



NEW ZEALAND'S EXCHANGE
TE PAEHOKO O AOTEAROA

Major and Related Party Transactions Guidance Note

Consultation Paper

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This Consultation Paper has been prepared by NZX to seek comment on the proposals contained in the paper, with a view to ensuring that the proposals will enable NZX to operate its markets on a fair, orderly and transparent basis. The proposals set out in this paper do not reflect NZX's concluded views of the matters raised. Capitalised terms which are not defined in this Consultation Paper have the same meanings given to them in the NZX Listing Rules.

Introduction

NZX is consulting on proposed amendments to the NZX Major and Related Party Transactions Guidance Note (**Guidance Note**), which sets out NZX's regulatory guidance on the NZX Listing Rule (**Rule**) requirements relating to major transactions, and Material Transactions with Related Parties (as defined in the Rules).

The last substantial update to the Guidance Note was in 2018, when NZX updated its market structure and undertook a holistic review of the Rules. As some time has passed since that review, NZX now wishes to consider further changes to the Guidance Note to ensure that it reflects current market practice, and to better align the guidance with the changes that were made to the Rules as part of the 2018 Rule review.

NZX is not proposing any changes to the Rules themselves.

While NZX sets the Rules and publishes guidance (including the Guidance Note), NZ RegCo is responsible for monitoring and enforcing the Rules. NZX has therefore worked closely with NZ RegCo to design the proposed changes and enhancements to the Guidance Note.

Scope of the review

NZX is proposing substantial amendments and additions to the Guidance Note to clarify the application of the Rules. These changes provide additional guidance in areas not addressed by the current Guidance Note, and further clarify how the Rules apply in practice. NZ RegCo is also proposing amendments that provide further detail about the Rule waiver process, including standard conditions on which waivers may be granted, and guidance as to the circumstances when waivers are not likely to be granted.

The proposed amendments have been informed by NZ RegCo's experience in monitoring and enforcing the Rules for a number of years, including in assisting with guidance requests from the market. The objective of the review is to ensure that the Guidance Note provides greater transparency of the manner in which NZX and NZ RegCo interpret the Rules, to support the operation of NZX's markets on a fair, orderly and transparent basis.

This consultation therefore seeks feedback on both:

- the interpretation of the Rules as explained further in this paper, and
- specific changes to the Guidance Note that are set out in the accompanying exposure draft of the Guidance Note (**Exposure Draft**).

Consultation process

We invite interested parties to provide their views on the matters contained in this Consultation Paper, and the Exposure Draft, by emailing a written submission to policy@nzx.com. Alternatively, if you would prefer to provide a verbal submission, please email NZX Policy to arrange a time to speak with us.

We are interested in responses to the discussion questions contained in this Consultation Paper, along with general feedback in relation to the proposals.

The closing date for submissions is **24 February 2023**.

NZX may publish the submissions it receives, so please clearly indicate in your submission if you do not wish for your submission to be published, or if part of your submission contains confidential information.

If you have any queries in relation to the review, please contact:

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Background

Under the Rules, both major transactions, and Material Transactions with a Related Party, must be approved by shareholders before they are entered into, or must be conditional upon such approval. These requirements seek to strike a balance between respecting the primacy of the board of an Issuer to transact freely, while ensuring that shareholders have appropriate oversight and approval rights in relation to such transactions.

Rule requirements

The requirements of the Rules are summarised below.

Rule 5.1 – Major transactions

The requirements in relation to major transactions are set out in Rule 5.1. Major transactions are transactions, or a related series of transactions, that:

- significantly change, either directly or indirectly, the nature of the Issuer's business; and/or
- involve a 'Gross Value' above 50% of the Average Market Capitalisation of the Issuer.

The Rules require that such transactions are approved by a shareholder resolution, or are conditional upon such an approval. The purpose of these requirements is to ensure that shareholders have the opportunity to consider and vote on transactions that are significant to the Issuer, and therefore likely to affect shareholders' interests.

Rule 5.2 – Material Transactions with Related Parties

The requirements in relation to Material Transactions with Related Parties are set out in Rule 5.2. Related Parties include large shareholders and directors of the Issuer. Material Transactions are transactions with a value above 10% of the Average Market Capitalisation of the Issuer (unless the transaction is for services, where the threshold is 1% of the Average Market Capitalisation of the Issuer in a financial year). The Rules require shareholder approval where a Related Party is a direct party to the Material Transaction.

