

Finalised Market Structure and Listing Rules Explanatory Paper

October 2018



Contents

| | |
|--|--------------------|
| Part 1 - Introduction | 03 |
| Part 2 - Structure of updated market and rules | 05 |
| Part 3 - Specific rule settings | 07 |
| Appendix 1 | 13 |
| Appendix 2 | 22 |

Part 1 - Introduction

NZX today published its updated Listing Rules to align with the refreshed market structure. This completes the first holistic review of the rule set in 15 years. The changes support NZX's commitment to create a rule set that will promote market development and assist in the listing of a broader range of financial products for New Zealanders.

The Listing Rules provide an important connection with our current and prospective customers. We received excellent engagement during this review and the updated rule set and market structure delivers on this feedback and improves our current customer offering.

The updated rules are designed to make it easier for companies to list on the NZX – and make it simpler and faster for our current listed companies to raise additional capital. Investor protections have also been enhanced in key areas.

NZX is also developing its customer offering by partnering with global exchanges to improve offshore access for our issuers, and to attract more overseas issuers to New Zealand. This will also improve New Zealanders' access to offshore investment opportunities. The updated Listing Rules play an important role in facilitating this.

NZX has also been seeking to align its policy settings with global markets, where it makes sense to do so, while ensuring that measures meet the needs of participants in New Zealand's markets.

The market structure and rule review was an important project for NZX and we are grateful to all those who have contributed and helped us to deliver on all its objectives to:

- ▶ Reduce complexity with the current three equity market structure and build scale in the Main Board
- ▶ Enhance investor protections to increase confidence and participation in our 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
- ▶ Remove unnecessary compliance costs, introduce tools to reduce the cost of compliance and ensure the rules are easy to navigate and use

In conjunction with these specific objectives, the review has sought to align with the purposes outlined in sections 3 and 4 of the Financial Markets Conduct Act 2013 (FMC Act).

The review started in November 2017 and NZX received feedback from 68 interested parties in the first stage, and had continued strong engagement during the second stage in April 2018, which included a consultation paper and exposure draft. In addition to the formal consultation a survey, workshops and forums with smaller groups were held. Over 100 submissions and survey responses have been received during the course of the review from a broad range of capital markets participants.

Thank you to everyone who engaged in this review. Copies of past discussion and consultation papers, and the non-confidential submissions received are available [here](#).

The updated rules will be implemented as follows:

| | |
|--|-------------------------|
| Publication of final rules | 30 October 2018 |
| Publication of updated guidance, forms and procedures | 30 November 2018 |
| Amended rules to take effect | 1 January 2019 |
| Transition opt-in period | H1 2019 |
| Final date for transition (including NZAX and NXT markets) | 30 June 2019 |

We continue to welcome your feedback, if you have any queries in relation to this explanatory paper, please contact General Counsel and Head of Policy Hamish Macdonald at: hamish.macdonald@nzx.com

For all issuer relationship enquiries please contact Head of Issuer Relationships Joanna Lawn at: joanna.lawn@nzx.com

For all enquiries relating to transition, migration or other regulatory support please contact Head of Market Supervision Joost van Amelsfort at joost.vanamelsfort@nzx.com or the Issuer Compliance team at: regulation@nzx.com

Part 2 - Structure of updated market and rules

Market structure

The updated rules will deliver an open architecture to facilitate the listing of a broader range of issuers and product classes, including fit for purpose rules in relation to equity, funds, debt, and issuers who are already listed overseas.

An important aspect of the review has been to consider the listed market structure. The removal of the existing three equity market structure was strongly supported as an outcome for the review. NZX explored whether differential standards should be introduced for earlier stage equity companies but this was generally not supported. Feedback indicated that although the intention with the junior equity markets was good, previous attempts at rule settings for smaller equity issuers had not been effective in meeting the needs of this sector. A particular concern was that the current structure is overly complex. The updated market structure will have a single set of standards for equity issuers, but we have carefully considered the settings for smaller issuers to ensure that compliance costs are proportionate and that the Listing Rules are efficient in delivering shareholder protections.

Market development has been an important focus of the review. The NZX debt market is performing well with 21 issues so far this year and \$3.4 billion of capital raised. We are introducing changes to build on the recent strong momentum in this market by removing unnecessary compliance costs and improving speed to market for further capital raising.

NZX has also been considering non-rules based measures to promote its debt market and NZX was pleased to welcome the inaugural listing of a green bond on NZX by Auckland Council on 26 August 2018. NZX guidance on issuing green bonds is available [here](#) (see section 10). We are also introducing a wholesale debt market to broaden the listed product range.

