



# Guidance Note

Spread

December 2014



This guidance note has been prepared to provide guidance to issuers as to the spread requirements of the NZX Main Board/Debt Market and NZAX Listing Rules (“rules”) and in particular when NZX Regulation (“NZXR”) is likely to consider that a “sufficiently liquid market” exists in relation to a class of securities.

This guidance note replaces the previous Guidance Note issued on 1 May 2007, ‘Spread’.

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Issuers should note that this guidance note is not intended to be a definitive statement of the application of the rules in every situation and is only a guide to NZX’s policy and practice. This guidance note does not limit NZXR’s discretion under the rules. This guidance note reflects the rules and law as at 1 December 2014, which is subject to change. NZX takes no responsibility for any error contained in this guidance note. NZXR may replace guidance notes at any time and issuers should ensure that they have the most recent version of this guidance note by checking NZX’s website at [www.nzx.com](http://www.nzx.com).



## 1. What is spread?

Rule 5.2.3 provides that a class of securities will not generally be quoted by NZX unless:

- for NZX Main Board or Debt Market issuers:
  - at least 25% of the number of securities on issue are held by at least 500 **members of the public**; or
  - NZX is otherwise satisfied that the issuer will maintain a spread of security holders that will ensure that there is a sufficiently liquid market in the securities; and
- for NZAX issuers: the class of securities is held by at least 50 **members of the public**.

A **member of the public** is any person other than:

- a person who holds, or who is one of a group of **associated persons** who together hold, 10% or more of a class of securities; or
- a person who has, or who is one of a group of **associated persons** who together have, the power (whether contingent or not) to appoint one or more **directors** of the issuer; or
- any other person or member of a class of persons, whom NZX in its discretion declares not to be a **member of the public** for the purposes of the rules.

Rule 5.2.3 also requires that the spread requirements set out above, continue to be maintained by an issuer during the course of its listing.

The purpose of the spread requirements is to ensure that an issuer has sufficient liquidity both at the time of listing and on an ongoing basis. Liquidity assists investors in efficiently changing their investment position and price discovery.

## 2. Meaning of “holder”

NZXR is aware that an issuer’s securities are often held on behalf of beneficial holders by custodians. NZXR has previously granted waivers where the number of beneficial holders and the size of their holdings would allow an issuer to satisfy the spread requirements.

NZXR considers it appropriate to interpret the term “holder” in Rule 5.2.3 as encompassing beneficial holders who hold through custodians, as these underlying holders control the investment held by the custodian and will drive the liquidity in an issuer’s securities. This approach should result in waivers no longer being required in these circumstances.

## 3. Failure to meet or maintain spread

Where an applicant is unable to meet the prescribed spread thresholds prior to listing, the applicant should discuss the reasons for this with NZXR. NZXR will then determine: whether an applicant has sufficient liquidity notwithstanding that the requirements of rule 5.2.3 are not met, such that it is appropriate to grant a waiver; or that the application for listing should be declined.

As discussed above, the rules also require an issuer to continue to meet the spread requirements while listed. Where an issuer ceases to meet the spread thresholds the issuer should discuss the position with NZXR, in particular whether NZXR considers that there is a sufficiently liquid market in the issuer's securities, or whether a waiver from the spread requirements would be appropriate.

## 4. Waivers from the spread requirements

If you wish to apply for a waiver from the spread requirements you should also refer to NZXR's guidance in relation to engaging with NZXR which is available here:

<http://www.nzx.com/regulation/listing-rule-guidance>

When considering an application for a waiver from rule 5.2.3, NZXR's primary focus will be on whether there will be a sufficiently liquid market for the relevant class of securities despite the issuer not satisfying the bright-line requirements.

NZXR considers that key features that are likely to result in a "sufficiently liquid market" would include a reasonable bid/offer spread with adequate market depth in the order book. These features are likely to allow investors to efficiently change their investment position.

In addition, an issuer will need to provide reasons as to why compliance with rule 5.2.3 has not been possible and what needs to occur to enable those requirements to be met. For example, an applicant for listing may not meet the bright-line spread requirements, but may expect to do so within 6 months of being listed, because one of its key shareholders intends to sell down its shares.

### 4.1 Terms and conditions of spread waivers

NZXR generally grants waivers from rule 5.2.3 for a maximum period of 12 months.

