



# NZX Regulation Decision

Class waiver and ruling for NZAX and NXT Market Migration -

NZX Listing Rules (dated 1 January 2019)

NZX Main Board Listing Rules (dated 1 October 2017)

NZAX Listing Rules (dated 22 May 2017)

NXT Market Rules (dated 26 September 2014)

19 November 2018



## Background

1. These waivers apply to Migrating Issuers, as more particularly described in Appendix One.
2. The Rules to which these decisions relate are set out in Appendix Two.
3. Capitalised terms that are not defined in these decisions have the meanings given to them in the Rules, unless the terms are not defined in the Rules, in which case they shall have the meanings given to them in the NZAX Listing Rules and NXT Market Rules as the context requires.

## Waiver from Rules 1.1.1(a), 2.18.1(a) and 2.20.1

### Decision

4. Subject to the conditions in paragraph 5 below, NZX Regulation (**NZXR**) grants waivers from NZX Listing Rules (**Rule**) 1.1.1(a), 2.18.1(a) and 2.20.1, to the extent those Rules would require a Migrating Issuer to have a Governing Document that complies with Rules 2.18.1(a) and 2.20.1 from its Migration Date.
5. The waivers set out in paragraph 4 above are provided on the conditions that:
  - a. the relevant Migrating Issuer puts a resolution at its next scheduled annual meeting (or earlier, if a special meeting of shareholders is called (other than a meeting called by the Board following a request by shareholders pursuant to section 121(b) of the Companies Act 1993) prior to the scheduled annual meeting) after its Migration Date to approve a Rules compliant Governing Document; and
  - b. until the relevant Migrating Issuer adopts a Rules compliant Governing Document, it will comply with, and procure that its directors comply with, the Rules from its Migration Date, as if the content requirements of Rules 2.18.1 and 2.20.1 were contained in the relevant Migrating Issuer's Governing Document.

### Reasons

6. In coming to the decision to provide the waiver set out in paragraph 4 above, NZXR has considered that:
  - a. the policy behind Rules 1.1.1(a), 2.18.1(a) and 2.20.1 is to ensure that Governing Documents of Issuers of equity securities are consistent with the Rules. This consistency helps to reinforce the protections that the Rules provide Financial Product holders, and it ensures that Issuers are not conflicted in complying with both the Rules and their Governing Documents;
  - b. the condition set out in paragraph 5(b) provides NZXR with comfort that Financial Product holders will not be disadvantaged by a Migrating Issuer's Governing Document not including the content requirements set out in Rules 2.18.1(a) and 2.20.1, and its protections will resemble the requirement for a Governing Document to be consistent with the Rules;
  - c. all Migrating Issuers will be bound by a Listing agreement with NZX, which requires them to comply with all of its obligations under the Rules;

- d. the waiver is temporary, and will only apply until the earlier of the Migrating Issuer's next scheduled annual meeting or next special meeting of shareholders, if such a meeting is called prior to the scheduled annual meeting (other than a meeting called by the Board following a request by shareholders pursuant to section 121(b) of the Companies Act 1993), after its Migration Date; and
- e. there is precedent for this decision.

## Waiver from NZAX Listing Rules 6.1.1, 6.1.2, 6.1.3, and 6.1.4

### Decision

- 7. Subject to the conditions set out in paragraph 8 below, NZXR grants a waiver from NZAX Listing Rules 6.1.1, 6.1.2, 6.1.3 and 6.1.4 to that extent that those rules would require an NZAX Migrating Issuer, which intends to adopt a Rules compliant Governing Document to be effective from its Migration Date, to:
  - a. obtain from NZXR prior approval for:
    - (i) any proposed changes to the Governing Document; or
    - (ii) any notice of meeting of the Financial Product holders of the NZAX Migrating Issuer to be issued in relation to the meeting at which approval will be sought from those Financial Product holders for amendments to a Governing Document; and
  - b. submit to NZXR in draft full final form for approval at least 10 Business Days before that document is intended to be circulated:
    - (i) any document setting out the proposed changes to such Governing Document; and
    - (ii) any notice of meeting of the Financial Product holders of the NZAX Migrating Issuer, to be issued in relation to the meeting at which approval will be sought from those Financial Product holders for amendments to such Governing Document.
- 8. The waivers set out in paragraph 7 above are provided on the conditions that:
  - a. the relevant notice of meeting would not otherwise require review and approval by NZXR under NZAX Listing Rules 6.1.1, 6.1.3 and 6.1.4; and
  - b. the NZAX Migrating Issuer provides to NZXR, prior to any amendments to that NZAX Migrating Issuer's Governing Document becoming effective, a solicitor's opinion satisfying the requirements of Rule 2.19.1 (whether or not that Rule is then in force), and which opinion is stated by reference to the Governing Document complying with the Rules on and from the NZAX Migrating Issuer's Migration Date.

## Waiver from NXT Listing Rule 95

### Decision

9. Subject to the conditions set out in paragraph 10 below, NZXR grants a waiver from NXT Listing Rule 95 to that extent that that rule would require a NXT Migrating Issuer, which intends to adopt a Rules compliant Governing Document to be effective from its Migration Date, to:
  - a. obtain from NZXR prior approval for any notice of meeting of the Financial Product holders of the NXT Migrating Issuer to be issued in relation to the meeting at which approval will be sought from those Financial Product holders for amendments to a Governing Document; and
  - b. submit to NZXR in draft full final form for approval at least 10 Business Days before that document is intended to be circulated any notice of meeting of the Financial Product holders of the NXT Migrating Issuer to be issued in relation to the meeting at which approval will be sought from those Financial Product holders for amendments to such Governing Document.
10. The waivers set out in paragraph 9 above are provided on the condition that the relevant notice of meeting would not otherwise require review and approval by NZXR under NXT Listing Rule 95.

## Waivers from Rules 1.12 and 1.13

### Decision

11. Subject to the conditions in paragraph 12 below, NZXR grants waivers from:
  - a. Rule 1.12, to the extent that that Rule would require a Migrating Issuer to submit an application for Listing in accordance with the requirements of that Rule; and
  - b. Rule 1.13, to the extent that that Rule would require a Migrating Issuer to submit an application for Quotation in accordance with the requirements of that Rule.
12. The waivers set out in paragraph 11 above are provided on the condition that the relevant Migrating Issuer's migration to the Main Board is undertaken in accordance with the migration process for NZAX and NXT Market issuers prescribed by NZXR in connection with the consolidation of the NZAX and NXT Markets into the Main Board, as more particularly described in the migration guide published by NZXR dated 30 October 2018.

### Reasons

13. In coming to the decision to provide the waivers set out in paragraph 11 above, NZXR has considered that:
  - a. in order to rely on the waivers, a Migrating Issuer must already be Listed, with its shares Quoted on either the NZAX or the NXT Market, and seek to migrate the quotation of its shares to the Main Board. There will be no public offer of a new Class of Financial Products associated with the migration;

- b. imposing the requirement that a Migrating Issuer comply with Rules 1.12 and 1.13, in relation to their technical delisting and cessation of quotation on the NZAX or NXT Markets and subsequent new listing and quotation on the Main Board, would provide no benefit to the Migrating Issuer's Financial Product holders, the market as a whole or NZX; and
- c. there is precedent for this decision.

## Waiver from Rule 3.5.1

### Decision

14. Subject to the conditions in paragraph 15 below, NZXR grants a waiver from Rule 3.5.1, to the extent that that Rule would require a NZAX Migrating Issuer to release a Results Announcement through MAP pursuant to Rule 3.5.1 no later than 60 days after the end of each financial year or financial half-year, if such financial year or financial half-year ended in the period commencing on, and from, 30 September 2018 to, and including, 30 June 2019.
15. The waiver set out in paragraph 14 above is provided on the conditions that the relevant Results Announcement:
  - a. is released by the NZAX Migrating Issuer through MAP, either before or together with the release of their annual report (where applicable), and no later than 75 days after the end of the financial year or financial half-year to which they relate; and
  - b. includes the information required by, and otherwise addresses the matters specified in, the relevant section of Appendix 2 to the Rules.

