



NEW ZEALAND'S EXCHANGE
TE PAEHOKO O AOTEAROA

Dual Class Shares

Consultation Paper

May 2026

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This Consultation Paper has been prepared by NZX to seek comment on the proposals contained in the paper, with a view to ensuring that the proposals will enable NZX to operate its markets on a fair, orderly and transparent basis. The proposals set out in this paper do not reflect NZX's concluded views of the matters raised. Capitalised terms which are not defined in this Consultation Paper have the same meanings given to them in the NZX Listing Rules.

Introduction

NZX is designing settings to formally accommodate issuers who operate a dual class share structure (**DCS structure**) within the NZX Listing Rules (**Rules**) and NZX Corporate Governance Code (**Code**).

DCS structures arise where a company issues two classes of shares with different voting rights: superior shares, which confer multiple votes per share on their shareholders who are normally founders; and ordinary shares, carrying normal 1:1 voting rights held by the public.

While DCS structures are not prohibited by the current Rule and Code settings, waivers and rulings would likely be needed to accommodate an issuer wishing to utilise a DCS structure (**DCS Issuer**).

This review aligns with NZX's strategy of broadening the range of investible product available on NZX's markets, by creating a clearer pathway for DCS Issuers. NZX considers that formalising these structures within our regulatory settings will provide greater certainty for DCS Issuers and investors.

NZX is aware that a DCS structure could be designed in a manner where ordinary shares do not have any voting rights and superior shares have one or more voting rights. However, there are additional complexities relating to the introduction of the concept of non-voting right shares within the Rules, and as such we have not addressed this type of DCS structure within the current review.

As part of the review of our capital raising settings in 2022, NZX previously consulted on whether it would be appropriate to introduce DCS structures as a product class within the Rules. While demand was low for these structures at that time, NZX has continued to observe that DCS structures are becoming increasingly common internationally. While DCS structures are prohibited in Australia, both the United States and Canada and NZX's peer exchanges in Asia (SGX and HKEx) expressly allow these structures. As part of this review we have completed international benchmarking of these requirements to inform the design of settings and safeguards that are appropriate for NZX's markets.

NZX considers that DCS structures could be beneficial for New Zealand's start-up sector, in particular FinTech companies. This review also supports the work NZX has undertaken to engage with New Zealand co-operative entities, including through the development of a bespoke Co-operative Guidance Note in 2025.

The OECD Economic Survey for New Zealand¹ noted that the allowance of DCS structures, which is common in comparable small advanced economies, could further alleviate founder concerns about loss of control and support greater updates of public listings.

¹ OECD (2026), *OECD Economic Surveys: New Zealand 2026*, OECD Publishing, Paris, <https://doi.org/10.1787/3ec5de98-en>.

Objectives of the review

NZX is undertaking this review, with the objectives of ensuring that NZX's regulatory settings:

- formally recognise and clearly regulate DCS structures, broadening the suite of products available on NZX's markets,
- are correctly calibrated to provide appropriate investor protections for those investing in ordinary shares that form part of a DCS structure, and
- enable access for investors and other stakeholders to key information relating to a DCS structure, including in relation to the issuer's corporate governance practices.

These objectives have been designed to enable NZX to enhance the operation of its markets on a fair, orderly, and transparent basis, consistent with NZX's obligations under the Financial Markets Conduct Act 2013 (**FMC Act**).

How can I contribute to this consultation?

Provide a submission

We invite interested parties to provide their views on the proposals described in this consultation paper, and that are contained in the Exposure Draft of the Rules, Guidance Note and Code accompanying this paper.

We are interested in general feedback in relation to the proposals, and have raised specific consultation questions to prompt feedback in certain areas.

Please email your submission to: policy@nzx.com. Alternatively, if you would prefer to provide a verbal submission, please email NZX Policy to arrange a time to speak with us.

The closing date for submissions is **10 July 2026**.

NZX may publish the submissions it receives, so please clearly indicate in your submission if you do not wish for your submission to be published, or identify any part of your submission which contains confidential information.

Questions

If you have any queries in relation to this review, please email policy@nzx.com or contact:

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Executive Summary

NZX is proposing amendments to the Code and Rules, and the introduction of a new DCS Guidance Note. Exposure Drafts of those documents accompany this consultation paper.

The proposals are summarised in this consultation paper, more detail relating to the proposed requirements is contained in the Exposure Draft of the Guidance Note. The key proposals relate to:

- **Eligibility:** requirements in relation to persons who are permitted to hold superior shares (the 'Permitted Superior Holder Group'), and shareholder spread,
- **Superior Shares:** holding criteria, voting restrictions, anti-dilution requirements, sunset and conversion mechanisms,
- **Governance:** specific governance requirements in relation to board and board committee composition,
- **Disclosure:** additional content requirements for Offer Documents and Profiles, periodic reporting and announcements, including the use of a warning statement, and
- **Capital Raising:** restrictions on the use of certain capital raising structures in relation to the issuance of further Superior Shares, whether or not those Shares are Quoted.

