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Disclaimer

This guidance note has been issued to promote commercial certainty and assist market participants. It provides guidance to issuer's 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 recommends that Issuer's take advice from qualified professionals.

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 – PROCESS FOR AMENDING NZX CONDUCT RULES

Introduction

This guidance note sets out the process for amending New Zealand Exchange Limited (“NZX”) conduct rules. NZX considers that transparency of process for changing the rules is important and this guidance note is intended to promote such transparency. However NZX reserves the right to depart from the process set out in this guidance note in unusual circumstances.

NZX considers that consultation with relevant stakeholders is an important part of any amendment process. NZX will provide ample opportunity for consultation as set out in the process table below.

In addition there are requirements under the Securities Markets Act 1988 which NZX as a registered exchange must follow when making new rules or changes to existing rules. In that regard section 36J of the Securities Markets Act 1988 requires registered exchanges to provide proposed new conduct rules or changes to the Minister before making the change. The term conduct rules will include the NZSX, NZDX and NZAX Listing Rules and the NZX Participant Rules. This guidance note does not apply to amendments to the NZX Futures & Options Rules which require different steps to be followed. Section 36K of the Act provides that the Minister may either apply the disallowance or approval processes when considering the new rules or changes.

The criteria for disallowing or approving are similar. Also both processes involve the Minister and the Securities Commission. However there are there are some important differences between the processes. Each of these processes is considered separately here prior to setting out the process for amending NZX conduct rules.

Disallowance process

The disallowance process is likely to be the process under which most new rules and amendments to existing rules will be considered under. The disallowance process will be followed in the case of rule changes not involving new securities markets, or where notice of the approval process has not been given.

Under the disallowance process the Minister may disallow all or part of a new conduct rule or change within 40 working days after receiving it if:

- a. it is in the public interest to do so; or
- b. the proposal affects continuous disclosure rules and the proposal does not achieve the purpose of subpart 1 of Part 2 (the continuous disclosure provisions) of the Act.

Before determining whether or not to disallow the proposed conduct rule or change, the Minister must seek the advice of the Securities Commission.

If the rule or amendment is disallowed it will have no effect under contract law.

Approval process

The approval process only applies to new rules or amendments involving new securities markets. Presumably it is considered that new securities markets will require greater attention as their approval requires an Order in Council by the Governor General. Once notice has been given that the approval process will apply there is no time limit within which the Minister must make a decision and there is no reference to any time frame within which the Governor General in Council should make an order.

Section 36 of the Act states that the approval process will apply to a new conduct rule or change if the Minister:

- a. is satisfied the proposal relates to a new securities market; and
- b. is satisfied that it is in the public interest to apply the approval process;
- c. applies the approval process by written notice to the registered exchange within 15 working days after receipt of the proposed conduct rule.

Before applying the approval process the Minister must have regard to:

- a. the integrity and effectiveness of securities markets in New Zealand;
- b. the confidence of investors in securities markets in New Zealand;
- c. the extent of the difference between existing securities markets operated by the registered exchange and new securities markets; and
- d. the extent of the difference between the existing conduct rules and the proposed new conduct rules or changes.

In determining whether to apply the approval process, the Minister must seek the advice of the Commission.

The Governor General may approve the proposed conduct rule or changes in the recommendation of the Minister. The Minister must recommend approval unless he or she is satisfied that:

- a. it is not in the public interest to do so; or
- b. the listing rules do not achieve the purpose of subpart 1 of Part 2 of the Act (continuous disclosure).

The Minister must again seek the advice of the Commission in considering whether to make a recommendation. A registered exchange must not operate a securities market

described in an approval process notice unless the proposed conduct rules or changes to which the notice relates are approved.

Process

Each year NZX will facilitate two consultation rounds in which new conduct rules or changes to existing conduct rules will be considered. While matters in respect of any of the conduct rules may be considered in either round, for the most part NZX expects that the first round will focus on changes to the various Listing Rules and the second will focus on changes to Participant Rules. The public consultation rounds will commence in March and August respectively. NZX encourages interested persons from the market to raise issues with the conduct rules at any time throughout the year to be fed into these processes. However there are likely to be periods in which there are no matters in respect of the conduct rules requiring review, in which case there will be no need for any consultation process to be followed.

In addition there will, from time to time, be larger scale reviews that may not fit within the timeframes set out. Examples of these include the wide review of the Participant Rules undertaken last year and the unit trust review in respect of which a working group is currently being established. In any such case the timeframe will be set out in the relevant consultation documents.

The following table sets out the indicative standard process that NZX will follow when considering amendments to the conduct rules. The table is prepared on the basis that the new rules and changes to existing rules are being considered under the disallowance process. The approval process may take longer as there is no set date by which the Minister must decide whether to approve a new rule under that process.

Action	Timing: Round 1	Timing: Round 2
NZX to receive comments and proposals for changes to the conduct rules from NZX's Legal and Regulatory Advisory Board and any other relevant bodies. NZX will also consider whether it wishes to initiate any amendments to the conduct rules itself.	Any time up to and including the end of January (to be included in the March consultation round)	Any time up to and including the end of June (to be included in the August consultation round)
NZX to consider the comments proposals and prepare a consultation paper with proposals for amendments.	February	July
Consultation paper to be reviewed by NZX's Legal and Regulatory Advisory Board, Securities Commission and any other relevant bodies prior to public release.	March	August
Consultation paper containing proposed changes or new rules to be released for public consultation.	March	August
NZX to receive and consider submissions made in response to the consultation paper.	April	September

NZX to release an exposure draft containing wording of proposed changes to the market for a further 4 week consultation period.	June	November
NZX to consider any further comments and prepare rules to go to the Minister.	July	December
NZX to submit new rules or changes to existing rules to the Minister in accordance with the Securities Markets Act 1988.	August	January
Disallowance period ends. Rules come into effect.	40 working days after rule changes submitted	40 working days after rule changes submitted