## Waiver from Rule 3.6.1

### Decision

16. Subject to the conditions in paragraph 17 below, NZXR grants a waiver from Rule 3.6.1, to the extent that that Rule would require a NZAX Migrating Issuer to prepare and deliver to (i) NZX by release through MAP, and (ii) each Quoted Financial Product holder of the NZAX Migrating Issuer in accordance with Rule 3.6.3, an annual report within three months after the end of the NZAX Migrating Issuer's financial year, if such financial year ended in the period commencing on, and from, 30 September 2018 to, and including, 30 June 2019.
17. The waiver set out in paragraph 16 above is provided on the conditions that:
  - a. the NZAX Migrating Issuer prepares and delivers to (i) NZX by release through MAP, and (ii) each of its Quoted Financial Product holders, in accordance with Rule 3.6.3, an annual report within four months after the end of that NZAX Migrating Issuer's financial year; and
  - b. the annual report meets the content requirements prescribed in Rule 3.7.1 and 3.8.1.

## Ruling on Rule 3.6

### Decision

18. NZXR rules that Migrating Issuers will, subject to the waiver set out in paragraph 16 above (if applicable), immediately be subject to Rule 3.6 on and from their Migration Date, including in respect of periodic reporting obligations for full and half-year financial periods ended prior to that Migration Date.

### Reasons

19. The ruling in paragraph 18 above is intended to clarify, for the avoidance of doubt, that Migrating Issuers will have the benefit of Rule 3.6 from their Migration Date, including in relation to their most recently concluded half-year financial period. This ruling confirms that if a Migrating Issuer's Migration Date falls in the period between (i) a half-year balance date, and (ii) the date on which a half-year report would otherwise be required under NZAX Listing Rule 10.5.1 or NXT Market Rule 54 (as applicable), that Issuer will immediately have the benefit of the revised reporting framework under Rule 3.6, and not be required to publish a separate half-year report in relation to that most recently ended half-year financial period.

## Ruling in relation to Governing Documents

### Decision

20. NZXR rules that the provisions of NZAX Listing Rules 3.2.2 to 3.2.9 and 3.3, and NXT Market Rules 6 to 15 and 17 to 18, are inconsistent with the provisions of Rules 2.2 to 2.10 and 2.13 for the purposes of Rule 2.20.1(e), and that each Migrating Issuer on and from their Transition Date is authorised for the purposes of Rule 2.20.1(d) to comply with the provisions of Rules 2.2 to 2.10 and 2.13 to the exclusion of any provisions in its Governing Document that substantially repeat some or all of NZAX Listing Rules 3.2.2 to 3.2.9 and 3.3, and NXT Market Rules 6 to 15 and 17 to 18.

### Reasons

21. NZXR is aware that Governing Documents may repeat some or all of the existing NZAX Listing Rules or NXT Market Listing Rules in relation to the appointment and rotation of Directors, the powers of Directors and, for NXT Migrating Issuers, the requirements in relation to Audit Committees. The ruling in paragraph 20 above is intended to clarify, for the avoidance of doubt, that Migrating Issuers should generally comply with the governance requirements of the Rules in relation to these matters.
22. NZXR also draws Migrating Issuers' attention to the general ruling below in relation to the application of Rule 2.7.1 to persons appointed as Directors of a Migrating Issuer by the Directors, Executive Directors of a Migrating Issuer and Directors of a Migrating Issuer who are holders of a special office. These persons may be required to retire from office at a Migrating Issuer's next annual meeting, notwithstanding any provisions to the contrary in the Migrating Issuer's Governing Document.

# Ruling on NZX Main Board as successor market

## Decision

23. NZXR rules that:

- a. the NZX Main Board is the successor market of the NZAX and NXT Markets, on and from 1 July 2019; and
- b. the NZX Listing Rules are the successor listing rules relevant to, and which constitute a contract between NZX Limited and each NZAX Issuer and NXT Market Issuer, with effect on the earlier of (i) a NZAX Migrating Issuer or NXT Migrating Issuer's Migration Date, or (ii) 1 July 2019.

## General Rulings

### Decision

24. A number of Rules refer to matters done under other Rules, which means that Migrating Issuers may not be able to comply with the Rules in respect of these matters, notwithstanding that the equivalent NZAX Listing Rules or NXT Market Rules have been complied with. NZXR therefore grants a class ruling that matters undertaken under certain NZAX Listing Rules or NXT Market Rules as set out in the table below are deemed to have been undertaken under the equivalent Rules.

<b>Rule</b>	<b>Application to NZAX Migrating Issuers</b>	<b>Application to NXT Migrating Issuers</b>
1.19.2	An exercise of NZX's powers to impose a condition under NZAX Listing Rule 5.3.2 shall be deemed to be an exercise of NZX's powers under Rule 1.19.2 and such condition will continue to apply to a Migrating Issuer.	An exercise of NZX's powers to impose a condition under NXT Market Rule 75 shall be deemed to be an exercise of NZX's powers under Rule 1.19.2 and such condition will continue to apply to a Migrating Issuer.
2.7.1	Any person appointed as a Director of a NZAX Migrating Issuer by the Directors prior to the NZAX Migrating Issuer migrating to the NZX Main Board who has not retired from office in accordance with NZAX Listing Rule 3.2.3 shall be required to retire from office at the next annual meeting of the NZAX Migrating Issuer in accordance with Rule 2.7.1.	Any person appointed as a Director of a NXT Migrating Issuer by the Directors prior to the NXT Migrating Issuer migrating to the NZX Main Board who has not retired from office in accordance with NXT Market Rule 6 shall be required to retire from office at the next annual meeting of the NXT Migrating Issuer in accordance with Rule 2.7.1.
2.7.1	Any person who is an Executive Director of a NZAX Migrating Issuer, and who has held office (without re-election) past the third annual meeting following the	Any person who is an Executive Director of a NXT Migrating Issuer, and who has held office (without re-election) past the third annual meeting following the



<b>Rule</b>	<b>Application to NZAX Migrating Issuers</b>	<b>Application to NXT Migrating Issuers</b>
	Director's most recent election or re-election, or for more than 3 years, whichever is longer, must retire from office at the NZAX Migrating Issuer's next annual meeting, but shall be eligible for re-election at that meeting in accordance with Rule 2.7.1.	Director's most recent election or re-election, or for more than 3 years, whichever is longer, must retire from office at the NXT Migrating Issuer's next annual meeting, but shall be eligible for re-election at that meeting in accordance with Rule 2.7.1.
2.7.1	Any person who is a Director of a NZAX Migrating Issuer that is the holder of a special office for the purposes of NZAX Listing Rules 3.2.8 and 3.2.9, and who has held office (without re-election) past the third annual meeting following the Director's most recent election or re-election, or for more than 3 years, whichever is longer, must retire from office at the NZAX Migrating Issuer's next annual meeting, but shall be eligible for re-election at that meeting in accordance with Rule 2.7.1.	As per the Rules.
2.8.1 and 3.8.1(f)	A Director appointed under NZAX Listing Rule 3.2.4 shall be deemed to have been appointed under Rule 2.4.1 for the purposes of Rule 2.8.1 and Rule 3.8.1(f).	As per the Rules.
2.11 and 2.12	The remuneration which an NZAX Migrating Issuer is authorised to pay under NZAX Listing Rule 3.4.1 shall be deemed to be authorised under Rules 2.11 and 2.12.	The remuneration which an NXT Migrating Issuer is authorised to pay under NXT Market Rule 16 shall be deemed to be authorised under Rules 2.11 and 2.12.
3.7.1(h)	An exercise of NZX's powers under NZAX Listing Rule 5.4.2 shall be deemed to be an exercise of NZX's powers under Rule 9.9.3.	An exercise of NZX's powers under NXT Market Rules 82, 83, 84 or 89 shall be deemed to be an exercise of NZX's powers under Rule 9.9.3.
7.1.1	An approval by NZX under NZAX Listing Rule 6.1.1 shall be deemed to be a confirmation of no objection by NZX of the relevant document under Rule 7.1.1.	An approval by NZX under NXT Market Rule 95 shall be deemed to be a confirmation of no objection by NZX of the relevant document under Rule 7.1.1.
4.1.1	A resolution passed pursuant to NZAX Listing Rule 7.3.1(a) shall be deemed to be a resolution passed pursuant to Rule 4.2.1(a).	A resolution passed pursuant to NXT Market Rule 26 in accordance with NXT Market Rule 62 shall be deemed to be a resolution passed pursuant to Rule 4.2.1.



