

Guidance Note

Delisting from NZX

Draft for public consultation – October 2023



The purpose of this guidance note is to provide guidance to issuers in relation to delisting from NZX, the circumstances in which NZX may delist an issuer, and the process issuers should follow when applying to delist from NZX.

Under rule 9.15.1 of the NZX Listing Rules (**Rules**), 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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This guidance note applies to the provisions relating to delisting of issuers contained in the NZX Listing Rules. Issuers should note that 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 reflects the listing rules and law as at DATE, which is subject to change. NZX takes no responsibility for any error contained in this guidance note. This guidance note does not limit NZX's discretion under the rules. 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. Capitalised terms which are not defined in this Consultation Paper have the same meanings given to them in the NZX Listing Rules.

Introduction

Under the Rules, issuers have the ability with one month's notice to apply to delist from NZX. NZX has discretion to either accept or reject such applications. NZX also has the ability to cancel the listing of any issuer and the quotation of its securities at NZX's absolute discretion.

When an issuer delists, its securities will no longer be quoted on NZX's markets and the issuer is no longer subject to the Rules.¹ The issuer will also no longer be a Listed Issuer under the Financial Markets Conduct Act 2013. Delisting will often have a material impact on the issuer's investors due to the change in the ability to transfer securities, and the regulatory and disclosure requirements that apply to the issuer and trading in the issuer's securities.

This guidance note provides detail on NZX's expectations when an issuer seeks to delist from NZX, and also on when NZX may exercise its discretion to cancel the listing of an issuer under the Rules.

When proposing to undertake a transaction not covered by this Guidance Note issuers are encouraged to contact NZX early to discuss.

¹ Under Rule 9.9.5 the cancellation of Listing or Quotation does not release the issuer from any prior obligations in respect of any period or matter occurring before the cancellation.

Delisting at the request of an Issuer

Issuers may apply to delist at any time. However, due to the different circumstances of issuers and investors, NZX will usually only approve a delisting application subject to certain standard conditions. The exact conditions that NZX imposes will depend on the issuer's specific circumstances and listing status.

NZX is mindful of the protections afforded to financial product holders by the Rules. Delisting removes the issuer from a regulated market and therefore it will often be appropriate that financial product holders consider and vote on the delisting.

Continuous disclosure

Issuers can apply to delist or announce a proposed delisting at any time. A Board's decision to delist will always likely be material information requiring disclosure to the market. Issuers must always be mindful of their continuous disclosure obligations under Rule 3.1.1, and application of any exceptions to disclosure under Rule 3.1.2, when considering whether to delist. When engaging with NZX at an early stage, or applying to delist prior to any public announcement, issuers should ensure they clarify to NZX whether the delisting considerations are an incomplete proposal, and whether the Issuer is relying on the safe harbour provisions contained in Rule 3.1.2.

Application process – all issuers

Upon receipt of a delisting application, NZX will consider the application and may request further information. As above, an issuer may announce an intended delisting before or after submitting a delisting application to NZX.

Matters that issuers should address when submitting an application to delist include (as applicable):

- the reason for delisting from NZX, along with a proposed timetable for the delisting; and
- a summary of market announcement(s) the issuer will make about the delisting.

If the issuer is an equity issuer, it should also outline whether or not the issuer will continue to be domiciled in New Zealand and whether financial product holder rights under the Companies Act 1993, Financial Markets Conduct Act 2013, and Takeovers Code will be substantially unchanged.

If an equity or fund issuer is migrating to another exchange, or consolidating listings, the issuer should also provide the following (as applicable):

- whether the issuer intends to retain its other listing (or listings);
- whether the issuer is changing its domicile location or its regulatory structure (for example a New Zealand Managed Investment Scheme transferring location to be subject to another jurisdiction);
- if the issuer proposes to list on another exchange, information on the other exchange, including whether the other stock exchange is a Recognised Stock Exchange under the Rules.
- whether the issuer intends to transfer financial products currently held on the New Zealand register to a different register. If the issuer will transfer those financial products, details of how that transfer will take place and a description of the impact on financial product holders;

- a summary of the composition of the Issuer's financial product register, including the number of holders on each register, and the percentage of financial products held on each register. The summary should also provide information on the number and size of retail and institutional financial product holdings;
- if applicable, whether the issuer considers that existing New Zealand investors would be familiar with trading on the other exchange and whether New Zealand financial product holders can readily trade their securities through New Zealand-based brokers;
- whether financial product holders would be required to take any action, pay or be subject to different trading fees in relation to the proposed change in listing venue; and
- if the issuer is also listed on another securities exchange and considers that a reason for delisting is the trading volume and value on NZX in comparison to the other exchange, the issuer should also include a comparison of the number and volume of trades on the NZX market and the other exchange.

