

New NZX Listing Rules – What you need to know

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Key points and dates

- Changes to continuous disclosure, board composition and other matters
- Rules effective from 1 January 2019 with a transitional period. Issuers must opt in by **30 June 2019**
- MAP changes from **22 January 2019**
- Consultation on new guidance, eg continuous disclosure and governance. Submissions due **13 November 2018**.

NZX has published updated Listing Rules and a range of supporting material. Outlined below are key changes, the transition process and key transition dates, and where to get more information.

Buddle Findlay will be hosting a National CPD seminar on 3 December 2018 to discuss the changes to the Listing Rules. Please contact us if you are interested in attending.

Key changes

Equity issuers	
Continuous disclosure	<p>New constructive knowledge concept</p> <p>Continuous disclosure obligations apply where a Director or Senior Manager has, or ought reasonably to have, come into possession of material information in the performance of their duties</p> <p>See further discussion below of NZX's new draft Guidance Note on Continuous Disclosure</p>
Major transactions	<p>Definition of major transaction remains at 50% of Average Market Capitalisation</p> <p>Proposals to reduce threshold to 25% or introduce material increase in scale trigger dropped</p> <p>But the requirement for shareholder approval is triggered if the transaction will "significantly change, either directly or indirectly, the nature of the Issuer's business" (instead of the existing requirement – "change the essential nature" of the issuer's business)</p>
Related party transactions	<p>Provision amended to apply only where a related party is a direct party to the Material Transaction</p> <p>This addresses the problematic current rule, which applies where a related party is a party to a non-material transaction which is at least one of a related series of transactions of which the Material Transaction forms part</p>
Board	<p>Minimum 2 independent directors. NZX Corporate Governance Code (NZX Code) recommends majority of independent directors (on a "comply or explain" basis)</p> <p>Minimum 2 NZ resident directors</p>

	<p>Rotation standardised – 3rd annual meeting after appointment or 3 years (whichever is longer) for directors including executive directors and directors holding special office (but not a director that was appointed by a shareholder under the issuer’s constitution) This should address the confusion highlighted in the recent NZMDT decision here.</p>
Director independence	<p>Audit committee requirements retained</p> <p>“Disqualifying Relationship” definition amended to remove the current deeming provisions and retain principles based test – “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 Director’s [independence]”</p> <p>The NZX Code also lists factors that may impact a director’s independence – see Recommendation 2.4</p>
Reporting	Requirement for half year report removed
Voting	Voting at shareholder meetings to take place by poll, rather than a show of hands or voice
Going digital	<p>Shareholder meetings permitted to be held by audio, audio and visual and/or electronic means</p> <p>Annual reports permitted to be provided by electronic means</p>
Capital raising	<p>Placement threshold reduced to 15% from 20%</p> <p>Share purchase plan threshold reduced to 5% from 30%</p> <p>Rule changes to enable accelerated offers</p>
Listing	<p>Eligibility: 100 holders and 20% spread (down from 500 and 25%), and \$10 million minimum market capitalisation (these requirements also subject to NZX discretion); \$1000 minimum holding size (simplifying the current requirement, determined by share number and price)</p> <p>Overseas listed issuers: NZ incorporated issuers with a primary listing on a recognised overseas exchange can now also be Foreign Exempt issuers</p> <p>Reverse listings: Treated as new listings</p>
Review and approval of documents	<p>NZX will no longer review:</p> <ul style="list-style-type: none"> • Offer documents for same class offers or dividend reinvestment plans, or disclosure documents for excluded offers under Schedule 1 of the FMCA • Constitutions (but solicitor’s opinion still required) • Notices of meeting merely because they include a shareholder proposal
Definitions	<p>Associated Person: More closely aligned with FMCA definition. But, in a good move, the ‘triangulation’ provision in the FMCA definition is expressly not adopted, ie the NZX definition says A is not associated with B merely because there is another person to which A and B are both associated</p> <p>Senior Manager: Adopts FMCA definition – a person (other than a director) in a position to exercise significant influence over management, eg the CEO or CFO. Likely to capture the same people as the current “Officer” definition in most cases</p>

