



Guidance Note

Major and Related Party Transactions

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This guidance is published to help Issuers to understand whether Rule 5.1 or 5.2 applies to a transaction that they propose to enter into. It has been prepared to provide guidance to issuers as to their obligations relating to major transaction and related party transactions under the NZX Listing Rules that take effect from 10 December 2020 (**Rules**).

Under Rule 9.15.1, NZX Limited (**NZX**) may act by and through NZX Regulation Limited (**NZ RegCo**) in performing any function or discharging any power set out in the Rules. References in this Guidance Note to NZX therefore also include NZ RegCo in relation to any regulatory activity or discretion.

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This guidance note applies to the major transaction and related party transaction obligations contained in the NZX Listing Rules. Issuers should note that this guidance note is not intended to be a definitive statement of the application of the Rules in every situation, and is only a guide to NZX’s policy and practice. This guidance note does not limit NZX’s discretion under the rules. This guidance note reflects the Rules and law as at [10 December 2020] which is subject to change. NZX takes no responsibility for any error contained in this guidance note. NZX may replace guidance notes at any time and Issuers should ensure that they have the most recent version of this guidance note by checking NZX’s website at www.nzx.com.

1. Introduction

Under the NZX Listing Rules (**the Rules**), 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.

This guidance is published to help Issuers to understand whether Rule 5.1 or 5.2 applies to a transaction that they propose to enter into.

Unless otherwise defined, capitalised terms in this guidance note have the same meaning as given in the Rules.

2. Major Transactions

2.1 What is a major transaction?

Pursuant to Rule 5.1.1, a transaction, or series of related transactions, may be considered a major transaction if it:

- significantly changes, either directly or indirectly, the nature of the Issuer's business; and/or
- involves a Gross Value above 50% of the Average Market Capitalisation (AMC) of the Issuer.

An Issuer may not enter into a major transaction unless the transaction is first approved by the Issuer's shareholders by ordinary resolution, or is made conditional upon such approval.

The policy behind Rule 5.1.1 is to regulate transactions that are deemed to be so significant to the company, and therefore so likely to impact shareholders' interests, that shareholders should have an opportunity to consider the transaction and exercise their right to vote before the transaction can take effect.

2.1.1 Transactions by subsidiaries

The definition of "issuer" set out in the Glossary to the Rules extends to certain other members of a group of companies in which the issuer is the holding company or has a controlling interest, to the extent that this is necessary to prevent the object of the Rules being frustrated or avoided by the use of a separate legal personality. This means that Rule 5.1.1 applies to transactions entered into by one or more subsidiaries of an Issuer. If an Issuer's subsidiary enters into a transaction that either significantly changes the nature of the business of the Issuer or exceeds 50% of the AMC of the Issuer, the Rule will apply.

2.1.2 Relationship with "major transactions" under the Companies Act 1993

Issuers governed by the Companies Act 1993 (**the Act**) should be aware of the requirement for shareholder approval, by special resolution, for "major transactions" as defined in that section. Transactions that trigger the major transaction test may also trigger the section 129 test, and vice versa. This means that an Issuer may need to meet both requirements for the same transaction or related series of transactions.

Where Rule 5.1.1 applies, but section 129 of the Act does not, then only an ordinary resolution is required to approve the transaction (a simple majority of the votes of those shareholders entitled to vote and voting). Otherwise, if both Rule 5.1.1 and section 129 of the Act apply, then a special resolution is needed (a majority of 75% of the votes of those shareholders entitled to vote and voting).

Relationship with the Backdoor or Reverse Listing Rule

A backdoor or reverse listing is defined as a transaction, or series of related transactions, entered into by an Issuer which would result in a significant change:

- (a) in the ownership of a majority of the Equity Securities carrying Votes, and

- (b) either directly or indirectly, in the nature or scale of its activities, including through the acquisition of a new business.

This type of transaction will almost always be a major transaction under Rule 5.1.1. For further guidance on backdoor and reverse listing, please refer to NZX's Guidance Note [Backdoor and Reverse Listing Transactions](#).

2.2 Is the Issuer acquiring, selling, leasing, exchange or disposing of an asset?

Rule 5.1.1 is concerned with transactions to acquire, sell, lease, exchange or otherwise dispose of assets.

"Assets" is not a defined term in the Rules. However, NZX considers that it has a wide meaning and includes tangible or intangible property of any kind. For the avoidance of doubt, the issue of financial products for cash and payment of a dividend are transactions involving the acquisition or disposal of assets.

NZX notes that any purchase of an asset also generally involves the disposal of cash which is an asset. This may be relevant if the Issuer is paying cash to build an asset, and the market value of the asset is difficult to determine.

2.2.1 Charges excluded

Rule 5.1.1 specifically excludes charges from the major transaction test (floating charges or otherwise). However, the underlying obligation itself may constitute a major transaction if the Issuer is incurring rights under another contract (for example, a loan document).

