

What directors need
to know about the new

NZX Listing Rules

A brief from MinterEllisonRuddWatts
and the Institute of Directors

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The New Zealand Stock Exchange (**NZX**) has released its long consulted revisions to the structure of the stock market, together with its revamped Listing Rules. Intended to simplify and modernise both the structure of the market and the rules, current and prospective issuers need to understand the advantages these new rules offer, as well as the behavioural changes they require.

Purpose of the rule changes

The **new rules**, redrafted in plain English, are contained in a single document which applies to equity, debt and fund listings. The NZX's stated aims are to:

- make it easier for companies to list;
- make it simpler and faster for listed companies to raise additional capital; and
- enhance investor protections.

Key changes

The rules have been reordered to follow the life cycle of a listing and now take a modular approach, with less used provisions relegated to appendices at the back. This brief highlights the most significant changes, following the format of the new rules.

SECTION 1:

Listing and quotation

With the three equity boards being combined, the NZX was concerned that this might put off smaller companies from seeking or retaining their listing. To accommodate for this, the free-float requirement for equity listing is being reduced from 25% of the securities of a class to 20%, with a minimum holding of 100 members of the public – down from the previous requirement of 500 holders.

Free float and minimum holder requirements have been entirely eliminated for debt holders, and debt issuance is subject to a new streamlined application process.

SECTION 2:

Governance requirements

The minimum requirement for three directors, at least two of whom are New Zealand residents has been retained, but there is a new recommendation in the NZX Corporate Governance Code (the **NZX Code**) that a majority of directors be independent. Independence requirements have also been revamped on a principles basis, with examples embedded within the new NZX Code¹. Director rotation requirements have been simplified, with every director being required to stand for re-election on the later of 3 years or the third annual meeting after their appointment (with the sole exception of directors appointed under special Constitutional provisions).

¹ See recommendation 2.4

SECTION 3:

Disclosure

In possibly the most significant change for currently listed companies, continuous disclosure will not only be required where the directors (or a senior manager) comes into possession of material information, but also when they *ought* to be aware of that information. This new standard, reflective of several other major exchanges worldwide including the LSE and the ASX, requires directors to ensure processes are in place to identify and escalate relevant issues as they, and the company for which they are responsible, can now be liable for facts of which they were not actually aware.

A number of other changes have been made to periodic reporting requirements including the removal for equity issuers of the requirement for a separate half year report (although half year accounts are still required). Issuers should pay careful attention to the updated appendix 2 of the Listing Rules as content requirements have changed.

SECTION 4:

Changes to capital raising

The current placement headroom is reduced from 20% to 15% and a new recommendation is included in the NZX Code that capital raisings are carried out on a pro rata basis. The NZX has also taken various steps to streamline capital raisings such as removing the requirement for review of certain documentation.

SECTION 5:

Major and related party transactions

The Major Transaction threshold has been left unchanged at 50% of Average Market Capitalisation, although the NZX notes in its guidance on the new Listing Rules that it might revisit this in future². The old test of whether a transaction changed the “essential” nature of the business has been modified, though, to whether the transaction constitutes a “significant” change to the issuer’s business. This new language lowers the threshold and is likely to create some uncertainty relative to the old position as it requires more judgment on the part of the issuer.

Voting on major transactions must also now take place by poll.

Sections 6 to 9 cover mainly administrative actions and are not the subject of major changes. The Appendices contain the provisions relating to results announcements, takeovers and mining disclosures as well as setting out the full NZX Code.

² It is worth noting that this 50% threshold remains high relative to other major exchanges, e.g. the London Stock Exchange where the equivalent threshold is 25%

Market announcement platform

Issuers will be required to make all announcements through the NZX's Market Announcement Platform (MAP).

Foreign exempt issuers

The NZX is keen to attract overseas companies and so has launched a renamed "NZX Foreign Exempt" regime which will also be available to New Zealand companies (e.g. if they have listed overseas first).

Listings will now either be "primary listings" for those who fully comply with the NZX rules and "Foreign Exempt" for issuers who are primarily governed by the rules of an approved overseas exchange (albeit subject to certain minimum NZX requirements).

Transition, timing and resources

The new Listing Rules will apply to all listed companies generally from 30 June 2019. However, issuers already admitted to the Main Board or Debt Market are able to voluntarily transition to the new rules at any time after 1 January 2019 by giving one week's notice to the market.

New issuers admitted to listing after 1 January 2019 will be subject to the updated rules from admission.

The NZX is also updating all existing forms, and will reissue guidance and practice notes to reflect the new rules and these are expected by the end of November. It is currently consulting on draft guidance notes on spread, backdoor / reverse listings, governance and continuous disclosure. The proposed form of these can be found [here](#).

Those familiar with the old rules who want to identify where a provision has been moved can find a useful reference document [here](#) and the NZX's own guidance document can be found [here](#).

Our view

Overall the changes to the rules, their structure and their layout reflect a welcome modernisation and streamlining. The NZX expects its market to become more appealing to issuers, reducing costs and complexity for existing participants and bringing new companies to the market both inside New Zealand and from overseas. The new Listing Rules go a significant distance towards achieving this, but issuers and their directors will have concerns³ over the new threshold for continuous disclosure, even though this is expected to raise standards for the benefit of investors.

Transition to the new rules will involve some planning given the requirements to move all announcements to MAP, the new forms, and the increased burden of the altered continuous disclosure test. It is therefore considered unlikely that companies will generally move to the new regime ahead of the 30 June deadline unless they are seeking to take advantage of the new capital raising regime or one of the other specific benefits of the new rules.

As for the overall effect, time will tell whether these changes deliver sufficient incentives for NZX listings to regain the momentum NZX is keen to deliver.

³ These are outlined in the IoD's submission at 8 June 2018

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Authorship

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ISBN 978-0-473-46327-4

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