



NZX Regulation Decision

NZX Regulation (NZXR)

Ruling on NZX Listing Rule 7.1

11 February 2019



Background

1. This Ruling applies to the NZX Listing Rules (**Rules**) dated 1 January 2019.
2. Rule 7.1.1 states that the documents referred to in Rule 7.1.2 must not be circulated to holders of Financial Products, executed or otherwise given effect to in any way, until NZX provides written confirmation that it does not object to the document.
3. Rule 7.1.2(a) states that the documents referred to in Rule 7.1.1 include any notice of a meeting of Quoted Equity Security holders to consider any matter other than:
 - a. consideration of the annual report or financial statements;
 - b. electing Directors;
 - c. fixing Director remuneration;
 - d. changing the name of the Issuer;
 - e. appointing or fixing the remuneration of auditors;
 - f. a resolution required or regulated under the Takeovers Code, or a resolution for a scheme of arrangement under Part 15 of the Companies Act 1993 where the Issuer is the target company; or
 - g. a shareholder proposal under the Governing Document of the Issuer or under Schedule 1 of the Companies Act 1993.
4. Under Rule 7.1.1, circulation of a notice of meeting to consider amendments to a Governing Document would require NZX to provide written confirmation that it does not object to the document. Rule 7.1.1 does not require NZX to review the proposed changes to the Governing Document itself.
5. Capitalised terms that are not defined in this decision have the meanings given to them in the Rules.

Decision

6. Subject to the condition in paragraph 7 below, an issuer is deemed to have received NZX's written confirmation that it does not object to a notice of meeting of Quoted Equity Security holders to consider amendments to a Governing Document, and accordingly may circulate, execute or otherwise give effect to that document.
7. The ruling set out in paragraph 6 above is provided on the condition that the relevant notice of meeting would not otherwise require written confirmation from NZX under Rule 7.1.1 (for example, if the meeting will also consider another matter that is not carved out by Rule 7.1.2).

Reasons

8. In coming to the decision to provide the ruling set out in paragraph 6 above, NZXR has considered that:
 - a. The matters excluded from review under Rule 7.1.2(a) are either administrative or governed by another regulatory framework, and so requiring oversight by NZXR would create an additional compliance burden for Issuers without a corresponding benefit to Quoted Equity Security holders;
 - b. NZXR considers that this rationale can be applied to the process of amending a Governing Document, which is regulated by the Companies Act 1993 rather than the Rules. In addition, Rule 2.19.1 requires that a solicitor's opinion is provided for any amendment to a Governing Document, that confirms its compliance with the Listing Rules;
 - c. Accordingly, in the course of the Listing Rules review undertaken in 2018, NZX determined that it would no longer review Governing Documents or issue a written confirmation of non-objection to those documents;
 - d. In light of existing protections for Quoted Equity Security holders under legislation and pursuant to the requirement for a solicitor's opinion under Rule 2.19.1, NZXR anticipates the likelihood of it not issuing a confirmation of non-objection is very remote. NZXR is satisfied that the cost of compliance with this unintended requirement exceeds the benefits that might accrue; and
 - e. This Ruling ensures that the intention of the amendments to the Rules is preserved until permanent amendments can be made.