These requirements have been long-standing features of the Listing Rules, and similar requirements are common internationally.

Role of the Guidance Note

The Guidance Note is intended to inform the manner in which Rules 5.1 and 5.2 are interpreted. Issuers and their advisers look to the Guidance Note when interpreting these Rules, which is often when an Issuer is considering a transaction. The Guidance Note is also designed to provide assistance to Issuers who are considering whether to seek a waiver from the Rules, as it sets out the purpose of the requirements, and provides guidance as to the matters NZ RegCo considers when determining waiver applications.

1 Major transactions

The Exposure Draft accompanying this Consultation Paper contains the proposed amendments that NZX intends to make to the Guidance Note in relation to the Rule settings for major transactions. The material changes that are proposed are described in more detail below.

1.1 Policy of the major transaction requirements

We propose to include a clear statement of the policy behind Rule 5.1.1. We consider that the purpose of the requirement is to ensure that shareholders have an opportunity to consider and vote on transactions that are significant to the Issuer, and therefore likely to impact shareholders' interests.

The inclusion of a clearer statement of the intent of the Rule is intended to provide greater clarity as to the interpretation of the requirements, and greater certainty for Issuers considering whether it would be appropriate to seek a waiver from the shareholder approval requirement.

1.2 Renewals, amendments and variations

The current Guidance Note does not explain how Rule 5.1 applies to renewals, variations or amendments to major transactions. NZX is proposing amendments to the Guidance Note to clarify that the renewal, amendment or variation of a transaction will only require approval under Rule 5.1 if the renewal, amendment or variation is itself a major transaction.

NZX acknowledges that requiring shareholder approval for *every* renewal, amendment, and/or variation of a major transaction is not supported by the policy of the Rule (see section 1.1 of this consultation paper). We consider the better view is that so long as shareholder approval (or a waiver from the approval requirement) has been obtained in relation to the underlying major transaction, that a new 'baseline' is established from which to consider whether the renewal, variation or amendment is so significant as to require shareholder approval.

We are mindful of shareholders needing to have received appropriate information on which to determine whether to approve the 'underlying' major transaction which is being varied or amended. We are therefore proposing additional amendments to the Guidance Note that Issuers should be mindful of the disclosure that shareholders received when the transaction was approved.

1.3 Acquiring, selling, leasing, exchange or disposing of an asset

NZX is proposing changes to section 2.2 of the Guidance Note to clarify the types of major transactions to which Rule 5.1.1 applies. These transactions include entry into a lease as either lessor or lessee, but do not include charges.

Charges

Rule 5.1.1 expressly excludes charges from the operation of the Rule. We are proposing to clarify that both the entry into a charge, and the exercise of a charge by a charge-holder that allows the charge-holder to realise a security interest, are excluded from the operation of the Rule. This represents a change in approach from the current Guidance Note which applies the major transaction test to the exercise of a charge by a charge-holder.

NZX considers that the current approach frustrates the express exclusion of charges from Rule 5.1.1. We also consider that the proposed amendment is appropriate, as Rule 5.1.1 applies to transactions, rather than obligations, and the exercise by a charge-holder of a charge does not result in the entry into an additional transaction by an Issuer.

Cash transactions

In relation to other transactions that fall within the scope of the Rule, NZX proposes that the Guidance Note continues to clarify that the payment of a cash dividend or other cash distribution is a disposal of an asset (i.e, cash) for the purposes of Rule 5.1.1(b).

We note that Rule 5.1.2(c) provides that Rule 5.1.1 does not apply to the issuance of financial products for cash which does not significantly change the nature of the Issuer's business.

1.4 Significant change to the nature of the Issuer's business

NZX proposes to include commentary in section 2.4 of the Guidance Note to provide further clarity as to the application of Rule 5.1.1(a) to transactions that significantly change, either directly or indirectly, the nature of the Issuer's business. NZX considers this to mean transactions that create a major change in the character of the Issuer's business activities.

The proposed amendments further explain the relevant factors that should be considered when determining whether the nature of an Issuer's existing business activities and strategy have significantly changed. We are proposing to further support these amendments by including examples of transactions that may trigger the Rule, although we have removed some of the previous examples that identified when a transaction would be regarded as not significantly changing an Issuer's business - on the basis that the assessment needs to be made taking account of all relevant factors, on a case-by-case basis.

