



# NZX Regulation Decision

Heartland Bank Limited (“HBL”)

Application for a waiver from NZX Main Board Listing  
Rules 7.3.1, 7.5.1, 7.12.2, 9.1.1 and 9.2.1

13 February 2017



## Background

1. The information on which this decision is based is set out in Appendix One to this decision. This waiver will not apply if that information is not or ceases to be full and accurate in all material respects.
2. The Rules to which this decision relates are set out in Appendix Two to this decision.
3. Capitalised terms that are not defined in this decision have the meanings given to them in the Rules.

## Application 1 – Waiver from NZX Main Board Listing Rule 7.12.2 in respect of announcement of conversion

### Decision

4. Subject to the conditions set out in paragraph 5 below, and on the basis that the information provided by HBL is complete and accurate in all material respects, NZXR grants HBL a waiver from Rule 7.12.2 so that, if Conversion of the Heartland Notes occurs on account of a non-viability trigger event, HBL is not required to give notice for the purposes of Rule 7.12.2 in relation to the Conversion at least ten Business Days before the Conversion occurs.
5. The waiver in paragraph 4 above is provided on the conditions that:
  - a. the notice required by Rule 7.12.2 must be given as soon as practicable and in any event before the NZX Main Board opens for trading on the Business Day after the Conversion occurs;
  - b. the full terms and conditions of the Heartland Notes are released to NZX on the issue date of the Heartland Notes together with disclosure that Conversion will occur without prior notice to the market and will have a dilutionary impact for existing holders of HBL Shares;
  - c. the information required by Rule 7.12.2 which is known at the date of the Information Memorandum is disclosed in the Information Memorandum; and
  - d. the waiver, its conditions and its implications are disclosed in the Information Memorandum.

### Reasons

6. In coming to the decision to provide the waiver set out in paragraph 4 above, NZXR has considered that:
  - a. HBL has submitted, and NZXR has no reason not to accept, that if a Conversion is required, HBL will be unable to provide 10 Business Days' prior notice, as required by Rule 7.12.2, as the RBNZ's Standards require Conversion to occur immediately;
  - b. HBL will be required, as a condition of this waiver, to disclose to the market the full terms and conditions of the Heartland Notes and the implications of this waiver and NZXR is satisfied that this will inform the holders of the Heartland Notes and HBL Shares that on the occurrence of a Conversion, the market will not be given advance notice;

- c. the condition in paragraph 5(b) will ensure that holders of Heartland Notes, holders of HBL Shares and the market will have notice of all information about the Conversion that is known at the date of the Information Memorandum. The condition in paragraph 5(a) will ensure that all other information that is required to be disclosed under Rule 7.12.2 is disclosed as soon as practicable;
- d. if a Conversion occurs, HBL will be required by the terms of the Deed Poll to give notice to holders of Heartland Notes as soon as practicable, that Conversion has occurred.

## Application 2 – Waiver from NZX Main Board Listing Rule 7.3.1 and Rule 7.5.1

### Decision

- 7. Subject to the conditions set out in paragraph 8 below, and on the basis that the information provided by HBL is complete and accurate in all material respects, NZXR grants HBL waivers from Rule 7.3.1 and Rule 7.5.1, so that HBL is not required to comply with Rule 7.3.1 and Rule 7.5.1 for the issue of HBL Shares on a Conversion.
- 8. The waivers in paragraph 7 above are provided on the conditions that:
  - a. the full terms and conditions of the Heartland Notes are released to NZX on the issue date of the Heartland Notes together with disclosure that Conversion is potentially dilutionary for existing shareholders because the terms and conditions do not include a cap on the maximum number of HBL Shares that may be issued on Conversion;
  - b. the waivers, their conditions and their implications (including disclosure that Conversion is potentially dilutionary for existing shareholders because the terms and conditions do not include a cap on the maximum number of HBL Shares that may be issued on Conversion) are disclosed in any Offering Document for HBL Shares;
  - c. the waivers, their conditions and their implications (including disclosure that Conversion is potentially dilutionary for existing shareholders because the terms and conditions do not include a cap on the maximum number of HBL Shares that may be issued on Conversion) are disclosed in HBL's annual report; and
  - d. details of the Heartland Notes on issue are contained in HBL's full year and half year disclosure statements in accordance with the Registered Bank Disclosure Statements (New Zealand Incorporated Registered Banks) Order 2014 (as amended from time to time).

