



NEW ZEALAND'S EXCHANGE  
TE PAEHOKO O AOTEAROA

# Direct Listing Disclosure Requirements

Consultation Paper

July 2020

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This Consultation Paper has been issued 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

In its report ‘*Growing New Zealand’s Capital Markets 2029*<sup>1</sup>’, Capital Markets 2029 (an industry-lead review group<sup>2</sup> formed by NZX and the FMA) published 42 recommendations to unlock stronger capital markets in New Zealand to build productivity, wealth and opportunity for all New Zealanders.

The recommendations were formed following extensive consideration of the condition of New Zealand’s capital markets (informed by broad consultation and more than 80 interviews with domestic and off-shore stakeholders, including representatives of issuer and wholesale investors), and the thematic issues that capital markets are experiencing globally.

Capital Markets 2029 tasked NZX with considering how it could better promote alternative pathways to listing. NZX has therefore been considering the disclosure requirements for applicants who wish to list on the NZX Main Board without an associated capital raising (**direct listings**).

One of the specific recommendations made by Capital Markets 2029, is that the requirement for prospective financial information (**PFI**) be removed for first regulated offers (initial public offers, or **IPOs**). While that recommendation is a matter for MBIE and the FMA’s consideration, as it requires a legislative change, NZX has specifically considered whether PFI should be required in the direct listing context.

NZX now wishes to consult on proposed changes to the NZX Listing Rules (**Rules**) to amend the disclosure settings for direct listings by:

- clarifying that PFI is not required in a Profile; and
- allowing NZX Regulation (**NZXR**) to prescribe the content requirements for Profiles of applicants for NZX Foreign Exempt Issuer status.

This Consultation Paper provides further detail in relation to those proposed changes and the proposed amendments to the Rules.

Schedule One to this Paper contains a template Profile for applicants seeking NZX Foreign Exempt Status. The template has been designed for existing ASX issuers, but would also be used by NZXR to inform the design of templates for applicants who are listed on other Recognised Stock Exchanges.

## Consultation Process

NZX is seeking responses to the proposed changes to: the disclosure settings for direct listings; the proposed amendments to the Rules; and the proposed content requirements for Profiles of

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<sup>1</sup> ‘Growing New Zealand’s Capital Markets 2029’ is available [here](#).

<sup>2</sup> The Capital Markets 2029 Steering Group comprised: Martin Stearne - Chair; EY - professional consultant; Rob Campbell (Chair: SKYCITY and THL); Rachel Dunne (Partner, Chapman Tripp); Ross George (Managing Director, Direct Capital); James Lee (CEO, Jarden); David McLean (CEO Westpac New Zealand); Neil Paviour-Smith (Managing Director, Forsyth Barr); Rebecca Thomas (CEO, Mint Asset Management); Matt Whineray (CEO, NZ Superannuation Fund); and Geoff Zame (Head of Institutional Equities, Craigs Investment Partners).

applicants seeking NZX Foreign Exempt Issuer status (as set out in the template contained in Schedule One to this Paper).

We invite interested parties to provide their views on the proposals raised in this paper by emailing a written submission to [policy@nzx.com](mailto:policy@nzx.com). The closing date for submissions is **Friday 31 July 2020**.

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

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

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# Background

## What is a direct listing?

A 'compliance listing' occurs when a new Issuer lists without conducting a capital raising or selling down its existing financial products. Recent examples of companies undertaking compliance listings in New Zealand, include: QEX Holdings Limited, Pushpay Holdings Limited and further back A2 Milk Company Limited (2004).

A 'reverse listing' occurs where an existing Issuer enters into a transaction which results in a significant change in: the ownership of the majority of its shares; and, the nature of its business. Usually this occurs where the existing Issuer purchases a target private company (or its business), resulting in the target becoming listed.

In this Consultation Paper, compliance listings and reverse listings are referred to as 'direct listings' because no new capital is raised, and no financial products are sold down, at the time of listing.

Direct listings in essence involve an existing business moving its current shareholder base into a regulated environment, affording shareholders the benefit of the issuer being subject to obligations under the Rules. The fair dealing provisions of the Financial Markets Conduct Act 2013 (**FMCA**), also apply, even though no offer is being made.