2.3 What is a Related Series of Transactions?

Transactions cannot be considered in isolation when applying Rule 5.1.1 or Rule 5.2.1. If two or more transactions form part of a "related series of transactions", those transactions must be considered together. This is to prevent a situation where Issuers could avoid the protections provided to shareholders by artificially structuring a large transaction into several smaller transactions.

Example:

An Issuer wishes to buy a residential subdivision. It purchases a number of separate lots under individual sale and purchase agreements. While none of the purchases alone are big enough to constitute a major transaction, taken together those purchases could result in a major transaction.

A major transaction can be comprised in more than one document. Individual transactions do not necessarily need to be cross-conditional to form part of a related series of transactions. Factors that may suggest that two or more transactions form part of a related series include (but are not limited to):

- the transactions are inter-dependent or cross-conditional,
- the transactions are with the same counterparty, or related counterparties,
- the transactions form part of a common commercial strategy underpinning the transactions,
- each transaction was contemplated prior to the entry into the first transaction,
- the Issuer would not have reasonably pursued each transaction individually if the other transaction did not, or may not, occur, and
- the transactions occur together within a short period of time.

NZX notes that entry into and completion of one transaction can subsequently lead to further transactions that are seemingly related but were not previously contemplated.

Example:

An Issuer buys shares in a company to expand its business into a new region. Following the purchase, it must incur additional capital expenditure to satisfy demand in that region. The additional capital expenditures not previously foreseen or forecast by the issuer.

Outcome:

While the acquisition and capital expenditure are connected in the sense that they relate to expansion of the Issuer's business in the new region, NZX would consider that the unforeseen capital expenditure should not be included.

The lack of premeditation of the second transaction when entering into the first transaction makes it artificial to consider them as a related series.

2.3.1 Underwriting Transactions

For the purposes of Rule 5.1.1 and 5.2.1, NZX considers that underwriting and sub-underwriting arrangements are related to the issue of securities to which the underwriting relates. Any underwriting arrangements will be related to the offer (including a contractual commitment by a party to take up its full entitlement under that offer).

Example:

An Issuer proposes to undertake a rights issue which would result in the issue of equity securities having a market value of approximately 45% of that Issuer's AMC. That rights issue would not, of itself, be a major transaction. However, the issuer also proposes to enter into an underwriting agreement in relation to the offer. The aggregate gross value of the rights issue and the underwriting arrangement exceeds 50% of the issuer's AMC.

Accordingly, shareholder approval will be required for the series of transactions that are represented by the rights issue and the underwriting arrangements.

If a Related Party to the Issuer was to sub-underwrite the rights offer, that would be a related party transaction for the purposes of Rule 5.2.1, unless an exception in the Rules applied. This is discussed in further detail in this guidance note.

2.4 What is a significant change to the nature of the Issuer’s business?

The major transaction rule requires an Issuer to consider whether the proposed transaction, or series of related transactions, would significantly change, directly or indirectly, the nature of the Issuer’s business. NZX considers this to mean a major change in the character of the Issuer’s business activities.

If an Issuer has a clearly identifiable main activity, this requires there to be a significant change in the character of its main undertaking. However, if a conglomerate entity conducts a number of different businesses of different characters, no one of which is separately identifiable as its main undertaking, this requires there to be a significant change to the conglomerate character of the Issuer’s business activities.

If an issuer is unsure whether its proposed transaction will result in a significant change to the nature of its business, it should engage with NZX in the first instance. NZX is likely to regard the following examples of an Issuer deciding to switch its main business activity as a significant change in the nature of the Issuer’s business (or vice versa). It is always best to engage with NZX when you are unclear or uncertain about activity:

Original main business activity	New main business activity
Long-haul freighting	Manufacturing consumer goods
Exploration for gold	Exploration for offshore oil and gas
Trading financial products	Commercial property investment
Conglomerate that conducts a number of different businesses	Disposal of all existing businesses and purchase of a new business

Conversely, NZX would not regard the following examples as a significant change in the nature of the Issuer’s business:

Original main business activity	New main business activity	Comment
Mining exploration entity for one type of mineral	Mining exploration entity deciding to explore for different type of mineral on same tenements	The Issuer’s main undertaking remains exploring for minerals on the same tenements
Mining exploration	Mining producing entity following successful exploration	This is a natural extension of, rather than a major change to, the nature of the Issuer’s business
Financial product trading entity	Entity reweights its holdings to predominantly fixed interest investments and cash	Its main undertaking remains trading in financial products
Conglomerate that conducts a number of different businesses	Conglomerate sells some businesses and purchase some additional businesses	Its main undertaking is and remains conducting conglomerate businesses

2.5 Calculating Gross Value of the Transaction and AMC of the Issuer

The major transaction rule also requires an Issuer to assess whether the gross value of the transaction, or series of related transactions, exceeds 50% of its AMC.

This requires the calculation of both the value of the transaction and the Issuer’s AMC.

2.5.1 Calculating the value of the transaction

The “Gross Value” of a transaction, or series of related transactions, is calculated as the greater of:

- the gross asset value from the most recently published financial statements of the relevant Issuer (if applicable); or
- the ~~gross~~-market value.