PFI

Rule 7.4.1(a) requires a Profile to contain the information required by the FMC Act to be included in a product disclosure statement for a regulated offer.

Recent changes made to the Financial Markets Conduct Regulations 2014 clarify that PFI is no longer required to be included in a product disclosure statement for a regulated offer in relation to equity securities that are Quoted on NZX's markets.

NZX is proposing a minor change to the Rules to remove the clarification from Rule 7.4.2(a) that Prospective Financial Information (**PFI**) is not required in a Profile for Equity Securities, as this is no longer necessary given the more permissive legislative settings. NZX's policy position remains that PFI is not required in a Profile for Equity Securities.



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Consultation Snapshot

We have set out in the table below a snapshot of the proposed changes to NZX's regulatory policy relating to DCS structures. The table identifies where the proposal is discussed in this paper, and the Exposure Draft of the Guidance Note, Rules and Code that accompany this paper.

Consultation Proposal	Consultation Paper	Guidance Note	Rules / Code
1 Eligibility			
<ul style="list-style-type: none"> New Listings 	1.1	1.1	Rule 1.23
<ul style="list-style-type: none"> Quotation of Superior Shares 	1.2	1.2	
<ul style="list-style-type: none"> Superior Shares – Minimum Holding 	1.3	1.3	Rule 1.2.1(b)
<ul style="list-style-type: none"> Spread 	1.4	1.4	Rule 1.1.1(b)(i)
2 Superior Shares			
<ul style="list-style-type: none"> Permitted Superior Holder Group - holding criteria 	2.1	1.2	Rule 1.15.2(l), Rule 2.15.1(a) - (c)
<ul style="list-style-type: none"> Superior Shares - voting restrictions 	2.2	2.1	Rule 2.15.1(e), Rule 2.16.1(h)
<ul style="list-style-type: none"> Superior Shares - anti-dilution requirements 	2.3	2.2	Rule 2.15.1(f), Rule 2.15.1(d)
<ul style="list-style-type: none"> Restrictions on concentration of Superior Holders 	2.4	2.1	Rule 4.14.1
<ul style="list-style-type: none"> Sunset and conversion 	2.5	2.8	Rule 2.16
3 Governance			
<ul style="list-style-type: none"> Board composition and independence 	3.1	2.3	Rule 2.1, Code Recommendation 2.4
<ul style="list-style-type: none"> Representative Directors 	3.2	2.4	Rule 2.17
<ul style="list-style-type: none"> DCS Governance Committee 	3.3	2.5	Rule 2.17.2

Consultation Proposal	Consultation Paper	Guidance Note	Rules / Code
<ul style="list-style-type: none"> Board Committee composition requirements 	3.4	2.6	Rule 2.18.1, Rule 2.13.2, Code Principle 3
4 Disclosure			
<ul style="list-style-type: none"> Designation and Warning Statement 	4.1	3.1 and 3.2	Rule 1.4.2, Rule 3.8.1(h)(i), Rule 7.4.6
<ul style="list-style-type: none"> Offer Documents and Profiles 	4.2	3.3	Rule 7.4.6
<ul style="list-style-type: none"> Continuous Disclosure 	4.3	3.4.1	Rule 3.1
<ul style="list-style-type: none"> Annual Report 	4.4	3.5	Rule 3.6, Rule 3.7, Rule 3.8
<ul style="list-style-type: none"> Substantial Product Holder Disclosures 	4.5	3.6	Rule 3.24.2
5 Capital Raising			
<ul style="list-style-type: none"> Restrictions on issuance of Superior Shares 	5.1	4.2	Rule 1.3.1
<ul style="list-style-type: none"> Shareholder approval for issuance of Superior Shares 	5.2	4.3	Rule 4.2.1
<ul style="list-style-type: none"> Permitted issuance of Superior Shares 	5.3	4.4	Rule 4.1.2

1. Eligibility

1.1 New Listings

NZX considers that it is important that investors receive appropriate disclosure in relation to the unique features of a DCS Issuer, at the time they acquire the DCS Issuer's shares. NZX therefore intends only to allow DCS structures to be used for new Listings.

1.2 Superior Shares – quotation

NZX does not intend to require that Superior Shares are Quoted on the NZX Main Board, although a DCS Issuer may elect to do so. While Superior Shares may only be held by persons who meet criteria specified by the DCS Issuer, there is no reason for NZX to prohibit Superior Shares from being Quoted.