The listed fund market in New Zealand is currently underdeveloped. We are introducing special purpose rules for the listing of managed funds and we are encouraged by the strong support which this has received already. We have designed a regime which complements the framework for the regulation of managed funds outlined in the FMC Act to reduce regulatory overlap. NZX can offer an important distribution channel for fund securities.

We are also enhancing settings to facilitate the listing of overseas companies and the rules will also continue to permit the listing of co-operative structures.

Structure of updates rules and supporting framework

The Listing Rules are generally operating effectively for Main Board listed issuers so these have been retained as the basis for the updated rules. However, we have organised the rules into a more logical, modular format based on feedback received during the review. The modular (or building block) format will make navigation of the rules easier. Those areas of the rules which are used less have been addressed at the back of the rules or have been included within appendices. The rules will also be easier to navigate for different issuer types, depending on whether you are an equity, debt or fund issuer.

The updated rules also align definitions with legislation (particularly the FMC Act) to reduce unnecessary complexity and we have also introduced rule changes to embed existing class rulings and waivers to reduce overall regulatory compliance costs.

We have also made changes to ensure the updated rules are presented in plain English to improve usability – this includes removal of antiquated language (such as “forthwith” timing obligations and references to telex and facsimiles).

The rules for equity, fund and debt issuers are now contained in a single rule set instead of across three separate rule sets as was the case previously for equity issuers.

Overall these changes have led to a significant improvement in the rules framework which will be easier to apply by customers, and for NZX to maintain in future. To illustrate this point, the total page number of rules will reduce from approximately 345 pages plus appendices across the three rule sets to approximately 81 pages plus appendices in the updated rules.

The updated rules will be supported by NZX’s broader regulatory framework. As part of the review process we have updated existing forms so that redundant forms are removed and to improve the usability of remaining forms. This will in turn drive the disclosure of better information. An important aspect of the review is to make better use of NZX’s Market Announcement Platform (MAP) for release of information to market. This will ensure consistency of treatment of information being released and will also provide a platform for further enhancements over time i.e. better online tools to facilitate compliance.

The rules and forms will be supported by updated guidance and practice notes, with the NZX Regulation team providing the next line of support in respect of questions of application.

Part 3 - Specific rule settings

Outlined below is a summary of the key changes to the updated rules for the listing of equity, funds and debt securities. This seeks to provide an explanation of the key changes but is not exhaustive. To assist existing issuers, we have also published some materials with more technical details, including 'finder tables' to identify where existing Main Board Listing Rules are addressed in the updated rules. These are available at [NZX.com](https://www.nzx.com).

We have provided more detail on specific rule changes within appendix 1. We have also published an overview of the updated setting for equity, funds and debt issuers as appendix 2.

For equity issuers the changes to the rules have been supported by enhancements to the [NZX Corporate Governance Code](#) (NZX Code), as explained below and within the appendices. The NZX Code does not apply to debt and funds issuers.

Equity Issuers

Eligibility for listing

To be eligible for quotation, NZX currently requires securities to be held by at least 500 members of the public holding at least 25% of the number of securities of that class. With the removal of the junior equity markets NZX is conscious of the need to ensure settings remain suitable to attract new issuers. The current spread and free-float requirements are being amended to 100 holders and 20%, respectively. The indicative minimum market capitalisation requirement is set at \$10 million.

We have retained the requirement for issuers to have a constitution which complies with the Listing Rules but removed the requirement for constitutions to be reviewed and approved by NZX Regulation in order to reduce costs for issuers. A solicitor's opinion will still be required to confirm that a constitution meets the requirements under the Listing Rules.

The listing application process has also been reviewed to streamline the information which must be provided with an application for listing or quotation.

Governance

We have retained the requirement for a minimum of three directors but we have simplified the existing rotation requirements to make them easier to apply in practice and to ensure that executive directors are also subject to the same standard. In response to investor feedback, we have also retained the requirement for at least two New Zealand resident directors.

We have enhanced the current director independence regime by recommending within the NZX Code that boards have a majority of independent directors while retaining a minimum requirement for two independent directors. This allows companies the flexibility to explain why majority independence may not be appropriate for their circumstances.

Feedback to the review generally agreed that the definition of independence (and Disqualifying Relationship) set out in the rules has not been operating effectively in some areas. Feedback supported the view that a principles based test will work better, supported by additional commentary within the NZX

Code explaining the situations which would be likely to be considered to give rise to non-independence. It will be up to boards to make assessments based on this enhanced guidance.