In both cases, this is calculated irrespective of any liabilities attributable to the assets. The liabilities of ~~or~~ any subsidiaries (or other entities through which the assets are held) attributable to the assets should also be disregarded for the purposes of the calculation.

If the transaction involves the leasing of an asset, the value is to be calculated as the value of the right to use that asset rather than the value of the asset itself.

2.5.2 Calculating the Issuer’s AMC

An Issuer’s AMC is linked to the trading price of that Issuer’s quoted Equity Securities, which can vary day-to-day.

The calculation under Rule 5.1.1 is to be determined as at “Day A”, which will be the earlier of:

- the business day before the transaction is question is announced to market, or
- the business day before the transaction is entered into.

Once Day A is identified, the following formula can be applied:

$$AMC = A * B$$

Where:

A = the Average Market Price of the Issuer’s shares, being the lesser of the volume weighted average price of an Issuer’s quoted equity securities calculated from trading through the main board over the following two periods:

- 20 Business Days before Day A, or
- 5 Business Days before Day A.

B = the number of Quoted Equity Securities carrying Votes on Day A.

2.6 Exceptions

Rule 5.1.2 exempts the following transactions from the major transaction rule:

- a takeover offer (or scheme of arrangement) made by an Issuer (if one of the three limbs in Rule 5.1.2(a) applies), or
- any transaction entered into by the Issuer with a Bank as principal, on arm’s length terms and in the ordinary course of the Bank’s banking business .

Further, an issue of Financial Products for cash is exempt unless the issue would significantly change the nature of the Issuer’s business.

2.7 Continuous Disclosure

An Issuer’s decision to enter into a major transaction will almost certainly require disclosure in accordance with the Issuer’s continuous disclosure obligations. For further guidance on continuous disclosure, please refer to NZX’s Guidance Note [Continuous Disclosure](#).

2.8 Shareholder approval

The resolution required to approve a major transaction for the purposes of Rule 5.1.1 or Rule 5.2.1 is an ordinary resolution. This is a resolution passed by a simple majority of the votes of the holders of financial products who are entitled to vote.

If section 129 of the Act applies, a special resolution of financial products who are entitled to vote is required (see paragraph 2.1.2 above for further guidance on section 129 of the Act).

The notice of meeting for the meeting where these resolutions will be considered and voted on 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.

The Rules do not specify the terms of the resolution required under Rule 5.1.1 or Rule 5.2.1. NZX considers that a resolution to the following effect will suffice:

“That the [description of transaction] is approved under and for the purposes of NZX Listing Rule [5.1.1 / 5.2.1][(a)/(b)] [and section 129 of the Companies Act 1993].”

Where multiple approvals are required under the Rules and/or the Companies Act, NZX has no objection to the approvals being combined into the one resolution provided:

- the notice of meeting makes it clear which Rules, or sections of the Companies Act, approval is being sought under, and
- the voting restrictions for such Rules, or sections of the Companies Act, align. The voting restrictions under the Rules are set out in Rule 6.3.

Information to be included with the notice of meeting

Rule 7.8.2 requires each notice of meeting to contain or be accompanied by sufficient explanation, reports, valuations, and other information, as to enable a reasonable person entitled to Vote to understand the effect of the resolution proposed, including:

- the consequences if the resolution in questions is not passed, and
- a statement outlining who is subject to voting restrictions in relation to such resolution (if applicable).

To comply with Rule 7.8.2, NZX will expect the notice of meeting to include a reasonable level of detail about the transaction. This may include (as applicable):

- an assessment of the financial effect of the transaction on the Issuer and on the interests of financial product holdings in the entity, including information about the likely effect of the transaction on the Issuer’s total assets, total equity interests, annual revenues, annual expenditure and annual profit before tax,
- details of any changes the Issuer will be making to its business model in light of the transaction,
- in the case of an acquisition, details of how the Issuer intends to pay for the acquisition,
- in the case of a disposal, details of what the Issuer intends to do with the proceeds of the disposal,
- any changes proposed to the Issuer’s board or senior management in connection with, or as a consequence of, the transaction,

- the timetable for implementing the transaction,
- a prominent statement that the transaction requires financial product holder approval under the Rules (or the Companies Act if applicable) and therefore may not proceed if that approval is not forthcoming, and
- a statement that NZX takes no responsibility for the contents of the notice.

Issuers should also refer to NZX's Practice Note [Notice of Meeting](#), which includes checklists of information NZX expects to be included in a notice of meeting.

If an Issuer seeks shareholder approval in advance of entering into a major transaction (for example, an Issuer intends to dispose of its main business and pursue business in a different sector), NZX will require the approval to sufficiently define the scope of the major transaction being approved in advance. An Issuer cannot obtain general shareholder approval to enter into a major transaction, without providing sufficiently specific details regarding the nature of the transaction to be pursued.

2.9 Waiver of Rule 5.1.1

The policy behind Rule 5.1.1 is to ensure that shareholders have an opportunity to consider and vote on transactions that will significantly change the nature of an Issuer's business or which have a value that represents a majority of the equity that investors hold in that company. NZX may grant a waiver from Rule 5.1.1 in circumstances which do not offend that policy.