Issuers should allow 10 Business Days for the NZX review process. NZ RegCo considers all applications to delist from NZX.

After completion of the review, NZX will confirm its decision to the issuer. Delisting decisions will usually be subject to certain conditions. The conditions that apply will depend on the type of listing and the issuer's specific circumstances. Set out below are the most common delisting scenarios and conditions that NZX will apply in each.

Standard conditions for all delisting decisions

If approved, delisting applications will likely be subject to the following standard conditions:

- Issuer to provide NZX with draft market announcements and details to be sent to financial product holders relating to the delisting for review prior to publication;
- Issuer must pay all NZX fees; and
- Issuer must provide one month's notice of the delisting to the market, beginning from the date at which the announcement to delist was made.

Issuers may provide the draft market announcement and other documents with the delisting application, or may provide this at a later date after NZX has confirmed its decision in respect of the delisting application.

The exact conditions that will apply depending on the NZX listing status of the issuer, and the issuer's proposals after delisting. The most common scenarios, along with the conditions that apply, are set out below.

Financial product holder approval of the delisting

If NZX requires that the Issuer seeks financial product holder approval for the delisting, the following conditions will also apply:

- Issuer to obtain approval of Non-Affiliated Holders, by way ordinary resolution; and
- NZX to review and provide non objection to the relevant notice of meeting.

These conditions are designed to ensure sufficient financial product holder protection as a delisting represents a significant change to the nature of an investment, and also the liquidity available to existing financial product holders.

The requirement that Non-Affiliated Holders vote on the resolution is to ensure sufficient protection to minority financial product holders. Non-Affiliated Holders is a defined term in the Rules, being financial product holders with a holding of less than 10%, and who do not have the power (either themselves or by Associated Persons) to appoint a director. This voting restriction is designed to ensure minority financial product holders generally control the decision whether to delist or not, reflecting the significant change to an Issuer, and to the type of investment, that a delisting represents.

Conditions that apply in specific delisting scenarios

The exact conditions that will apply depend on the NZX listing status of the issuer, and the issuer's proposals after delisting. The most common scenarios for equity and fund issuers, along with the conditions that will usually apply, are set out below:

a) Issuer to delist from NZX or list on a different financial product market

If an issuer proposes to delist and become a non-public issuer, or transfer its listing to a different financial product market², NZX requires that the issuer seek financial product holder approval for the delisting.

Standard conditions that NZX will apply are:

- Issuer to obtain approval of Non-Affiliated Holders, by way ordinary resolution;
- NZX to review and provide non objection to notice of meeting;
- Issuer to provide NZX with draft market announcements and detail to be sent to financial product holders relating to the delisting for review prior to publication;
- Issuer must pay all NZX fees; and
- Issuer must provide one months' notice of the delisting to the market.

NZX considers financial product holder approval by Non-Affiliated Holders is appropriate in these circumstances as the issuer proposes to alter existing financial product holder rights in relation to the Rules that apply, or the relative ease to trade in the issuer's financial products. The proposal may also materially affect the rights and protections for financial product holders, and the basis on which they hold and transact in those financial products.

These conditions apply to equity and fund issuer delisting applications.

² This includes all exchanges, including any Recognized Stock Exchanges, other than the ASX

b) Issuer migrating to a primary listing on ASX

If an issuer applies to migrate to the ASX and delist from NZX, the standard conditions that NZX will apply are:

- Issuer to provide NZX with draft market announcements and detail to be sent to financial product holders for review prior to publication;
- Issuer must pay all NZX fees; and
- Issuer must provide one months' notice of the delisting to the market.

NZX does not consider that financial product holder approval is required as the migration will not materially affect the rights and protections for financial product holders, and the options available to trade on ASX are similar to trading on NZX. Investors of NZX listed securities are also likely to be aware of other relevant matters such as the implications of investing in Australian dollar denominated securities.

The issuer announcement must explain the impact on financial product holders moving from a New Zealand branch register to the home jurisdiction register, with the notice period enabling financial product holders to sell out prior to the change.

c) NZX Foreign Exempt Issuer delisting from NZX, but remaining listed on its Home Exchange

Conditions that apply when a NZX Foreign Exempt issuer proposes to delist from NZX, but remain listed on its Home Exchange³ are:

- Issuer to provide NZX with draft market announcements and detail to be sent to financial product holders for review prior to publication;
- Issuer must pay all NZX fees; and
- Issuer must provide one months' notice of the delisting to the market.

