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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 NZXMS's interpretation of the Listing Rules. This Guidance Note sets out NZXMS'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 NZXMS's policy & practice. NZXMS recommends that Issuers take advice from qualified professionals.

NZXMS 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](http://www.nzx.com)

## GUIDANCE NOTE – APPLICATION OF NZSX/DX LISTING RULE 7.12.1 AND NZAX LISTING RULE 7.11.1

### Introduction

NZX Market Supervision (“NZXMS”) has become aware that there is some uncertainty amongst Issuers regarding the correct interpretation and application of NZSX/NZDX Listing Rule 7.12.1 and NZAX Listing Rule 7.11.1 (together the “Relevant Rules”), that require an Issuer to provide NZX with an allotment notice whenever an Issuer issues Securities. In particular, there appears to be uncertainty as to whether an allotment notice should be provided in respect of securities that are not Quoted.

This Guidance Note restates an announcement made by NZX Market Supervision in 2007. The purpose of this Guidance Note is to clarify that NZXMS does not interpret the Relevant Rules to apply to the issue of debt instruments (including stock, notes and the taking of deposits) not Quoted on a market operated by NZX.

This Guidance Note first sets out the Relevant Rules and then examines the policy behind the Rules and the application of the Relevant Rules to Issuers who issue non-Quoted debt instruments. The Guidance Note concludes with a guideline to assist Issuers with their compliance with the Relevant Rules.

Capitalised terms used in this Guidance Note that are not otherwise defined have the meanings given to them in the NZSX/NZDX and NZAX Listing Rules.

### NZSX/NZDX Listing Rule 7.12.1 and NZAX Listing Rule 7.11.1

The Relevant Rules both provide that:

*“Where an Issuer issues Securities, or acquired Securities of that Issuer, the Issuer shall forthwith give to NZX details of the issue or acquisition, including:*

- (a) Class of Security and ISIN; and*
- (b) the number issued or acquired; and*
- (c) the nominal value (if any) and issue or acquisition price; and*
- (d) whether payment was in cash; and*
- (e) any amount paid up (if not in full); and*
- (f) the percentage of the total Class of Securities issued or acquired; and*
- (g) the reason for the issue or acquisition; and*
- (h) the specific authority for the issue or acquisition (if any); and*
- (i) any terms or details of the issue or acquisition (such as an escrow provision); and*
- (j) the total number of Securities of the Class in existence after the issue or acquisition; and*

- (k) *in the case of an acquisition of shares by an Issuer which is a company registered under the Companies Act 1993, whether those shares are to be held as Treasury Stock; and*
- (l) *the dates of issue or acquisition.*

*For the purposes of this Rule ... the sale of Treasury Stock by an Issuer shall be deemed to constitute an issue of Securities. Without limiting the obligation in this Rule to supply information forthwith, details of the acquisition by an Issuer of Securities of that Issuer, and of the sale of Treasury Stock, shall be given to NZX no later than the end of the Business Day in which that acquisition or sale takes place.”*

### **Policy behind NZSX/NZDX Listing Rule 7.12.1 and NZAX Listing Rule 7.11.1**

The main purpose of the Relevant Rules is to ensure that the correct number of Quoted Securities on issue is known to the market. This is particularly important for Equity Securities, as the issue of the new securities on issue directly impacts the market price and dilutes existing shareholders' interests. Although the number of Debt Securities on issue is less relevant to the market price of Debt Securities, NZX's systems record and publish this data for all **Quoted Securities**. Accordingly the number of Quoted Debt Securities on issue is required to ensure that such information is accurate.

A wide interpretation of the Relevant Rules would require an Issuer to disclose all Securities issued or acquired by that Issuer, including Equity Securities, Debt Securities and Participatory Securities (regardless of whether or not the Securities are Quoted or not). Such a wide interpretation of the Relevant Rules would place an onerous obligation on an Issuer who issues non-Quoted debt instruments in the ordinary course of its business to disclose information that is not relevant to holders of Quoted Debt Securities. NZXMS considers that such a wide interpretation of the Relevant Rules is not consistent with the policy behind those Rules, and would result in an onerous obligation being placed on Issuers, without any corresponding benefit to the market.

### **Guideline – compliance with NZSX / NZDX Listing Rule 7.12.1 and NZAX Listing Rule 7.11.1**

NZXMS's interpretation of the Relevant Rules is that:

- (a) An Issuer must notify NZXMS whenever it issues or acquires its own Quoted Securities.
- (b) An Issuer that has Quoted Equity Securities must notify NZXMS of all issues and acquisitions of the Issuer's Equity Securities (whether or not they are of a Class that is Quoted).

### **Relationship with continuous disclosure obligations**

Issuers should note that the interpretation set out above does not affect an Issuer's continuous disclosure obligations as set out in NZSX/NZDX and NZAX Listing Rule 10.1. Although an Issuer may not be required to give a notification under the Relevant Rules in relation to an issue of Securities, the fact of the issue, the circumstances surrounding the issue and the transaction of which the issue forms part may need to be disclosed under NZSX/NZDX and NZAX Listing Rule 10.1. For example, an issue or redemption of non-Quoted Debt Securities may result in the breach of an Issuer's covenants concerning maintenance of certain financial ratios. This may result in acceleration of debt owed by the Issuer and be Material Information that is required to be disclosed under NZSX/NZDX and NZAX Listing Rule 10.1.

NZXMS would expect that disclosures made under NZSX/NZDX and NZAX Listing Rule 10.4.1 would ensure that the market was provided with appropriate information regarding the number

of securities issued by an Issuer, including information of the monetary amounts of classes of Securities on issue, as at the relevant balance date. In the case of an Issuer of Debt Securities, NZXMS would expect that NZSX/NZDX and NZAX Listing Rule 10.4.1 would result in the disclosure of sufficient information so that a reader could determine whether the Issuer complied with any relevant financial covenants.