



# NZX Regulation Decision

Class Waiver and Ruling on NZX Debt Market Listing  
Rules 3.2.1(d) and 3.2.1(e)

7 April 2017



## Decision on Rule 3.2.1(d)

1. On the condition set out in paragraph 2 below, NZX Regulation (**NZXR**) waives the application of NZX Debt Market Rule (**Rule**) 3.2.1(d) to the extent that this Rule requires that every Trust Deed governing Debt Securities shall provide that a meeting of Security holders shall be called on a requisition in writing signed by holders of not less than 10% of the amount of the Securities for the time being outstanding, or such other number of holders as required by section 120(1)(b) of the FMC Act (if applicable).
2. The waiver in paragraph 1 above is provided on the condition that every Trust Deed which relies on such waiver shall provide that a meeting of Security holders shall be called on a requisition in writing by holders of not less than 10% of the amount of the Securities for the time being outstanding, or such other number of holders as required by section 120(1)(b) of the FMC Act (if applicable).
3. Pursuant to Rule 1.10.1, NZXR rules that the reference to “section 120(b)” in Rule 3.2.1(d), should be interpreted as a reference to “section 120(1)(b)”.
4. The background information to this decision is set out in Appendix One to this decision.
5. The Rule to which these decisions relate is set out in Appendix Two to this decision.

## Reasons

6. In coming to the decision to provide the waiver set out in paragraph 1 above, NZXR has considered that:
  - a. under the Rules, and but for a waiver, Issuers who offer Debt Securities under the FMC Regime would need to provide in their Trust Deed that any requisition to call a meeting of Security holders is required to be signed by Security holders;
  - b. it is appropriate that Issuers of Debt Securities subject to the FMC Regime should be able to align the Trust Deeds for those Debt Securities with the process for the requisition of meetings under the FMC Regime, without breaching the Rules; and
  - c. NZXR considers the waiver better represents the interests of the Security holders in relation to their ability to call a meeting, which is consistent with the purpose of Rule 3.2.1 and is in line with current market practice.
7. The ruling set out in paragraph 3 above gives effect to the correct relevant reference in the FMC Act.

## Decision on Rule 3.2.1(e)

8. On the condition set out in paragraph 9 below, NZXR waives the application of Rule 3.2.1(e) to the extent that this Rule requires that every Trust Deed governing Debt Securities shall provide that the necessary majority for passing an extraordinary resolution shall be not less than 75% of the persons voting thereon on a show of hands and, if a poll is demanded, then not less than 75% of the Votes cast.
9. The waiver in paragraph 8 above is provided on the condition that every Trust Deed which relies on such waiver shall provide that the necessary majority for passing an extraordinary resolution shall be not less than 75% of the Votes cast on a poll.
10. The background information to this decision is set out in Appendix One to this decision.

11. The Rule to which this decision relates is set out in Appendix Two to this decision.

## Reasons

12. In coming to the decision to provide the waiver set out in paragraph 8 above, NZXR has considered that:

- a. the requirement set out in Rule 3.2.1(e) does not align with the requirements of Schedule 11, clause 7(3) of the FMC Regs, which requires that a poll must be taken in the case of a vote on a special resolution at meetings of financial product holders;
- b. under the Rules, and but for a waiver, Issuers of Debt Securities which are subject to the FMC Regime would need to provide in their Trust Deed for thresholds that apply to voting on a show of hands in relation to extraordinary resolutions;
- c. NZXR considers that it is appropriate that Issuers of Debt Securities subject to the FMC Regime should be able to align the Trust Deeds for those Debt Securities with the requirements in the FMC Regime, without breaching the Rules; and
- d. the waiver is in line with current market practice and does not negatively impact Security holders' interest and rights.



## Appendix One

1. NZX Debt Market Listing Rules (**Rules**) 3.2.1(d) and 3.2.1(e) prescribe certain provisions that are required to be included in a Trust Deed for Debt Securities.
2. Rule 3.2.1(d) requires that a Trust Deed provide that a meeting of Security holders shall be called on a requisition in writing signed by holders of not less than 10% of the amount of the Securities for the time being outstanding, or such other number of holders as required by section 120(1)(b) of the Financial Markets Conduct Act 2013 (**FMC Act**) (if applicable).
3. Rule 3.2.1(e) requires that the Trust Deed provide that the necessary majority for passing an extraordinary resolution shall be not less than 75% of the persons voting thereon on a show of hands and, if a poll is demanded, then not less than 75% of the Votes cast.
4. Those Rules are inconsistent with certain requirements for Debt Securities under the FMC Act and the Financial Markets Conduct Regulations 2014 (**FMC Regs**, and together with the FMC Act, the **FMC Regime**). In particular:
  - a. Section 120(1)(b) of the FMC Act does not require that a requisition to call a notice of meeting of holders of Debt Securities needs to be signed by requisitioning Security holders; and
  - b. Schedule 11, clause 7(3) of the FMC Regs requires that a poll must be taken in the case of a vote on a special resolution at meetings of financial product holders. The term “special resolution” is analogous to the term “extraordinary resolution” for the purposes of Rule 3.2.1(e).



## Appendix Two

“Rule 3.2.1 Every Trust Deed governing Debt Securities shall provide that:

...

(d) a meeting of Security holders shall be called on a requisition in writing signed by holders of not less than 10% of the amount of the Securities for the time being outstanding, or such other number of holders as required by section 120(b) of the FMC Act (if applicable);

(e) the necessary majority for passing an extraordinary resolution shall be not less than 75% of the persons voting thereon on a show of hands and, if a poll is demanded, then not less than 75% of the Votes cast; and”

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