



JUNE 2019

## UPDATED NZX LISTING RULES APPLY TO ALL ISSUERS FROM 1 JULY 2019

From 1 July all NZX listed issuers must comply with the updated listing rules which came into force on 1 January this year (the **New Rules**). This date also marks the end of NZX's current three equity market structure, when all remaining NXT and NZAX issuers will migrate to NZX's single equity "Main Board".

While a majority of listed issuers will transition to the New Rules on 1 July, over 80 listed issuers opted to transition early and have been complying with the New Rules from their respective transition dates.

### TRANSITION MEASURES STILL IN PLACE

NZX has provided transitional relief to permit issuers to update their constitutions for compliance with the New Rules at their next scheduled annual meeting after their transition date (or earlier, if certain special meetings are held). Until their constitution is updated, issuers are required to comply with the New Rules as if the relevant content requirements of the New Rules are contained in the issuer's existing constitution.

NZX also has put in place transitional relief which allows issuers after they transition to continue to rely on their existing NZX waivers until 30 June 2020 if new waivers are not in place before that date.

### WHAT ARE THE KEY CHANGES FOR MAIN BOARD LISTED ISSUERS TRANSITIONING TO THE NEW RULES?

The New Rules retain most of the October 2017 NZSX Listing Rules (**2017 Rules**), although they are presented in a more logical order and are much easier to follow than the 2017 Rules. The New Rules incorporate previous NZX Regulation class rulings and waivers, as well as NZX practice notes and some common issuer-specific waivers.

To make it easier for issuers to find their way around the New Rules, NZX has published two finder guides [here](#) and [here](#) which cross-refer the 2017 Rules to the New Rules and vice versa.

The substantive changes that have been made to the 2017 Rules reflect NZX's general aim of seeking to align its policy settings with international markets (and, in particular, ASX) where it made sense to do so. For equity issuers, this has included introducing investor protections around matters requiring shareholder approval, increasing disclosure obligations and introducing some new governance requirements. The key changes are highlighted in the Schedule.

### UPDATED NZX GUIDANCE NOTES, PRACTICE NOTES, FORMS AND TEMPLATES

To support the New Rules, NZX has issued 10 new [Guidance Notes](#) and 23 [Practice Notes](#). This includes an updated Continuous Disclosure Guidance Note and a new Major and Related Party Transactions Guidance Note.

In addition, NZX has created a number of [editable templates](#) to assist issuers to release information in the prescribed form as easily as possible. This includes the following templates:

- Capital Change Notice
- Corporate Action notice for a Distribution
- Corporate Action other than for a Distribution
- Meeting Results Announcements
- Half-year and Full-year Results Announcements.

### FURTHER ASSISTANCE

We would be happy to discuss these changes with you in more detail, and assist you with transitioning to the New Rules regime (including assisting with updating constitutional and governance documents as required). Please contact your usual [Bell Gully adviser](#) or any of the contacts listed if we can assist further.