NZX proposes to include guidance that where an Issuer operates multiple businesses which are either vertically integrated, or which operate within the same, or an aligned, industry sector, that the sale of one business can constitute a significant change to the nature of the Issuer's business, even if the Issuer retains a business unit within the same sector. Similarly, NZX considers that in certain circumstances the acquisition of a business which is strategically aligned with, or is to be vertically integrated with, an Issuer's existing business can also constitute a significant change in the nature of the Issuer's business.

1.5 Value of a major transaction

NZX proposes to provide further clarity, in section 2.5 of the Guidance Note, regarding the calculation of the Gross Value (as defined in the Rules) of a major transaction.

We are providing additional guidance as to how Issuers should determine the Gross Value of assets, where the relevant assets are not valued in the Issuer's most recent financial statements. We are proposing that in those circumstances, an Issuer must have a reasonable basis for the assessment of the Gross Value of the relevant assets, which may involve the Issuer seeking a valuation from an external professional adviser.

We propose removing a reference to “gross market value”, which was a drafting error in the existing Guidance Note, as the Rules themselves use the term “market value” in the definition of Gross Value. We also further explain how “market value” should be assessed, which may be the price agreed between the Issuer and the counterparty, or will sometimes be the equity value of an entity which itself holds assets (and potentially debt).

NZX proposes that the Guidance Note clarify how the exclusions from Gross Value should be assessed, which is to calculate the gross value of relevant assets without double counting, and without adding external transaction costs to the asset value.

NZX has also included further worked examples of how to apply this area of the Rules, in the Exposure Draft.

1.6 Shareholder approvals

Rule 7.1.1 requires that a notice of meeting which includes the resolution to approve a major transaction, cannot be circulated to shareholders until NZX provides written confirmation that it does not object to the notice of meeting under Rule 7.1.1. NZX proposes to further clarify, in section 2.8 of the Guidance Note, our current expectations as to the documents that should be submitted to NZ RegCo for this review. The proposed changes to section 2.8 of the Guidance Note have been informed by NZ RegCo’s views, as NZ RegCo is responsible for undertaking the review of notices of meeting under Rule 7.1.1.

Rule 7.8.2 requires each notice of meeting to contain or be accompanied by sufficient explanation, valuations, and other information, so as to enable a reasonable person to understand the effect of the resolution proposed. We are proposing to include further detail in the Guidance Note about the information Issuers should include in a notice, in order to comply with these requirements. This includes information on the purchase price and negotiation of a major transaction, an outline of the due diligence undertaken in relation to the transaction, and further financial detail about the effects of the transaction on the Issuer.

Where a third-party report was prepared to support the transaction (for example third party valuations, or property valuations), we are proposing that Issuers should make the report, or a summary of the report, publicly available in the notice of meeting, as this information will be important for shareholders. If the report is not to be made public, we suggest that the Issuer should explain in the notice why this is the case. We are interested in submitters’ views on this proposal, including whether there would be difficulty for issuers in providing this information, in particular in light of the terms of engagement of independent valuers, and views as to the utility of this information for shareholders.

We are also proposing that an Issuer should also include information in the notice of meeting, as to whether preparing for the major transaction has resulted in any sunk costs for the Issuer, and also whether any break fees apply. We are proposing that a description or summary of costs could be provided, and that these costs need not be individually quantified. We are interested in submitters views of whether there would be difficulty for Issuers in providing such disclosures, and also views as to the utility of this information to shareholders and other stakeholders.

1.7 Waivers from Rule 5.1.1

We are proposing amendments to section 2.9 of the Guidance Note which relates to waivers from Rule 5.1.1. As NZ RegCo considers any waiver requests from the Rules, the proposed changes to section 2.8 of the Guidance Note have been informed by NZ RegCo's views.

The Guidance Note confirms that NZX expects that waivers from Rule 5.1.1 will be rare due to the importance of shareholders' considering, and voting on major transactions. Waivers from Rule 5.1.1(a) (significant change of nature of business) are very unlikely, with any waiver request from Rule 5.1.1(b) likely to be granted only in limited circumstances.