Rule	Application to NZAX Migrating Issuers	Application to NXT Migrating Issuers
4.2.1(b)	A resolution passed pursuant to NZAX Listing Rule 7.3.3(c) shall be deemed to be a resolution passed pursuant to Rule 4.2.1(b)	As per the Rules.
4.2.4	An approval by NZX under NZAX Listing Rule 7.3.10 shall be deemed to be an approval under Rule 4.2.4.	As per the Rules.
4.5.1 and 4.6.1	<p>For the purposes of Rules 4.5.1 and 4.6.1:</p> <ul style="list-style-type: none"> <li>• Equity Securities issued pursuant to NZAX Listing Rules 7.3.1(a); 7.3.4; 7.3.5; 7.3.6; or 7.3.11 shall be deemed to have been issued under Rules 4.2.1; 4.3.1 or 4.4.1; 4.5.1; 4.6.1; and 4.8.1 or 4.9.1 respectively;</li> <li>• Equity Securities issued pursuant to NZAX Listing Rule 7.3.5, the issue of which has been ratified by an Ordinary Resolution of the NZAX Migrating Issuer, shall be counted in Rule 4.5.1(c) as if they had been issued and ratified under the Rules;</li> <li>• an NZAX Migrating Issuer shall be deemed to have been Listed on the NZX Main Board on the date on which it was listed on the NZAX; and</li> <li>• an NZAX Migrating Issuer shall not be in breach of Rule 4.5.1 or 4.6.1 if the Equity Securities issued by it prior to its migration to the NZX Main Board exceeds the aggregate permitted by those Rules in circumstances where the NZAX Migrating Issuer issued those Equity Securities in compliance with NZAX Listing Rule 7.3.5 or 7.3.6 respectively.</li> </ul>	<p>For the purposes of Rules 4.5.1 and 4.6.1:</p> <ul style="list-style-type: none"> <li>• Equity Securities issued pursuant to NXT Market Rule 26 shall be deemed to have been issued under Rule 4.2.1;</li> <li>• Equity Securities issued pursuant to NXT Market Rule 25(b) and paragraphs 1; 2 or 4 of Schedule 3B to the NXT Market Rules shall be deemed to have been issued under Rules 4.3.1(a) or 4.4.1(a); 4.3.1(c); and 4.3.1(b) respectively;</li> <li>• Equity Securities issued pursuant to NXT Market Rule 25(a) and Schedule 3A to the NXT Market Rules shall be deemed to have been issued under Rule 4.5.1;</li> <li>• Equity Securities issued pursuant to NXT Market Rule 25(b) and paragraph 3 of Schedule 3B to the NXT Market Rules shall be deemed to have been issued under Rule 4.6.1;</li> <li>• Equity Securities issued pursuant to NXT Market Rule 25(b) and paragraphs 5, 6, 7, 8, 9 or 10 of Schedule 3B to the NXT Market Rules shall be deemed to have been issued under Rules 4.8.1 or 4.9.1;</li> <li>• Equity Securities issued pursuant to NXT Market Rule 25(a) and Schedule 3A, the issue of which has been ratified by shareholders of the NXT Migrating Issuer in accordance</li> </ul>

Rule	Application to NZAX Migrating Issuers	Application to NXT Migrating Issuers
		<p>with NXT Market Rule 62, shall be counted in Rule 4.5.1(c) as if they had been issued and ratified under the Rules; and</p> <ul style="list-style-type: none"> <li>an NXT Migrating Issuer shall be deemed to have been Listed on the NZX Main Board on the date on which it was listed on the NXT Market.</li> </ul>
4.7.1	<p>A resolution passed pursuant to NZAX Listing Rule 3.4.1 that expressly provided that the remuneration may be payable either in part or in whole by way of an issue of Equity Securities shall be deemed to be a resolution passed pursuant to Rule 2.11.2 for the purposes of Rule 4.7.1.</p>	<p>A resolution passed pursuant to NXT Market Rule 16 in accordance with NXT Market Rule 62 that expressly provided that the remuneration may be payable either in part or in whole by way of an issue of Equity Securities shall be deemed to be a resolution passed pursuant to Rule 2.11.2 for the purposes of Rule 4.7.1.</p>
4.9.1	<p>For the purposes of Rule 4.9.1:</p> <ul style="list-style-type: none"> <li>Securities issued in accordance with any of NZAX Listing Rules 7.3.1(a); 7.3.4; 7.3.5; 7.3.6; 7.3.11(a) or 7.3.11(e) shall be deemed to have been issued in accordance with Rules 4.2.1(a); 4.3.1 or 4.4.1; 4.5.1; 4.6.1; 4.9.1(a); and 4.8.1 respectively; and</li> <li>Securities, the issue of which was approved in the manner set out in NZAX Listing Rule 7.3.1(a), shall be deemed to have been approved in the manner set out in Rule 4.2.1.</li> </ul>	<p>For the purposes of Rule 4.9.1:</p> <ul style="list-style-type: none"> <li>Securities issued pursuant to NXT Market Rule 25(b) and paragraphs 1; 2; or 4 of Schedule 3B to the NXT Market Rules shall be deemed to have been issued under Rules 4.3.1(a) or 4.4.1(a); 4.3.1(c); and 4.3.1(b) respectively;</li> <li>Securities issued in accordance with NXT Market Rule 25(a) and Schedule 3A to the NXT Market Rules shall be deemed to have been issued in accordance with Rule 4.5.1;</li> <li>Securities issued in accordance with NXT Market Rule 25(b) and paragraph 3 of Schedule 3B to the NXT Market Rules shall be deemed to have been issued in accordance with Rule 4.6.1;</li> <li>Equity Securities issued in accordance with NXT Market Rule 25(b) and paragraphs 5 or 6 of Schedule 3B to the NXT Market Rules shall be deemed to have been</li> </ul>

Rule	Application to NZAX Migrating Issuers	Application to NXT Migrating Issuers
		<p>issued under Rules 4.8.1 and 4.9.1(a) respectively; and</p> <ul style="list-style-type: none"> <li>Securities, the issue of which was approved in the manner set out in NXT Market Rule 62, shall be deemed to have been approved in the manner set out in Rule 4.2.1.</li> </ul>
4.14.1	<p>For the purposes of Rule 4.14.1, Equity Securities issued in compliance with, or under, NZAX Listing Rules 7.3.1(a); 7.3.4; or 7.3.6 shall be deemed to have been issued in compliance with, or under, Rules 4.2.1; 4.3.1 or 4.4.1; and 4.6.1 respectively.</p>	<p>For the purposes of Rule 4.14.1:</p> <ul style="list-style-type: none"> <li>Equity Securities issued in compliance with NXT Market Rule 26 shall be deemed to have been issued in compliance with Rule 4.2.1;</li> <li>Equity Securities issued in compliance with NXT Market Rule 25(b) and paragraphs 1; 2; or 4 of Schedule 3B to the NXT Market Rules shall be deemed to have been issued in compliance with Rules 4.3.1(a) or 4.4.1(a); 4.3.1(c); and 4.3.1(b) respectively; and</li> <li>Equity Securities issued under NXT Market Rule 25(b) and paragraph 3 of Schedule 3B to the NXT Market Rules shall be deemed to have been issued under Rule 4.6.1.</li> </ul>
4.14.1(b)(ii)	<p>For the purposes of Rule 4.14.1(b)(ii)(B), Equity Securities acquired under NZAX Listing Rule 7.6.1(f) shall be deemed to have been acquired under Rule 4.14.1(b)(ii).</p>	<p>For the purposes of Rule 4.14.1(b)(ii)(B), Equity Securities acquired under NXT Market Rule 29 shall be deemed to have been acquired under Rule 4.14.1(b)(ii).</p>
4.15	<p>For the purposes of Rule 4.15:</p> <ul style="list-style-type: none"> <li>financial assistance given under NZAX Listing Rule 7.6.4(a) or (b) shall be deemed to have been given under Rule 4.15.2(a) and (b) respectively; and</li> <li>an NZAX Migrating Issuer shall be deemed to have been Listed on the NZX Main Board on the date on which it was listed on the NZAX.</li> </ul>	<p>For the purposes of Rule 4.15:</p> <ul style="list-style-type: none"> <li>financial assistance given to those who are not Employees under NXT Market Rule 35 shall be deemed to have been given under Rule 4.15.2(a);</li> <li>financial assistance given to Employees under NXT Market Rule 35 shall be deemed to have been given under Rule 4.15.2(b); and</li> </ul>