Linked to this discussion is the question of the definition of an "Associated Person". Submitters agreed that the current test is too complicated and often produces anomalous results. We have simplified the test so that it is more aligned with the test within the FMC Act.

In response to investor feedback, we have retained the current audit committee requirements for Main Board issuers.

Disclosure and reporting

Disclosure and reporting is an important part of the current listing framework which supports informed investment decision making. We have retained the primary continuous and periodic disclosure requirements, but we have addressed drafting issues with the existing rules and embedded some aspects currently outlined in guidance, including amending references to "immediate" disclosure requirements to "promptly and without delay".

We have also introduced the concept of constructive knowledge in respect of continuous disclosure. Although this was opposed by some issuers and advisers it was supported by investors and will align other regimes, such as the Australian Securities Exchange, the London Stock Exchange and the Singapore Stock Exchange. Additional guidance has been developed in this area which is discussed separately below.

Recent changes to legislation enable issuers to satisfy their annual reporting requirements by electronic means, and this has now been reflected in the rules. A change which has been widely supported is to remove the requirement for a separate half year report, which will significantly reduce costs for issuers. We have also updated the content requirements for periodic reports outlined in appendix 2 of the Listing Rules and the Annual Report content requirements in section 3.8 of the Listing Rules.

We are also introducing a change so that all announcements from issuers must be released via MAP. This change is discussed in a separate section below.

Capital raising and transactions

To enhance existing core shareholder protections we have improved protection against dilution by reducing the current placement headroom from 20% to 15%, together with reducing the headroom for share purchase plans and ensuring any placement of amounts not taken up are subject to the overall placement capacity. We have also introduced a recommendation in the NZX Code that capital raisings are carried out on a pro rata basis.

We have removed the requirement for NZX to review same class offer documentation in order to reduce compliance costs for further capital raisings by existing equity issuers. This will make capital raising faster and more efficient for issuers and aligns with the intentions outlined in the FMC Act.

We received strong feedback on the question of major transaction approval thresholds. We have carefully considered this feedback and decided to retain the status quo at this stage. This is an issue which can be considered further in future. However, we have introduced mandatory voting by poll to enhance existing investor protections in respect of exercising voting rights.

Debt Issuers

We are introducing several measures which will continue the strong momentum in NZX's Debt Market. The focus has been to remove unnecessary compliance costs in the form of spread and free float requirements and to improve speed to market. There was strong support to remove entirely the current spread and free float requirements for debt issuers to recognise long standing practice and to reduce compliance costs.

The existing governance provisions have been updated to recognise the introduction of the FMC Act where not all offers are regulated offers and to recognise routine waivers which have been granted in respect of transfer and selling restrictions.

We have not made material amendments to the existing disclosure and reporting requirements which are operating well currently, but we are proposing additional guidance in respect of application of the existing continuous disclosure requirements.

We have removed the requirement for NZX Regulation to approve same class debt offers to improve speed to market. This will make capital raising faster and cheaper for these issuers and was strongly supported by submitters.

Wholesale Debt

We have also introduced a framework for the listing of wholesale debt. These products will be listed only, with trading continuing to occur on an OTC basis. The framework is straightforward and aligns closely with other overseas regimes, with minimal listing requirements. There will be no periodic reporting or continuous disclosure requirements but these issuers will be able to release information over MAP if they wish to do so.

Funds

There are currently a relatively small proportion of listed funds on NZX's Main Board. We have introduced tailored rules for these issuers which delivers an open architecture for the listing of a broad range of investment entities. The updated rules will significantly reduce the compliance costs for these issuers, while targeting protections which deliver value for investors. This is an area of the listed market which is under developed compared to global peers and presents a strong opportunity for market development.

Eligibility

The FMC Act has introduced a licensing regime for managed investment schemes which provides a number of core investor protections together with frontline regulation from an external supervisor and FMA oversight. These licensing requirements provide strong baseline protections. The rules supplement these requirements for closed ended funds to have a minimum market capitalisation of \$10 million and minimum spread and free-float requirements of 100 holders and 20%, respectively.

Governance

The key governance arrangements for funds relate to the investment manager and external supervisor, which are governed by legislation for licensed fund managers. We have supplemented this with a requirement for at least one member of the board of the manager to be ordinarily resident in New Zealand or Australia.

Disclosure and reporting

Continuous disclosure requirements will apply to these issuers to ensure dissemination of information to investors and we have developed additional guidance for these issuers. Licensed fund managers must provide quarterly fund updates under legislation. These requirements will be supplemented by a requirement that any information sent to product holders is also released over NZX via MAP.