For example, a variation of an agreement that was itself a major transaction is also a major transaction under the Rules. NZX may waive the application of Rule 5.1.1 to a variation to a material agreement where shareholder approval was originally given in respect of the agreement, and if the variation:

- is entirely within the ordinary course of the Issuer's business,
- confirms and expands the current commercial relationship between the contractual parties rather than being an immediate expenditure of shareholder funds,
- is in the best interests of shareholders; and
- has been negotiated on an arm's length basis.

Low market capitalisation

NZX may waive application of Rule 5.1.1 where, due to deterioration in the financial position of the Issuer, the AMC of the Issuer has reduced to such an extent that the Rules impose an unreasonable restriction on the ability of the Issuer to realise assets.

3. Related Party Transactions

3.1 The Related Party Transaction test

Rule 5.2.1 prohibits an Issuer entering into a Material Transaction with a Related Party unless the transaction is first approved by the Issuer's shareholders by ordinary resolution, or is conditional upon such approval. The purpose of the rule is to ensure that shareholders have an opportunity to consider, and vote on, such transactions where there is, or may be a perception of, the potential for undue influence by a Related Party on an Issuer's decision to enter into a transaction or agree to its terms.

Not all transactions with Related Parties are captured by Rule 5.2.1. For Rule 5.2.1 to apply:

- the transaction must be a Material Transaction, and
- a Related Party must be either a direct party to the Material Transaction, or a beneficiary of a guarantee or other transaction that is a Material Transaction.

The Rule also sets out certain specific exceptions, which are discussed further below.

3.2 What is a Material Transaction?

Material Transaction is defined within the Glossary of the Rules, and includes situations where an Issuer:

- buys, acquires, gains, leases, sells or disposes of assets that have Aggregate Net Value of more than 10% of that Issuer's AMC;
- issues Financial Products, or acquires its own Equity Securities that have a market value above 10% of that Issuer's AMC (subject to some exceptions);
- borrows, lends, pays or receives money, or incurs an obligation of more than 10% of that Issuer's AMC;
- enters into a guarantee, indemnity, underwriting, or similar obligation, or gives any security, which could expose the Issuer to a liability above 10% of its AMC;
- provides or obtains any services where the gross cost to the Issuer in any financial year is likely to exceed 1% of its AMC; or
- undertakes an amalgamation, except for amalgamations of a wholly owned subsidiary of the Issuer.

The diagram set out in Appendix 2 has been prepared to assist Issuers navigate the Material Transaction definition, and the corresponding exceptions to this Rule.

3.2.1 Related series of transactions

Two or more transactions, which form part of a related series of transactions, must be considered in aggregate when determining whether one of the Material Transaction thresholds has been triggered.

For further guidance on what is a “related series of transactions”, refer to section 2.3 of this guidance note.

3.2.2 Calculating AMC

Often, for an Issuer to determine whether a transaction is a Material Transaction, it must determine its AMC. Information on how to calculate AMC is provided at section 2.5 of this guidance note.

3.2.3 Revolving credit facilities

Prior shareholder approval is required if an Issuer wishes to borrow an amount above 10% of the AMC of the Issuer from a Related Party. For example, an Issuer with an AMC of \$25m must obtain shareholder approval if the Issuer was to borrow more than \$2.5m from a Related Party.

If an Issuer has a revolving credit facility with a Related Party which allows the Issuer to drawdown an aggregate amount in excess of 10% of the Issuer’s AMC, NZX would expect the Issuer to obtain shareholder approval prior to entering into the facility (rather than the point in time when the Issuer seeks to make a drawdown on that facility which would result in the aggregate loan balance exceeding 10% of the Issuer’s AMC).

Further, if an Issuer does not obtain prior shareholder approval before entering into the revolving credit facility, NZX considers that each drawdown from the facility forms part of a related series of transaction. As such, the 10% AMC threshold test requires recalculation for each subsequent drawdown. For example, using the figures in the table below and assuming no principal repayments are made between drawdowns, the Issuer would require shareholder approval for drawdown 3 as, at the relevant time that drawdown is made, the total drawn down amount would exceed 10% of the Issuer’s AMC.

	Drawdown 1 (year 1)	Drawdown 2 (year 2)	Drawdown 3 (year 3)
AMC	15m	16m	11m
Drawdown	500k	300k	500k
Total drawdown	500k (being 3.33% of AMC)	800k (being 5% of AMC)	1.3m (being 11.8% of AMC)

Renewing, varying or renegotiating a Material Transaction

Rule 5.2.1 applies to any subsequent renewal, [material](#)-variation or renegotiation of a Material Transaction. Section 3.6 of this guidance note discusses NZX waivers from the obligation to seek shareholder approval in that scenario.

