regulatory fees will be payable in relation to the approval of documentation including the Notice of Meeting and the Profile. Urgency rates will be applicable where urgency is requested.

Appendix

Certification of the Directors and Promoters of the New Issuer - Rule 9.1 Reverse and Backdoor Listings

41. We, the persons signing this profile, after due inquiry by us, certify that:
- a. All Material Information relating to the Issuer, the proposed transaction outlined in this Profile and the Notice of Meeting, the process of creation of the Issuer and the proposed business of the Issuer is set out in this Profile and the Notice of Meeting;
 - b. All the information contained in this Profile and Notice of Meeting is complete and accurate in all material respects, and neither this Profile nor the Notice of Meeting contain any material that is false, or untrue, or is likely to deceive or mislead, with regard to any particular that is material to the proposed transaction;
 - c. In the period between the date of the latest statement of financial position contained in this Profile and the date of this certification, there have not, in our opinion, arisen any circumstances that materially affect –
 - i. The trading or profitability of the Issuer; or
 - ii. The value of its assets; or
 - iii. The ability of the Issuer to pay its liabilities due within the next 12 months.

In this Profile:

“Issuer” means [*name of new Issuer*]

“Material Information” means information in relation to the Issuer that a reasonable person would expect to materially influence the decision of a shareholder on whether to vote to approve or not to approve the transaction proposed in the Notice of Meeting, or to have a material effect on the price of Quoted Securities of the (Post Transaction Issuer);

“Notice of Meeting” means the notice of meeting in relation to the proposed transaction provided to shareholders of [existing listed issuer] Limited together with this Profile;

The Profile must be signed by all of the proposed directors of [Post Transaction Issuer] Limited (“Issuer”) and all other persons who would be a “Promoter” for the purposes of the Securities Act and Regulations if the if the arrangement were an offer of securities by the Issuer to the shareholders of [existing listed issuer] Limited.