## SCHEDULE

	TOPIC	KEY CHANGES INTRODUCED UNDER THE NEW RULES AND THE 2019 NZX CODE
Listing and Quotation	Market cap	New market capitalisation threshold of \$10 million.
	Spread and free float	20% of an issuer's securities must be held by at least 100 non-affiliated holders who hold a "Minimum Holding" (or the issuer must otherwise have an appropriate spread of security holders to ensure a sufficiently liquid market).
	Minimum Holding	The "Minimum Holding" has been simplified from the current calculation, and is set at \$1,000 (to be calculated on the basis of a prescribed formula in the New Rules).
	Listing and quotation	Applicants are no longer required to submit listing and quotation applications through an organising participant.
Governance requirements	Governing documents	<ul style="list-style-type: none"> <li>There is an updated list of the NZX Rules which must be incorporated by reference in a constitution.</li> <li>NZX no longer reviews constitutions, but a solicitor's opinion is still required to confirm compliance with the NZX Rules.</li> </ul>
	Board Composition	<ul style="list-style-type: none"> <li>At least two directors must be Independent Directors, with a new NZX Governance Code (<b>2019 NZX Code</b>) recommendation that a majority of the board be comprised of Independent Directors.</li> <li>Independent Directors must satisfy the new principle-based approach to determining a director's independence through changes made to the "Disqualifying Relationship" definition.</li> <li>The 2019 NZX Code has strengthened the recommendation to provide that the chair of the board should be an Independent Director.</li> </ul>
	Director Rotation	<ul style="list-style-type: none"> <li>Director rotation requirements now apply to all directors. There is no longer a provision exempting managing or other executive directors from the rotation requirements.</li> <li>Directors must retire (and can offer themselves for re-election) no later than the third annual meeting following their first appointment, or three years, whichever is longer.</li> </ul>
	Director remuneration	The rule relating to directors' remuneration now makes it clear that when calculating the amount an issuer can increase a fee pool by, 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).
Disclosure	Continuous disclosure	<ul style="list-style-type: none"> <li>The continuous disclosure rule now includes a constructive knowledge test which provides that disclosure of "Material Information" is made where a director or "Senior Manager" of the issuer has, <u>or ought reasonably to have</u>, come into the possession of the information in the course or performance of their duties. This increases the importance of effective reporting systems and processes being in place to ensure potentially material information flows to Directors and Senior Management on a timely basis.</li> <li>"Senior Manager" means a person who occupies a position that allows that person to exercise significant influence over the management or administration of the issuer (e.g., a CEO or a CFO), which is more limited in scope than the meaning given to the "executive officer" term used in the 2017 Rules.</li> <li>The rule requires that "Material Information" is released "promptly and without delay" instead of "immediately".</li> </ul>
	Half-year and full-year reporting obligations	<ul style="list-style-type: none"> <li>Half-year financial reports are no longer required.</li> <li>Changes have been made to the full and half-year preliminary announcements' content requirements, which are now referred to as "Results Announcements".</li> <li>A full-year Results Announcement can be made together with the release of the annual report.</li> <li>Some content changes have been made for annual reports.</li> </ul>
	Distributions	An announcement must be released to the market <b>5</b> business days prior to a relevant record date.
Changes to Capital	Pro-rata offers	<ul style="list-style-type: none"> <li>The New Rules specifically incorporate provisions for accelerated entitlement offers. Issuers will no longer have to rely on the previous class relief to facilitate such offers.</li> <li>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 2013 (<b>FMCA</b>) (sometimes referred to as "same class offers") do not need to be reviewed by NZX.</li> </ul>