3.2.4 Exceptions

There are certain exceptions to the Material Transaction Rule. These include:

- for Issuers issuing Financial Products, or acquiring its Equity Securities, with a market value above 10% AMC:
 - any placement of equity securities (Rule 4.5) or issue of debt securities where the market value of the Financial Product being issued to any Related Party or Employee does not exceed 10% AMC is excluded;
 - any issue of Equity Securities under a Share Purchase Plan or Dividend Reinvestment Scheme is excluded; or
 - the issue of Equity Securities under an Accelerated Offer if the certification in Rule 5.2.2(d)(i) is provided is excluded.
- any issue of Debt Securities where the nominal amount of Debt Securities being issued to any Related Party or Employees does not exceed 10% of AMC is excluded;
- [a](#)Any indemnification of a Director or Employee of the Issuer (or a Related Body Corporate) where the relevant Director or Employee has not been in circumstances in any capacity which are likely to result in a claim under the indemnity is excluded;
- for providing or obtaining any services (including the underwriting of Financial Products or services as an Employee) where the gross costs to the Issuer in any financial year is likely to exceed an amount equal to 1% of AMC:
 - a contract where the gross cost to the Issuer in any financial year is \$250,000 or less is excluded;
 - an employment agreement with a natural person who is not a Director of the Issuer is excluded; or
 - an employment contract or contract for personal services where the conditions in Rule 5.2.2(e) are satisfied is excluded.
- amalgamations of a wholly owned Subsidiary with another wholly owned Subsidiary with the Issuer is excluded; or
- arrangements, amalgamations or compromises under Parts 13 or 15 of the Companies Act is excluded.

3.3 Who is a “Related Party”?

The definition of Related Party is purposely broad. It includes:

- the Issuer’s directors and Senior Managers,

- those with a Relevant Interest in 10% or more of a class of the Issuer’s voting securities,
- Associated Persons of either the Issuer or those persons referred to above, and
- a person in respect of whom there are current arrangements intended to result in that person becoming a Related Party of the Issuer at any time in the future.

The diagram set out in Appendix 3 has been prepared to assist Issuers to identify their Related Parties.

The definition of Related Party includes a person who has been a Related Party at any time within the 6 months before the relevant Material Transaction, even if that person has ceased to be a Related Party at the time of the Material Transaction.

3.3.1 Timing

Issuers should determine whether or not a Related Party is a direct party or beneficiary of a guarantee or other transaction that is a Material Transaction before entering into that transaction. Issuers should allow sufficient time to make this determination to allow for any further administrative steps, including, where appropriate, holding a meeting of shareholders to approve the transaction or negotiating the terms of the transaction so that it is conditional on shareholder approval.

3.3.2 Treatment of Subsidiaries and Joint Ventures

Subsidiaries and joint ventures (**JVs**) will generally be captured by the Associated Person definition, which means that Material Transactions between an Issuer and a subsidiary or JV would likely be captured by Rule 5.2.1. However, in many cases the other parties with interests in the subsidiary or the JV are bona fide arm’s length commercial parties and not otherwise related to the Issuer. Given the existence of additional parties the potential for undue influence from a related party is mitigated and the cost of requiring shareholder approval of these transactions is unlikely to be justified.

In recognition of this, subsidiaries and JVs have been carved out of the Related Party definition in certain circumstances. A Subsidiary or JV will not be a Related Party of the Issuer if both A and B in the table below apply:

Entity	Issuer’s interest (“A”)	No other Related Party (“B”)
Subsidiary	The Issuer: has at least 50% of the votes, or is entitled to at least 50% of the dividends, of the entity.	No other ¹ Related Party of the Issuer has or intends to obtain a material direct or indirect economic interest in the entity/JV, other than: through the Issuer itself, or receiving reasonable director’s fees or executive remuneration.
Incorporated JV		
Unincorporated JV	The Issuer is entitled to at least 50% of the income or profits, and the assets, of the JV.	

¹ ‘Other Related Party’ refers to a Related Party other than the Subsidiary or Joint Venture itself

3.4 Continuous Disclosure

An Issuer's decision to enter into a related party transaction under Rule 5.2.1 will almost certainly require disclosure in accordance with the Issuer's continuous disclosure obligations under Rule 3.1. For further guidance on continuous disclosure, please refer to NZX's Guidance Note [Continuous Disclosure](#).

Rule 3.4 – Related Party Transactions

Rule 3.4.1 requires Issuers to release details through MAP upon entering into certain transactions with Related Parties. This includes transactions which involve more than 5% of the Issuer's AMC. However, if Rule 5.2.1 applies to the transaction, Rule 3.4.1 does not apply.

3.5 Shareholder approval

The resolution required to approve a transaction for the purposes of Rule 5.2.1 is an ordinary resolution passed at a general meeting of the holders of financial products who are entitled to vote.

For further guidance on what should be included in the notice of meeting, please refer to section 2.8 of this guidance note (which applies equally to Rule 5.2.1).

Additional information

In addition to the information set out in section 2.8 of this guidance note, the notice of meeting for the purposes of Rule 5.2.1 must be accompanied by an Appraisal Report. An Appraisal Report must be made by an independent appropriately qualified person previously approved by NZX (for more information about NZX's approval of appraisers, see NZX's Guidance Note [Approval of Appraisers](#)).

