



15 May 2018

**APPLICATION FOR WAIVER FROM NZX DEBT MARKET LISTING RULE 7.12.1
NZX LIMITED**

1. This is a decision of the Special Division of the NZ Markets Disciplinary Tribunal (*Special Division*).
2. Capitalised terms that are not defined in this decision have the meanings given to them in the NZX Debt Market Listing Rules (*the Rules*).

Decision

3. Subject to the conditions set out in paragraph 3 below, and on the basis that the information provided by NZX Limited (*NZX*) is complete and accurate in all material respects, the Special Division grants NZX a waiver from Rule 7.12.1 to the extent that this Rule would require NZX to release to the market details of any acquisition of the Subordinated Notes acquired through a retail liquidity support facility offered to noteholders, forthwith after the acquisition.
4. The waiver in paragraph 3 above is provided on the conditions that:
 - (a) NZX must release to the market details of the acquisitions under the Facility for a calendar month in the form as required under Rule 7.12.1:
 - (i) aggregating the information for each trading day to provide the monthly totals; and
 - (ii) amended to include an "item (n)" showing the total number of Subordinated Notes held by NZX under the Facility at the end of the calendar month;
 - (b) monthly Disclosure Notices required under paragraph 2(a) above must be provided to the market no later than on the first Business Day of the calendar month following the calendar month to which the notice relates, including in respect of a calendar month in which no acquisitions are made by the Facility Agent;
 - (c) every notice made under paragraph 2(a) above must clearly be identified as a monthly acquisition notice and include a reference that the notice is being made in reliance on this waiver and where a copy of the waiver is available; and
 - (d) a summary of the terms of this waiver, and its effect, are set out in each NZX Annual Report if NZX relied on this waiver at any stage during the financial year to which the relevant Annual Report relates.
5. The information on which this decision is based is set out in Appendix 1 to this decision. This waiver will not apply if that information is not or ceases to be full and accurate in all material respects.

6. The Rules to which this decision relates are set out in Appendix 2 to this decision.

Reasons

7. In coming to the decision to provide the waiver set out in paragraph 1 above, the Special Division has considered that:
- (a) the policy of Rule 7.12.1 is to ensure that the correct number of an Issuer's Quoted Securities on issue is known to the market. This policy is particularly important in the context of Equity Securities, as the number of Equity Securities on issue directly impacts the market price of those securities and dilutes existing shareholders' interests. The number of Debt Securities on issue, however, is less relevant to the market price of Debt Securities;
 - (b) the policy of Rule 7.12.1 will not be affected by the waiver. The acquisition of Subordinated Notes by NZX through the Facility does not change the total amount of Subordinated Notes outstanding and therefore has no impact on the indices or the value of the Subordinated Notes. As the acquisition of Subordinated Notes through the Facility does not change the number of Subordinated Notes outstanding, the acquisitions will not dilute any rights of noteholders in relation to the Subordinated Notes;
 - (c) the Facility is directed at assisting small retail noteholders to sell their Subordinated Notes where the market does not otherwise provide sufficient liquidity. The Facility Agent will only be able to purchase Subordinated Notes on-market within the strict parameters of the Facility Agreement to ensure that only small parcels of retail Subordinated Notes can be acquired through the Facility;
 - (d) the market will be aware of the existence of the Facility as its purpose, existence and key parameters will be disclosed in the product disclosure statement for the Offer and the monthly disclosure notice will inform the market as to acquisitions that the Facility Agent has made in the calendar month prior to its release as well as the number of Subordinated Notes held by NZX under the Facility at the end of each calendar month;
 - (e) the nature of the Facility may require NZX to acquire Subordinated Notes from noteholders multiple times in each calendar month. Requiring NZX to release a 7.12.1 Notice each time NZX acquires Subordinated Notes through the Facility would impose a disproportionate compliance burden on NZX, with little corresponding benefit to the market; and
 - (f) the policy rationale of Rule 7.12.1 will be satisfied through periodic reporting of Notices to the market.