## UPDATED NZX LISTING RULES APPLY TO ALL ISSUERS FROM 1 JULY 2019

		<ul style="list-style-type: none"> <li>• There is a new 2019 NZX Code recommendation that pro-rata offers should be the preferred method of raising additional equity capital. If an issuer raises capital by a means other than a pro rata offer, the issuer must explain why such capital raising method was preferred when next reporting against the 2019 NZX Code (i.e., in the next annual report).</li> <li>• The closing date for applications under rights issues can be reduced from 12 to 7 business days under certain conditions.</li> </ul>
	Placements	The placement rules have reduced the percentage of shares that are permitted to be issued under a placement from 20% to 15%. Placements above this threshold will need to be approved by shareholders.
	Share Purchase Plans	The \$15,000 limit has been retained, but 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.
	DRPs	Offer documents for offers of quoted equity securities made under a dividend reinvestment plan do not need to be reviewed by NZX.
	Allotment timing	Issuers must allot quoted financial products no later than <b>10</b> business days after the final closing date for the offer.
	Offer documents	<ul style="list-style-type: none"> <li>• A Product Disclosure Statement must be submitted to NZX for review at least <b>20</b> business days before quotation is sought.</li> <li>• Limited disclosure documents for offers of equity securities prepared as a result of an exclusion under Schedule 1 of the FMCA do not need to be reviewed by NZX.</li> <li>• Issuers must now release through MAP a copy of the offer document or listing profile relating to its financial products as soon as those financial products are quoted.</li> </ul>
Major and related party transactions	Major transactions	<ul style="list-style-type: none"> <li>• The major transaction trigger has been broadened to capture significant changes that “either directly or indirectly” change the nature of the issuer’s business (instead of transactions that change the essential nature of the issuer’s business).</li> <li>• The definition of “Average Market Capitalisation” has changed to include two periods over which the volume weighted average price (<b>VWAP</b>) of the issuer’s shares must be calculated. The Average Market Capitalisation is now the lower of the VWAP measured over 20 business days and 5 business days prior to the transaction being entered into or announced.</li> </ul>
	Related party transactions	<ul style="list-style-type: none"> <li>• The definition of related party has been changed by introducing an amended definition of “associated person” that more closely aligns with the test that applies under the FMCA.</li> <li>• The treatment of leases is clarified by referring to both lessees and lessors.</li> <li>• A specific rule has been introduced to address technical issues that commonly arise for accelerated offers under the related party transaction rules.</li> </ul>
Shareholders	Meetings	<ul style="list-style-type: none"> <li>• Issuers may hold their shareholder meetings in Australia, so long as shareholders based in New Zealand can participate by audio, audio and visual, and/or electronic means.</li> <li>• NZX no longer reviews a notice of meeting (<b>NOM</b>) merely because it includes a shareholder proposal (under the constitution or under Schedule 1 of the Companies Act).</li> <li>• NOMs must set out: <ul style="list-style-type: none"> <li>○ the consequences of resolutions if they are not approved (although this does not apply to standard AGM items)</li> <li>○ set out any voting restrictions that apply under the rules to specific resolutions.</li> </ul> </li> <li>• Under a 2019 NZX Code recommendation, NOMs for both annual and special meetings must be posted on the issuer’s website at least 20 working days prior to the meeting.</li> <li>• An issuer must release through MAP: <ul style="list-style-type: none"> <li>○ the outcome of resolutions (including poll results)</li> <li>○ notice of any adjournments</li> <li>○ during or prior to the start of a meeting, the contents of prepared announcements or presentations (that are not of a procedural nature or relating to the administration of the meeting).</li> </ul> </li> </ul>
	Voting/Polls	All voting at shareholders’ meetings must be conducted by poll.
	Disclosure	<p>The rule that all communications sent to shareholders are to be provided to NZX for release to the market no longer applies to:</p> <ul style="list-style-type: none"> <li>• investor relations material (that does not contain Material Information)</li> <li>• personalised letters only sent to some shareholders</li> <li>• section 209 notices regarding the annual report or the alternative annual report notice provisions under the FMC Regulations</li> <li>• dividend or transfer statements.</li> </ul>

BELL GULLY TEAM



**James Gibson**  
PARTNER

DDI +64 9 916 8962    MOB +64 21 703 735  
[james.gibson@bellgully.com](mailto:james.gibson@bellgully.com)



**Anna Buchly**  
PARTNER

DDI +64 9 916 8649    MOB +64 21 622 555  
[anna.buchly@bellgully.com](mailto:anna.buchly@bellgully.com)



**Jennifer Coote**  
SENIOR ASSOCIATE

DDI +64 9 916 8367    MOB +64 21 706 248  
[jennifer.coote@bellgully.com](mailto:jennifer.coote@bellgully.com)

**AUCKLAND**  
VERO CENTRE  
48 SHORTLAND STREET  
PO BOX 4199  
NEW ZEALAND

**WELLINGTON**  
ANZ CENTRE  
171 FEATHERSTON STREET  
PO BOX 1291  
NEW ZEALAND

Disclaimer: This publication is necessarily brief and general in nature. You should seek professional advice before taking any further action in relation to the matters dealt with in this publication.