The Appraisal Report must comply with the requirements set out in Rule 7.10.2.

Voting Restrictions

When voting on a resolution to approval a Related Party transaction under Rule 5.2.1, the Related Party who is a party or beneficiary of the transaction in question cannot vote, nor can any Associated Person of that Related Party (unless such Related Party or Associated Person is voting as a proxy for a person qualified to vote and under that person's express voting instructions). Voting restrictions are set out at Rule 6.3.

3.6 Waiver of Rule 5.2.1

NZX may waive the requirement to obtain shareholder approval of a Material Transaction if it is satisfied that the personal connections with, or involvement or personal interest of any Related Party are immaterial or plainly unlikely to have influenced the promotion of, or the decision to enter into, the transaction or its terms and conditions.

When making an application for a waiver from Rule 5.2.1 on those grounds, NZX will expect to receive submissions establishing (as applicable):

- that entry into, and the terms of, the Material Transaction were negotiated on an arm's length basis,
- that the Related Party will not be in a position to exercise undue influence over the Issuer's decision to enter into the transaction,
- entry into the transaction is in the best interests of the Issuer and its non-related shareholders, and
- that the terms of the transaction are not materially different to similar transactions entered into with non-related parties.

When granting a waiver from Rule 5.2.1, NZX will likely make it conditional upon:

- the directors of the Issuer certifying that (as appropriate):
 - the terms of the Material Transaction have been entered into, and negotiated, on an arm's length commercial basis,
 - the Issuer was not influenced to enter into the Material Transaction by the Related Party, and
 - entry into the Material Transaction is in the best interests of all of the Issuer's shareholders, and
- the waiver, its conditions and implications being disclosed in the Issuer's next annual report.

A variation or a renewal of a related party transaction is itself a related party transaction for which a waiver would be available.

4. Contact us

If you have any questions on the matters in this guidance note, please contact NZ RegCo at issuer@nzregco.com or (04) 495 2825. However, it is the issuer's obligation to comply with the continuous disclosure rules and any assistance from NZ RegCo should not be taken to constitute legal advice on the issuer's obligations.

Appendix 1: Relevant Listing Rules

Glossary

Aggregate Net Value

means the net value of the relevant assets calculated as the greater of:

- (a) the net tangible asset value or, for leased assets, the value of the right of use (in each case, from the most recently published financial statements of the relevant Issuer, if applicable), or
- (b) market value.

Associated Person

a person (A) is associated with, or an Associated Person of, another person (B) if:

- (a) A is able, directly or indirectly, to exert a substantial degree of influence over the activities of B (or vice versa),
- (b) B is a body corporate and A has the power, directly or indirectly, to exercise, or control the exercise of, more than 50% of the Votes attaching to the Financial Products of B (or vice versa),
- (c) A and B are Relatives or Related Bodies Corporate,
- (d) A and B are partners to whom the Partnership Act 1908 applies,
- (e) A is a director or Senior Manager of B (or vice versa), or
- (f) A and B are acting jointly or in concert,

except that:

- (g) A is not an Associated Person of B merely because:
 - i. A acts as a professional or business adviser to B, without a personal financial interest in the outcome of that advice,

- ii. A's ordinary business includes dealing in Financial Products on behalf of others and A is acting in accordance with the specific instructions of B,
 - iii. A acts as a proxy or representative of B for the purposes of a meeting of holders of
 - iv. there is another person with which A and B are both associated,
- (h) persons will not be Associated Persons if NZX makes a Ruling that they are not Associated Persons.

Average Market Capitalisation

means, in relation to an Issuer, the Average Market Price multiplied by the number of Quoted Equity Securities carrying Votes on Day A.

Average Market Price

means, on Day A, the lesser of the volume weighted average price of an Issuer's Quoted Equity Securities (or, when calculating a Minimum Holding, the relevant Financial Product) calculated from trades through the Main Board over the following two periods:

- (a) 20 Business Days before Day A, or
- (b) 5 Business Days before Day A.

Material Transaction

means a transaction, or a related series of transactions, whereby an Issuer:

- (a) buys, acquires, gains, leases (as lessor or lessee), sells or otherwise disposes of, assets having an Aggregate Net Value above 10% of the Issuer's Average Market Capitalisation,
- (b) issues its own Financial Products, or acquires its own Equity Securities, having a market value above 10% of the Issuer's Average Market Capitalisation (except where Rule 4.5 applies or in the case of an issue of Debt Securities, in which case only the market value of

Financial Products being issued to any Related Party or to any Employees of the Issuer are to be taken into account),

- (c) borrows, lends, pays or receives money, or incurs an obligation of an amount above 10% of the Average Market Capitalisation of the Issuer (except in the case of the issue of Debt Securities, in which case only the nominal amount of Debt Securities being issued to any Related Party or to any Employees of the Issuer are to be taken into account)
- (d) enters into any guarantee, indemnity, underwriting, or similar obligation, or gives any security, which could expose the Issuer to liability above 10% of the Average Market Capitalisation of the Issuer,
- (e) provides or obtains any services (including the underwriting of Financial Products or services as an Employee) where the gross cost to the Issuer in any financial year is likely to exceed an amount equal to 1% of the Average Market Capitalisation of the Issuer, or
- (f) undertakes an amalgamation, except for amalgamations of a wholly owned Subsidiary with another wholly owned Subsidiary or with the Issuer.