Under Rule 1.6, a foreign exempt issuer is already primarily subject to its Home Exchange's listing rules (the Home Exchange being a Recognised Stock Exchange) and therefore other than not being able to trade over NZX, there will be no significant change in terms of financial product holder protection. As such, NZX does not consider that financial product holder approval is required as financial product holder rights and protections for financial product holders which are primarily derived from the issuer's Home Exchange. NZX considers this difference of treatment compared to when a NZX primary listed issuer proposes to migrate to a Recognised Stock Exchange (other than ASX) is appropriate due to the difference of listing category type for primary and foreign exempt issuers.

The issuer announcement must explain the impact on financial product holders moving from a New Zealand branch register to the home jurisdiction register, with the notice period enabling financial product holders to trade out prior to the change.

d) NZX Foreign Exempt Issuers delisting from both NZX and its Home Exchange

If a NZX foreign exempt issuer seeks to delist from NZX, and also delist from its Home Exchange at the same time, NZX will likely assess the conditions imposed by the Home Exchange as this regime is the primary compliance regime for the issuer. NZX expects that in most cases the issuer would be required to seek financial product holder approval. Issuers should provide NZX with information on the conditions and

³ Note that a proposal to "switch" the relevant Foreign Exempt and home jurisdiction is not an application for delisting, but a change in the nature of the listing with NZX.

process that it must follow in accordance with the requirements of its Home Exchange. Along with imposing the same conditions as the issuer's Home Exchange, NZX will also require:

- provide NZX with any market announcements and detail to be sent to financial product holders for review prior to publication;
- pay all NZX fees; and
- provide one month's notice of the delisting to the market.

Market announcement confirming delisting

Issuers are able to confirm in a market announcement an intention to delist at any time, and must ensure that they announce the delisting in compliance with their continuous disclosure obligations. Issuers must also provide further information on any delisting after NZX approval, with the announcement confirming the conditions that are in place and timeline.

There is no prescriptive list of information that issuers need to include in their market announcements. The level of detail that should be included in an announcement will vary depending on the content and the reason for the announcement. Issuers should ensure that announcements contain sufficient information for investors to understand and assess the implications of the announcement and to assess the potential impact on the price or value of the Issuer's financial products. However, it is important that proper emphasis is given to key items and these are not buried in the details. Rule 3.26.2 requires long and complex announcements to be prefaced by a summary of salient points.

If NZX approves a delisting conditional on NZX reviewing any delisting announcements, Issuers must provide to NZX for review a draft copy of any future announcements in relation to the delisting. Some issuers may choose to provide an initial delisting announcement with their initial delisting application. The market announcement should explain at a minimum the reason for delisting, the process that financial product holders are subject to, and what the impact of the delisting will be on existing financial product holders. Issuers should also outline what the issuer's plans and strategy is after delisting.

If applicable, issuers should also explain whether issuers can migrate to a different branch register prior to delisting and what regulatory regime the issuer will be subject to after delisting.

The announcement should also include a delisting timetable.

Usual delisting timetable – financial product holder approval

Action	Date
Delisting approved by NZX and announced to market If applicable, notice of meeting published	Day X – 20 Business Days (10 Business Days is the minimum)
Financial product holder meeting to consider delisting	Day X
Last day of trading on NZX	Day X + 1 calendar month
Trading suspension applied to trading on NZX	Close of business last trading day
Financial products delisted from NZX	Close of business two business days after the last trading day

Usual timetable where no financial product holder approval

Action	Date
Delisting approved by NZX and announced to market	Day X
Last day of trading financial products on NZX	Day X + 1 calendar month
Trading suspension applied to trading on NZX	Close of business last trading day
Financial products delisted from NZX	Close of business two business days after the last trading day

Requirements for notices of meeting

An Issuer's notice of meeting seeking approval of a delisting must contain, or be accompanied by sufficient explanation, reports, valuations, and other information, as to enable a reasonable person entitled to vote to understand the effect of the resolution proposed. The notice should also explain the consequence of the resolution not being passed.

NZX expects that at a minimum the notice of meeting should:

- explain the reason for delisting;
- outline the process that financial product holders are subject to;
- detail the impact of the delisting on existing financial product holders; and
- provide information on the Issuer's plans and strategy after delisting.

If applicable, Issuers should also explain whether financial product holders can migrate to a different branch register prior to delisting and what regulatory regime the Issuer will be subject to after delisting.

