



NEW ZEALAND'S EXCHANGE  
TE PAEHOKO O AOTEAROA

# NZX Listing Rules Hygiene Review

Consultation Paper

June 2021

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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

The purpose of this hygiene review is to improve the operation of the Rules and Guidance Notes, by making minor and typographical amendments that will reduce ambiguity and clarify the policy settings contained in the Rules. NZX is not proposing any substantive policy change through this Rule review process.

## Consultation Process

NZX wishes to consult on the proposed amendments to the NZX Listing Rules (**Rules**) and associated Guidance Notes, that accompany this Consultation Paper. NZX also seeks comments on a proposed new Practice Note and revised corporate action notice.

We invite interested parties to provide their views on the proposed amendments by emailing a written submission to [policy@nzx.com](mailto:policy@nzx.com). The closing date for submissions is **Friday 30 July 2021**.

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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## Introduction

In 2017, NZX commenced the first holistic review of the policy settings contained in the Rules in 15 years. After extensive consultation, NZX finalised substantial amendments to the Rules, that were designed to:

- reduce complexity with the three equity market structure and build scale in the NZX Main Board;
- enhance investor protections to increase confidence and participation in NZX's markets and reduce the cost of capital for Issuers;
- accommodate the listing of a broader range of financial products and Issuers with fit for purpose Rules for smaller issuers, funds and debt issuers;
- improve access for foreign listings to expand the range of investable products for New Zealand investors; and
- remove unnecessary compliance costs, introduce tools to reduce the cost of compliance and ensure the Rules are easy to navigate and use.

Subsequent to the extensive amendments becoming effective on 1 January 2019, Issuers and legal advisors have highlighted unintended technical consequences of the Rules, which NZX is endeavouring to address through this hygiene review. NZX would like to thank those who took the time to bring these matters to our attention.

NZX notes that some stakeholders have raised more substantive matters which would alter the policy settings contained in the Rules, including in respect of corporate governance (which will be considered as part of the review of the Corporate Governance Code later this year), and capital raisings. NZX is not proposing policy changes to the settings contained in the Rules as part of the current hygiene review.

## Summary of the Proposed Amendments

The exposure draft of the Rules is attached to this consultation paper. The exposure draft contains a number of minor and typographical amendments to the Rules, along with the following amendments:

- all references to “Financial Reporting Standards” have been amended to “New Zealand IFRS” as the definition of Financial Reporting Standards has been removed from the Rules;
- paragraph (c) of the definition of a “Schedule 1 Offer Document” has been expanded and clarified to specifically include a reference to a document relating to an offer of Quoted Debt Securities or Quoted Fund Securities in accordance with clause 19 of Schedule 1 of the Financial Markets Conduct Act 2013 (**FMC Act**);
- the definition of “Wholesale Debt Securities” is amended to clarify that the definition refers to Debt Securities *for which NZX has accepted an application under Rule 1.8.1* which are issued to wholesale investors under Schedule 1 of the FMC Act. This change clarifies that the Rules do not apply to all wholesale debt securities that are issued by an Issuer but only those for which a listing application has been accepted;
- Rule 1.9 and Rule 3.13.1 are amended so that capital change notices must be provided in respect of new issuances of further Wholesale Debt Securities within the same series. This amendment ensures that NZX has appropriate information regarding the number of securities on issue within each Class of Wholesale Debt Securities;

- Rule 2.11.3 allows a Board to increase the aggregate remuneration payable to all Directors in the event of an increase in the number of Directors in office, without seeking an additional Ordinary Resolution. This Rule has been amended to clarify that for the purpose of determining whether there has been an increase in the number of Directors, the Board should determine the number of Directors originally in office at the conclusion of the meeting of Financial Product holders at which the Board remuneration was approved by Ordinary Resolution;
- the definition of a Key Audit Partner has been amended and a new Rule 2.13.4 has been included to reflect the class ruling decision from [May 2019](#);
- Rule 2.19 has been amended to allow barristers sole to provide a solicitor's opinion in respect of a Governing Document;
- Rule 2.21.1 has been amended to restrict the operation of the Rule, to remove the unintended consequence that it could be interpreted to require meeting provisions that satisfy the requirements of Rule 2.21.1 to be included in a Governing Document in relation to Wholesale or unquoted Debt Securities, where the Governing Document also applies to Quoted Debt Securities. This change is to remove the unintended consequence of requiring amendments to master trust deeds that apply to both Quoted and unquoted Debt Securities;
- Rule 3.12.1(d) has been amended to require that at least 5 business days' notice is given to the market of any change in the identity of an Issuer's registrar of Quoted Financial Products. This amendment will support NZX's operational processes for such changes.
- Amendments to Rules 4.6.1(c)(ii), 4.9.1(b)(i), and Rule 4.14.1(e) to refer to Equity Securities issued in the circumstances permitted under Rule 4.4.1. These amendments enable Equity Securities issued under Rule 4.4.1 to be included when calculating the headroom available for issuances to directors and employees, and to allow for the conversion and redemption of Equity Securities issued under Rule 4.4.1;
- Rule 4.11.1(e) has been amended to reflect the class Ruling issued in July 2019, so that the rule does not restrict Convertible Securities being issued on conversion where the consideration payable on conversion is less than 85% of the Average Market Price of the relevant existing Equity Securities. The amendment enables Issuers to utilise a number of current and prospective issuance structures (for example, employee incentive schemes) where the consideration payable is fixed otherwise than by reference to the market price of existing securities;
- Rule 4.14.1(a) has been amended to refer to a "a Recognised Stock Exchange" rather than an "Issuer's Home Exchange". This change allows dual-listed Issuers who have NZX as their Home Exchange to acquire shares as part of an on-market buyback programme on an overseas exchange that is a Recognised Stock Exchange;
- Rule 7.1.2 has been amended so that NZX does not have to provide its non-objection to notices of meeting relating to amendments to a Governing Document, consistent with the [February 2019 ruling](#) decision; and
- Rule 8.3.1 has been amended to require additional information to be included on holding statements consistent with the information that was required under the 2017 Listing Rules;

NZX has become aware that some issuers consider that Rule 6.1 that requires voting to be conducted by poll are unduly burdensome for procedural motions tabled at a meeting. NZX is interested in views of submitters as to whether Rule 6.1.1 should be amended to allow procedural motions to be voted on in the manner contemplated by clause 5 of Schedule 1 of the Companies Act 1993. NZX would also be interested in views of submitters as to an appropriate test that could be adopted to determine whether a motion is procedural in nature.

In addition, a number of minor amendments are proposed to the Guidance Notes which support the Rules, including the following amendments:

- Section 2.5.1 of the Major and Related Party Transactions Guidance Note is amended to clarify that the calculation of the value of a transaction for the purposes of Rule 5.1 should be by reference to “the market value” rather than “*gross market value*” of the relevant assets as currently referred to in the Guidance Note. This change conforms the Guidance Note to the definition of Gross Value contained in the Rules; and
- Section 3.2.3 of the Major and Related Party Transactions Guidance Note is amended so that Rule 5.2.1 applies to “any variation” of Material Transaction as opposed to “any material variation” of Material Transaction.

In addition, NZX is proposing to release a new Practice Note which clarifies the timetable requirements that apply to warrant offers. NZX is also proposing changes to the corporate action notice to clarify when it should be released for different types of corporate actions.

NZX is also consulting on the new draft practice note and amended corporate action notice as part of this hygiene review.

The above amendments and other minor amendments can be viewed in the marked-up versions of the Rules and Guidance Notes which accompany this Consultation Paper.