Related Party

means a person who, at the time of a Material Transaction, or at any time within the previous six months, was:

- (a) a Director or Senior Manager of the Issuer or any of its Subsidiaries,
- (b) the holder of a Relevant Interest in 10% or more of a Class of Equity Securities of the Issuer carrying Votes,
- (c) an Associated Person of the Issuer or any of the persons referred to in (a) or (b), except where the person becomes

an Associated Person as a consequence of the Material Transaction, or

- (d) a person in respect of whom there are arrangements which are intended to result in that person becoming, or expected to become, a person described in (a), (b), or (c) other than as a consequence of the Material Transaction,

but a person is not a Related Party of an Issuer if:

- (e) the only reason why that person would otherwise be a Related Party of the Issuer is that a Director or Senior Manager of the Issuer is also a Director of that person, so long as:
 - (i) the proportion of Directors of the Issuer who are also Directors of that person is one third or less, and
 - (ii) no Director or Senior Manager of the Issuer has a material direct or indirect economic interest in that person, other than receiving reasonable Director's fees or executive remuneration, or
- (f) that person is a Subsidiary or incorporated joint venture of, or unincorporated joint venture participant with, the Issuer and:
 - (i) no Related Party of the Issuer has or intends to obtain, other than through the Issuer itself, a material direct or indirect economic interest in that Subsidiary or joint venture other than receiving reasonable Director's fees or executive remuneration, and
 - (ii) the Issuer has at least 50% of the Votes in or is entitled to at least 50% of the dividends declared or paid by the Subsidiary or incorporated joint venture or is entitled to at least one half of the income or profits, and the assets, of the unincorporated joint venture (if and when distributed).

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.

5.1.2 Rule 5.1.1 does not apply to:

- (a) a takeover offer made by an Issuer:
 - (i) to a Code Company in accordance with the Takeovers Act 1993 or by a scheme of arrangement under Part 15 of the Companies Act 1993,
 - (ii) to an Issuer which is covered by Appendix 3 of these Rules, in accordance with the relevant provisions in the Governing Document of that other Issuer which complies with Appendix 3, or
 - (iii) to any person, in accordance with the takeover law of a jurisdiction other than New Zealand applicable to that person where this provides, in the opinion of NZX, a similar or greater level of protection to the recipients of the offer as the Takeovers Code or Appendix 3,
- (b) any transaction entered into by the Issuer with a Bank as principal, on arm's length terms and in the ordinary course of the Bank's banking business, or
- (c) an issue of Financial Products for cash which does not significantly change the nature of the Issuer's business.