A DCS Issuer may wish to enable holders of Superior Shares to utilise NZX's trading platform, noting that NZX proposes that a DCS Issuer must at all times ensure that holders of its Superior Shares fall within the permitted eligibility criteria.

1.3 Superior Shares - minimum holding

NZX proposes that an applicant seeking DCS Issuer status must ensure that at the time of Quotation the holders of its Superior Shares in aggregate hold a beneficial interest in at least 10% of its 'anticipated market capitalisation'.

This requirement is designed to provide confidence to holders of Ordinary Shares that the Permitted Superior Holder Group has a meaningful financial interest in the ongoing performance of the Issuer, and to mitigate concerns that the superior control rights attached to Superior Shares will be exercised in a manner that is not aligned with the financial performance of the Issuer.

Rule 1.1.1(b)(i) currently requires that a Class of Equity Securities will not be considered for initial Quotation unless the anticipated market capitalisation of the Equity Securities to be Quoted is at least \$10 million. NZX does not expect an applicant seeking DCS Issuer status to apply sophisticated financial modelling to determine its 'anticipated market capitalisation', although relevant factors may include the value implied by the expected listing price, the value premium attributed to its Superior Shares, and the value of its share capital recorded in its statement of financial position.

1.4 Spread

The Rules currently impose spread requirements in relation to each class of an applicant's Equity Securities that are to be Quoted. These requirements will therefore separately apply to the Ordinary Shares of a DCS Issuer and will also apply to its Superior Shares where those Superior Shares are to be Quoted.



The Rules require that:

- at least 20% of the Class of Equity Securities be held by at least 100 Non-Affiliated Holders (persons other than those who hold 10% or more of the Class, or who have the power to appoint a Director), or
- the applicant has an appropriate spread of Equity Security holders to ensure a sufficiently liquid market in the Class of Equity Securities.

NZX is interested in whether a spread requirement should be imposed on non-Quoted Superior Shares.

The holders of Superior Shares have significant voting rights disproportionate to their economic interest in the DCS Issuer, and imposing an additional spread requirement in relation to the non-Quoted Superior Shares may give comfort to Ordinary Shareholders that control over the DCS Issuer is not concentrated within the Superior Shareholder group.

However, a spread requirement for non-Quoted Superior Shares may artificially constrain the DCS Issuer's ownership structure and may be unnecessary in light of the proposed limits on the voting rights of Superior Shareholders (explained in section 2 of this consultation paper) and the ongoing disclosure requirements (explained in section 4 of this consultation paper).

Consultation Questions - Eligibility

1. Do you agree that DCS structures should only be available for new Listings? If NZX were to enable Issuers to become DCS Issuers, what additional requirements should apply over and above the existing protections in the Rules (e.g. the related party and major transaction requirements)?
2. Do you agree that NZX should require holders of Superior Shares to have a minimum 10% interest in a DCS Issuer at the time of its Quotation?
3. Are there any specific factors that should be considered by a DCS Issuer when determining its 'anticipated market capitalisation', that NZX could usefully refer to in guidance for the purpose of supporting an applicant in assessing its 'anticipated market capitalisation'?
4. Do you consider that NZX should impose spread requirements on non-Quoted Superior Shares?

2 Superior Shares

2.1 Permitted Superior Holder Group – holding criteria

NZX proposes that DCS Issuers must only permit certain persons to hold Superior Shares in accordance with criteria specified by the DCS Issuer and approved by NZX. The DCS Issuer will be required to ensure that the holders of Superior Shares at all times fall within the criteria for the Permitted Superior Holder Group. A DCS Issuer will not be permitted to amend the criteria from those which it has specified at the time of Quotation.

This is an important requirement given that holders of Superior Shares have control over the DCS Issuer that is disproportionate to their economic interest. NZX expects that Superior Shareholders will typically be founders, key executives or Directors who are actively involved in the management or long-term strategic direction of the issuer. NZX will not restrict corporate entities from holding Superior Shares. It is important for Ordinary Shareholders that persons holding Superior Shares are aligned with the DCS Issuer's long term interests.

In the event that Superior Shares are held by a person who falls outside of the permitted criteria, the Rules will require automatic conversion of the Superior Shares to Ordinary Shares (unless Ordinary Shareholders approve otherwise), causing the dissolution of the DCS structure. This provides added protection to Ordinary Shareholders that at all times the DCS Issuer's Superior Shares are only held by permitted persons.

2.2 Superior Shares – voting restrictions

NZX is proposing certain restrictions on the voting rights of Superior Shareholders. These include that superior voting rights may only be exercised in relation to resolutions tabled at general meeting. This is intended to provide visibility to Ordinary Shareholders of the manner in which superior voting rights are exercised.