## Current disclosure and approval requirements for direct listings

As direct listings do not involve a 'regulated offer' under the FMCA there is no requirement for a Product Disclosure Statement (**PDS**), and the disclosure requirements under Part 3 of the FMCA will not apply. The disclosure requirements are therefore governed by the Rules.

An applicant seeking to conduct a compliance listing must prepare a Profile in accordance with Rule 7.3.1(b)(i). In the context of a reverse listing, NZXR will usually exercise its discretion under Rule 1.11.1 to require the Issuer to prepare a Profile for the Post Transaction Issuer that will exist following the acquisition of the target entity.

Rule 7.4.1(b)(i) provides that a Profile must contain the information required in a PDS as if the offer was regulated under the FMC Act, unless NZX determines otherwise. The Profile for a direct listing of Equity Securities therefore usually includes similar information to a PDS such as: information about the Issuer's business operations, historical financial information (where the Issuer has completed at least one financial reporting period) and risks.

The regulatory process for direct listing applications includes an assessment by NZXR of the disclosures contained in the Profile, against the content requirements under the Rules (which by default, include the relevant requirements of the FMCA). In addition, an external committee of industry participants (the NZX Listing Sub-Committee), reviews the financial statements contained within the Profile. Finally, the Head of Market Supervision and NZX CEO must approve the direct listing. This process is the same as that used to assess an application for an IPO.

## Current approach to inclusion of PFI in Profile documents

The FMCA requires issuers of a first regulated offer (an IPO) of equity securities to provide PFI for the next two financial years unless the issuer considers, having made reasonable endeavours to obtain all relevant information, that PFI for the period (or part of that period)

would be likely to deceive or mislead in a material manner<sup>3</sup>. The FMCA therefore provides a degree of flexibility to enable FMCA issuers who are undertaking a capital raising to determine not to include PFI in a PDS.

As noted above, Rule 7.4.1(b)(i) affords NZX a broad discretion, exercised by NZXR, to determine the content of a Profile, including whether PFI is required. Therefore NZXR currently recommends that applicants provide specific comments to NZXR as to whether the inclusion of PFI would be materially deceptive or misleading when the Profile is submitted for review<sup>4</sup>, to enable NZXR to determine whether PFI should be included.

### NZX Foreign Exempt Issuer Profiles

Where an applicant is seeking to conduct a direct listing to obtain NZX Foreign Exempt Issuer status, Rule 7.3.1 also requires the applicant to prepare a Profile, which must meet the content requirements of Rule 7.4.1(b)(i).

When exercising its discretion under Rule 7.4.1(b)(i) to determine the content requirements for a Profile for such an application, NZXR would consider the existing compliance and disclosure obligations of the applicant's home jurisdiction, and the nature of the information that can already be accessed about the applicant.

NZXR would therefore currently consider whether PFI is required in a Profile for Equity Securities of an applicant for NZX Foreign Exempt Issuer status on a case-by-case basis, by considering: whether the inclusion of such information would be likely to materially mislead or deceive; the information that is already available in the market about the applicant; and, the applicant's home jurisdiction disclosure requirements.

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<sup>3</sup> Clause 39 of Schedule 3 of the Financial Markets Conduct Regulations 2014.

<sup>4</sup> Refer to Part 5 of the Backdoor and Reverse Listing Transactions [Guidance Note](#).

# Proposal 1: PFI not required in a Profile

## Proposal

NZX is proposing to allow applicants considering a direct listing to have more flexibility in determining whether to include PFI in a Profile document. Specifically, we are proposing that the inclusion of PFI in a Profile would be voluntary, and therefore an applicant would not need to reach a view that PFI would be likely to materially deceive or mislead an investor, in order to exclude PFI from the Profile.

NZX considers that allowing applicants complete discretion as to whether to include PFI will provide more regulatory certainty as to NZX's requirements for PFI, rather than devolving determination of the requirements to NZXR on a case-by-case basis.

## Rationale for Proposal

### Disclosure remains appropriate

NZX does not consider that PFI is necessary to enable a Profile to provide an appropriate level of disclosure to enable a reasonable person to obtain a proper understanding of the Issuer's business, in order to make an informed assessment of whether to acquire or dispose of the Issuer's financial products in the secondary market. The Profile will continue to be required to include disclosure of the applicant's business operations and risks, and NZXR will continue to vet applications using its standing processes to ensure that an applicant has provided appropriate disclosure, and is suitable for listing.