Appendix 1

1. NZX Limited (NZX) is a Listed Issuer with Equity Securities Quoted on the NZX Main Board.
2. NZX intends to make an offer (*Offer*) of up to \$40 million unsecured, subordinated notes (*Subordinated Notes*).
3. The terms for the Offer of Subordinated Notes are set out in a product disclosure statement dated 15 May 2018 (*PDS*). The Subordinated Notes are governed by the trust deed dated on or around 15 May 2018. NZX intends to Quote the Subordinated Notes on the NZX Debt Market on or around 21 June 2018.
4. As part of the terms of the Offer, NZX proposes to establish a retail liquidity support facility (*Facility*) to facilitate and support liquidity for small retail investors by providing retail noteholders with an ability to sell their Subordinated Notes to NZX if the market is not otherwise providing sufficient liquidity.
5. NZX intends to enter into a liquidity facility agreement (*Facility Agreement*) with a broker to provide the Facility (*the Facility Agent*), under which the Facility Agent would purchase and sell Subordinated Notes on NZX's behalf. Under the Facility Agreement, NZX and the Facility Agent will establish a fixed trading plan for the purposes of section 260 of the Financial Markets Conduct Act 2013. The Facility Agreement will set certain parameters within which the Facility Agent would be required to operate and will be entered into at a time when NZX does not hold any inside information in relation to itself.
6. The Facility Agreement will:
 - (a) cap the aggregate volume of buy orders that can be placed by the Facility Agent at 20,000 Subordinated Notes at any time;
 - (b) cap the net quantity of Subordinated Notes that the Facility Agent may purchase at 200,000 Subordinated Notes per month;
 - (c) cap the maximum number of Subordinated Notes that NZX will hold at any time under the Facility Agreement to 5 million Subordinated Notes;
 - (d) require the Facility Agent to maintain a view of the fair market yield of the Subordinated Notes by having regard to a range of factors. Where the Facility Agent has a view of the fair market yield of the Subordinated Notes, the Facility Agent will use reasonable endeavours to maintain buy and sell orders on NZX's behalf under the Facility Agreement;
 - (e) require that the Facility Agent only sell Subordinated Notes through the Facility to the extent that NZX holds a sufficient number of Subordinated Notes that have been acquired through the Facility;
 - (f) be set for a fixed period of time during which NZX will have no right to withdraw from the Facility before the end of that fixed period; and
 - (g) require that all transactions will occur through the on-market Trading System.
7. Rule 7.12.1 requires NZX to release a notice including the information required by Rule 7.12.1 each time NZX acquires Subordinated Notes through the Facility.
8. NZX has sought a waiver from the requirement in Rule 7.12.1, to instead allow NZX to issue an aggregate monthly disclosure notice.
9. Notices must be made by NZX in accordance with Rule 7.12.1 for all other issues, acquisitions and redemptions which fall outside of the Facility.

Appendix 2

Rule 7.12.1

If an Issuer issues, acquires or redeems Quoted Securities, or an Issuer with Equity Securities Quoted issues, acquires or redeems Equity Securities or Securities Convertible into Equity Securities, then the Issuer shall give to NZX for release to the market details of the issue, acquisition or redemption, including:

- (a) Class of Security and ISIN; and
- (b) the number issued, acquired or redeemed; and
- (c) the nominal value (if any) and issue price, acquisition price or redemption price; and
- (d) whether payment was in cash; and
- (e) any amount paid up (if not in full); and
- (f) the principal terms of the Securities (other than for Quoted Securities), for example, the exercise price and exercise date in respect of an Option, or the conversion price and conversion date in respect of Convertible Securities or the ranking of the Securities in relation to other Classes of Securities; and
- (g) the percentage of the total Class of Securities issued, acquired or redeemed; and
- (h) the reason for the issue, acquisition or redemption; and
- (i) the specific authority for the issue, acquisition or redemption (if any); and
- (j) any terms or details of the issue, acquisition or redemption (such as an escrow provision); and
- (k) the total number of Securities of the Class in existence after the issue, acquisition or redemption; and
- (l) in the case of an acquisition of shares by an Issuer which is a company registered under the Companies Act 1993, whether those shares are to be held as Treasury Stock; and
- (m) the dates of issue, acquisition or redemption.

Notices required by this Rule must be given to NZX for public release forthwith after the issue, acquisition or redemption, and in respect of an acquisition effected by an Issuer through NZX's order matching market or through the order matching market of a Recognised Stock Exchange, no later than the end of the Business Day on which the acquisition took place. For the purposes of Rule 7.12.1 the sale or transfer of Treasury Stock by an Issuer shall be deemed to be an issue of Securities.