In addition, NZX proposes that there are certain matters (such as the appointment or removal of a Director or auditor, delisting or liquidation) in respect of which Superior Shares will vote on a 1 vote: 1 share basis. These settings, contained in Rule 2.15.1(h), recognise that there are certain fundamental matters on which shareholders should vote on an equal basis.

NZX is interested in feedback on whether the matters on which Superior Shares vote on a 1:1 basis are appropriately calibrated.

2.3 Superior Shares – anti-dilution restrictions

NZX is proposing important restrictions on the extent to which DCS Issuers may permit the voting rights of Ordinary Shares to be diluted by the voting rights of Superior Shares.

NZX proposes to require that a DCS Issuer:

- does not allow Superior Shares to carry more than 10 times the Votes attached to each Ordinary Share, and
- does not increase the proportion of Superior Shares to Ordinary Shares from the proportion that existed at the date of Quotation.

These limits are intended to strike an appropriate balance between enabling founders or key stakeholders to retain an enhanced degree of control, while ensuring that Ordinary Shareholders continue to have meaningful voting influence commensurate with their economic interest in the DCS Issuer. Capping the voting differential at 10:1 reflects international practice and is designed to guard against extreme disparities in control that could undermine investor confidence.

The restriction on increasing the proportion of Superior Shares: Ordinary Shares following Quotation is intended to prevent the incremental dilution of Ordinary Shareholders' voting rights. Without such a restriction, a DCS Issuer could progressively dilute the voting power of Ordinary Shareholders through subsequent issuances of Superior Shares, or buy-backs of Ordinary Shares.

Together, these requirements are intended to provide Ordinary Shareholders with certainty that the degree of control exercised by holders of Superior Shares will not expand beyond what was disclosed and accepted by the market at the time of Quotation.

These are important protections, which must be complied with by a DCS Issuer when undertaking a capital raise. NZX will require disclosures to be made in an Offer Document or Profile at the time of listing, and ongoing disclosures in the annual report and capital change notices, to provide transparency of a DCS Issuer's compliance with these requirements.

2.4 Superior Shares – concentration of Superior Holders

NZX is proposing restrictions on a DCS Issuer such that it may not acquire or redeem its Equity Securities in a manner that causes further concentration of the holdings of Superior Shares within the Superior Shareholder group. This restriction is designed to prevent a DCS Issuer from altering the relative holdings of the Superior Holder group in order to re-allocate voting control to a specific Superior Holder.

This requirement is designed to provide additional protections to holders of Ordinary Shareholders, to provide comfort that transfers of control do not cause a specific Superior Shareholder to be able to exert additional power over the DCS Issuer from that which it held at the time of Quotation.

In addition, the proposed requirements relating to the disclosure of substantial product holdings that are described in section 4.5 of this paper are designed to ensure that there is appropriate visibility of the identity and holdings of Superior Shareholders.

2.5 Sunset and conversion

NZX is proposing that certain events will trigger an automatic dissolution of a DCS Issuer's DCS structure, by requiring all Superior Shares to convert into Ordinary Shares. NZX considers these events to be sufficiently significant that it would be inappropriate for superior voting rights to continue to apply unless Ordinary Shareholders expressly determine otherwise.

Automatic conversion will be triggered where a Superior Shareholder ceases to fall within the approved eligibility criteria for the Permitted Superior Holder Group under Rule 2.15.1(b). Automatic conversion will also be triggered where the DCS Issuer's board fails to include a Director appointed by Ordinary Shareholders, or a Director appointed by Superior Shareholders (these 'representative' Director requirements are explained in section 3.2 of this consultation paper).

If a holder of Superior Shares no longer falls within the Permitted Superior Holder Group, the policy basis for allowing that holder to exercise superior voting power no longer applies, as this does not align with the disclosure made to Ordinary Shareholders at the time of Quotation.

The 'representative' Director requirements act as a key governance safeguard. Ensuring that holders of Superior Shares, who exercise disproportionate voting influence remain directly accountable at a governance level, and that there is appropriate governance representation of Ordinary Shareholders. While 'representative' Directors must act in the best interests of the DCS Issuer for the Superior and Ordinary Shareholders as a whole, this governance requirement is an important protection to support conflict management between each Class of shareholder, and provide confidence in the governance arrangements of the DCS Issuer.

However, NZX recognises that there may be circumstances in which Ordinary Shareholders do not wish a DCS Issuer to cease operating under a DCS structure despite a breach of Rule 2.15.1(b) or Rule 2.17. Accordingly, the Rules provide that the automatic conversion may be avoided if approved by an Ordinary Resolution of Ordinary Shareholders within 30 Business Days of the occurrence of the relevant trigger event, allowing Ordinary Shareholders the ability to continue the DCS structure.

