



CORPORATE

NEW LISTING RULES IN PLACE

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Gavin Macdonald
PARTNER



Andrew Brown
PARTNER

Recent amendments to the NZX Listing Rules should make it easier for NZX listed issuers to raise capital.

The changes to the Listing Rules of the NZSX/NZDX and NZAX Markets (the New Rules), which came into effect on 3 April 2009, put in place the changes outlined in NZX's December 2008 consultation Exposure Draft with some minor amendments.

Many of the changes have been prompted by current market conditions and some of the recommendations of the Capital Markets Development Taskforce. However, a number of the New Rules are not directly related to the financial crisis.

What has changed?

A summary of the New Rules is set out below.

Rights issues

The New Rules have reduced the prescribed time period for a rights issue. The closing date for applications to be received after the mailing of entitlement letters has been reduced from a minimum of 18 business days to a minimum of 12 business days. Details of the issue must now only be announced to the market five business days before the Record Date. The minimum

timeframe for completing a rights issue is therefore now reduced to just over three weeks compared with the previous timeframe of approximately six weeks.

This should make rights issues more attractive. Because a rights issue will now be able to be completed more quickly, it will be easier for issuers to accurately price a rights issue and result in less risk to underwriters. It will, of course, mean that investors will have less time to decide whether or not to take up their rights.

Private placements

The New Rules now allow an NZSX listed issuer to issue up to 20 per cent (previously 15 per cent) of the total number of shares on issue in any 12 month period without first obtaining shareholder approval under Rule 7.3.5. The New Rules also allow directors, associated persons of directors or employees to participate in such placements, subject to satisfaction of certain conditions.

A consequential amendment has also been made to the related party transaction provisions in Rule 9.2.2 to ensure that in the case of a private placement under Rule 7.3.5, only the market value of the securities being issued to related parties and employees of the issuer is taken into account in determining whether the

placement is a related party transaction which requires shareholder approval.

Pricing

The previous requirement to obtain NZX approval for certain non-pro-rata share issues (which was required if the issue price was less than 90 per cent of VWAP over a 20 business day period before the issue) has been replaced. The New Rules no longer require NZX approval but instead require the directors to sign a fairness certificate if the issue price is less than 85 per cent of VWAP over a five business day period before the issue.

Remuneration of directors with shares

The New Rules allow for directors to be remunerated, in whole or in part, by the issue of securities. Previously, the Listing Rules only contemplated cash remuneration. Issuers looking to take advantage of this will initially need to obtain an authorising shareholders' resolution in the same way as they would need shareholder approval for an increase in directors' fees.

The change will assist issuers to align management and shareholder interests more closely and allow issuers more flexibility in the way they remunerate directors in periods of cash constraint.

Related party transaction threshold increased

The New Rules permit issuers to enter into transactions with, or involving, related parties without the need for shareholder approval if the transaction value is no greater than 10 per cent of the issuer's average market capitalisation. The previous threshold was 5 per cent of average market capitalisation. For services transactions, the threshold in relation to the annual gross cost to the issuer has increased from 0.5 per cent to one per cent of average market

capitalisation.

These changes have been made in recognition of the general fall in market capitalisations over recent months and the fact that, for smaller companies in particular, 5 per cent often represents a very small absolute amount. However, concerns expressed by some market participants and the Securities Commission that this amendment could have significant consequences for larger issuers and undermine investor confidence in the market have resulted in a new disclosure requirement being introduced. A new Rule 10.1.3 requires announcement to the market of transactions involving related parties which are for a value in excess of 5 per cent, but less than 10 per cent, of an issuer's average market capitalisation.

Financial assistance

The New Rules permit issuers to provide financial assistance without shareholder approval to persons other than directors and associated persons of directors or employees for the acquisition of shares if the amount of financial assistance, together with all other financial assistance given in the preceding 12 months, is not greater than 10 per cent of the issuer's average market capitalisation. The previous threshold was 5 per cent of average market capitalisation.

The threshold in respect of financial assistance to employees without shareholder approval has been increased to 5 per cent of average market capitalisation.

The overall limit for both categories over a five year period has also been increased from 5 per cent to 10 per cent of average market capitalisation.

Share buybacks from employees

The New Rules remove the restriction on the buyback of shares from employees.

Changes NZX has decided not to proceed with

Appraisal reports

In NZX's initial consultation paper on this round of rule changes released in November 2008, NZX also proposed to make Appraisal Reports (which are required in respect of share issues to directors and their associated persons, share buybacks affecting control and "related party" transactions) non-mandatory. This proposal has been abandoned, but NZX has stated that it will issue a guidance note on applications for waivers from the requirement for an Appraisal Report within the next three months.

Minority shareholders and independent directors

NZX has also decided not to proceed with its controversial proposal in the November consultation paper that only minority shareholders may vote on the remuneration, appointment or reappointment of independent directors.

Changes deferred

Reduced offer document requirements

As previously noted (see the article "[Update on NZX reforms to capital raising and flexibility](#)" on our website), one of NZX's key proposals directed at improving capital raising (put forward in the November consultation paper) was deferred until relevant legislative changes are put in place. This proposal would permit a NZX listed issuer which was in compliance with its continuous disclosure obligations to be able to raise equity, on a pro-rata basis, from its existing shareholders and to raise debt using a Term Sheet Offering Document rather than an investment statement and prospectus.

It is likely that this proposal will be revisited later this year following the implementation of the Securities Disclosure and Financial Advisers Amendment Bill.

Additional stylistic changes

NZX has taken the opportunity as part of this round of rule changes to make a number of other minor changes to the Listing Rules. These are largely stylistic changes, but some of the changes may give rise to confusion. In particular it should be noted that references to previously revoked rules have been removed, which has resulted in a number of existing rules being renumbered. Section 1 of the Listing Rules has undergone the biggest redraft, although most of the wording replicates the wording of the old version of the Listing Rules.

Further review

NZX has stated that it will review the operation of the New Rules after 12 months to ensure they are working as intended.

Full copies of the New Rules can be found at www.nzx.com/regulations/rules

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For further information, please contact your usual Bell Gully adviser or:

AUCKLAND

Anna Buchly

64 4 916 8649

anna.buchly@bellgully.com

Garry Downs

64 9 916 8932

garry.downs@bellgully.com

David Flacks

64 9 916 8957

david.flacks@bellgully.com

James Gibson

64 9 916 8962

james.gibson@bellgully.com

Brynn Gilbertson

64 9 916 8948

brynn.gilbertson@bellgully.com

Glenn Joblin

64 9 916 8955

glenn.joblin@bellgully.com

Gavin Macdonald

64 9 916 8938

gavin.macdonald@bellgully.com

Haydn Wong

64 9 916 8918

haydn.wong@bellgully.com

WELLINGTON

Andrew Brown

64 4 915 6848

andrew.brown@bellgully.com

David Coull

64 4 915 6863

david.coull@bellgully.com

Mark Freeman

64 4 915 6963

mark.freeman@bellgully.com

Chris Gordon

64 4 915 6836

chris.gordon@bellgully.com

Dean Oppenhuis

64 4 915 6921

dean.oppenhuis@bellgully.com

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AUCKLAND VERO CENTRE 48 SHORTLAND STREET
PO BOX 4199, AUCKLAND 1140, NEW ZEALAND, DX CP20509
TEL 64 9 916 8800 FAX 64 9 916 8801

WELLINGTON HP TOWER 171 FEATHERSTON STREET
PO BOX 1291, WELLINGTON 6140, NEW ZEALAND, DX SX11164
TEL 64 4 915 6800 FAX 64 4 915 6810