Transactions and capital raising

For licensed fund managers, transactions and changes in capital will continue to be governed by legislation.

Corporate action timetables

Timeframes have been updated to reflect developments in capital raising methods, such as accelerated entitlement offers, and to reflect current expectations and practices, such as reducing notice requirements from 10 to five business days for payments and distributions.

In addition, we have updated some of the standard forms (such as old appendix 7) to make them more user friendly. New forms to support the updated rules will be published alongside updated guidance and practices notes at the end of November 2018.

Reverse and backdoor listings

A reverse or backdoor listing occurs when a listed company without an existing business activity purchases a private company or its business in order to list the enlarged group.

There are benefits to companies of utilising listed shells or smaller companies in order to obtain a listing but we propose to treat such transactions as new listings to ensure an appropriate listing process is followed. We have also developed updated guidance to confirm that issuers may be suspended from trading pending release of sufficient information on the target company.

Foreign Exempt Issuer settings

We are also enhancing settings to facilitate the listing of overseas companies. We are renaming this as the NZX Foreign Exempt regime and removing the current restriction on companies incorporated in New Zealand from listing under this category, because there is no reason why the principle of substituted compliance should not apply to these companies if they are meeting regulatory standards on an approved overseas market.

We have reduced the current complexity in respect of local and overseas listing statuses by confirming we will have primary listings (i.e. issuers who fully comply with NZX's Listing Rules) or Foreign Exempt issuers (i.e. who comply with their home exchange requirements, and some NZX additions). The rules in

this area are now easier to use and understand so that they do not act as an unnecessary hindrance to listing by overseas listed companies.

Supporting Materials

We have updated our fee schedule to support the revised market structure and rules. This includes attractive settings for smaller equity issuers and funds issuers in order to promote market development. The full updated fee schedule can be found on [NZX.com](https://www.nzx.com) and further information is available at the Q&A noted below.

Guidance and updated forms

To support the updated rules we have also prepared new and updated guidance notes and forms. We intend to publish these materials by 30 November 2018 but in the meantime we are seeking any feedback on the draft updated/new guidance which has been prepared. These draft guidance notes are available at [NZX.com](https://www.nzx.com) together with details of how to provide feedback, which can be provided to the following email address policy@nzx.com by Tuesday 13 November 2018.

Market Announcement Platform (MAP) enhancements

In order to support the updated Listing Rules, we will be introducing changes to NZX's Market Announcement Platform (MAP). Under these changes, issuers will be required to input certain key reporting data directly into MAP when submitting an announcement for release to the market. These changes will provide issuers with more direct control over their information and increase the accuracy of data reporting.

Additional features have been added to MAP, such as the ability for issuers to update their company overview and performance sections that display on [NZX.com](https://www.nzx.com), functionality to auto-generate appendix documents, as well as improvements to the MAP user experience arising from feedback received from consultation held with users of the current system.

We will be providing issuers with training on these changes both in person and via webinar, alongside a comprehensive suite of guidance documentation.

Migration and transitional arrangements

NZX Regulation has prepared information for issuers to assist them in their transition to the updated rules.

NXT and AX Issuers

We have engaged with each of the issuers that are currently listed on the NXT and AX markets, to provide them with key information about migrating to the Main Board in 2019. The migration process for NXT and AX issuers will be supported by class waiver relief, including to extend the time by which such issuers will be required to update their constitutions. Information relating to that migration process is set out on [NZX.com](https://www.nzx.com).

Existing Main Board/Debt Market issuers

The transition process for issuers that are already listed on the Main Board or Debt Market on 1 January 2019 reflects that the change for these issuers is low impact. They will just need to release an announcement to the market to identify their transition date. The transition process for Main Board and Debt Market issuers will also be supported by class waiver relief, including in relation to the timing for the update of issuers' governing documents. We have published information about the transition for Main Board issuers on [NZX.com](https://www.nzx.com).

Appendix 1

We outline below some of the key changes in detail to operation of the rules for equity, funds and debt issuers. You can find more details in 'finder tables', available at the following links to [NZX.com](https://www.nzx.com). A more high-level explanation of the settings of the updated Listing Rules is provided in appendix 2.

Layout of the rules

The rules are rearranged to follow a lifecycle approach to listing. The layout of the rules is:

1. Listing and Quotation
2. Governance Requirements
3. Disclosure
4. Changes to Capital
5. Major and Related Party Transactions
6. Voting Rights and Rights of Equity Securities
7. Requirements for Documents
8. Transfers and Statements
9. NZX Powers

The rules are drafted in plain English to make them simpler to understand and more user-friendly.