<b>Rule</b>	<b>Application to NZAX Migrating Issuers</b>	<b>Application to NXT Migrating Issuers</b>
		<ul style="list-style-type: none"> <li>an NXT Migrating Issuer shall be deemed to have been Listed on the NZX Main Board on the date on which it was listed on the NXT Market.</li> </ul>
4.16.1	A proposal authorised by resolutions passed pursuant to NZAX Listing Rule 7.6.5 shall be deemed to be a proposal authorised by resolutions passed pursuant to Rule 4.16.1.	A proposal authorised by resolutions passed pursuant to NXT Market Rule 37 in accordance with NXT Market Rule 62 shall be deemed to be a proposal authorised by resolutions passed pursuant to Rule 4.16.1.
5.1.1 and 5.2.1	A transaction authorised by resolutions passed pursuant to NZAX Listing Rules 9.1.1 or 9.2.1 shall be deemed to be a transaction authorised by resolutions passed pursuant to Rules 5.1.1 or 5.2.1.	A transaction authorised by resolutions passed pursuant to NXT Market Rules 38 in accordance with NXT Market Rule 62 shall be deemed to be a transaction authorised by resolutions passed pursuant to Rules 5.1.1 or 5.2.1.
8.1.6(a)	An approval by NZX under NZAX Listing Rule 11.1.5 shall be deemed to be an approval under Rule 8.1.6(a).	An approval by NZX under NXT Market Rule 67 shall be deemed to be an approval under Rule 8.1.6(a).
8.3.2	A statement required by NZAX Listing Rule 11.2.1 or 11.2.3 shall be deemed to be a Statement required by Rules 8.3.1 and 8.3.3 respectively for the purposes of Rule 8.3.2.	A statement required by NXT Market Rule 70 shall be deemed to be a Statement required by Rules 8.3.1 and 8.3.3 respectively for the purposes of Rule 8.3.2.
8.3.4(b)	A statement of holding of Securities complying with NZAX Listing Rule 11.2 shall be deemed to be a Statement for the purposes of Rule 8.3.4(b).	A statement of holding of Securities complying with NXT Market Rule 70 shall be deemed to be a Statement for the purposes of Rule 8.3.4(b).

## Appendix One

1. In 2017, NZX Limited announced that it would undertake a review of the NZX Main Board/Debt Market Rules and its current equity market structure.
2. That review included a formal consultation process on the settings of the existing NZX Main Board/Debt Market Rules dated 1 October 2017, and a proposal to consolidate the NZAX and NXT Markets into the NZX Main Board.
3. The consultation process has resulted in the development of revised listing rules for issuers listed with securities quoted on the NZX Main Board and Debt Market, which were approved by the Financial Markets Authority on 29 October 2018 (**Rules**). The Rules will take effect from 1 January 2019, subject to a transition period until 30 June 2019.
4. In conjunction with the introduction of the updated Rules, the NZAX and NXT Markets will be consolidated into the NZX Main Board, with effect from 1 July 2019. The NZX Main Board represents the successor market to the NZAX and NXT Markets. Existing NZAX and NXT Market issuers will need to migrate to the NZX Main Board, and transition to the new Rules, on a date to be selected by those issuers (**Migration Date**) by no later than 30 June 2019 (or otherwise make alternative arrangements for delisting from the markets operated by NZX).
5. NZX Regulation (**NZXR**) has developed a bespoke migration process for NZAX and NXT Market issuers, and NZXR considers it appropriate to clarify for existing NZAX and NXT Market Issuers:
  - a. the process for them to migrate their listing and quotation to the NZX Main Board; and
  - b. the application of various Rules that will apply to those Issuers following their Migration Date.
6. For the purposes of these waivers and rulings:
  - a. **NZAX Migrating Issuer** means an NZAX Issuer who has migrated, or will migrate, its Listing, and Quotation of its Securities, from the NZAX to the NZX Main Board;
  - b. **NXT Migrating Issuer** means a NXT Issuer who has migrated, or will migrate, its Listing, and Quotation of its Securities, from the NXT Market to the NZX Main Board; and
  - c. **Migrating Issuer** means either an NZAX Migrating Issuer or an NXT Migrating Issuer, as the case may be.
7. NZXR considers that the waivers and the ruling are appropriate, as:
  - a. the waivers and rulings will minimise some of the immediate compliance impacts for NZAX Migrating Issuers and NXT Migrating Issuers who migrate to the NZX Main Board, given the differing compliance requirements that apply under the Rules;
  - b. the ruling is necessary to ensure that actions taken in respect of NZAX Migrating Issuers and NXT Migrating Issuers prior to their migration to the NZX Main Board

are appropriately recognised for the purposes of the Rules without requiring those actions to be repeated under the Rules; and

- c. other than the waivers of the Rules granted in this class waiver, Migrating Issuers will be required to fully comply with the Rules in all other respects.

## Appendix Two

### NZX Listing Rules – 1 January 2019

## Section 1 Listing and Quotation

### Eligibility requirements for Equity, Debt & Fund Securities

#### 1.1 Eligibility for Listing as an Issuer of Equity Securities and Quotation of Equity Securities

1.1.1 For an applicant to be Listed on the Main Board, with NZX as its Home Exchange and its Equity Securities Quoted:

- (a) the applicant must have a Governing Document consistent with Rule 2.18 and Rule 2.20 and applicable legislation, and

### Application requirements for Listing and Quotation

#### 1.12 Application for Listing

1.12.1 An applicant may apply to NZX to List on the Main Board or Debt Market if eligible to do so in accordance with the requirements of this Rule 1.12.

1.12.2 The following information and material must be provided with any application to List:

- (a) an executed listing agreement, in a form specified by NZX, to the effect that the applicant will at all times comply with the Rules (or a confirmation that the applicant will execute and provide a listing agreement prior to Listing),
- (b) a copy of the applicant's Governing Document,
- (c) confirmation that any fees prescribed by NZX while Listed will be paid,
- (d) if Quotation of a Class of Financial Products is sought at the time of Listing, the further information specified in Rule 1.13, Rule 1.14, Rule 1.15 or Rule 1.16 (as applicable),
- (e) a copy of the applicant's certificate of incorporation or commensurate document,
- (f) confirmation that the bond or deposit required by Rule 1.23 has been provided, or will be provided prior to Listing,
- (g) the number and details of each Class of Financial Product on issue at the time of the application and, to the extent the number and details are known at the time at which the application is made, of any issue or allotment intended prior to Listing



(other than, in any case, Debt Securities which are not Quoted or not intended to be Quoted and any Class of Financial Product for which application for Quotation is not sought),

- (h) contact details of the applicant (being a phone number, postal address and email address),
- (i) copies of the applicant's annual reports for the last five years, if available,
- (j) all other documents or information as specified in any guidance published by NZX from time to time, and
- (k) any other information or documents that NZX may request.

### **1.13 Application for Quotation of Equity Securities**

1.13.1 An Issuer, or applicant for Listing, may apply to NZX for a Class or Classes of Equity Securities to be Quoted on the Main Board.

1.13.2 The following information and material must be provided with an application under Rule 1.13.1:

- (a) details of the Equity Security for which Quotation is sought, including the number of such Equity Securities (to the extent known at the time at which the application is made) and Class,
- (b) a draft Offer Document or Profile for the Equity Securities, to the extent required under Rule 7.3.1,
- (c) details of proposed arrangements to ensure opportunity for holders to trade on Quotation of the Equity Securities,
- (d) all other documents or information as specified in any guidance published by NZX from time to time, and
- (e) any other information or documents that NZX may request.

### **General rules for all Listings and Quotations**

#### **1.19 NZX discretion as to Listing and Quotation**

1.19.2 NZX may at any time impose conditions on an applicant for Listing or Issuer which must be fulfilled in order to obtain or maintain a Listing or Quotation where NZX considers this necessary or desirable to maintain a properly informed market or to ensure compliance with, or achieve the intent of, any of the Rules. Such conditions will be additional to the Rules.

## Section 2

# Governance Requirements

### Governance requirements for Equity Security Issuers

#### 2.2 Appointment of Directors

2.2.1 A person may be appointed as a Director of the Issuer by:

- (a) appointment by the Board, if permitted by the Governing Document of the Issuer,
- (b) nomination and appointment at an Issuer's annual or special meeting of Equity Security holders in accordance with Rule 2.3,
- (c) appointment by an Equity Security holder, as contemplated in Rule 2.4, or
- (d) appointment as an alternate Director under Rule 2.5.

#### 2.3 Director Nominations and Appointment

2.3.1 No person (other than a Director retiring at the meeting) may be elected as a Director at a meeting of an Issuer's Equity Security holders unless that person has been nominated by an Equity Security holder who will be entitled to attend and Vote at the meeting if he, she or it continues to hold Equity Securities on the date on which the entitlement to attend and Vote at the meeting is determined.

