

NZX Regulation Decision

NZX Regulation (**NZXR**)

Ruling on NZX Main Board Listing Rule 10.4.4

9 August 2017

Updated 3 October 2017

Background

1. NZX Main Board Listing Rule (**Rules**) 10.4.4 prescribes the requirements for Issuers to make annual and half-year reports available to Quoted Security holders, stating:

10.4.4 An Issuer shall make an annual or half-year report available to Quoted Security holders as required by Rule 10.4.1 or Rule 10.4.2, by sending to Quoted Security holders either:

- (a) A copy of the annual report or half-year report (as the case may be); or*
- (b) A notice containing the statements referred to in section 209(3) of the Companies Act 1993 and complying with sections 209A and 209B of the Companies Act 1993.*

Provided that for the purposes of Rule 10.4.4 and Rule 10.4.6, sections 209 to 209B of the Companies Act 1993 shall be deemed modified so that:

- (c) references in that section to “shareholders” shall be deemed to be references to members of the relevant Class of Quoted Security holders of that Issuer; and*
- (d) in respect of an Issuer which is not a company, references to “company” shall be deemed to be references to the Issuer; and*
- (e) in respect of a Managed Investment Scheme, references to “board of a company” shall be deemed to be references to the Manager; and*
- (f) references to “annual report” shall (for the purposes of compliance with Rule 10.4.2) be deemed to be a reference to a half-year report; and*
- (g) section 209(3)(d) shall not apply to the half-year report; and*
- (h) references to “annual report” shall be deemed to be references to an annual report as required by Rule 10.4.1.*

Provided also that an Issuer will be deemed to have made any half-year report available to Quoted Security holders if that Issuer’s most recent annual notification under Rule 10.4.4(b) explicitly stated that it applied to the next half-year report under the Rules. Where a half-year report is deemed to have been made available in this way, a Quoted Security holder’s election in respect of receipt of the relevant annual report, if any, shall apply in connection with that half-year report, except that an election to receive a concise annual report must be treated to include an election to receive the relevant half-year report.

Decision

2. For the purposes of compliance with Rule 10.4.4:
 - a. Issuers will be deemed to comply with Rule 10.4.4 if they make annual or half-year reports available to Quoted Security holders in accordance with any FMC regulations (as that term is defined in section 209C(5) of the Companies Act 1993); and
 - b. The proviso under Rule 10.4.4 starting “Provided that for...” will also be deemed to apply, subject to the following modifications:
 - i. The proviso shall be interpreted to read “Provided that for the purposes of Rule 10.4.4 and Rule 10.4.6, sections 209 to 209C of the Companies Act 1993 and regulations 61B to 61F of the Financial Market Conduct Regulations 2014...”; and
 - ii. The proviso shall be interpreted so that any reference to ‘section’ within the proviso is a reference to ‘section and the FMC regulations’
 - iii. The proviso shall be deemed to include the following modification to the existing list;
 - (i) any reference to an ‘e-reporting entity’ is deemed to be a reference to an Issuer;
 - c. If an Issuer is a State enterprise (as defined in the State-Owned Enterprises Act 1986), when complying with regulation 61D and 61E of the Financial Markets Conduct Regulation 2014, references to “working days after it is prepared” and “working days after the annual report for the period is prepared” is deemed to be 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.”
 - d. An Issuer will be deemed to have made any half-year report available to Quoted Security holders if that Issuer’s most recent notification made in reliance on this Ruling explicitly stated that it applied to half-year reports provided under the Rules.
3. The policy behind this ruling is to reflect amendments made to the Financial Markets Conduct Regulations 2014 (**Regulations**), which enable Issuers to satisfy their annual reporting requirements by electronic means. Those amendments also limit the requirement to send the notices contemplated by the Regulations to Quoted Security Holders who have not received a notice before. This Ruling extends this to the half-year reporting obligations Issuers have under the Rules, in accordance with the current policy expressed in the proviso to Rule 10.4.4. NZX intends to amend Rule 10.4.4 in due course, to reflect the changes under the Regulations