Consultation Questions – Superior Shares

1. Are there any additional matters in respect of which holders of Superior Shares should vote on a 1 vote: 1 share basis, or any matters that should be removed from Rule 2.16.1(h)?
2. Do you consider the proposed anti-dilution protections to be appropriate?

3. Is it appropriate to restrict the acquisition or redemption of Superior Shares so that a DCS Issuer may not acquire or redeem Superior Shares where that acquisition or redemption would proportionately increase the Superior Shareholding from that which existed at the date of Quotation, as a result of an acquisition or redemption? Should similar restrictions be applied in relation to capital raising or transfers of Superior Shares?
4. Are there any additional matters that should trigger the dissolution of the DCS Issuer? Do you consider that the current trigger events are appropriate?

3 Governance

3.1 Board composition and independence

DCS Issuers must comply with the standard board composition requirements in Rule 2.1, including the requirement to have at least two Independent Directors. A DCS Issuer must consider a Director's interests and relationships holistically when considering whether a Disqualifying Relationship exists, including by considering the factors contained in Table 2.4 of the [NZX Corporate Governance Code \(Code\)](#).

NZX is not proposing any amendments to these requirements, other than technical changes to Code factor 6, so that substantial product holdings of non-Quoted Superior Shares fall within that Code factor. Where a Director holds Superior Shares, the Director is not automatically disqualified from being considered an Independent Director, however where the Director has a relevant interest in 5% of the Superior Shares Code factor 6 will apply to the Director, whether or not the Superior Shares are Quoted.

NZX considers that requiring a minimum of two Independent Directors provides appropriate flexibility for a DCS Issuer in relation to its governance arrangements, noting that the proposed board committee composition requirements will place a significant workload on Independent Directors, and it is likely that a DCS Issuer will in practice look to appoint additional Independent Directors.

NZX is proposing restrictions so that holders of Superior Shares are not permitted to exercise superior voting rights in relation to the appointment of a Director, including an Independent Director. This ensures that all shareholders have equal Voting rights in relation to the appointment of the Directors of a DCS Issuer, on which they are eligible to Vote (see section 2.2, above).

3.2 Representative Directors

NZX is proposing to require a DCS Issuer to ensure that its board includes:

- one Director who holds Superior Shares, and who has been nominated and appointed by an Ordinary Resolution of Superior Shareholders ('**Superior Shareholder Representative Director**'), and

- one Director who holds Ordinary Shares, and who has been nominated and appointed by an Ordinary Resolution of Ordinary Shareholders (**'Ordinary Shareholder Representative Director'**).

The Superior Shareholder Representative Director and Ordinary Shareholder Representative Director (together, **Representative Directors**) will remain subject to Directors' duties owed equally to all shareholders to act in the best interests of the DCS Issuer. While the Representative Directors are appointed by separate Classes of shareholder, the Representative Director is not appointed to act as the delegate of the relevant shareholder Class, and must consider the interests of shareholders as a whole when discharging the Director's fiduciary duties.

It is consistent with international practice to require a Superior Shareholder Representative Director. This is intended to provide confidence to Ordinary Shareholders that Superior Shareholders remain accountable at board level for the governance of the DCS Issuer.

NZX also considers it appropriate to require an Ordinary Shareholder Representative Director. This helps ensure that the perspectives, concerns and likely impacts on Ordinary Shareholders are actively raised and considered as part of board deliberations. This is particularly important in a DCS structure, where Ordinary Shareholders do not exercise proportionate voting influence. NZX does not expect the Ordinary Shareholder Representative Director to prioritise the interests of Ordinary Shareholders over those of the DCS Issuer or Superior Shareholders. Rather, the requirement for an Ordinary Shareholder Representative Director is intended to assist a DCS Issuer's board in ensuring that decisions are made after consideration of a balanced range of viewpoints, to reduce the risk that board decisions are shaped predominantly by the interests or preferences of Superior Shareholders.

Rule 2.17 requires that the board of a DCS Issuer at all times contains a Superior Shareholder Representative Director, and an Ordinary Shareholder Representative Director. Failure to comply with this requirement is a sunset event which could cause the dissolution of the DCS structure as explained in section 2.5 of this consultation paper.

3.3 DCS Governance Committee

NZX proposes that DCS Issuers be required to establish a dedicated governance committee (**DCS Governance Committee**) to oversee the operation of the DCS structure. This requirement is set out in Rule 2.17.2.