2.3.2 An Issuer must comply with the following Director nomination process:

- (a) the closing date for nominations must be no more than two months before the date of the relevant meeting at which the election is to take place,
- (b) the closing date for nominations must be announced to the market at least 10 Business Days prior to such closing date,
- (c) there must be no restriction on who may be nominated as a Director, unless:
  - (i) the Governing Document requires Directors to hold certain Financial Products to qualify as a Director, or
  - (ii) applicable legislation restricts who may be a Director of the Issuer,
- (d) subject to (c) above, there must be no precondition to the nomination of a Director other than compliance with the time limits in this Rule, and
- (e) details of all nominations received prior to the closing date (and not later withdrawn) must be included in the notice of the relevant meeting.

2.3.3 Each resolution of the holders of Equity Securities to appoint, elect or re-elect a Director must be for the appointment, election or re-election of one Director only.

## **2.4 Equity Holder appointment rights**

- 2.4.1 The Governing Document may give an Equity Security holder the right to appoint one or more Directors (and to remove any Director so appointed), provided:
- (a) the appointment does not result in the proportion of such Directors to the total number of Directors (excluding alternate Directors) exceeding the proportion of total Votes attaching to the Equity Securities in the Issuer held by the appointer, and
  - (b) if the appointer exercises its right to appoint one or more Directors with such Director remaining in office at the time of the election of other Directors, the appointer must not also Vote upon the election of other Directors.

## **2.5 Alternate Directors**

- 2.5.1 No Director may appoint an alternate Director to act for him or her except with the consent of a majority of his or her co-Directors. The alternate appointment may be revoked by the appointing Director or by a majority of the Board. A Director may not act as alternate for another Director. No Director may appoint a deputy or agent otherwise than as an alternate Director.

## **2.6 Independence of Directors**

- 2.6.1 The Board must identify which Directors it has determined to be Independent Directors, having had regard to the non-exhaustive factors described in the NZX Corporate Governance Code that may impact director independence.
- 2.6.2 The determination under Rule 2.6.1 as to whether a Director is an Independent Director must be made and released through MAP no later than 10 Business Days after any Director's initial appointment.
- 2.6.3 If, at any time, the Board makes a determination regarding a Director's independence that differs from the position most recently released through MAP (for example, that an Independent Director is no longer independent), such determination must be promptly and without delay released through MAP.
- 2.6.4 The Issuer is responsible for ensuring that Directors provide sufficient information to the Board for the Board to make a determination under Rule 2.6.1.

## **2.7 Rotation of Directors**

- 2.7.1 A Director of an Issuer must not hold office (without re-election) past the third annual meeting following the Director's appointment or 3 years, whichever is longer. However, a Director appointed by the Board must not hold office (without re-election) past the next annual meeting following the Director's appointment.
- 2.7.2 Rule 2.7.1 does not apply to Directors appointed by an Equity Security holder under Rule 2.4.

## **2.8 Removal of Directors**

- 2.8.1 All Directors (other than a Director appointed by an Equity Security holder under Rule 2.4) must be subject to removal from office by Ordinary Resolution.

## 2.9 **Proceedings and Powers of Directors**

2.9.1 Directors may continue to act where there is a vacancy in their body, but where the number of Directors has fallen below the minimum set by the Governing Document, the continuing Directors may act to remedy the shortfall in Directors or to summon a meeting of the Issuer's Equity Security holders, but for no other purpose.

## 2.10 **Interested Directors**

2.10.1 A Director must not vote on a Board resolution for, or be counted in a quorum for the consideration of, any matter in which that Director is interested. For this purpose, the term "interested" bears the meaning assigned in section 139 of the Companies Act 1993. If the Issuer is not a company registered under that Act, the reference to the "company" in that section will be read as a reference to the Issuer.

2.10.2 Notwithstanding Rule 2.10.1, a Director of an Issuer incorporated under the Companies Act 1993 may vote on a Board resolution for, and be counted in a quorum for the consideration of, a matter in which that Director has an interest, if the matter:

- (a) is one in respect of which Directors are expressly required under that Act to sign a certificate, or
- (b) relates to the grant of indemnity under section 162 of that Act.

## 2.11 **Directors' Remuneration**

2.11.1 No remuneration may be paid by an Issuer, or its Subsidiaries (unless such Subsidiary is Listed), to a Director in his or her capacity as a Director without prior authorisation by an Ordinary Resolution. Such resolution must express Directors' remuneration as either a monetary sum per annum payable to:

- (a) all Directors of the Issuer in aggregate, or
- (b) any person who from time to time holds office as a Director of the Issuer.

2.11.2 A resolution for the purposes of Rule 2.11.1:

- (a) must only be approved if notice of the amount of any increase in remuneration has been given in the notice of meeting, and
- (b) may provide that the remuneration may, in whole or in part, be through an issue of Equity Securities, provided the issue is in compliance with Rule 4.7.

2.11.3 If remuneration is expressed in accordance with Rule 2.11.1(a) and there is an increase in the number of Directors from the number when the remuneration was approved by an Ordinary Resolution, the Board may, without an Ordinary Resolution, increase the remuneration payable to all Directors of the Issuer in aggregate. The amount of the increase per additional Director may not exceed the amount necessary to enable the additional Director or Directors to be paid the average amount then being paid to each non-Executive Director (other than the chairperson) of the Issuer.

2.11.4 A lump sum payment or pension may be made to a Director or former Director, or to his or her dependents, on retirement or cessation of office provided that the amount of the payment, or the method of calculation, has been authorised by an Ordinary Resolution.

2.11.5 The resolutions referred to in this Rule 2.11 are subject to the voting restrictions in Rule 6.3.

## 2.12 **Directors' Remuneration as Employees or in another capacity**

2.12.1 Nothing in Rule 2.11 affects:

- (a) the remuneration of Executive Directors in their capacity as Employees, or
- (b) the amount paid to an Executive Director upon or in connection with the termination of his or her employment with the Issuer, or any payments relating to the contribution (or any normal subsidy related thereto) made by a Director to a superannuation scheme.

2.12.2 A Director's remuneration for work outside his or her capacity as a Director of the Issuer or a Subsidiary may be approved by the Directors without Shareholder approval, subject to Rule 5.2 (if applicable).

## 2.13 **Audit Committee**

2.13.1 Each Issuer must establish an Audit Committee.

2.13.2 The Audit Committee must:

- (a) be comprised solely of Directors of the Issuer,
- (b) have at least three members,
- (c) have a majority of Independent Directors, and
- (d) have at least one member with an accounting or financial background.

2.13.3 The responsibilities of an Issuer's Audit Committee include as a minimum:

- (a) ensuring processes are in place and monitoring those processes so that the Board is properly and regularly informed and updated on corporate financial matters,
- (b) recommending the appointment and removal of the independent auditor,
- (c) meeting regularly to monitor and review the independent and internal auditing practices,
- (d) having direct communication with and unrestricted access to the independent and any internal auditors or accountants,
- (e) reviewing the financial reports and advising all Directors whether they comply with the appropriate laws and regulations, and
- (f) ensuring that the Key Audit Partner is changed at least every five year

## **Governing Document requirements for all Issuers**

### **2.18 Requirement to have Governing Document**

2.18.1 An Issuer must:

- (a) have a Governing Document that complies with the applicable provisions of this Section 2, and

## **Governing Document requirements for Issuers of Equity Securities**

### **2.20 Content of Governing Document for Issuers of Equity Securities**

2.20.1 The Governing Document of each Issuer of Quoted Equity Securities must:

- (a) incorporate by reference provisions consistent with, and having the same effect as, the following provisions, as modified by any Ruling relevant to the Issuer:
  - (i) Rule 2.1.1, Rule 2.2.1, Rule 2.5.1, Rule 2.8.1, Rule 2.9.1, Rule 2.10.1 and Rule 2.10.2,
  - (ii) Rule 6.3.1 to Rule 6.3.3, and Rule 6.3.5, and
  - (iii) if the Issuer is not a company incorporated under the Companies Act 1993, Rule 6.7.1,
- (b) in the case of any non-Code Company, incorporate by reference the provisions required by Appendix 3,
- (c) provide that, for so long as the Issuer is Listed, the Issuer must comply with the Rules, and
- (d) provide that any Rulings authorising an act or omission which would otherwise be in breach of the Issuer's Governing Document will be deemed to be authorised by the Governing Document unless the Governing Document contains a contrary intention, and
- (e) provide that, subject to (d), if a provision in the Governing Document is inconsistent with the Rules, the Rules will prevail.