The notice of meeting, explanatory notes, proxy form and any other documents to be sent to financial product holders (such as any Appraisal Report) must be provided to NZX in draft for review at least 10 Business Days (or such other time as NZX may prescribe or advice from time to time) before the notice of meeting and accompanying documents are proposed to be printed or sent. The 10 Business Day review period will not start until NZX has received all documents in their proposed final draft form.

A suitable form of resolution that seeks approval for delisting is:

That the delisting of [Issuer] from the NZX Main Board is approved and the directors of [Issuer] are authorised to undertake all actions and enter into any agreements and other documents necessary to give effect to this resolution.

The notice of meeting should set out any voting restrictions that apply.

NZX discretion to delist an Issuer

Under Rule 9.9.3, NZX may at its absolute discretion at any time, cancel the listing of an Issuer, and cancel the quotation of an Issuer's financial products.

The drafting of Rule 9.9.3 is broad and NZX sets out below when it may exercise its discretion, including in relation to:

- Non-payment of NZX fees;
- Extended ongoing periods of compliance breach (e.g., non-compliance with financial reporting obligations);
- Extended periods of suspended status;
- The entity has no quoted securities; and
- Receivership or liquidation of the Issuer.

In each case NZX may suspend trading in the Issuer's financial products prior to delisting.

Non-payment of annual listing fees

Issuers must pay all relevant fees under the NZX Fee Schedule in a timely manner. If an Issuer does not pay its annual listing fee within 30 business days after the due date, NZX will suspend quotation of the Issuer's financial products. If the fees are then not paid within a further 30 business day period, NZX may cancel the Issuer's listing. Suspension and cancellation will not affect the amounts that remain owing or the rights of NZX in respect of recovery.

When suspending quotation of an Issuer's financial products, NZX will release a memorandum confirming the reason for the suspension.

Ongoing compliance breaches

NZX will sometimes suspend the trading of an Issuer's financial products when the issuer is not complying with the Rules. If an Issuer has ongoing egregious Rule breaches it may not be appropriate for the Issuer to remain listed.

Examples of when NZX may suspend trading include if the Issuer:

- a) does not, or is unable to, provide sufficient disclosure to the market to satisfy its continuous disclosure obligations in order for market participants to price the Issuer's financial products;
- b) is over five Business Days late in publishing half or full year Results Announcements, or its annual report;
- c) commits persistent or egregious breaches of periodic reporting obligations; and
- d) no longer has a minimum of three Directors, or two Independent Directors on its Board.

In addition to these examples, NZX may exercise its discretion to apply a suspension in situations where it is necessary for the fair, orderly and transparent operation of its markets.

When suspending quotation of an Issuer's financial products, NZX will release a memorandum confirming the reason for the suspension.

Any suspension of trading is likely to occur alongside investigation and enforcement activity, which may include referral to the NZ Markets Disciplinary Tribunal (NZMDT). See NZ RegCo's Approach to Enforcement for further information.⁴

A continued breach of continuous disclosure, periodic reporting, or corporate governance has implications for wider market integrity. If the issuer does not rectify the breach such that the suspension is lifted, NZX reserves the right to exercise its discretion to cancel the listing of an issuer and quotation of its financial products.

Receivership or liquidation of the Issuer

NZX does not automatically delist an Issuer that is in administration, receivership or liquidation, although it would suspend an issuer in such circumstances.

As Issuers in receivership or liquidation are subject to a statutory or regulatory process, NZX will usually exercise its discretion to cancel the listing of an issuer and quotation of its securities ten Business Days after a receiver or liquidator is appointed.

⁴ <https://www.nzx.com/regulation/nzregco/publications>

Other delisting related transactions

Takeovers/schemes of arrangement

In New Zealand, the Takeovers Code governs transactions and events that impact on the voting rights attaching to the financial products held by investors in Code companies. If an Issuer is subject to a Takeovers Code transaction or a scheme of arrangement pursuant to the Companies Act 1993, the Takeovers Panel is the primary regulator overseeing the transaction. Depending on the outcome of an offer, the Issuer may seek to delist from NZX.

Conditions to delisting that NZX imposes at the end of a takeover transaction are limited to reviewing any final announcements that confirm that the Issuer will delist, ensuring NZX fees are paid, and that key dates are announced to market. The relevant dates are usually already available for financial product holders due to Takeovers Code or High Court requirements.