Glossary

To the extent possible definitions are aligned with those in the Financial Markets Conduct Act 2013 (the FMC Act).

- ▶ Associated Person – the current test is complicated and often produced anomalous results. This test is simplified and streamlined to align more closely with the test under the FMC Act. Note that further amendments were made to this definition during the course of the FMA approval process.
- ▶ Average Market Capitalisation – this is updated to mean in relation to an issuer, the Average Market Price multiplied by the number of Equity Securities carrying votes.
- ▶ Average Market Price – under the new definition for Average Market Capitalisation, Average Market Price is calculated as the lesser of the volume weighted average price of an issuer's quoted equity securities over a 20 business day period or a five business day period. This calculation is proposed to reduce potential for aberrant results.
- ▶ Disqualifying Relationship – the definition of "Disqualifying Relationship" is amended to remove the current deeming provisions and retain an overarching test. The new definition covers any direct or indirect interest, position, association or relationship that could reasonably influence or could reasonably be perceived to influence in a material way the Directors capacity to bring an independent view to decisions in relation to the issuer, to act in the best interests of the issuer and represent the interests of the issuer's financial product holders generally. There is also a new recommendation in the

NZX Code regarding director independence to support this change. The commentary added is to help you to assess whether there is a disqualifying relationship.

- ▶ Financial Product – the current rules referred frequently to a “security” (as was the case under the former Securities Act before the FMC Act came into force). This is now updated to be financial product when referring to most products, to align with the FMC Act and avoid confusion. Specific security types (equity, debt and fund securities) are defined by reference to the definition in the FMC Act.
- ▶ Minimum Holding size is now \$1000.
- ▶ Senior Manager – aligned with the meaning given in section 6 of the FMC Act, is introduced as a new definition. This is a person who is not a director but occupies a position that allows that person to exercise significant influence over the management or administration of the issuer (for example, a chief executive or a chief financial officer). This replaces the current term ‘officer’. However, the term officer has been retained for the purpose of ongoing diversity reporting requirements.

Types of issuers

The rules no longer provide for Dual Listed Entities. Instead, issuers will either list with NZX as their Home Exchange or will be Foreign Exempt issuers. The regime for Foreign Exempt issuers is largely unchanged from that previously in place for Overseas Listed Issuers, except that Foreign Exempt issuers do not need to be incorporated overseas.

The rules then set out different requirements for equity issuers, debt issuers (including separately wholesale debt issuers) and fund issuers. The rules also include a regime for issuers of other financial products, to create some flexibility in the rules and permits the listing of new or novel types of products without having to use a number of waivers to fit these into the equity related rules.

Equity issuers

Eligibility for listing

See section 1 of the Listing Rules.

NZX currently requires securities to be held by at least 500 members of the public holding at least 25% of the number of securities of that class. These spread and free-float requirements are being changed to 100 holders and 20% spread. In addition, the minimum market capitalisation requirement will be set at \$10 million. These requirements are also subject to a further discretion on the part of NZX, for additional flexibility.

The new minimum holding size is \$1000. This is a simplified approach contrasted to the current requirement, determined by share number and price.

Issuers must continue to have a constitution which complies with the Listing Rules. This document no longer needs to be submitted to NZX Regulation for review and approval before being approved by shareholders. A solicitor’s opinion is still required to confirm that a constitution meets the requirements under the Listing Rules, and this must be provided to NZX Regulation with an application for listing and then before the constitution is changed.

Requirements relating to the information that must be provided with an application for listing or quotation are streamlined (updating current Listing Rules 5.1 and 5.2). Applicants are no longer required to use an Organising Participant.

Governance

See section 2 of the Listing Rules.

Boards are still required to have a minimum of three directors. Issuers must have at least two directors that are ordinarily resident in New Zealand. Independent director settings are retained and enhanced. The NZX Code now recommends (on a “comply or explain” basis that boards have a majority of independent directors (see recommendation 2.8) while the rules retain a minimum requirement for two independent directors.)

The definition of ‘Disqualifying Relationship’ has been amended: see ‘Glossary’ above.

Rotation requirements are simplified so that a director qualifying for rotation is any director who has held office (without re-election) past the third annual meeting following the Director’s appointment or three years, whichever is longer. We have removed the separate exceptions relating to executive directors and directors who hold a special office. These directors will now be subject to standard director rotation requirements.