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,

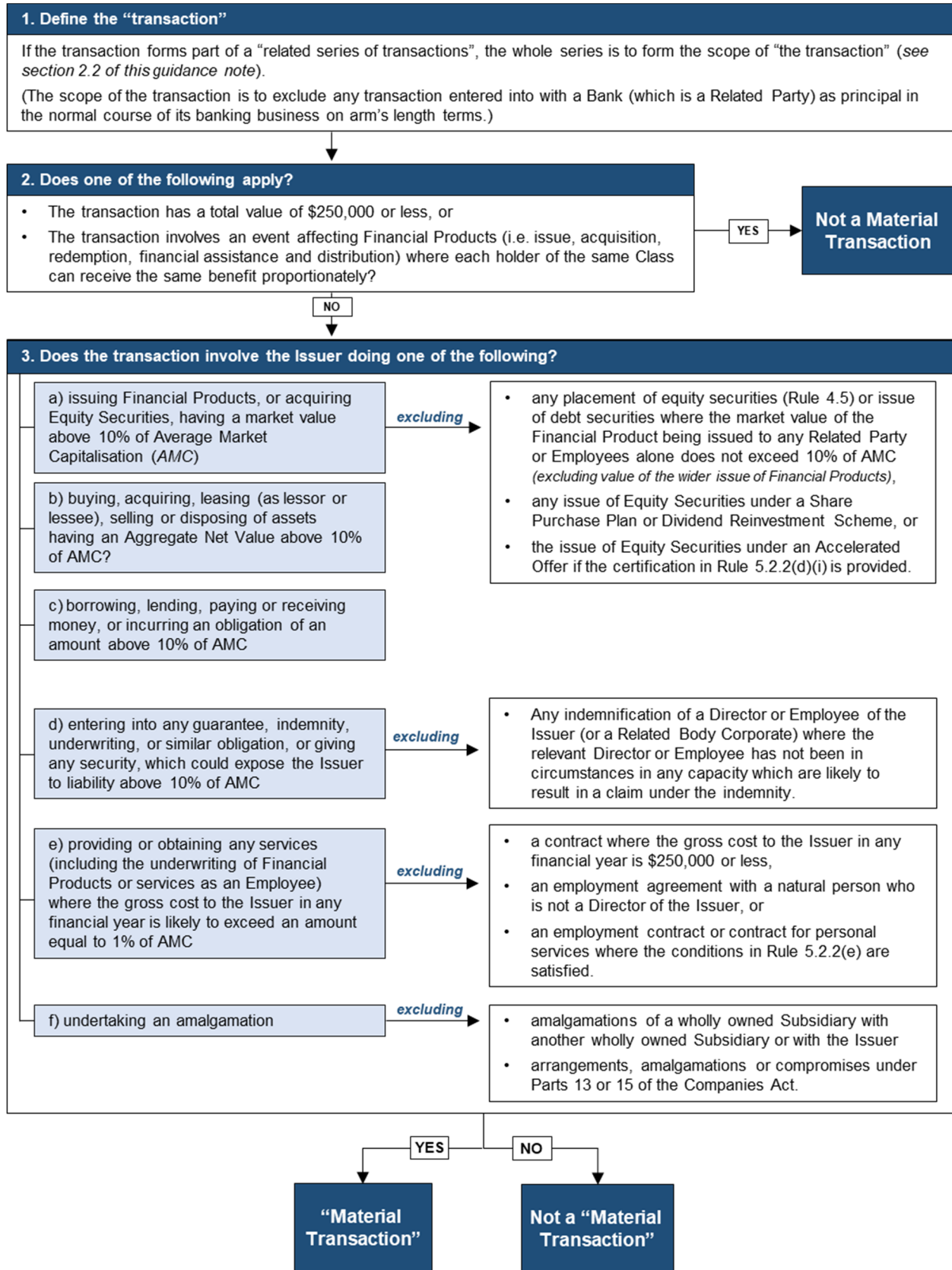
unless that Material Transaction is approved by an Ordinary Resolution (such resolution being subject to the voting restrictions in Rule 6.3) or conditional on such approval.

5.2.2 Rule 5.2.1 does not apply to:

- (a) any transaction entered into by an Issuer with a Bank as principal, on arm's length terms and in the normal course of the Bank's banking business,
- (b) the issue, acquisition or redemption of Financial Products, or the provision of financial assistance in connection with the purchase of Financial Products, or the payment of a distribution, where the Issuer gives each holder of Financial Products of the Class in question the opportunity to receive the same benefit in respect of each Financial Product held (except to the extent that an issue excludes holders outside New Zealand in accordance with Rule 4.4.1(e)),
- (c) the issue of Equity Securities by an Issuer under Rule 4.3.1(c) or Rule 4.8,
- (d) the issue of Equity Securities by an Issuer by way of an Accelerated Offer under Rule 4.3.1(a), provided that:
 - (i) Directors of the Issuer, excluding any Director that is an Associated Person of the Related Party, certify, in a form acceptable to NZX, that:
 - (A) the terms of the Accelerated Offer are fair, reasonable and in the best interests of the Issuer's Equity Security holders, other than the Related Party,
 - (B) the Issuer will pay and receive fair value under the Accelerated Offer,
 - (C) the Issuer was not unduly influenced in its decision to enter into the Accelerated Offer by the Related Party,
 - (D) the Related Party will not be involved in, or influence, any allocation decision in relation to any bookbuild(s) undertaken in connection with the Accelerated Offer, and
 - (E) the Related Party will derive no benefit as a result of the Related Party relationship, other than solely through participation in the Accelerated Offer on the same terms and conditions as other Equity Security holders or as an underwriter or sub underwriter on commercial terms.
- (e) an employment contract or contract for personal services which is a Material Transaction, where:
 - (i) the terms of the contract are set on an arm's length, commercial basis and have been approved by the Independent Directors of the Issuer,

- (ii) the Independent Directors approving the contract sign and provide to NZX (not for market release) a certificate stating Rule 5.2.2(e)(i) has been complied with, and
 - (iii) material particulars of the contract (including the Issuer's use of this exception) are disclosed in the next annual report of the Issuer,
- (f) indemnification of a Director or Employee of the Issuer, or a Director or Employee of a Related Body Corporate of the Issuer, which would be a Material Transaction, where, at the time the indemnity is to be granted, the relevant Director or Employee has not been involved in proceedings, threatened proceedings or circumstances in any capacity which are likely to result in a claim by them under the indemnity,
- (g) arrangements, amalgamations or compromises under Parts 13 or 15 of the Companies Act 1993,
- (h) a Material Transaction that is an employment agreement with a natural person who is not a Director of the Issuer, or
- (i) a Material Transaction with:
- (j) a total value of, or
- (k) in the case of paragraph (e) of the definition of Material Transaction, a gross cost to the Issuer in any financial year of, \$250,000 or less.

Appendix 2: Material Transaction Flow Chart



Appendix 3: Related Party Flow Chart

