

15 June 2018



Hamish Macdonald  
Head of Policy & Legal  
NZX Limited  
Level 7, Zurich House  
21 Queen Street  
Auckland 1010

## Submission on second stage of Listing Rule review

Dear Hamish

Thank you for the opportunity to make a submission on the second stage of the NZX Main Board Listing Rules (**LRs**) review.

We are an active participant in the New Zealand Corporate Governance Forum. Our submission comprises this letter and the Forum's submission (copy **attached**).

The New Zealand Superannuation Fund (**Fund**) is committed to promoting a fair and efficient listed market and encouraging good governance for the successful growth of New Zealand issuers. The Fund has significant long-term investment in the New Zealand listed market.

We have a strong belief that good governance, an efficient and fair regulatory environment, protection of shareholder rights and good information flows between companies, investors and key stakeholders improves company performance, creates shareholder value and increases confidence in the capital market.

We congratulate NZX on the progress made in this regard in the review to date, including simplifying the market structure and encouraging more pro rata share issues and forward looking disclosure by issuers. We also commend NZX on developing a more logically sequenced and comprehensive set of listing rules.

We believe there are still areas where substantial and important refinements can be made, and in particular we wish to highlight the following:

### Capital raising and allocation

- Whilst shareholders want Boards to have the flexibility to raise capital efficiently, issuers should not be able to materially dilute shareholders by non-pro rata share issues without their approval.
- We acknowledge that NZX proposes to reduce the capacity for general non-pro rata issues to 15% per annum, which is the pre-GFC level and at the upper end of the Forum's recommendation of 5%-15%.
- However, the NZX Code should further reinforce that pro-rata issues are the default option by containing a 'comply or explain' requirement for all capital raisings to be on a pro-rata basis and, if they are not, this should also be spoken to at the AGM. *This is consistent with the fact that pro-rata issues can now (under current securities law settings) be executed swiftly, efficiently and with a high degree of certainty*

## Major transactions

- We are disappointed that the exposure draft of the LRs carries forward the major transactions threshold of 50% of average market capitalisation, rather than the 25% proposed at the first stage of consultation.
- This threshold is out of step with other significant markets we reviewed and deprives investors of the right to vote on substantial transactions that impact their investment.
- We do, however, appreciate that for certain types of entities, such as investment trusts, a threshold of 25% can result in certain routine transactions being subject to shareholder approval requirements. However, we believe the right approach is to address those specific situations, rather than set a high general threshold that results in truly significant transactions falling outside shareholder approval requirements.
- We therefore strongly support NZX's initial proposal to reduce the threshold for major transactions to 25% of average market capitalisation, but with concessions for certain issuers/transactions where the lower threshold would be inappropriate.
- We also consider that the definition of transaction should include a wider range of matters, such as share issues.

## Strategic Report

- We believe Listing Rule Section 3.8 should include a requirement to report on the Issuer's business strategy. This would bring the NZ market closer to the requirements of other markets including Australia and the UK.

## Board Directors

- The Board should report on the Board's skills requirements to deliver its strategy. A skills matrix can assist the Board and shareholders in this respect. The Board should also disclose detailed biographies of Directors; the Forum provides useful guidance on the details which should be included.
- We appreciate the benefits of the proposed principles-based test for Independent Director status, and NZX's recognition that extended tenure is a factor to be taken into account in assessing independence.
- However, we consider there are certain fundamental situations where the LRs should continue to provide that a director cannot be designated as independent, such as where they were recently employed by the issuer.
- We also recommend that the criteria in the NZX Code that can affect independence are enhanced through providing greater detail and closer alignment with the equivalent guidance in Australia (which is similar to the Forum's recommendations on independence).

## One share: one vote

- NZX should no longer permit a "show of hands" at shareholder meetings, and the LRs should require all voting at shareholder meetings to be conducted by poll. Despite the NZX Code containing this commentary we have seen the archaic practice of "show of

hands” voting persist. This approach is regarded as a persistent weakness in internationally benchmarking the NZ market in terms of protection of shareholder rights.

We look forward to continuing to work with you to promote best international practice in our listing rules and codes for the long-term benefit of our market.

We would be happy to discuss our submission with you.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'M Whineray', with a stylized flourish at the end.

**Matt Whineray**  
**Acting Chief Executive Officer**