Audit committee requirements are retained.

In other updates:

- ▶ The requirements in relation to conduct of Annual Meetings have been aligned to legislation i.e. to permit these to be held by audio, audio and visual, and/or electronic means.
- ▶ NZX has also tweaked the rule relating to directors’ remuneration, to clarify how issuers should calculate the amount they can increase a fee pool by. This drafting now makes it clear that the issuer should have regard to the number of directors that were on the board at the time the fee pool was created (as opposed to the number that are on the board at the time the increase was calculated).
- ▶ The updated rules expressly set out clauses that can be included in the governing document to create permissible transfer restrictions. This update addresses common issues relating to transfer restrictions, including in relation to the specific needs of cooperatives to limit transfers to persons who are not transacting shareholders. In addition, the rules clarify that escrow agreements that are entered into with shareholders in respect of “vendor securities” are not subject to the rules prohibiting transfer restrictions. This simplifies the arrangements for sell downs by major shareholders following listing.

Disclosure and reporting

The periodic reporting requirements are updated to more closely align with existing practices, including deleting the requirement for separate interim reports. The content requirements for periodic reports are updated. A key change is to require management commentary as part of periodic reporting.

The common waivers for registered banks, and the class ruling relating to the provision of annual reports by electronic means, have been reflected in the rules.

Drafting issues with the existing rules are fixed, including references to time (for example, “forthwith” has been amended to “within one business day”). Requirements for releasing particular information to the

market have been reviewed and amended (for example, by reducing from 10 business days to five days' notice for payments of dividends and distributions).

From 22 January 2019, Issuers will be required to input certain key reporting data directly into MAP when submitting an announcement for release to market.

Some changes have been made to the continuous disclosure rule. In particular, a constructive knowledge test has been introduced. This means issuers will be subject to continuous disclosure obligations where a Director or Senior Manager has, or ought reasonably to have, come into possession of material information in the performance of their duties. Additional guidance will be provided in respect of this change, which is available for feedback in draft form. We have also amended the reference to "immediate" disclosure requirements to "promptly and without delay", replaced the reference to "executive officers" with "senior managers" and aligned the definition of "material information" with the Financial Markets Conduct Act.

Capital Raising and transactions

See sections 4 and 5 of the rules

The current headroom threshold for equity issuers is reduced to 15% from 20% for existing Main Board issuers (and 20/25% for NXT and NZAX issuers).

The rules relating to share purchase plans have also been amended, so that issuers are restricted to issuing 5% of fully paid and vote carrying equity securities already on issue to any person, not just to employees and executive directors (as per the updated definition within the glossary).

The rules have been updated to reflect the increased use of accelerated offers, including by providing for the technical issues that arise under the related party rules.

While the definition of a major transaction still refers to 50% of Average Market Capitalisation, issuers must now consider whether the transaction will significantly change, either directly or indirectly, the nature of the issuer's business (instead of whether it will change the essential nature of the issuer's business). The change to the definition of Associated Person will also have flow on effects to the treatment of related party transactions, and NZX has made some minor clarifications in this section (for example, in relation to leases).

Review and approval of documents

NZX will no longer review:

- ▶ Offer documents for an offer of quoted equity securities or options under a rights offer or an accelerated offer made in reliance on clause 19 of Schedule 1 of the Financial Markets Conduct Act 2019 (sometimes referred to as "same class offers");
- ▶ Offer documents for offers of quoted equity securities made under a dividend reinvestment plan;
- ▶ Limited disclosure documents for offers of equity securities prepared as a result of an exclusion under Schedule 1 of the FMCA;

- ▶ Constitutions and other governing documents (although a solicitor's opinion must be provided, and the final approved document must be sent to NZX); and
- ▶ Notices of meeting merely because they include a shareholder proposal.

Debt Issuers (including wholesale debt)

Issuers of wholesale debt

NZX has introduced a framework for the listing of wholesale debt. Wholesale debt issuers are not required to meet a minimum market capitalisation or spread requirement. Following listing, issuers of wholesale debt are largely exempt from the rules. These issuers are only required to comply with:

- ▶ The obligation to release the offer document or terms sheet for the relevant wholesale debt securities; and
- ▶ The rules relating to the form of disclosure and communication to the market.

NZX is accepting applications for the listing of wholesale debt for new listings to take effect from 1 January 2019. The process is streamlined and a practice note will be available from 30 November about how to do this. See Listing Rules 1.8.1 and 3.25.2.