The proposal to require a DCS Issuer to have a bespoke governance committee focused on its specific obligations under the Rules relating to its DCS status is consistent with the approach taken in other jurisdictions. NZX considers this to be an appropriate additional governance safeguard.

The DCS Governance Committee's responsibilities are to ensure that the DCS Issuer has complied with its obligations to ensure that persons holding Superior Shares fall within the criteria for its Permitted Superior Holder Group and that its board contains Representative Directors. It is appropriate for there to be additional governance oversight to ensure that these obligations are met, as a breach of these obligations will result in a sunset event being triggered for the DCS Issuer (see section 2.5 of this consultation paper).

The DCS Governance Committee must also identify and monitor conflicts of interest between (1) Superior Shareholders and the DCS Issuer, and (2) Superior Shareholders and Ordinary Shareholders. This requirement acknowledges the superior control rights of Superior Shareholders and that the interests of holders of each Class of share may differ. It is designed to ensure that there is appropriate governance oversight of the conflict management arrangements to manage the different interests of each Class of holders, and the superior control rights of Superior Shareholders.

The DCS Governance Committee must be comprised of a majority of Independent Directors and have an Independent Director as chair. No member of the DCS Governance Committee may hold Superior Shares.

NZX is proposing that a summary of the DCS Governance Committee's activities is included in the DCS Issuer's annual report, to provide visibility to shareholders and other stakeholders of the committee's role and function within the DCS Issuer's broader governance arrangements.

3.4 Board Committee composition requirements

NZX is proposing that DCS Issuers must ensure that its Audit Committee, and where applicable its Nomination and Remuneration Committees are comprised of a majority of Independent Directors, and are chaired by an Independent Director. This is required by Rule 2.18 and Rule 2.13.2.

The requirements that the chair of the Audit Committee be an Independent Director, and the composition requirements for the Nomination and Remuneration Committee are additional requirements that do not apply to standard Issuers on the NZX Main Board. While the Code does recommend that the majority of members of the Nomination and Remuneration Committee are Independent Directors, along with the chair of the Audit Committee, these are Rule requirements, rather than recommended practice, for DCS Issuers.

The proposal that a DCS Issuer is required to have additional Independent Directors on its board committees is consistent with the settings of peer exchanges that allow DCS structures. These settings support decision-making by establishing a framework that is designed to provide comfort that the board committees have a sufficient number of Directors who do not have interests or relationships that affect their capacity to bring an

independent perspective to decision-making in light of the voting power imbalances inherent in a DCS structure.

As noted above it will be important for DCS Issuers to consider the capacity of their Independent Directors, when structuring their governance arrangements, to ensure that those Directors are able to effectively discharge their roles and responsibilities.

Consultation questions – Governance

1. NZX is proposing to retain the current board composition requirements relating to Director independence, and to include requirements for the appointment of 'representative' Directors appointed by each Class of shareholders. Do you consider that any changes should be made to the Director independence settings for DCS Issuers?
2. NZX considers that it remains appropriate for Code Recommendation 2.8 that recommends an Issuer's board is comprised of a majority of Independent Directors to apply to DCS Issuers. Do you consider any amendments are needed to this recommendation for DCS Issuers?
3. Do you consider it appropriate for NZX to require a DCS Issuer to maintain a bespoke DCS Governance Committee?
4. Do you consider that proposed Board Committee composition requirements to be appropriate? Are these settings likely to cause any practical difficulties for DCS Issuers?

4 Disclosure

4.1 Designation and Warning Statement

NZX is proposing that DCS Issuers will be clearly differentiated from standard Issuers, both on nzx.com and in announcements made by the DCS Issuer.

A DCS Issuer will be designated 'DCS'. This will appear on nzx.com after the DCS Issuer's name and the designation will also be attached to the DCS Issuer's quoted securities. A DCS designation is a type of non-standard designation that provides visibility to investors as to the unique status of the DCS Issuer.

In addition a DCS Issuer will be required to prominently state that it has a DCS designation and include a template 'warning statement' in announcements it makes over the NZX Markets Announcement Platform (MAP), its annual report and any Offer Document or Profile, as follows:

The Issuer operates with a Dual Class Share Structure. Investors should be aware that the voting rights attached to Ordinary Shares are diluted by the superior voting rights attached to the Issuer's Superior Shares. This structure may limit the ability of Ordinary Shareholders to influence the governance and strategic direction of the Issuer.

These requirements are designed to ensure that prospective and existing investors are provided with clear, prominent and ongoing visibility of the existence and implications of a DCS structure. In particular, NZX considers that the DCS designation and mandatory warning statement support informed investment decision-making by clearly signalling that Ordinary Shareholders hold diluted voting rights and may have a reduced ability to influence the governance and strategic direction of the DCS Issuer.