NZX acknowledges that Issuers will sometimes seek a waiver from Rule 5.1.1(b) and the Guidance Note sets out examples of circumstances when a waiver may be granted. These examples are:

- where an Issuer varies a transaction, and the variation itself is a major transaction, and
- where an Issuer suffers a significant decline in market capitalisation, such that there is an unreasonable restriction on the ability of the Issuer to realise assets or operate in the ordinary course of business.

We are proposing that the Guidance Note further outlines the information that should be provided with any waiver application, in order to assist Issuers that are considering whether to apply for a waiver.

While all waiver decisions are based on specific circumstances, we are proposing to describe the conditions that NZ RegCo is likely to apply when granting Rule 5.1.1(b) waivers. These conditions are that the Board (or all non-interested directors) of the Issuer certify to NZ RegCo that the transaction:

- does not significantly change the nature of the Issuer's business,
- is in the ordinary course of the Issuer's business,
- is in the best interest of the Issuer's shareholders as a whole,
- has been negotiated and agreed on an arms' length basis, and
- is not a major transaction requiring shareholder approval for the purposes of the Companies Act 1993.

We are proposing that the standard condition of the waivers for Rule 5.1.1(b) that relates to the best interests of shareholders now refers to 'shareholders as a whole' to better align with the Companies Act test.

We also propose to highlight that while there are certain historical waivers from shareholder approval requirements under previous versions of the Rules, NZX (in practice NZ RegCo) has progressed its policy position, and would likely not grant similar waivers now. The purpose of including this guidance is to assist Issuers and advisers to understand that waivers from Rule 5.1.1 will be relatively rare and to not rely on certain precedent to support an application.

We also propose to include information on how waiver decisions are published over the relevant Issuer's ticker, and the NZ RegCo ticker. Ordinarily this will occur on announcement of the relevant transaction with the waiver decision will set out facts of the application and grounds for

the decision unless the affected Issuer establishes satisfactory grounds for maintaining confidentiality, or NZ RegCo elects at its sole discretion not to publish the decision.

2 Related Party transactions

The Exposure Draft accompanying this Consultation Paper contains the proposed amendments that NZX intends to make to the Guidance Note in relation to the Rule settings for Material Transactions with Related Parties.

The Related Party section of the Guidance Note currently cross refers to various sections of the major transactions section of the Guidance Note. NZX now proposes to provide more specific detail on the requirements for Material Transactions with Related Parties, in the Guidance Note reflecting the importance, and difference in the application of the requirements under the two respective areas of the Rules.

The material changes to the Related Party transactions section of the Guidance Note are described in more detail below.

2.1 Material Transactions

The definition of Material Transaction is defined in the glossary of the Rules. As the definition is prescriptive, NZX proposes to include the full definition in section 3.2 of the Guidance Note.

Transactions with multiple limbs

NZX proposes to clarify that where transactions involve various aspects or components that fall under different paragraphs of the definition of Material Transaction, the different components should not be aggregated together when considering whether a transaction falls within the definition of a Material Transaction. NZX has also included examples to assist with the interpretation of this requirement.

Transactions with multiple Related Parties

We are also proposing to include guidance as to how transactions to which multiple Related Parties are direct parties should be treated. We are proposing to amend the Guidance Note to clarify that the aspects of the transaction to which the Related Parties are direct parties, should be aggregated together when assessing the limb of the transaction against the relevant limb of the definition.

When assessing a transaction that has multiple related parties, the involvement of the related parties should be aggregated together to assess whether the transaction is a material transaction on the basis that the rule is designed to regulate undue influence over an Issuer.

This aligns with the purpose of the Rule that ensures that shareholders have the ability to consider and vote on transactions with Related Parties, where there may a perception of potential influence on an Issuer's decision to enter into transactions (including incurring obligations) of a certain size, such that the transaction is a Material Transaction.

Calculating the value of a Material Transaction

The Rules also include different value metrics in various limbs of the definition of Material Transaction, being aggregate net value, market value, and gross cost. This is due to the

different types of transactions contemplated by the definition. NZX proposes to include further guidance on how Issuers should apply these limbs to assist with considering the size of transactions.

NZX also proposes to include guidance that when determining the market value of a transaction that NZX acknowledges that it is possible the value can differ depending on the test applied, for example where financial products are issued at a deep discount. In these circumstances it is possible that the market value of the financial products issued for cash may differ from the subscription price.

