

**Key Notes:**

- NZXMS's approval to provide an Appraisal Report relates to the individual person and, if applicable, his or her firm
- Candidates should be independent and remain independent throughout the engagement
- Where approval is required under the Takeovers Code, approval from the Takeovers Panel should be sought first prior to NZX's approval
- A candidate's application should be accompanied by a request from an Issuer

**Applications should include:**

- Sufficient information for NZX to determine independence
- Details of the transaction
- Information about the candidate
- Details on the candidate's relationship with the Issuer and transaction
- Candidate's confirmation of independence and qualifications

**Ongoing Obligations of the Appraiser:**

- To disclose any material change in circumstances or terms of engagement
- To confirm independence to NZX at the time the Appraisal Report is submitted for NZX's review

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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 and does not limit NZXMS's discretion under the Rules. 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 on NZX's website at [www.nzx.com](http://www.nzx.com).

## **GUIDANCE NOTE – APPROVAL OF PERSONS TO PROVIDE APPRAISAL REPORTS**

### **Introduction**

The purpose of this guidance note is to assist persons seeking approval from NZX Market Supervision (“**NZXMS**”) to act as an appraiser and to provide an Appraisal Report under the Main Board/Debt Market Listing Rules (“**Rules**”) and the NZAX Listing Rules (“**NZAX Rules**”). It is intended to increase certainty and transparency by describing NZXMS' expectations as to: (1) the content of an application to provide an Appraisal Report; (2) the factors NZXMS will consider when exercising its discretion to provide approval in accordance with Rule 1.7 of the Rules; and (3) the ongoing obligations of the appraiser.

An Appraisal Report is required in each of the following circumstances:

- **Rule 4.5.8 and NZAX Rule 4.5.8:** where Directors of an Issuer receive notice of a Restricted Transfer to an Insider.
- **Rule 6.2.2:** where a notice of meeting contains a resolution that requires approval under Rule 7.5 (*Issues and Buybacks of Securities Affecting Control*) or a resolution to approve an issue intended or likely to result in more than 50% of the Securities to be issued being acquired by Directors or Associated Persons of Directors of the Issuer.
- **Rule 9.2.5:** where a notice of meeting contains a resolution that requires approval under Rule 9.2.1 (*Transactions with Related Parties*).

The objective of these Rules is to ensure that holders of Securities have sufficient information to understand the terms of a transaction proposed by an Issuer, so as to make a fully informed assessment of its merits. To achieve this objective, NZXMS must be satisfied that the candidate has appropriate qualifications and is sufficiently independent to provide an opinion as to the fairness of the transaction for the benefit of non-associated shareholders.

### **Application for Approval to Act as an Appraiser**

NZXMS will grant approval under Rule 1.7 taking into account the independence of both the individual person or persons that propose to provide the Appraisal Report and of the firm or organisation that employs those individual(s). A reference in this guidance note to a “candidate” or “appraiser” is a reference to the individual person or persons seeking to provide the Appraisal Report and, where applicable, to the firm or organisation which employs that person. Accordingly, the information in the application should refer to a candidate's specific qualifications and relationship with the Issuer as well as furnishing information about their firm or organisation.

A candidate should make note of the requirements of Rule 1.7 when applying to NZXMS for approval to act as an appraiser.

NZX expects that an application for approval will include the following:

### Independence

The footnote to Rule 1.7 requires that a candidate (being the individual, and if applicable, his or her firm) advise NZX of the following information relating to the candidate's independence:

- *“whether the person proposed has had or will have any relationship with the parties to the transaction”*. To satisfy this requirement, a candidate should provide a description of the candidate's proposed, current and past relationship (professional or otherwise) with each of the parties to the transaction;
- *“whether any fee or benefit is payable to that person contingent on the success or implementation of the relevant transaction or any transaction complementary to or dependent on it;”*
- *“the number and nature of Appraisal Reports in respect of the Issuer prepared by the candidate in the past five years;”*
- a description of all *“business transacted with the Issuer by the person proposed in the past five years and, where the proportion of the proposed person's total revenue that business represented in the financial year that business was transacted exceeded 5% of the proposed person's total revenue, the actual amount of revenue that business represented;”* To satisfy this requirement, a candidate should provide a description of all business transacted between the candidate and the Issuer over the five-year period prior to the date of the application. Where the candidate has been engaged by the Issuer within the five-year period, a description of the nature of the engagement including, as applicable, the date of the activity, the type of transaction, the fees paid by the Issuer and the percentage of the candidate's revenue that the business represented in each year. Revenue figures should be calculated in relation to the candidate's individual total revenue in a given year, as well as the revenue of the firm or organisation for which the candidate works; and
- *“whether the candidate has had any part in the formulation of the proposal of the transaction or any aspect thereof”*. To satisfy this requirement, NZX expects a candidate to provide a description of the candidate's involvement in the transaction or series of transactions up to the date of the application.
- To satisfy the above requirements, NZX also requires the names of all individuals who will be contributing to the preparation of the Appraisal Report and for each individual, a statement that the candidate believes that these individuals are independent of the Issuer and the other parties associated with the transaction (including any Related Party of an Issuer).