4.2 Offer Documents and Profiles

NZX is proposing that specific information must be included in an Offer Document or Profile of a DCS Issuer. Along with the warning statement referred to above, the following information must be included:

- the rationale for adopting a Dual Class Share structure,
- the name of each Superior Shareholder, and information about that person's holding of Superior Shares (and Ordinary Shares, if any),
- a description of the criteria for the Permitted Superior Holder Group, and
- a description of the circumstances in which the Superior Shares will convert to Ordinary Shares, including as a result of compulsory conversion requirements under Rule 2.16.1.

NZX considers that information relating to the rationale for the DCS Issuer's adoption of the DCS structure is important information for investors, as it provides context for why the DCS Issuer considers a divergence between voting control and economic ownership to be appropriate. Clear disclosure of this rationale assists investors in better understanding the DCS Issuer's governance framework, the intended benefits of the DCS structure, and how it is expected to support the DCS Issuer's long-term strategy.

Disclosure of the identity of each Superior Shareholder, together with their respective holdings of Superior Shares and Ordinary Shares, and the voting power attached to those holdings, allows investors to assess how control is distributed within the DCS Issuer. In particular, disclosure of the proportion of Votes held relative to both the total Votes attached to Superior Shares and to all Shares on issue, provides transparency of the extent to which a specific Superior Shareholder may influence or determine shareholder outcomes.

NZX considers that it is also important for investors to understand the circumstances in which Superior Shares will convert to Ordinary Shares, causing the DCS Issuer to lose its DCS structure. The Rules require conversion to occur where the DCS Issuer fails to ensure that Superior Shares are held by a person who falls within the criteria for its

Permitted Superior Holder Group, or where the Representative Director requirements cease to be met.

NZX considers that clear disclosure of these conversion triggers, and the consequences of the loss of DCS status is likely to be significant information for investors. The loss of DCS status is likely to affect the DCS Issuer's ability to deliver on its long-term strategic objectives, given that the DCS structure is intended to support a particular governance and control framework.

4.3 Continuous Disclosure

DCS Issuers must comply with the continuous disclosure obligations contained in Rule 3.1, which requires the disclosure of Material Information promptly and without delay through MAP, once the DCS Issuer becomes Aware of the Material Information.

NZX is not proposing any amendments to these requirements, but intends to explain through the DCS Guidance Note, that DCS Issuers should consider whether a transfer of Superior Shares from one Superior Holder to a person who falls within the criteria for its Permitted Superior Holder Group is Material Information. Relevant factors for a DCS Issuer to consider when making this assessment would be to consider the nature of the relationship that exists between each of the transferee and transferor Superior Holders, the effects of the transfer on the DCS Issuer's strategy, and the implications of the transfer in relation to control.

NZX intends to provide further guidance through the DCS Guidance Note that where an event triggers the conversion provisions of Rule 2.16 that this is likely to be Material Information and should be announced promptly and without delay through MAP. The DCS Issuer should disclose the consequences of the trigger event on both Ordinary and Superior Shareholders.

4.4 Annual Report

NZX is proposing that the annual report of a DCS Issuers be required to include the following specific disclosures:

- the template warning statement (explained in section 4.1 of this consultation paper),
- the reasons why the DCS Issuer considers it appropriate to continue with a DCS structure,
- the circumstances in which Superior Shares convert to Ordinary Shares (including the circumstances set out in Rule 2.16.1) and the effect of conversion on the Issuer's share capital,
- a summary of the work performed by its DCS Governance Committee, with regard to its responsibilities, and
- a statement as to which of its Directors were holders of Superior Shares and which were holders of Ordinary Shares, during the financial year to which the annual report relates.

It is appropriate for a DCS Issuer to explain to investors and other stakeholders why it considers a DCS structure to remain appropriate. The nature of that disclosure will depend on the DCS Issuer's circumstances and strategy, but will be useful information to enable investors and other stakeholders to understand why the unique governance structure remains appropriate over time.

The requirement for a summary of the work performed by the DCS Governance Committee is designed to provide confidence to shareholders and other stakeholders that the Committee is actively overseeing specific Rule requirements relating to the DCS structure and identifying and monitoring conflicts arising from the DCS Issuer's DCS structure. This transparency supports accountability, demonstrates that the Committee is operating as intended, and assists investors to assess whether the relevant governance safeguards remain effective and appropriate.

4.5 Substantial Product Holder Disclosures

Part 5, subpart 5 of the FMC Act contains a regime for the disclosure of interests of substantial product holders in listed issuers. This regime requires that holders with a relevant interest in 5% of a class of quoted financial products of an issuer listed on NZX's markets (**substantial holding**) must disclose that interest via MAP along with subsequent movements of 1% or more in that substantial holding, and the cessation of that substantial holding.