2.2 Related series of transactions

The Rules require that two or more transactions, which form part of a related series of transactions, must be considered together when determining whether the transactions are a Material Transaction for the purposes of the Rules. This is an anti-avoidance provision to ensure that transactions cannot be divided into a number of smaller components to avoid the operation of the Rule.

We are proposing a change to NZX's regulatory policy that is contained in the Guidance Note as to the manner in which Rule 5.2.1 applies to a related series of transactions.

Prior to the Rule amendments that arose from the 2018 Listing Rule Review, the involvement of a Related Party in a related series of transactions often caused a series of transactions to fall within the operation of the Related Party Rules, due to the involvement of the Related Party in the series of transactions. This was because historically the Rule requirement for shareholder approval applied to an Issuer entering into a Material Transaction if the Related Party was, or was likely to become, a direct or *indirect party* to the Material Transaction, *or to at least one of a related series of transactions of which the Material Transaction forms part*.

As part of the 2018 Rule amendments, NZX narrowed the Rule with the intention that it only applies to transactions to which the Related Party is actually a counterparty. Specifically, the 2018 amendments dis-applied the requirements to transactions where a Related Party was an indirect party to a Material Transaction. The changes also disapplied the Rule requirements to Material Transactions that had a number of elements which were tainted by the involvement of a Related Party, by removing the reference in the Rule to 'at least one of a related series of transactions of which the Material Transaction forms part'.

The current Rule requires that an Issuer must obtain shareholder approval, where it enters into a Material Transaction if a Related Party is, or is likely to become a direct party to the Material Transaction. While the definition of Material Transactions retains the concept of a related series of transactions forming a Material Transaction, this acts as an anti-avoidance provision to ensure that a transaction with a Related Party cannot be divided into a number of parts to avoid the application of the Rule. The Rules are not intended to operate such that the immaterial involvement of a Related Party as a direct party to one component of a transaction, triggers the entire series of transactions as needing to be assessed as a Material Transaction with a Related Party.

NZX considers that this proposed change in NZX's regulatory policy contained in the Guidance Note is borne out by both the language contained in the current Rules, and the intent of the Rules which is to ensure that shareholders have the opportunity to consider and vote on transactions of a certain size with a Related Party, given the potential for the existence of, or perception of, undue influence.

NZX proposes to include examples of how this works in practice, and also commentary on factors that may suggest that two or more transactions form part of a related series.

The Guidance Note also suggests that where Issuers have questions about whether a related series of transactions is a Material Transaction, that they discuss these concerns with NZ RegCo.

2.3 Direct vs indirect party to the transaction

Rule 5.2.1 requires an Issuer to seek shareholder approval when a Related Party is, or is likely to become a direct party to a Material Transaction, or a beneficiary of a guarantee or other transaction which is a Material Transaction. NZX proposes to include a section in the Guidance Note as to how to determine whether a Related Party is a direct party to a transaction. The key, but not only, factor is whether there is a direct contractual nexus between the Issuer and the Related Party.

2.4 Underwriting and sub-underwriting transactions

While the existing Guidance Note includes information on underwriting and sub-underwriting, NZX proposes to include further detailed guidance on how to approach these arrangements when considering Rule 5.2.1, reflecting changes made as part of the 2018 Rule amendments.

NZX considers that, in general, a sub-underwriting arrangement between the underwriter and a Related Party of the Issuer will not, in and of itself, make the Related Party a direct party to a Material Transaction (assuming the issue of Financial Products is the Material Transaction), provided that the Issuer is not party to the sub-underwriting arrangement. This reflects the nature of the contractual arrangements that usually apply to sub-underwriting facilities. However, if a Related Party was a direct underwriter of, or had some other direct involvement in, a capital raising which is Material Transaction (other than an involvement that is subject to an applicable exception, as addressed in paragraph 3.2.8) then Rule 5.2.1 is likely to apply.

NZX also proposes to clarify that the carve-out in Rule 5.2.2(b) that relates to pro-rata issuances does not extend to the involvement by a Related Party as an underwriter, as the underwriter is regarded as receiving an additional benefit through its ability to take up the shortfall, and is therefore not participating in the issuance on the same basis as other shareholders, or solely in its capacity as a shareholder.