## **Section 3 Disclosure**

### **Periodic disclosure – Equity and Debt Securities**

#### **3.5 Results Announcement**

3.5.1 Subject to Rule 3.5.3, each Issuer of Quoted Equity Securities or Quoted Debt Securities must release a Results Announcement through MAP no later than 60 days after the end of each financial year or half year.

### 3.6 Preparation and delivery of Annual Reports

3.6.1 Each Issuer of Quoted Equity Securities or Quoted Debt Securities must within three months after the end of each financial year:

- (a) prepare an annual report, which must contain all information required by all applicable laws and these Rules, and
- (b) deliver, subject to Rule 3.6.2, the annual report to:
  - (i) NZX by release through MAP (including by URL link to the annual report on an Issuer's website) before or at the same time as it is made available to Quoted Financial Product holders, and
  - (ii) each Quoted Financial Product holder in accordance with Rule 3.6.3.

3.6.2 An Issuer that comes within the State-Owned Enterprises Act 1986 is not required to issue an annual report to its Quoted Financial Product holders or NZX until that report has been provided to the Minister responsible for the State Enterprise in accordance with the requirements of the State-Owned Enterprises Act 1986 and laid by the Minister responsible for that State Enterprise before the House of Representatives in accordance with the State Owned Enterprises Act 1986 or published in the Gazette under section 17(2A) of the State-Owned Enterprises Act 1986, whichever is the earlier.

3.6.3 Annual reports must be made available to Quoted Financial Product holders by:

- (a) sending to Quoted Financial Product holders:
  - (i) a hard copy of the annual report, or
  - (ii) a notice under 209(3) of the Companies Act 1993, or
- (b) complying with regulations 61B to 61F of the FMC Regulations.

For the purposes of this Rule 3.6.3, sections 209 to 209C of the Companies Act 1993 and regulations 61B to 61F of the FMC Regulations will be deemed to be modified so that:

- (c) "shareholders" are members of the relevant Class of Quoted Financial Product holders of that Issuer,
- (d) "company" includes all Issuers, whatever their structure,
- (e) "board of a company" includes the Manager of a Managed Investment Scheme,
- (f) "annual report" means an annual report as required by Rule 3.6.1,
- (g) references to "working days after it is prepared" and "working days after the annual report for the period is prepared" are, for an Issuer that is a State Enterprise complying with regulations 61B to 61F of the FMC Regulations, interpreted as "working days after the annual report has been provided to the Minister responsible for the State Enterprise in accordance with the requirements of the State-Owned Enterprises Act 1986 and laid by that Minister responsible for that State Enterprise before the House of Representatives in accordance with the State Owned Enterprises Act 1986 or published in the Gazette under section 17(2A) of the State-Owned Enterprises Act 1986, whichever is the earlier."



### **3.7 Contents of Annual Report**

3.7.1 The annual report of an Issuer of Quoted Equity Securities or Quoted Debt Securities must contain:

- (h) details of any public exercise of NZX's powers set out in Rule 9.9.3, and

### **3.8 Further Annual Report content for Issuers of Equity Securities**

3.8.1 Further to the requirements of Rule 3.7.1, the annual report of an Issuer of Quoted Equity Securities must also contain:

- (f) details of any Director who has been appointed under the provisions of the Governing Document complying with Rule 2.4, and the Financial Product holder which appointed that Director.

## **Section 4 Changes to Capital**

### **Rules applying to Issuers of Equity Securities**

#### **4.1 Issue of New Equity Securities**

4.1.1 Except as provided in Rule 4.1.2, an Issuer must only issue Equity Securities with approval by Ordinary Resolution in accordance with Rule 4.2.1.

#### **4.2 Shareholder approval for Issues by Ordinary Resolution**

4.2.1 For the holders of Equity Securities to approve an issue of Equity Securities by the Issuer, the precise terms and conditions of the issue must have been approved by:

- (b) if a Class of Quoted Equity Securities were issued on terms that the holders would vote together with the holders of another Class or Classes of Equity Securities on a resolution of the nature referred to in Rule 4.2.1(a), a single resolution of all such Classes of Equity Securities voting together.

4.2.4 Except as provided in Rules 6.5.1, 6.5.2 and 6.5.3, no Issuer may re-price or amend the terms of any Equity Securities issued under Rule 4.2.1 held by Employees or Directors, in their capacity as such, without either the approval of NZX or a further Ordinary Resolution of the Quoted Equity Security holders approving the repricing or amendment.

#### **4.5 15% Placements**

4.5.1 An Issuer may issue Equity Securities provided the number to be issued, together with all other Equity Securities of the same Class issued under this Rule 4.5.1 over the shorter of the previous 12 months or the period since the Issuer was Listed, will not exceed the aggregate of:

- (a) 15% of the Equity Securities of that Class on issue at the beginning of that period, and
- (b) 15% of the Equity Securities of that Class issued during that period under any of Rules 4.2.1, 4.3, 4.4.1(a), 4.6, 4.8.1 and 4.9, and

- (c) any Equity Securities of that Class issued under this Rule 4.5.1 during that period, the issue of which has been ratified by an Ordinary Resolution (such resolution being subject to the voting restrictions in Rule 6.3), less
- (d) 15% of Equity Securities of that Class which have been acquired or redeemed by the Issuer during that period (other than Equity Securities held as Treasury Stock),

provided that:

- (e) Employees and Directors of the Issuer, and Associated Persons of a Director of the Issuer may participate only if:
  - (i) all Directors voting in favour of the resolution to issue the Equity Securities sign a certificate that the participation of such persons is in the best interests of the Issuer and fair to other Equity Security holders,
  - (ii) the terms of issue are the same for all persons participating in the issue and such persons are not exclusively Employees and / or Directors of the Issuer and / or Associated Persons of a Director of the Issuer, and
  - (iii) the level of participation of any Employee, Director or Associated Person of a Director, is determined according to criteria applying to all persons participating in the issue, and
- (f) Financial Products which may Convert to Quoted Equity Securities are deemed to be of the same Class as the Quoted Equity Securities into which they may Convert, and
- (g) the Financial Products referred to in paragraph (f) are deemed to be of the same number as the Quoted Equity Securities to which they may Convert, except that for the purpose of this calculation:
  - (i) in relation to the conversion ratio or conversion price, any reference to the market price (however described) of the underlying Quoted Equity Securities will instead be to the Average Market Price, and
- (ii) any provisions for early Conversion at the option of a holder exercisable in limited circumstances (such as due to an event of default or change of control or similar) using a different formula or method will be disregarded.

#### 4.6 **3% Issues to Employees and Executive Directors**

4.6.1 An Issuer may issue Equity Securities if:

- (a) the issue is made to, or to a trustee to hold for the benefit of, Employees and may include Employees that are Directors or Associated Persons of Directors only if their participation satisfies the allocation criteria applying to Employees generally,
- (b) the issue is of a Class of Equity Securities already on issue, and
- (c) the number to be issued, together with all other Equity Securities of the same Class issued under this Rule 4.6.1 over the shorter of the previous 12 months or the period since the Issuer was Listed, will not exceed 3% of the aggregate of:

- (i) the total number of Equity Securities of that Class on issue at the commencement of that period, and
- (ii) the total number of Equity Securities of that Class issued during that period under Rules 4.2.1, 4.3, 4.5.1, 4.8 and 4.9,

provided that for the purposes of this Rule 4.6.1:

- (d) Financial Products which may Convert to Quoted Equity Securities are deemed to correspond in number to, and be deemed to be of the same Class as, the Quoted Equity Securities into which they may Convert, and
- (e) if the conversion ratio is fixed by reference to the market price of the underlying Equity Securities, unless otherwise specified in the issue terms, this is the Average Market Price.

#### **4.7 Issues to Directors as remuneration**

4.7.1 An Issuer may issue Equity Securities to a Director (or a person at the direction of the Director) if:

- (a) the issue is made to satisfy Director remuneration in accordance with a resolution passed under Rule 2.11.2,
- (b) the issue is of a Class of Equity Securities already on issue,
- (c) the issue of Equity Securities is made after the end of the period to which that remuneration is payable, and
- (d) the issue price of the Equity Securities is not less than the Average Market Price before the issue is made.