### Reasons

- 9. In coming to the decision to provide the waivers set out in paragraph 8 above, NZXR has considered that:
  - a. in order to comply with the RBNZ's Standards, HBL must ensure that when the Heartland Notes are issued there are no legal or other impediments to the issue of the HBL Shares upon a Conversion. The issue of the HBL Shares must be immediate and automatic in these circumstances and there will not be an opportunity to seek shareholder approval in order for HBL to comply with Rule 7.3.1 and Rule 7.5.1;



- b. the policy of Rule 7.5.1 is to provide shareholders the opportunity to vote on a change to the capital structure of an Issuer, which would result in a change to the effective control of that Issuer. At the time the Heartland Notes are issued, HBL cannot determine whether any person's effective control would increase if HBL Shares are issued on a Conversion and therefore whether shareholder approval under Rule 7.5.1 will be required;
- c. HBL has submitted that Conversion can only occur in the unusual circumstances of a non-viability trigger event. NZXR is comfortable that the terms of the Heartland Notes will provide adequate protection to shareholders that Conversion will only occur on a non-viability trigger event; and
- d. NZXR is satisfied that the conditions imposed will provide the HBL shareholders, and potential investors, access to information about the possible issue of HBL Shares if a Conversion occurs, as well as the amount of Heartland Notes on issue.

## Application 3 – Waiver from NZX Main Board Listing Rule 9.1.1

### Decision

- 10. Subject to the conditions set out in paragraph 11 below, and on the basis that the information provided by HBL is complete and accurate in all material respects, NZXR grants HBL a waiver from Rule 9.1.1 in respect of HBL Shares issued on a Conversion.
- 11. The waiver in paragraph 10 above is provided on the conditions that:
  - a. the full terms and conditions of the Heartland Notes are released to NZX on the issue date of the Heartland Notes together with disclosure that Conversion is potentially dilutionary for existing shareholders because the terms and conditions do not include a cap on the maximum number of HBL Shares that may be issued on Conversion;
  - b. the waiver, its conditions and its implications are disclosed in the Information Memorandum;
  - c. the waiver, its conditions and its implications are disclosed in any Offering Document for HBL Shares; and
  - d. the waiver, its conditions and its implications are disclosed in HBL's annual report.

### Reasons

- 12. In coming to the decision to provide the waiver set out in paragraph 10 above, NZXR has considered that:
  - a. the purpose of Rule 9.1 is to provide shareholders the opportunity to vote on major transactions of an Issuer. At the time the Heartland Notes are issued, HBL is unable to determine whether the issue of HBL Shares on a Conversion will require shareholder approval under Rule 9.1;
  - b. in order to comply with the RBNZ's Standards, HBL must ensure that when the Heartland Notes are issued, among other things, there are no legal or other impediments to the issue of the HBL Shares upon a Conversion. The issue of the HBL



Shares must be immediate and automatic in these circumstances and HBL has submitted that there will not be an opportunity to seek shareholder approval if Rule 9.1.1 is triggered;

- c. HBL has submitted that Conversion can only occur in the unusual circumstances of a non-viability trigger event. NZXR is comfortable that the terms of the Heartland Notes allow for Conversion in very limited circumstances; and
- d. the issue of HBL Shares on a Conversion is consistent with the policy of the exemption to Rule 9.1.1 stated in Rule 9.1.3(c).

## Application 4 – Waiver from NZX Main Board Listing Rule 9.2.1

### Decision

13. Subject to the conditions set out in paragraph 14 below, and on the basis that the information provided by HBL is complete and accurate in all material respects, NZXR grants HBL a waiver from Rule 9.2.1 in respect of HBL Shares issued on a Conversion.

14. The waiver in paragraph 13 above is provided on the conditions that:

- a. the full terms and conditions of the Heartland Notes are released to NZX on the issue date of the Heartland Notes;
- b. the waiver, its conditions and its implications are disclosed in the Information Memorandum;
- c. the waiver, its conditions and its implications are disclosed in any Offering Document for HBL Shares; and
- d. the waivers, their conditions and their implications are disclosed in HBL's annual report.