### Details of the Transaction

- The name of the Issuer seeking to commission the Appraisal Report and the relevant Listing Rule. (Also note the obligations of the Issuer set out in “Issuer Request and Fees” below.)
- A description of the transaction or series of transactions to which the Appraisal Report will relate.

- The names of all parties to the transaction or series of transactions other than the Issuer. Where the party is a Related Party of an Issuer (as defined in the Rules) that information should be disclosed, if not first provided by the Issuer.

Information about the Candidate:

- The contact details for the candidate.
- A description of the candidate's qualifications, relevant to the ability to provide an Appraisal Report.
- Where the candidate works for a firm, a description of the main business of the firm, and details on the size and structure of the firm.

Relationship with the Issuer and Transaction

- A description of the work, including any ongoing advice, that the candidate expects to provide to the Issuer or other parties in connection with the transaction or series of transactions after the date of the application.

Confirmation of Independence and Qualifications

- A statement that the candidate considers that he/she (and, if applicable, their firm) is independent of the Issuer and the proposed transaction and appropriately qualified to provide the Appraisal Report.
- An acknowledgment from the candidate that he/she will reconfirm the representation as to independence at the time of providing the Appraisal Report to NZX for review.

**Factors that NZX will take into account when considering whether to grant approval**

NZXMS has complete discretion to grant approval under Rule 1.7 and will assess each application on a case-by-case basis. As to independence, NZXMS will determine whether, in the circumstances, there would be a reasonable apprehension or suspicion of bias on the part of a fair minded and informed Security holder of the Issuer.

The existence of a past or present relationship will not necessarily preclude approval of the candidate to act as an appraiser. By way of example, NZXMS may approve a candidate to provide an Appraisal Report where the candidate has been engaged in a single non-strategic consulting assignment unrelated to the matter to be reported.

By comparison, NZXMS is unlikely to approve a candidate to provide an Appraisal Report in the following circumstances:

- the candidate has had an ongoing significant professional advisory role with the Issuer over the five year period prior to the Appraisal Report (including in respect of auditing engagements);
- the candidate is to receive remuneration that is contingent on the success or failure of the proposed transaction;
- the candidate has recently provided strategic corporate advisory work to the Issuer or its associates; or
- where a significant portion of the candidate's revenue in recent years has been connected to engagements with the Issuer.

Note that, if approval of an independent adviser is required under the Takeovers Code, NZX will not consider an application until the independent adviser has first been approved by the Takeovers Panel.

### **Ongoing Obligations**

The candidate is expected to notify NZX promptly if there is a change in circumstances that might suggest that there has been a change in the nature of its engagement or independence between the time of the application and final release of the Appraisal Report. For example, a candidate is expected to advise NZX if they have provided any advice or assistance in connection with the transaction which is not solely connected with the provision of the Appraisal Report.

If there is any reason to suspect that the candidate is no longer independent, NZX may revoke its approval for the candidate to act as an appraiser and provide the Appraisal Report.

At the time that the Appraisal Report is finalised, the appraiser should provide to NZX detail as to the nature and scope of the appraiser's involvement in the transaction (and in particular details of any change in the nature of the engagement described in the candidate's application under Rule 1.7), to enable NZX to ascertain whether the appraiser remains independent. In addition, the appraiser should confirm to NZX that his/her independence has not been compromised.

### **Issuer Request & Fees**

At the time that a candidate first contacts NZX, he/she should arrange for the Issuer to provide written confirmation:

- that the Issuer has requested that the candidate seek approval to provide an Appraisal Report;
- a description of the transaction or series of transactions to which the Appraisal Report will relate;
- of the names of all parties to the transaction or series of transactions other than the Issuer (noting that where a party is a Related Party (as defined in the Rules), that information should be disclosed); and
- that the Issuer will pay the fees associated with NZX's review of the candidate's application.

NZX will invoice the Issuer directly for the fees associated with reviewing the candidate's application.

NZXMS understands that candidates are often seeking approval urgently to begin work on a new engagement. The candidate's application for approval to act as an appraiser should set out the timeframe within which the candidate would like a response. NZXMS will make all reasonable efforts to meet the request. NZXMS's rates are set out in the current NZX Listed Issuer Fee Schedule available at [www.nzx.com](http://www.nzx.com). Where a candidate requests consideration "as soon as possible" or otherwise requests urgent review, the Issuer will be billed at the highest urgency rate (0-2 days).

Questions relating to this guidance note may be sent to NZX Market Supervision at: [regulation@nzx.com](mailto:regulation@nzx.com).

NZX Market Supervision  
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