#### **4.9 Issues relating to takeovers, conversions, minimum holdings and amalgamations**

4.9.1 An Issuer may issue Equity Securities if:

- (a) the issue is in consideration of an offer made by the Issuer in accordance with:
  - (i) the Takeovers Code or a scheme of arrangement under Part 15 of the Companies Act 1993, or
  - (ii) the takeover regime of a jurisdiction other than New Zealand which NZX considers provides a similar or greater level of protection to the recipients of the offer as the Takeovers Code or Appendix 3, and

the offer is made to all holders (other than the Issuer) of any Equity Securities in any other entities Listed on the Main Board or on another stock exchange, except if the other entity is an Associated Person of the Issuer or of any Director of the Issuer,

- (b) the issue of Equity Securities (Security B) is made on Conversion of any Financial Product (Security A), and

- (i) the terms of issue of Security A provided for the Conversion to Security B and the issue of Security A was approved in the manner set out in Rule 4.2.1 or Security A was issued in accordance with any of Rules 4.3, 4.5.1, 4.6, 4.8 or 4.9.1(a) (whether or not any of the Rules quoted applied to the issue of Security A), or
- (ii) the issue of Security B is approved in the manner set out in Rule 4.2.1, or Security B is issued in accordance with Rule 4.5.1 or Rule 4.6,
- (c) the issue is made to bring an existing holder's holding up to a Minimum Holding, or
- (d) the issue is made under an arrangement, amalgamation or compromise effected through Part 13 or Part 15 of the Companies Act 1993 or an equivalent statutory regime in a jurisdiction other than New Zealand which NZX considers is at least as useful to the recipients.

#### 4.14 Buy Backs and Redemption of Equity Securities

4.14.1 An Issuer may only acquire or redeem Equity Securities of that Issuer by:

- (a) an acquisition effected through NZX's order matching market or through the order matching market of an Issuer's Home Exchange,
- (b) an acquisition effected in compliance with:
  - (i) section 60(1)(a) (read together with section 60(2)) of the Companies Act 1993,
  - (ii) section 60(1)(b)(ii) (read together with section 61) of the Companies Act 1993, and:
    - (A) not made from a Director, or an Associated Person of a Director, of the Issuer, and
    - (B) not of a size which would cause the number of Equity Securities of the same Class acquired under this Rule 4.14.1(b)(ii) either in the 12 months preceding the date of the acquisition or since the issuer was listed, whichever is earlier, to exceed 15% of the total number of Equity Securities of the same Class on issue at the commencement of that period,
  - (iii) section 61(7) of the Companies Act 1993, or
  - (iv) sections 110 or 118 of the Companies Act 1993, or other applicable legislation, if required by a shareholder pursuant to such sections or legislation,
- (c) a redemption in compliance with section 69(1)(a) of the Companies Act 1993,
- (d) an acquisition or redemption:
  - (i) approved in accordance with Rule 4.16.1,

- (ii) of Equity Securities that were issued under Rule 4.6, or
- (iii) from a holder who holds less than a Minimum Holding, or
- (e) a redemption of Equity Securities issued in compliance with Rule 4.2.1 or 4.3, where the Issuer is bound or entitled to redeem those Equity Securities pursuant to their terms of issue,

provided that for the purposes of Rule 4.14.1(b)(ii)(B):

- (f) Financial Products which may convert to Quoted Equity Securities are deemed to be of the same Class as the Quoted Equity Securities into which they may convert, and
- (g) the Financial Products referred to in paragraph (f) are deemed to be of the same number as the Quoted Equity Securities to which they may Convert, except that for the purpose of this calculation:
  - (i) in relation to the conversion ratio or conversion price, any reference to the market price (however described) of the underlying Quoted Equity Securities will instead be to the Average Market Price, and
  - (ii) any provisions for early Conversion at the option of a holder exercisable in limited circumstances (such as due to an event of default or change of control or similar) using a different formula or method will be disregarded.

#### 4.15 Financial Assistance

4.15.1 An Issuer must not give financial assistance for the purpose of, or in connection with, the acquisition of its Equity Securities except if that assistance:

- (a) complies with Rule 4.15.2, or
- (b) is approved in accordance with Rule 4.16.1.

4.15.2 An Issuer may give financial assistance of the nature referred to in Rule 4.15.1 provided:

- (a) such assistance is not given (either in whole or in part) to any Employee, Director, or Associated Person of a Director, and the amount, together with any other financial assistance given under this paragraph (a) over the preceding 12 months or since the Issuer was listed, whichever is the shorter, does not exceed 10% of the Average Market Capitalisation of the Issuer, or
- (b) such assistance is given to Employees of the Issuer and:
  - (i) the amount, together with all other financial assistance given under this paragraph (b) by the Issuer during:
    - (A) the shorter of the preceding three years or the period from the date on which the Issuer was Listed, will not exceed \$1 million, or
    - (B) the shorter of the preceding 12 months or the period from the date on which the Issuer was Listed, will not exceed 5% of the Average Market Capitalisation of the Issuer, and

- (ii) the amount, together with all other financial assistance given under Rule 4.15.2(b)(i) during the shorter of the preceding five years or the period from the date on which the Issuer was Listed does not exceed 10% of the Average Market Capitalisation of the Issuer, and
  - (iii) may only be given to a Director of the Issuer who is an Employee, or Associated Person of such Director, if their participation satisfies the allocation criteria applying to Employees generally, or
- (c) all holders of Equity Securities of the Issuer are treated, or given the opportunity to be treated, on the same basis.
- 4.15.3 For the purposes of Rule 4.15.2(b)(iii) financial assistance given to a Director or an Associated Person of a Director solely in that person's capacity as a trustee of a bona fide employee share or superannuation scheme or suchlike, in which that Director or Associated Person has no beneficial interest, is deemed not to be financial assistance given to a Director or Associated Person of a Director.
- 4.16 Shareholder approval of buy backs, redemption and financial assistance**
- 4.16.1 An Issuer may acquire or redeem Equity Securities under Rule 4.14.1(d)(i) or give financial assistance under Rule 4.15.1(b) if the precise terms and conditions of the transaction have been approved by separate resolutions (passed by a simple majority of Votes) of the holders of each Class of Quoted Equity Securities whose rights or entitlements will be materially and similarly affected.

## Section 5

### Major and Related Party Transactions

#### Rules applying to Equity Issuers

##### 5.1 Disposal or Acquisition of Assets

- 5.1.1 An Issuer must not enter into any transaction, or a related series of transactions, to acquire, sell, lease (whether as lessor or lessee), exchange, or otherwise (except by way of charge) dispose of assets where the transaction or related series of transactions:
- (a) would significantly change, either directly or indirectly, the nature of the Issuer's business, or
  - (b) involves a Gross Value above 50% of the Average Market Capitalisation of the Issuer,
- unless the transaction, or related series of transactions, is:
- (c) approved by an Ordinary Resolution, or a special resolution if approval by way of special resolution is required under section 129 of the Companies Act 1993, or
  - (d) conditional upon such approval required by paragraph (c) above.

## 5.2 Transactions with Related Parties

5.2.1 An Issuer must not enter into a Material Transaction if a Related Party is, or is likely to become:

- (a) a direct party to the Material Transaction, or
- (b) a beneficiary of a guarantee or other transaction which is a Material Transaction,

unless that Material Transaction is approved by an Ordinary Resolution (such resolution being subject to the voting restrictions in Rule 6.3) or conditional on such approval.

# Section 7

## Requirements for Documents

### NZX Review of documents

#### 7.1 NZX to review documents

7.1.1 The documents listed in Rule 7.1.2 must not be circulated to holders of Financial Products, executed or otherwise given effect to in any way, until NZX provides written confirmation that it does not object to the document.

# Section 8

## Transfers and Statements

### Transfers

#### 8.1 Transfer of Quoted Financial Products (common rules)

8.1.6 The Governing Document of an Issuer may:

- (a) restrict the transfer of Debt Securities by requiring that holders must hold those Debt Securities in a specified minimum nominal amount (of no more than \$10,000, or such higher amount as NZX may specify from time to time) and/or in integral multiples of a specified nominal amount (of no more than \$1,000, or such higher amount as NZX may specify from time to time),

### Statements

#### 8.3 Statements

8.3.2 An Issuer is not obliged to provide a holder with the Statement required by Rule 8.3.1 if:

- (a) such a Statement has been provided within the previous six months, and
- (b) the holder has not acquired or disposed of Financial Products of the relevant Class since a previous Statement required by Rule 8.3.1 or Rule 8.3.3 was provided.

8.3.4 Where the Statement required by Rule 8.3.3 is issued following a transfer, the Statement must include:



- (b) the number of Financial Products transferred (to or from the holder) in each transfer since the last Statement.