NZX has included further examples on how the Rules apply to underwriting and sub-underwriting arrangements to assist Issuers.

2.5 Renewals, variations and amendments

NZX is proposing amendments to the Guidance Note to further clarify that a variation of a Related Party transaction will not require shareholder approval under Rule 5.2 unless the

variation itself is a Material Transaction. NZX acknowledges this is a change from the existing guidance but considers this approach is in line with the intent of the Rules.

We are also proposing to note that where a renewal would itself be a Material Transaction, that if the notice of meeting for the original transaction provided an appropriate level of disclosure regarding the renewal such that shareholders approved the renewal, that additional shareholder approval may not be required.

2.6 Exemptions to Rule 5.2.1

There are certain exemptions to Rule 5.2.1 set out in the Rules. NZX proposes to include further detail in the Guidance Note about these exemptions, along with guidance on how some of the exemptions apply. This includes further guidance as to the Related Party Rule requirements apply to issuances of Financial Products.

2.7 Treatments of Subsidiaries and Joint Ventures

NZX proposes to refine the drafting of the guidance on treatment of subsidiaries, and incorporated and unincorporated joint ventures, to assist with understanding of this area of the Rules and the definitions that apply.

2.8 Shareholder approval

NZX proposes to amend section 3.5 of the Guidance Note, to include a new section on the requirements for NZX's review and no objection of the relevant notice of meeting, including the documents that should be provided to NZ RegCo in relation to the review.

Notice of meeting

NZX is also proposing to include further guidance on the information to be contained or included with a notice of meeting, and also the type of resolution that Issuers can put to shareholders. The purpose of including this guidance is to assist Issuers when preparing documentation, which can sometimes be for multiple approvals (for example under the Rules, Companies Act, and Takeovers Code).

It is also proposed that the Guidance Note clarify that if an Issuer seeks shareholder approval in advance of entering into a Material Transaction with a Related Party, NZX will require the approval to sufficiently define the scope of the transaction being approved in advance. An Issuer cannot obtain general shareholder approval to enter into a Material Transaction with a Related Party, without providing sufficiently specific details regarding the nature of the transaction to be pursued.

Appraisal Reports

Under the Rules, Issuers must arrange for the preparing of an independent Appraisal Report when seeking shareholder approval for a Material Transaction with a Related Party. NZX proposes to include a specific section in the Guidance Note on this highlighting that a separate guidance note on Appraisal Reports is available, and also highlighting the relevant Rules that apply.

2.9 Waivers of Rule 5.2.1

NZX proposes that the Guidance Note includes further information about seeking waivers from Rule 5.2.1, including to clarify that Issuers should supply to NZ RegCo with any waiver application, submissions establishing any third party validation of the agreed consideration in respect of the transaction. The purpose of requesting this third-party information is to ensure NZ RegCo receives appropriate supporting information on which to make a waiver determination in relation to a potential Related Party transaction. This information would support the view taken by the independent (or unconnected) directors that the terms of the transaction have been negotiated or entered into on an arm's length commercial basis.

We are also proposing to provide additional guidance as to the standard conditions that are likely to be imposed in relation to a waiver from Rule 5.2.1. The proposed conditions reflect the fact that shareholders will not have the ability to vote on the Material Transaction, and also that an Appraisal Report which provides an independent perspective will not be published with a notice of meeting, where a waiver is granted.

We are interested in submitters' views as to whether another standard condition for related party waivers should be that a third-party view, or Appraisal Report (or summary), be published alongside the announcement of the Material Transaction, that provides further background on the consideration or cost to the Issuer of the Material Transaction. We have not included this condition in the Exposure Draft, as we are mindful that such a condition would impose significant compliance costs on Issuers, and may restrict their commercial ability to transact in a timely manner. We are, however, interested in submitters views of this option.

Discussion questions

We are interested in your views in relation to the proposals described in this Consultation Paper, and the amendments that are proposed in the Exposure Draft.

In addition, we are interested in submitters views of the discussion questions which are set out below (the context for which is described in the body of the Consultation Paper, and additionally summarised below).