Other issuers of debt securities

Application of the rules

Debt issuers will continue to be exempt from certain rules: refer to rule 1.3

If the debt security issuer is also an issuer of other securities, they must separately comply with the rules that apply in respect of those other securities (for example, the rules relating to equity securities if they have equity quoted).

Eligibility

See section 1 of the Listing Rules.

The rules set a nominal amount for quotation of \$10 million, subject to NZX's discretion. Spread and free float requirements for debt issuers are removed.

Governance

See section 2 of the Listing Rules.

Trust deed provisions have been updated to recognise updates resulting from the introduction of the FMC Act where not all offers are regulated offers, for example, if the offer is made in reliance on the same class (or QFP) regime and help smooth other difficulties that are identified. Debt issuers must comply with Part 4 of the FMC Act, to the extent required by law. Among other things, this sets out the governance obligations for these issuers, including provisions relating to governing documents and the role of the supervisor.

There are also specific requirements relating to the content of governing documents for issuers of debt securities set out in the rules. This requires those governing documents to set out specific provisions relating to convening meetings of debt security holders and the passing of extraordinary resolutions.

NZX will no longer review and approve governing documents (although a solicitor's opinion must be provided, and the final approved document must be sent to NZX).

A distinction is drawn between transfer restrictions (which are prohibited) and selling restrictions (which are not) under the updated rules. The updated rules expressly set out clauses that can be included in the governing document to create permissible transfer restrictions. This update addresses common issues relating to transfer restrictions. For debt issuers, this will allow these issuers to include a restriction in the governing document so that security holders have to hold those securities in a specified nominal amount (for example, \$10,000) and/or in multiples of a specified nominal amount.

Disclosure and reporting

See section 3 of the Listing Rules.

The periodic reporting requirements are updated to more closely align with existing practices, including deleting the requirement for separate interim reports. The content requirements for periodic reports are updated. A key change is to require management commentary as part of periodic reporting. Debt issuers continue to have more limited disclosure obligations for annual reports.

The common waivers for registered banks, and the class ruling relating to the provision of annual reports by electronic means, have been reflected in the rules.

Drafting issues with the existing rules are fixed, including references to time (for example, "forthwith" has been amended to "within one business day"). Requirements for releasing particular information to the market have been reviewed and amended (for example, by reducing from 10 business days to five days' notice for payments of dividends and distributions).

From 22 January 2019, issuers will be required to input certain key reporting data directly into MAP when submitting an announcement for release to market.

Some changes have been made to the continuous disclosure rule. In particular, a constructive knowledge test has been introduced. This means issuers will be subject to continuous disclosure obligations where a Director or Senior Manager has, or ought reasonably to have, come into possession of material information in the performance of their duties. Additional guidance will be provided in respect of this change, which is available for feedback in draft form. We have also amended the reference to "immediate" disclosure requirements to "promptly and without delay", replaced the reference to "executive officers" with "senior managers" and aligned the definition of "material information" with the FMC Act.

Capital raising

The requirement for NZX approval of offer documents for same class debt offers (made in reliance on clause 19 of Schedule 1 of the FMC Act) has been removed.

Green bonds

NZX will not play a role in certifying green bonds, and the updated rules do not set out additional obligations for the listing of green bonds. Instead, NZX retains a discretion to approve a designation of a product as a green bond. Note our guidance to companies who are considering issuing green bonds, available [here](#) (see section 10 of this guidance note).

Once a product is designated as a green bond, the issuer has some additional obligations relating to providing information to NZX on request, or if it becomes aware that the designation is, or may have become, misleading or inaccurate.

Fund issuers

Bespoke rules are introduced for managed investment schemes. The rules permit the listing of both continuous issuers of fund securities and non-continuous issuers of fund securities, and distinguish between these two groups where necessary.

Application of the rules

Fund issuers will be exempt from certain rules: refer to rule 1.4 In particular, they will not be subject to the major transactions and related party transaction rules set out in section 5 of the rules, as this is regulated sufficiently by the FMC Act.

If the fund security issuer is also an issuer of other securities, they must separately comply with the rules that apply in respect of those other securities (for example, the rules relating to equity securities if they have equity quoted).

Eligibility

See sections 1.4 and 1.15.1 of the Listing Rules.

The rules set a market capitalisation threshold of \$10 million, subject to NZX's discretion.

Fund issuers that are not continuous issuers must meet spread requirements. 20% of the securities must be held by at least 100 non-affiliated holders, or the issuer must otherwise have an appropriate spread of security holders to ensure a sufficiently liquid market.

Fund issuers that are continuous issuers are not required to meet spread requirements.