## NZAX Listing Rules - 22 May 2017

### Section 3: Constitutions and Directors

#### 3.2 Appointment and Rotation of Directors

3.2.2 No person (other than a Director retiring at the meeting) shall be elected as a Director at an annual meeting of Security holders of an NZAX Issuer unless that person has been nominated by a Security holder entitled to attend and vote at the meeting. There shall be no restriction on the persons who may be nominated as Directors (other than the holding of qualification shares, if the Constitution so requires) nor shall there be any precondition to the nomination of a Director other than compliance with time limits in accordance with this Rule 3.2.2. The closing date for nominations shall not be more than two months before the date of the annual meeting at which the election is to take place. An NZAX Issuer shall make an announcement to the market of the closing date for Director Nominations and the contact details for making nominations no less than 10 Business Days prior to the closing date for Director nominations. Notice of every nomination received by the NZAX Issuer before the closing date for nominations shall be given by the NZAX Issuer to all persons entitled to attend the meeting together with, or as part of, the notice of the meeting.

3.2.9 A holder of a special office in terms of Rule 3.2.8 who is also a Director shall not be subject to retirement by rotation under Rule 3.2.6, provided that:

- (a) the holder of a special office shall retire every fifth year following appointment to the special office, as if Rule 3.2.6 applied to him or her in that year; and
- (b) the holder of the special office shall in each year be included in the number of Directors upon which the calculation for the purposes of Rule 3.2.6 is based; and
- (c) if an Executive Director holds office and is exempted from retirement by rotation under Rule 3.2.7, this Rule shall not apply, and the holder of the special office shall be subject to retirement by rotation under Rule 3.2.6.

#### 3.3 Proceedings and Powers of Directors

3.3.1 Directors may act notwithstanding any vacancy in their body but, if and for so long as their number is reduced below the number fixed by the Constitution as the minimum number of Directors, the continuing Directors may act for the purpose of increasing the number of Directors to that number or of summoning an annual meeting of the NZAX Issuer, but for no other purpose.

3.3.2 In cases where two Directors form a quorum, the chairperson of a meeting at which only two Directors are present shall not have a casting vote.

3.3.3 Subject to Rule 3.3.4, a Director shall not vote on a Board resolution in respect of any matter in which that Director is interested, nor shall the Director be counted in the quorum for the purposes of consideration of that matter. For this purpose, the term "interested"

bears the meaning assigned to that term in section 139 of the Companies Act 1993, on the basis that if an NZAX Issuer is not a company registered under that Act, the reference to the "company" in that section shall be read as a reference to the NZAX Issuer.

- 3.3.4 Notwithstanding Rule 3.3.3, a Director of an NZAX Issuer which is a company registered under the Companies Act 1993 may vote in respect of and be counted in the quorum for the Board for the purposes of a matter in which that Director is interested if that matter is one in respect of which, pursuant to an express provision of that Act, Directors are required to sign a certificate or one which relates to the grant of an indemnity pursuant to section 162 of the Companies Act 1993.

## Section 6: Approval of Documents by NZX

### 6.1 Approval

- 6.1.1 The documents listed below shall be subject to the approval of NZX, and shall not be circulated to holders of Securities, executed, or otherwise given effect to in any way, until the written approval of NZX is obtained.

- (a) any Constitution including any proposed changes to any Constitution; and
- (b) any notice of a meeting of holders of Quoted Securities to consider any matter other than declaring a dividend, the consideration of financial statements and reports of Directors or auditors, the election of Directors, the fixing of the remuneration of Directors, a change of name of the NZAX Issuer, or the appointment of, and fixing of remuneration of, auditors, or a resolution required or permitted under the Takeovers Code; and
- (c) any Offering Document, Prospectus or Disclosure Document provided pursuant to Rule 7.1.1 or 7.1.3; and
- (d) any Pre Break Announcement made pursuant to Rule 10.2.

NZX will not look favourably upon resolutions contained in notices of meeting of holders of Quoted Securities which purport to confer on the Board discretions to undertake certain transactions, where the material details of such transactions are not settled or cannot be disclosed and adequately explained to the Quoted Security holder to enable that Quoted Security holder to make an informed decision whether to vote in favour of that resolution, and NZX may decline to approve any notice of meeting which contains such resolutions.

- 6.1.2 Any Constitution (or proposed changes to a Constitution) shall be submitted to NZX for approval along with a certificate from the solicitor for the NZAX Issuer. That certificate shall be addressed to NZX, in a form satisfactory to NZX and shall confirm that the Constitution complies with the Rules.
- 6.1.3 Each document referred to in Rule 6.1.1 shall be submitted to NZX in draft form for approval at least 10 Business Days before that document is intended to be circulated, executed, or otherwise given effect to (or, if that document is to be printed, 10 Business Days before printing is intended to commence).
- 6.1.4 Each document referred to in Rule 6.1.1 shall be submitted in its proposed full form, and if more than one document is required to be approved, they shall be submitted together. If an Appraisal Report is required to accompany a notice of meeting, a draft of that

Appraisal Report shall be submitted together with the draft of the notice of meeting. The period of 10 Business Days referred to in Rule 6.1.3 shall not commence until NZX has received all relevant documents in their proposed final form. If any alteration is made to a document already submitted (that alteration not being required as a consequence of NZX's review of that document), NZX may regard in its absolute discretion that period of 10 Business Days as commencing at the time that alteration is received by NZX.

## NXT Market Rules - 26 September 2014

### Section 2 – Ongoing Requirements – Corporate Governance

#### Board composition and board rotation

6. The board of a NXT company may appoint a person to be a director of the NXT company. Directors appointed by the board must retire at the next annual meeting and may be reappointed by shareholders at that meeting.
7. The shareholders of a NXT company may appoint or reappoint a person to be a director of the NXT company at a shareholders' meeting but only if:
  - (a) that person retired at that meeting under rule 6, rule 9 or rule 10; or
  - (b) the person was nominated for appointment at that meeting by a shareholder entitled to vote at the meeting.

A resolution put for approval under this rule may only relate to the appointment of one person as director and the notice of meeting must state whether or not in the board's view, that person would be an independent director. Nothing in this rule prevents a ballot or poll to determine who should be elected to the board.

8. A NXT company must set a closing date for shareholders to nominate persons for appointment as a director for every annual meeting, which date must be no earlier than 2 months before the annual meeting. A NXT company must release the closing date for nomination no less than 10 business days prior to the closing date.
9. At least one-third of the directors of a NXT company who are the longest standing in office must retire as directors at each annual meeting and may be reappointed under rule 7. An executive director is not required to retire under this rule, but must be included in the calculation of the number of directors required to retire. A director retiring under rule 6 must not be included in the calculation of the number of directors required to retire.
10. An executive director must retire as director at an annual meeting at least every 5 years, and may be reappointed under rule 7.
11. The shareholders of a NXT company may remove a director by ordinary resolution.

12. If a NXT company appoints a person to be a director, then it must give to NZX Regulation an acknowledgement by that person in the form set out in template within 10 business days of appointment.
13. The board of a NXT company may continue to act if there is a board vacancy, but if there are fewer than three directors on the board of a NXT company, then the directors may only act for the purposes of appointing directors to comply with rule 5, or to call a shareholders' meeting for the purpose of appointing one or more directors or to consider a resolution to appoint a liquidator.
14. If a quorum of a NXT company board comprises only two directors, then the chairperson of that meeting may not have a casting or second vote.
15. A director of a NXT company may only appoint a person to be an alternate director with the prior consent of the board. An alternate director's appointment may be revoked by the board or by the director who appointed the alternate. No director of a NXT company may be an alternate director for another director of that NXT company.

### **Audit**

17. A NXT company must have an audit committee of the board with a minimum of three directors of the NXT company and at least one member must have relevant accounting experience. A majority of the audit committee must be independent directors. The responsibilities of the audit committee must be set by the board and include the matters set out in Schedule 2A (Minimum Audit Committee Requirements).
18. A NXT company must have a qualified auditor. The qualified auditor or lead audit partner must change at least every five years.

## **Section 8 - NZX**

### **Approval of documents by NZX Regulation**

95. Subject to rule 96 a NXT company must give a draft of any notice of shareholder meeting, transaction announcement, or other document that requires NZX approval under these rules and the procedures to NZX Regulation no less than 10 business days prior to the proposed date for release, or where NZX approval is required under rule 27, no less than 10 business days before the offer is made, and must not release the document or make the offer (as the case may be) prior to receiving NZX approval.