Major transactions

Treatment of charges

NZX proposes to update the terminology included in the Guidance Note about charges, including by referring to general security agreements. The current Guidance Note confirms that although Rule 5.1.1 does not apply to charges, the underlying obligation relating to a charge may itself constitute a major transaction, and so Rule 5.1.1 may apply. NZX proposes to clarify that both the granting of the charge, and any exercise of the charge by a charge-holder which realises a security interest, does not require shareholder approval in accordance with Rule 5.1.1. NZX proposes this change so the guidance is clear as to how the Rules apply if a charge is enforced, and because Rule 5.1.1 does not apply to obligations in the same way as in Rule 5.2.1, but rather applies to transactions. This is further explained in section 1.3 of this Consultation Paper.

1. Do you agree with the proposal to confirm that Rule 5.1.1 does not apply to the granting of a charge, and also the exercise of the charge?

Notice of meeting

NZX proposes that an Issuer include either: a summary of independent advice received by a Board in relation to a major transaction; or include an explanation as to why the summary cannot be provided, in the notice of meeting to consider a major transaction.

NZX welcomes any views on the expectation that Issuers provide this information, noting that there may be exclusions in an advisers' terms of engagement that prevents disclosure, but that shareholders may find it beneficial to be informed of whether such advice was obtained, to assess the utility of including this as a recommended disclosure.

We are also proposing that Issuers disclose a summary of the sunk costs or break fees that have been incurred, or apply in relation to a major transaction.

These proposals are further explained in section 1.6 of this Consultation Paper.

2. Do you consider that a summary of the independent advice received by the Board when considering a transaction is useful information for shareholders to consider when assessing a major transaction?
3. If the Board cannot share any independent advice received (for example, due to confidentiality), do you consider that a summary of why this is the case is useful for shareholders?

4. Do you consider that there is utility in Issuers providing information in relation to the break fees or sunk costs that apply to a major transaction?

Waivers from Rule 5.1.1

We are seeking to clarify that waivers from Rule 5.1.1 will be relatively rare, while acknowledging that there may be grounds for some waivers to be granted. The inclusion of additional background about waivers and their standard conditions in the Guidance Note, is designed to assist Issuers and advisers when considering how the Rules apply to major transactions. NZ RegCo welcomes any additional views on Rule 5.1.1 waivers and the standard conditions that will usually apply. The proposals are further explained in section 1.7 of this Consultation Paper.

5. Do you agree with the proposed guidance provided on waivers from Rule 5.1.1, and the standard conditions that NZ RegCo is likely to apply when granting a waiver?

Material Transactions with Related Parties

Treatment of a related series of transactions

NZX is proposing to clarify in the Guidance Note how transactions which have multiple aspects, or are being conducted with multiple Related Parties should be treated, as follows:

- in relation to a transaction which has a number of components, only the component to which the Related Party is a party should be considered to determine whether a transaction is a Material Transaction,
- in assessing a transaction which has a number of components that trigger different limbs of the Material Transaction definition, only the limb that is relevant to the respective component should be applied (i.e. the limbs should not be aggregated), and
- in assessing a transaction that has multiple Related Parties, the involvement of the Related Parties should be aggregated together to assess whether the transaction is a Material Transaction.

These amendments are proposed due to both the policy intent behind the Rules, and the changes that were made to the Rules as a result of the 2018 holistic Listing Rule review. The changes are explained in more detail in sections 2.1 and 2.2 of this Consultation Paper.

6. Do you agree with the proposed changes to the Guidance Note in relation to transactions with multiple Related Parties, or which have multiple components, as described above?

Waivers from Rule 5.2.1

NZ RegCo is proposing that the Guidance Note identifies that submissions from an Issuer in support of a waiver application should (if available) include a third party view of the appropriateness of the agreed consideration for the transaction.

NZ RegCo is interested in submitters views of this proposal, including whether shareholders would benefit from the publication of this information (being a third-party report or a summary of the third-party's advice) or whether a full Appraisal Report should be published along with the

announcement of the Transaction, which could be imposed as a standard waiver condition. We are mindful of the effects on Issuers in terms of compliance costs and the speed at which they are able to transact, if this information was required to be published. This is explained further in section 2.10 of this paper.

7. Do you agree with the standard conditions that NZ RegCo propose for waivers from Rule 5.2. as set out in the Exposure Draft, or are there additional conditions (such as the publication of an independent assessment of the value of the transaction) that NZ RegCo should consider?