Governance

See section 2.16 of the Listing Rules

Fund issuers must comply with Part 4 of the FMC Act, to the extent required by law. Among other things, this sets out the governance obligations for these issuers, including provisions relating to governing documents, the role and responsibilities of the manager, and the role and responsibilities of the supervisor. These requirements have been supplemented with a requirement for at least one member of the board of the manager to be ordinarily resident in New Zealand or Australia.

Disclosure and reporting

See section 3 of the Listing Rules.

Fund issuers do not have to prepare the periodic reports required by rules 3.5 to 3.10 of the updated rules, as this would introduce an additional reporting requirement. Instead:

- ▶ Every issuer of fund securities that is a managed fund under the FMC Act, must prepare a fund update under the FMC Act if required to do so by law, and release that fund update through MAP promptly and without delay after it has been made publicly available; and
- ▶ Every issuer of fund securities must prepare and release through MAP an annual report prepared in accordance with the FMC Act, within three months of the balance date of the relevant scheme.

Drafting issues with the existing rules are fixed, including references to time (for example, “forthwith” has been amended to “within one business day”). Requirements for releasing particular information to the market have been reviewed and tightened (for example, by reducing from 10 business days to five).

From 22 January 2019, issuers will be required to input certain key reporting data directly into MAP when submitting an announcement for release to market.

Some changes have been made to the continuous disclosure rule. In particular, a constructive knowledge test has been introduced. This means issuers will be subject to continuous disclosure obligations where a Director or Senior Manager has, or ought reasonably to have, come into possession of material information in the performance of their duties. Additional guidance will be provided in respect of this change, which is available for feedback in draft form. We have also amended the reference to “immediate” disclosure requirements to “promptly and without delay”, replaced the reference to “executive officers” with “senior managers” and aligned the definition of “material information” with the Financial Markets Conduct Act.

Review and approval of documents

NZX will no longer review offer documents for continuous offers where the offer document has previously been approved by NZX. NZX will also no longer review and approve governing documents (although a solicitor’s opinion must be provided, and the final approved document must be sent to NZX).

Corporate action timetables

See section 4 of the Listing Rules.

These have been amended to reflect developments in capital raising methods, including accelerated entitlement offers, current expectations and practices e.g. for announcement and payment of dividends to reduce notice from 10 business days to five business days.

In addition, appendix 7 had not been updated for some time this is updated to be more user friendly.

New forms to support the updated rules will be published alongside updated guidance and practices notes at the end of November 2018.

Reverse and backdoor listings

See sections 1.11 and 1.13.1 of the Listing Rules.

The rules have been amended to give NZX the discretion to treat these transactions as a new listing of the post-transaction issuer. NZX has also given further thought to when it will apply a suspension to trading of the listed issuer's shares, and when a profile for these transactions will be required. NZX will publish updated guidance on these by 30 November 2018.

Appendix 2

| | Equity | Debt | Funds |
|---|---|--|--|
| Spread requirements | Minimum 100 | None | Minimum 100 for non-continuous issuers of fund securities |
| Free float | 20% | None | 20% for non-continuous issuers of fund securities |
| Minimum value | \$10 million | \$10 million nominal value | \$10 million |
| Minimum number of directors | 3 | | |
| Director rotation requirements | Directors must retire every three years but shall be eligible for re-election | Issuer of debt shall comply with part 4 of the FMCA to the extent required by law | To be governed via legislation for licensed management investment schemes. General discretion for NZX to impose governance requirements if FMCA does not apply |
| At least two directors must be a resident of New Zealand | Yes | If a debt issuer is not subject to Part 4 of the FMCA, such debt issuer should comply with all applicable laws relating to its governance. | In addition, the manager must have at least one director ordinarily resident in New Zealand |
| Independent directors | Minimum two independent directors. Recommended majority | | |
| Corporate governance reporting – NZX Corporate Governance Code | Yes – report against NZX Corporate Governance Code | | |
| Audit committee requirement | Yes | | |
| Periodic reporting | Yes – full year and half year accounts | Yes – full year and half year accounts Carve outs are in place for registered banks | To be governed via legislation for licensed management investment schemes |
| Continuous disclosure | Yes | Yes | Yes Guidance will indicate this requires release of information through MAP of information which is required to be released to the public under legislation and regulations |
| Limitation on further issues of securities without shareholder approval | 15% | N/A | N/A |
| Major transactions threshold | 50% of average market capitalisation | N/A | N/A |
| Related party transactions | 10% | N/A | N/A |