In particular, NZX does not consider that it is necessary for PFI to be included in a Profile for a direct listing, where the immediate effect of the listing transaction is to migrate existing financial product holders into a more highly regulated environment (compared to the allotment of new financial products, as in the case of an IPO).

In a direct listing context, price formation is determined by the trading activity that occurs on the NZX Main Board in reliance on an Issuer's continuous disclosure obligations under the Rules. NZX does not consider that PFI is necessary in this context, given the trading information that is available to a potential investor. This reflects the standard approach to trading in the secondary market where Issuers are not required to publish PFI on an ongoing basis under the Rules (including when making a 'same-class offer' under the FMCA).

NZX considers that the removal of the requirement for PFI is appropriate for reverse listings as well as compliance listings, where the Profile for the reverse listing contains appropriate disclosure of the Post Transaction Issuer<sup>5</sup>. As in the case of a compliance listing, there will usually be some historical price information already in the wider market as to the nature and prospects of the target of the reverse listing. In addition, an Issuer's shareholders will also be advised as to whether the information provided by the Issuer is sufficient to enable shareholders to make an informed decision of the merits of the reverse listing, in the independent appraiser report that is required under Rule 7.10.

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<sup>5</sup> Refer to the [Reverse and Backdoor Listing Guidance Note](#).

Under the proposal, applicants will still be able to voluntarily include PFI in a Profile if they wish to do so, however removing the requirement provides regulatory certainty to applicants.

### Promotion of participation in New Zealand's capital markets

NZX considers that the proposal to allow PFI to be included in a Profile on a voluntary basis, will also contribute to providing alternative pathways to listing as a step towards addressing the current low numbers of public listings in New Zealand, contributing to the broader health of New Zealand's capital markets.

A significant obstacle to listing, is the need for support to enable the distribution of the offer that is made in an IPO. A direct listing offers a route to the NZX Main Board, without the need for an initial capital raising, within a robust disclosure framework that requires strong initial disclosure to be made in the Profile.

A direct listing also allows a new entrant to the public market to get used to operating within a highly regulated environment, with high governance standards, before seeking to raise additional capital. Once listed for 3 months an Issuer may take advantage of the same-class offer regime<sup>6</sup>, by issuing a cleansing notice<sup>7</sup> that both confirms the Issuer's compliance with its continuous disclosure obligations and discloses 'excluded information' that would otherwise not need to be disclosed due to the safe-harbours of the continuous disclosure requirements of the Rules (for example: the exception for incomplete proposals). These requirements provide additional protection at the time a new regulated offer is made. The 'same class offer regime' has been highly utilized by Issuers, and supports confident participation by businesses and investors in New Zealand's financial markets.

### Other regulatory considerations

As noted in the Introduction to this Paper, Capital Markets 2029 recommended that Government remove the requirement for PFI for IPOs. NZX considers that there are even stronger grounds to remove the requirement for PFI in the direct listing context where no capital is being raised at the time of listing, for the reasons outlined above.

NZX also understands that it is not common internationally to require PFI information in offering documents. Such information is not a requirement for IPOs in other jurisdictions such as the USA and UK, and PFI is not a requirement for introductory listings on the London Stock Exchange. It is vital for New Zealand's international competitiveness that it remains appropriate regulatory alignment with international jurisdictions and does not create unnecessary barriers to entry to its markets.

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<sup>6</sup> Clause 19 of Schedule One of the FMCA.

<sup>7</sup> Clause 20 of Schedule Eight of the Financial Markets Conduct Regulations 2014.



## Proposal 2: Profile Requirement for NZX Foreign Exempt Issuers

### Proposal

NZX would also like to clarify the disclosure requirements for applicants seeking a direct listing on NZX that have an existing listing and quotation on ASX or another Recognised Stock Exchange. NZX is proposing the introduction of a framework to enable NZX to prescribe the nature and content of the Profile documents for such applicants (including applicants seeking quotation of fund securities).

Applications would remain subject to NZX's standard regulatory approval process for new listings, which is described earlier in this paper, and requires NZXR and the Listing Sub-Committee's review of the Profile document.