As the regime only applies to Quoted financial products, NZX is proposing to require a DCS Issuer to provide disclosure of substantial holding information relating to non-Quoted Superior Shares through MAP as soon as the Issuer knows, or ought reasonably to know that the commencement, cessation or 1% or more movement in a substantial holding has occurred.

NZX expects that a DCS Issuer will become aware of this information through the register that it maintains that documents holdings of non-Quoted Superior Shares. NZX intends to design a bespoke SPH Notice for this purpose.

Consultation Questions – Disclosure

1. Do you consider that any amendments are required to the prescribed form of the template warning statement?
2. Is there any additional specific information that NZX should require to be included in a DCS Issuer's Offer Document or Profile?
3. Are there any other matters in respect of which NZX should provide guidance relating to the application of the continuous disclosure regime?
4. Are there any practical issues for a DCS Issuer being required to notify substantial product holding information for non-Quoted Superior Shares based on the holdings it has recorded on its share register?

5 Capital Raising

5.1 Restrictions on issuance of Superior Shares

The Rules prohibit Issuers from issuing Equity Securities unless the terms and conditions of the issuance are approved by an Ordinary Resolution of shareholders, or fall within a number of permitted exceptions.

NZX does not consider it appropriate for some of these standard exceptions to apply to the issuance by a DCS Issuer of further Superior Shares, and therefore intends to prohibit a DCS Issuer from issuing Superior Shares:

- in reliance on its 15% placement (under Rules 4.1.2(b) and 4.5) capacity,
- through an Employee share scheme (under Rule 4.1.2(c) and 4.6),
- as Director remuneration (under Rules 4.1.2(d) and 4.7),
- through a dividend reinvestment plan (under Rule 4.1.2(d) and 4.8), and
- as consideration for a takeover or amalgamation (under Rule 4.1.2(d) and 4.9).

These restrictions recognise the general principle that it is not appropriate to allow the issuance of additional Superior Shares without shareholder approval, except where the purpose of the issuance is to ensure that the Superior Shareholders are not diluted as a result of a broader issuance of both Ordinary and Superior Shares.

While a DCS Issuer must at all times comply with the anti-dilution requirements explained in section 2.3 of this consultation paper, NZX considers that it is inappropriate, and in some cases impracticable to allow a DCS Issuer to issue further Superior Shares in reliance on the mechanisms listed above.

5.2 Shareholder approval for issuance of Superior Shares

Rule 4.2.1(a) currently requires that the precise terms and conditions of the issue of Equity Securities must be approved by each Class of Quoted Equity Securities whose rights or entitlements could be affected. This means that Superior Shares (whether or not those Shares are Quoted) may only be issued with the approval by an Ordinary Resolution of Ordinary Shareholders, along with an Ordinary Resolution of Superior Shareholders.

NZX considers that this, coupled with the proposed anti-dilution requirements, provides suitable protections to Ordinary Shareholders from the potential that their voting rights are further diluted due to the issuance of Superior Shares. In particular, it mitigates the risk that the voting power of Ordinary Shareholders could be further diluted through the issuance of additional Superior Shares without their consent.

5.3 Permitted issuance of Superior Shares without shareholder approval

NZX considers that it is appropriate to provide some flexibility for DCS Issuers to Superior Shares without Shareholder approval, where the purpose of the issuance is to ensure that

the Superior Shareholders are not diluted as a result of a broader issuance of both Ordinary and Superior Shares.

Rule 4.1.2(a) therefore permits the issuance of Superior Shares through a pro-rata Rights issue, bonus issue or a Share Purchase Plan (**SPP**), without shareholder approval. NZX considers that the anti-dilution requirements provide sufficient protection to mitigate concerns relating to the erosion of Ordinary Shareholders' voting power, and that it is appropriate to allow a DCS Issuer some flexibility to access capital where the intention of the offer is to maintain parity between each Class of shareholder.

Rule 4.4 also provides a narrow set of circumstances in which it is appropriate for the DCS Issuer to issue further Superior Shares even though this may result in an increase of the proportion of Superior Shares: Ordinary Shares from that which existed at the time of Quotation (such as where overseas holders are unable to participate in the offer of Ordinary Shares, or to enable rounding).

Consultation Questions – Capital Raising

1. Do you consider that NZX should enable a DCS Issuer to issue Superior Shares without shareholder approval in any additional circumstances?
2. Are there any additional requirements that NZX should impose in relation to capital raising activities of a DCS Issuer to protect the rights of Ordinary Shareholders?