A) Compulsory acquisition - timetable

NZX will generally suspend trading in an Issuer's financial products five business days after the Issuer receives a compulsory acquisition notice under the Takeovers Code. NZX generally interprets this to mean five Business Days after an Issuer receives a notice that the 90% threshold has been reached and that the offeror intends to compulsorily acquire all remaining financial products in the Issuer.

The suspension will remain in place until the Issuer is delisted at the request of the offeror, with any delisting being subject to the conditions that the Issuer:

- pays all fees owing to NZX including any delisting fees; and
- release a delisting announcement to the market outlining the delisting process and a timetable of key dates.

NZX considers that the suspension is appropriate as there is no longer any benefit in the Issuer remaining listed once an offeror moves to compulsory acquisition, and the Takeovers Code governs the process for payment of compulsory acquisition monies.

B) Schemes of arrangement - timetable

NZX will generally suspend trading of an Issuer's financial products two Business Days after the issuer obtains final Court orders. The record date for entitlements must be at least two Business Days after the suspension, with the final quotation day and delisting occurring afterwards in line with the timetable approved by the High Court.

Delisting will be subject to the conditions that:

- the Issuer obtains final court orders approving the scheme of arrangement;
- the scheme implements as proposed in the scheme implementation agreement;
- the Issuer pays all fees owing to NZX including the delisting fees; and
- the Issuer provides NZX draft copies for review of any final delisting announcements prior to release.

Debt issuers with no Quoted financial products

Under the Rules Issuers are able to redeem, or allow to mature, all quoted financial products but remain a Listed Issuer. This usually occurs when a debt only Issuer has Debt Securities that mature but the Issuer may choose to remain Listed due to future plans to issue more quoted debt in the future. Issuers with no Quoted securities are still subject to the Listing Rules and are still party to a Listing agreement with NZX making them Listed Issuers in accordance with the Financial Markets Conduct Act 2013.

NZX's preference is that Issuers delist if they have no quoted financial products. NZX contacts Issuers to discuss scheduled debt maturity, and when NZX identifies that the Issuer has no other quoted financial products, NZX will confirm whether the Issuer also seeks to delist.

If a debt Issuer seeks to delist after maturity of all Quoted securities, the delisting will likely be subject to the condition that the Issuer pays all NZX fees.

Reclassification of listing status

Issuers may from time-to-time apply to switch Listing status, for example from primary to NZX Foreign Exempt Issuer status, or NZX Foreign Exempt Issuer status to primary Listing. Issuers must seek NZX approval for prior to the reclassification of Listing status. The conditions that apply in these circumstances will depend on the proposal.

Appendix: NZX Listing Rules

Glossary, Part A – Definitions

- Non-Affiliated Holder** means any person other than:
- (a) A person who holds, or is one of a group of Associated Persons who together hold, 10% or more of a Class of Financial Products, or
 - (b) A person who has, or is one of a group of Associated Persons who together have, the power (whether contingent or not) to appoint one or more Directors of the Issuer, or
 - (c) Any other person or group of persons whom NZX in its discretion declares not to be a Non-Affiliated Holder for the purposes of the Rules.

9.9 Trading Halts, Suspension, Cancellations and other Powers

- 9.9.1 An Issuer may request, by notice in writing to NZX in the prescribed form:
- (a) that trading in its Quoted Financial Products be halted for a period not to exceed 2 Business Days,
 - (b) that trading in its Quoted Financial Products be suspended for a period specified in the notice, or
 - (c) with at least one month's notice, that it will cease to be Listed or that some or all of its Quoted Financial Products will cease to be Quoted.
- 9.9.2 Upon receipt of a written notice under Rule 9.9.1, NZX may at its discretion accept or reject such applications or impose such conditions as it thinks fit.
- 9.9.3 NZX may at its absolute discretion at any time, without giving any reasons and without prior notice to the Issuer:
- (a) cancel the Listing of any Issuer,
 - (b) cancel, halt or suspend for such period as NZX thinks fit, the Quotation of any or all of an Issuer's Quoted Financial Products, or
 - (c) refer the conduct of any Issuer, or Director or Associated Person of any Issuer, to the Tribunal or any statutory or governmental authority.
- 9.9.4 Where NZX exercises its power under Rule 9.9.3 without giving prior notice or reasons to the Issuer, it will provide that notice, and the reasons for NZX exercising its powers in that manner, as soon as practicable.
- 9.9.5 Suspension of Quotation or trading does not release the Issuer from any obligation under the Rules. Cancellation of Listing or Quotation does not release the Issuer from any prior obligations in respect of any period or matter occurring before the cancellation.