### ASX Issuer Template

A template for ASX issuers seeking an NZX Foreign Exempt Issuer listing, is set out in Schedule One to this Consultation Paper. The template is a short form Profile that primarily links to, and incorporates by reference, existing information regarding the applicant that is available on ASX.

NZXR developed this template by considering the comparable requirements for a compliance listing on the ASX, comprising an (i) ASX Foreign Exempt Listing Application and Agreement (Appendix 1C form), (ii) related Information Form and Checklist, and (iii) Annexure 2 disclosure form (for entities with a primary listing on the NZX Main Board).

NZXR intends to develop similar templates for issuers of other Recognised Stock Exchanges, over time, that will require equivalent content to be included in a Profile, to that prescribed in the ASX issuer template.

NZX is interested in receiving submissions in respect of the appropriateness of the content requirements set out in the template.

### Rationale for the Proposal

NZX considers that the reasons for removing the obligation to include PFI from a Profile, as outlined in respect of Proposal 1 of this Paper apply equally to Profiles for applicants seeking a direct listing for NZX Foreign Exempt Issuer status.

In addition, the Profile for such an applicant should not need to contain the same level of information as for an applicant for full Issuer status because:

- applicants are already subject to a comparable regulated environment under the laws of their home jurisdiction and their home Recognised Stock Exchange;
- ready access to a significant amount of publicly available information relating to such applicants, enables appropriate price formation;
- secondary market trading data from the applicant's home exchange provides a price reference point; and

- New Zealand-based investors can already trade equity securities on Recognised Stock Exchanges.

Tailoring the Profile content requirements for applicants seeking an NZX Foreign Exempt Issuer Status, would reduce the compliance costs of duplicative regulation, while preserving appropriate protections for New Zealand investors. NZX considers this to be another mechanism by which it can support the development of New Zealand's markets by providing broader access to investment to New Zealand investors, and enabling the development of deeper and more liquid capital markets.

## Proposed Amendments to the NZX Listing Rules

In order to give effect to Proposal 1 and Proposal 2, NZX proposes amending Rule 7.4.1 and including a new Rule 7.4.1A, as set out in the box below.

Proposed new Rule 7.4.1A(b), contemplates NZX prescribing the nature and content requirements for Profiles of applicants seeking NZX Foreign Exempt Issuer status. This reflects the approach taken in other provisions of the Rules, for example: Rule 3.13 and 3.14 which allow NZX to prescribe the form of an announcement to be lodged via the Markets Announcement Platform; and Rule 9.9 which allows NZX to prescribe the form of a trading halt application.

NZXR intends to develop templates that would be published on [nzx.com](http://nzx.com) for this purpose. The proposed template that has been developed in respect of the Profile requirements for applications by ASX issuers for NZX Foreign Exempt Issuer status, is set out in Schedule One to this Consultation Paper. NZX is interested in submissions as to whether the proposed content requirements specified in the ASX issuer template are appropriate, as this template will be used to inform the development of additional templates for Profile disclosures for other Recognised Stock Exchange jurisdictions.

### Current Listing Rule 7.4.1:

Every Profile must:

- (a) contain the information required in a PDS as if the offer was regulated under the FMC Act, unless NZX determines otherwise,
- (b) contain all information required by the Rules, unless NZX determines otherwise, and
- (c) contain, or incorporate by reference, all other information NZX, in its sole discretion, might require.

### **Proposed Listing Rule 7.4.1:**

Every Profile must:

- (a) unless NZX determines otherwise:
  - (i) contain the information required in a PDS, as if the Financial Products for which Quotation is sought are being offered in a regulated offer under the FMC Act, whether or not those Financial Products have previously been allotted, and
  - (ii) contain all information required by the Rules, and
- (b) contain, or incorporate by reference, all other information NZX, in its sole discretion, might require.

### **Proposed Listing Rule 7.4.1A:**

NZX has determined that for the purposes of Rule 7.4.1(a), that:

- (a) Prospective Financial Information is not required in a Profile for Equity Securities;
- (b) In respect of applications where the applicant is seeking NZX Foreign Exempt Issuer Status, the Profile shall contain the information and be in the form prescribed by NZX from time to time.