### Reasons

15. In coming to the decision to provide the waiver set out in paragraph 13 above, NZXR has considered that:

- a. the purpose of Rule 9.2 is to provide shareholders the opportunity to vote on material transactions with related parties of an Issuer. At the time of issue of the Heartland Notes, HBL is unable to determine whether the issue of HBL Shares on a Conversion will require shareholder approval under Rule 9.2;
- b. in order to comply with the RBNZ's Standards, HBL must ensure that when the Heartland Notes are issued, among other things, there are no legal or other impediments to the issue of the HBL Shares upon a Conversion. The issue of the HBL Shares must be immediate and automatic in these circumstances and HBL has submitted that there will not be an opportunity to seek shareholder approval if Rule 9.2 is triggered;
- c. the waiver will only apply where HBL shares are issued on a Conversion. Conversion will be automatic and will be on the terms set out in the Deed Poll. Accordingly there is no scope for related parties to influence the issue of HBL Shares to them;



- d. related parties will participate in the issue on the same terms as all other holders of the Heartland Notes. Therefore there is no value transfer to related parties over and above the value received by any other holder; and
- e. the proposed condition at paragraph 14(a) above will ensure that existing and prospective shareholders of HBL have access to information about the possible issue of HBL Shares if a Conversion occurs.

## Confidentiality

- 16. HBL has requested this decision be kept confidential until HBL has made an announcement of the offer of the Heartland Notes.
- 17. In accordance with Footnote 1 to Rule 1.11.2, NZXR grants HBL's request.



## Appendix One

1. Heartland Bank Limited (**HBL**) is a Listed Issuer with ordinary shares Quoted on the NZX Main Board.
2. As a registered bank, HBL must comply with its conditions of registration, which are issued by the Reserve Bank of New Zealand (**RBNZ**), including having a level of regulatory capital. HBL intends to issue regulatory capital in the form of convertible notes. HBL intends to offer up to AUD\$30 million of subordinated, convertible notes (**Heartland Notes**), by way of private placement to wholesale investors in Australia and New Zealand under an information memorandum (**Information Memorandum**).
3. The Heartland Notes will be classified as debt in the financial statements of HBL, and will be treated as Tier 2 capital for HBL under the RBNZ document “Capital Adequacy Framework (Standardised Approach)” (BS2A) dated November 2015 (**RBNZ’s Standards**).
4. HBL may elect to redeem:
  - a. all or some of the Heartland Notes on each interest payment date that occurs after five years from the issue date of the Heartland Notes (each an **Optional Redemption Date**); or
  - b. all or some of the Heartland Notes if a specific tax or regulatory event occurs.

Early redemption is subject to certain conditions being satisfied, including obtaining the consent of the RBNZ.

5. HBL must redeem all of the Heartland Notes that have not previously been redeemed, converted, or written off, on the maturity date (10 years after the issue date of the Heartland Notes).
6. To qualify as Tier 2 capital, an instrument must fulfil certain criteria, including providing an unrestricted commitment of funds and being available to absorb losses if the bank is in financial stress. The terms of Heartland Notes must meet this criteria, in particular:
  - a. **Subordination:** The Heartland Notes are subordinated in right of repayment to all depositors and unsubordinated creditors of HBL;
  - b. **Term:** Heartland Notes have a term of 10 years, subject to HBL’s right to redeem the Heartland Notes early as detailed in paragraph 4 above;
  - c. **Interest payments:** Interest payments are scheduled to be paid quarterly in arrear, but are subject to the condition that HBL is solvent at the time payment is due and HBL will remain solvent immediately after the payment is made; and
  - d. **Loss absorption:** All or some of the Heartland Notes may be required to be converted into ordinary shares in HBL (**HBL Shares**) if a non-viability trigger event occurs in respect of HBL. A non-viability trigger event will occur if a determination is made by either the RBNZ or the statutory manager. Loss absorption occurs as follows:
    - i. If HBL is required to convert Heartland Notes because a non-viability trigger event has occurred:

1. each Heartland Note that is to be converted is immediately redeemed for an amount equal to its face value provided that HBL must apply the redemption

amount by way of payment for the subscription amount for the new HBL Shares; and

2. subject to the redemption amount being applied as set out in point 1 above, HBL will issue to the relevant Heartland Note holder a number of HBL Shares, determined in accordance with a formula set out in the terms of the Heartland Notes, in schedule 1 to the deed poll for the Heartland Notes (**Deed Poll**),

(together, **Conversion**).