There are a series of conditions that NZXR typically imposes in relation to waivers from the spread requirements, including:

- In relation to waivers granted prior to quotation:
  - that prominent disclosure of liquidity as a risk is included in the relevant offer document; and
  - that the issuer makes an announcement to the market as to the level of spread it has attained following the initial public offer;
- In relation to waivers granted following listing:
  - that disclosure of the waiver and its conditions is included in an issuer's half-year report as well as in its annual report (as required by rules 10.4.5(f) (Main Board) and 10.5.5(f) (NZAX));
  - that the issuer notifies NZXR where a material change in spread occurs; and
  - that a prescribed minimum number of members of the public is maintained.

### 4.2 Debt securities

As debt securities are not generally subject to the same level of trading as equity securities, NZXR is generally inclined to grant waivers from rule 5.2.3 where an issuer is able to indicate

that spread is expected to increase, and that the number of underlying holders demonstrates that sufficient liquidity will exist in a secondary market.

## 5. Breach of the spread requirements

There are a number of actions that NZXR may take in relation to a failure to meet the spread requirements including:

- suspending trading in a class of security, until such time as the spread requirements can be met;
- de-listing an issuer (although note that NZXR will not generally de-list an issuer in relation to a breach of the spread requirements unless the breach would give rise to one of the consequences set out in the footnote to rule 5.4.3 (which is included in the appendix to this guidance)); and
- imposing a non-standard designation on an issuer.

In addition, NZXR may take disciplinary action in accordance with NZX's enforcement policy. NZX's enforcement policy is available here: <https://nzx.com/files/static/cms-documents/NZXEnforcementPolicy.pdf>



## Appendix 1: Relevant Listing Rules

### NZX Main Board/ Debt Market Listing Rule 5.2.3

5.2.3 A Class of Securities will generally not be considered for Quotation on the NZSX or NZDX unless those Securities are held by at least 500 Members of the Public holding at least 25% of the number of Securities of that Class issued, with each Member of the Public holding at least a Minimum Holding, and those requirements are maintained, or NZX is otherwise satisfied that the Issuer will maintain a spread of Security holders which is sufficient to ensure that there is a sufficiently liquid market in the Class of Securities.

NZX will readily consider a waiver from the requirements of Rule 5.2.3

- (a) in the case of Debt Securities or Securities that may convert to Equity Securities if NZX is satisfied that the lack of initial liquidity would not be of disadvantage to holders; or
- (b) in a case where there is a commitment on the part of one or more major holders of the Securities to sell their holdings into the market within a reasonable period after the initial Quotation of those Securities.

See also Rule 5.4.3 and the associated footnote 1.

### NZAX Listing Rule 5.2.3

5.2.3 A Class of Securities will generally not be considered for Quotation on the NZAX Market unless those Securities are held by at least 50 members of the public.

### NZX Main Board/ Debt Market and NZAX Listing Rule 5.4.3

5.4.3 Without limiting Rule 5.4.2, NZX may exercise any of its powers under Rule 5.4.2 if it considers that:

- a) .....  
the spread requirements specified in Rule 5.2.3 are not being met in respect of any or all of an Issuer's Securities and the Issuer has failed to inform NZX that it has become aware that the requirements are not being met or the Issuer has failed to take steps to ensure compliance with the spread requirements at the earliest possible time; or ....

1. NZX may, but generally will not, remove Listing from an Issuer or Quotation of a Class of Securities only because the minimum spread requirements in Listing Rule 5.2.3 cease to be satisfied. Listing or Quotation will be removed in those circumstances (or may at the discretion of NZX, be qualified by a Non Standard designation) if NZX considers, taking account of any circumstances it thinks fit including the nature of the Issuer and the general characteristics of holders of its Quoted Securities, that:
  - (a) trading in the market in those Securities is limited and/or:
    - (i) quotations for the Securities; and/or
    - (ii) prices at which sales are reported to occur; and/or
    - (iii) any pattern of transactions;  
gives or appears to give a false indication of proper arm's length market prices;  
and
  - (b) continuation of Listing without Non Standard designation, or at all, as the case may be, is likely in the opinion of NZX to give rise to an unacceptable risk of damage to the reputation of NZX.
  - (c) NZX will be influenced by the extent to which any reports or references to the Listing of the Issuer or Quotation of all or any Class of its Securities could mislead people as to the value of investment in its Quoted Securities.