### **Proposed definition of Prospective Financial Information**

**Propsective Financial Information** means the information set out in clauses 35 and 38 of Schedule 3 of the FMC Regulations for P+1 and P+2 (as those terms are defined in Schedule 3 of the FMC Regulations), unless NZX determines otherwise.

# Schedule One – Proposed Template



## Template Profile

### NZX Foreign Exempt Issuer applications

### Direct listing by Issuers with an existing ASX listing

Updated as at [DATE]

#### Profile for Listing as an NZX Foreign Exempt Issuer

*[Issuer to amend header and replace logo as appropriate]*

Section 1: Issuer and financial product information	
Name of issuer	
Financial product name/description	
NZX ticker code	
ISIN	
Australian registration number (ABN, ACN, ARBN, ARSN)	
Main business activity	
Brief details of issuer's operating activities	<i>[Can provide cross reference to a description contained in other application material, for example, annual report]</i>
Brief history of issuer	<i>[Can provide cross reference to a description contained in other application material, for example, annual report]</i>

Key features/terms of the financial products	<i>[Can provide cross reference to a description contained in other application material. The description must be sufficient to make it clear why the feature is of significance to investors. The key features/terms need not be disclosed to the extent they are features that apply to ordinary shares in an Australian company generally or managed investment products of funds governed by Part 5C of the Corporations Act 2001 generally]</i>
Details of tax consequences applicable to the financial products	<i>[Can provide cross reference to a description contained in other application material. Tax consequences should only be disclosed if the information relates to the particular financial product on offer (rather than to equity securities/fund securities, or classes of the same, generally)]</i>
Details of fees applicable to the financial products (for example, annual fees or performance fees) <i>Applies to fund securities only</i>	<i>[Issuers should have reference to the guidance from ASIC in RG 97 as to the disclosure of fees for managed investment products]</i>
Details of the directors' intentions as to [Issuer's] future dividend policy <i>Applies to equity securities only</i>	
Details of any waivers from the ASX listing rules	<i>[Can provide cross reference to a description contained in other application material, for example, annual report. Please summarise any waivers from all or part of the ASX listing rules which are currently being relied upon, or upon which the issuer has relied within the 12 months prior to this application]</i>
Website URL to access previous announcements by the issuer under the ASX listing rules	<i>[Insert link to ASX website]</i>
<b>Section 2: Contact details</b>	
Address of registered office in place of incorporation	

Contact telephone number for investor enquiries	<i>[This need not be a New Zealand number]</i>
E-mail address for investor enquiries	
Website URL (for investor information)	
<b>Section 3: Other details</b>	
Place and date of incorporation	
Legislation under which incorporated	
Annual balance date	
Home Exchange	Australian Securities Exchange - ASX
Listing category on Home Exchange	[Equity/Funds] (delete one)
Any other exchanges on which the issuer is listed or financial products quoted	
Name of audit firm	
Currency of reporting	
Name of financial product registry	[Computershare Limited (AUS)/Computershare Investor Services Limited (NZ)/Link Market Services Limited]  <i>Please discuss with NZX if the issuer uses a different registry to one of the above.</i>
Address of financial product registry	
Telephone number of financial product registry	
Fax number of financial product registry	
Email address of financial product registry	

<b>Section 4: Governance<sup>8</sup></b>	
Full name of all current directors	
Full name and title of CEO/managing director	<i>[If there is no chief executive officer, the person or persons fulfilling that role should be included]</i>
Full name and title of CFO	<i>[If there is no chief financial officer, the person or persons fulfilling that role should be included]</i>
Full name and title of Company Secretary	
<b>Section 5: Confirmation</b>	
Confirmation this Profile document is complete and accurate, and that the issuer holds no information that has not been disclosed to ASX that should have been disclosed under the ASX listing rules	[Confirmed]
Confirmation the issuer complies with the listing rules of ASX	[Confirmed]
<b>Section 6: Authority for this Profile</b>	
Name of person authorised to release this Profile	
Contact person for this announcement	
Contact phone number	
Contact email address	

If the applicant is a fund or managed investment scheme, provide details for the manager/responsible entity

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<sup>8</sup> If the applicant is a fund or managed investment scheme, provide details for the manager/responsible entity