Debt Issuers	
Updates	<ul style="list-style-type: none"> • Nominal amount for quotation \$10m, subject to NZX discretion. Spread and free float requirements removed • Trust deed provisions updated to recognise updates from FMCA • Some updates to reporting and disclosure, including constructive knowledge in relation to continuous disclosure

Wholesale debt	New framework for listing wholesale debt. Wholesale debt issuers not required to meet minimum market capitalisation or spread requirement, and once listed are largely exempt from the rules
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Funds
Bespoke rules introduced for managed investment schemes. Both continuous and non-continuous issuers of fund securities able to list.

More information

See [here](#) for the updated rules, NZX's explanatory paper, etc.

Transition

MAP: From 22 January, MAP will have an additional screen where issuers can input data directly when submitting certain announcements to the market for release. NZX is providing training this month – see [here](#).

Waivers:

- Existing waivers will be grandparented until 30 June 2020. Issuers are being asked to notify NZX Regulation by **31 March 2019** whether they will seek to continue to rely on any existing waiver after they transition to the updated rules. NZX will engage on assessing / updating any waivers.
- Any new waiver required needs to be in place **before the issuer transitions**.

Constitutions and other governing documents: Issuers will have until the **next annual meeting after transition** to approve a governing document that complies with the updated rules. In the meantime a class waiver will deem governing documents to contain the provisions in the updated rules.

Periodic reporting: Class ruling granted to clarify the approach, eg an issuer that transitions after its balance date but before its reporting date will follow the requirements in the updated rules, meaning it is not required to prepare a half year report if the relevant financial period is a half year.

Board: Under the class ruling to be issued, any director on the board for more than 3 years will need to retire at the next annual meeting following transition and may stand for re-election.

Transition process: To transition to the updated rules, issuers will release an announcement to the market providing at least 1 week's prior notice of their transition.

More information: See [here](#) for more detail from NZX on transition.

New guidance – consultation

NZX is consulting on draft guidance notes on spread, reverse listings, governance and continuous disclosure, draft forms of which are available [here](#). Submissions are due on 13 November 2018.

Of particular interest are the comments on constructive knowledge in the updated Guidance Note on Continuous Disclosure. In particular:

"The test of information that an issuer is aware of is extended to information its directors or senior managers "ought to have reasonably come into possession of". The practical effect of this is that **issuers must have processes in place to ensure that information is appropriately escalated**, because any information that is of such significance that a senior manager ought reasonably to have been made aware of it in the course of their duties as a senior manager will be information that an issuer is aware of. If that information is material information, the issuer will have a disclosure obligation under Rule 3.1. **The issuer should have appropriate policies and procedures in place so that information is provided to senior managers efficiently in order to meet these disclosure requirements.**"

– Page 16

"... the extension of an issuer's awareness to information that an [sic] senior manager ought reasonably have come into position [sic] of **will effectively require the issuer**, when it is on notice of information that potentially could be material information, **to make any further enquiries or obtain any expert advice** needed to confirm whether it is material information within a reasonable period." – Page 12

"In the event that the issuer does breach its obligation under Rule 3.1.1, NZX Regulation **will likely have regard to the fact that the issuer has such a policy**, and the degree to which this was effective in the particular scenario (and why it was or was not effective)." – Page 25

Buddle Findlay submitted in the rules consultation process that NZX should consider a defence to the constructive knowledge test that the issuer took all reasonable steps to identify material information which was not actually known by senior management but which ought to have been (similar to the defence under section 272 of the FMCA for failure to comply with continuous disclosure). This was not adopted, however having proper processes in place is likely to be a mitigating factor, as indicated in the last quote above.

Concluding comments

We think NZX has done a good job updating the new rules. The consultation process has been effective, and the updated rules are clearer, shorter and easier to use.

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