- ii. As a consequence of Conversion, holders of Heartland Notes will cease to hold the Heartland Notes that have been converted and to have any rights under those Heartland Notes, and instead they will hold HBL Shares. If for any reason the Heartland Notes that are to be converted are not able to be converted when required following a non-viability trigger event, those Heartland Notes will be written off.
7. The Heartland Notes will only convert into HBL Shares on the occurrence of a non-viability trigger event, and will not convert into HBL Shares in any other circumstances.
  8. As a registered bank, HBL is subject to the prudential supervision of the RBNZ. Among other requirements, HBL must publish quarterly disclosure statements which contain financial information about the bank.





## Appendix Two

### **Rule 7.3 Issue of New Equity Securities**

7.3.1 No Issuer shall issue any Equity Securities unless:

- (a) the precise terms and conditions of the specific proposal to issue those Equity Securities have been approved (subject to Rule 7.3.3) by separate resolutions (passed by a simple majority of Votes) of holders of each Class of Quoted Equity Securities of the Issuer whose rights or entitlements could be affected by that issue, and that issue is completed within the time specified in Rule 7.3.2; or
- (b) the issue is made in accordance with any of Rules 7.3.4. to Rule 7.3.11.

### **Rule 7.5 Issues and Buybacks of Securities Affecting Control**

7.5.1 Notwithstanding the provisions of Rules 7.3 and Rule 7.6, no issue, acquisition, or redemption of Securities shall be made by an Issuer if:

- (a) there is a significant likelihood that the issue, acquisition, or redemption will result in any person or group of Associated Persons materially increasing their ability to exercise, or direct the exercise of (either then or at any future time) effective control of that Issuer; and
- (b) that person or group of Associated Persons is entitled before the issue, acquisition, or redemption to exercise, or direct the exercise of, not less than 1% of the total Votes attaching to Securities of the Issuer;

unless the precise terms and conditions of the issue, acquisition or redemption have been approved by an Ordinary Resolution of the Issuer.

### **Rule 7.12 Announcements**

7.12.2 Where any benefit is to be paid or distributed on Quoted Securities (including dividends, interest or bonus issues) or any Conversion of Securities or call on Securities is to take place, the Issuer shall give to NZX, forthwith after any Director's recommendation and at least 10 Business Days before the Record Date to determine entitlements or obligations, full details of the benefit, Conversion or call, including the information in the table below. That information shall be supplied in the form set out in Appendix 7.

Event	Information Required
Dividend	<ul style="list-style-type: none"><li>• Security description</li><li>• ISIN</li><li>• Total amount of dividend</li><li>• Cents per share</li><li>• Imputation tax credits per share (where applicable to six decimal places)</li><li>• Withholding tax cents per share (where applicable to six decimal places)</li><li>• Source of dividend</li><li>• Payable date</li><li>• Record Date</li><li>• Strike price for any issue in lieu of dividend</li></ul>

	<ul style="list-style-type: none"> <li>Excluded income per share (PIE Issuers only, where applicable to six decimal places)</li> <li>Foreign dividend payment credits per share (where applicable to six decimal places)</li> </ul>
Interest	Details no less than the equivalent required above for a dividend.
Bonus Issue	Full details of the issue including timing, entitlement and tax information.
Conversions	Full details of the nature and timing of the Conversion including pricing, entitlement and conversion ratio information.
Calls	Full details of the call including the Securities affected, and payment details.

## **Rule 9.1 Disposal or Acquisition of Assets**

### **9.1.1**

An Issuer shall not (subject to Rule 9.1.3) enter into any transaction or series of linked or related transactions to acquire, sell, lease, exchange, or otherwise dispose of (otherwise than by way of charge) assets of the Issuer or assets to be held by the Issuer:

- (a) which would change the essential nature of the business of the Issuer; or
- (b) in respect of which the gross value is in excess of 50% of the Average Market Capitalisation of the Issuer;

except with the prior approval of an Ordinary Resolution of the Issuer or a special resolution if that Issuer must obtain approval of the transaction or transactions by a special resolution under section 129 of the Companies Act 1993.

## **Rule 9.2 Transactions with Related Parties**

### **9.2.1**

An Issuer shall not enter into a Material Transaction if a Related Party is, or is likely to become:

- (a) a direct or indirect party to the Material Transaction, or to at least one of a related series of transactions of which the Material Transaction forms part; or
- (b) in the case of a guarantee or other transaction of the nature referred to in paragraph (d) of the definition of Material Transaction, a direct or indirect beneficiary of such guarantee or other transaction,

unless that Material Transaction is approved by an Ordinary Resolution of the Issuer.

