



NZX Regulation Decision

Auckland Council (“AKC”)

Application for a waiver from NZX Listing Rules

3.6.1(b)(ii) and 3.6.3

23 January 2020



Background

1. NZX has updated the NZX Listing Rules, effective from 1 January 2020 (**Rules**). This waiver decision re-documents a prior waiver decision granted by NZX Regulation (**NZXR**) for Auckland Council (**AKC**) dated 3 October 2014.

Waiver from Listing Rules 3.6.1(b)(ii) and 3.6.3

Decision

2. On the basis that the information provided to NZXR is full and accurate in all material respects, and subject to the conditions in paragraph 3 below, NZXR grants AKC a waiver from Rule 3.6.1(b)(ii) and 3.6.3 to the extent that these Rules require AKC to send to Security Holders a hard copy, or a notice that they can request a hard copy, of its annual report.
3. The waiver in paragraph 2 above is provided on the conditions that:
 - a. AKC complies with Rule 3.6.3, but on the basis that references in that Rule and in the legislation referred to in that Rule are, to the extent they would otherwise require AKC to send a hard copy of its annual report to Security Holders, construed as references to the document described in paragraph (c) of these conditions; and
 - b. The annual report continues to be made available in hard copy at public locations designated by AKC;
 - c. For the purposes of the condition in paragraph 3(a), the document must contain at least:
 - i. AKC's audited consolidated financial statements (including the auditor's report) as required to be prepared by AKC under section 69 of the Local Government Act 2002; and
 - ii. such information as prescribed in the Rules in relation to annual reports.
4. Pursuant to section 359 of the Financial Markets Conduct Act 2013, NZXR has given notice of this application to the Financial Markets Authority.
5. 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.
6. The Rules to which this decision relates are set out in Appendix Two to this decision.

Reasons

7. In coming to the decision to provide the waiver set out in paragraph 2 above, NZXR has considered that:
 - a. AKC is subject to regulation as a local authority under the Local Government Act 2002 which imposes reporting obligations on AKC in excess of what is required under the Rules, including to prepare:
 - i. annual financial statements in accordance with generally accepted accounting principles;

- ii. an annual plan for each financial year (other than the first year of the LTCCP); and
 - iii. an LTCCP every three years, which contains information in relation to the following ten-year period;
- b. As a result of the above, AKC's annual report is required to contain information that exceeds that required of corporate Issuers under the Rules;
 - c. AKC submits, and NZXR has no reason not to accept, that providing hard copies of the annual report creates an additional burden for AKC, with little additional benefit to Security Holders, as much of this information is relevant only to AKC's public functions as a local authority;
 - d. The conditions of this waiver require AKC to still make available, upon request of a Security Holder, the information relevant for investors as required under the Rules, including AKC's consolidated financial statements and auditor's report;
 - e. NZXR is satisfied with the level of disclosure contained in the document that AKC is required to make available to Security Holders on request in accordance with the condition in paragraph 3(a), above. AKC has submitted, and NZX accepts, that AKC's annual report will continue to be easily accessible for Security Holders as the report is released over MAP, available online, and available in hard copy at public locations designated by AKC;
 - f. AKC is still subject to continuous disclosure under Rule 3.1, which requires AKC to disclose any Material Information to NZX for release to the market; and
 - g. There is precedent for this decision and AKC was previously granted a similar waiver under the previous Listing Rules. This is in effect a continuation of that waiver.



Appendix One

1. AKC is a Listed Issuer with Debt Securities Quoted on the NZX Debt Market.
2. AKC is subject to comprehensive disclosure requirements under Part 6 of the Local Government Act 2002. In particular, AKC is required to prepare:
 - a. An annual report containing, among other things, audited consolidated financial statements;
 - b. An annual plan which must include forecast financial statements and a funding impact statement for each financial year (other than the first year of the Long Term Community Council Plan (“**LTCCP**”)); and
 - c. An LTTCP every three years that is audited by the Auditor-General and contains a description of the services and capital works that AKC proposes to undertake, including forecast financial statements for each of the ten years covered by the plan, a summary of AKC’s plans for each activity it undertakes for the next ten years, and a document setting out how expenditure will be funded and the likely level of each source (rates, fees and charges, etc.).
3. AKC’s annual report is a large document (approximately 500 pages in length).
4. Under Rule 3.6.3, AKC must make its annual report available by sending to holders of AKC’s quoted securities (“**Security Holders**”) either a hard copy of the annual report or a notice detailing a Security Holder’s right to receive a copy of the report and the ways in which Security Holders can obtain or request a copy (which includes the ability to request a hard copy).



Appendix Two

Rule 3.6.1 provides:

- 3.6.1 Each Issuer of Quoted Equity Securities or Quoted Debt Securities must within three months after the end of each financial year:
- (a) prepare an annual report, which must contain all information required by all applicable laws and these Rules, and
 - (b) deliver, subject to Rule 3.6.2, the annual report to:
 - (i) NZX by release through MAP (including by URL link to the annual report on an Issuer's website) before or at the same time as it is made available to Quoted Financial Product holders, and
 - (ii) each Quoted Financial Product holder in accordance with Rule 3.6.3.

Rule 3.6.3 provides:

- 3.6.3 Annual reports must be made available to Quoted Financial Product holders by:
- (a) sending to Quoted Financial Product holders:
 - (i) a hard copy of the annual report, or
 - (ii) a notice under 209(3) of the Companies Act 1993, or
 - (b) complying with regulations 61B to 61F of the FMC Regulations.

For the purposes of this Rule 3.6.3, sections 209 to 209C of the Companies Act 1993 and regulations 61B to 61F of the FMC Regulations will be deemed to be modified so that:

- (c) "shareholders" are members of the relevant Class of Quoted Financial Product holders of that Issuer,
- (d) "company" includes all Issuers, whatever their structure,
- (e) "board of a company" includes the Manager of a Managed Investment Scheme,
- (f) "annual report" means an annual report as required by Rule 3.6.1,
- (g) references to "working days after it is prepared" and "working days after the annual report for the period is prepared" are, for an Issuer that is a State Enterprise complying with regulations 61B to 61F of the FMC Regulations, interpreted as "working days after the annual report has been provided to the Minister responsible for the State Enterprise in accordance with the requirements of the State-Owned Enterprises Act 1986 and laid by that Minister responsible for that State Enterprise before the House of Representatives in accordance with the State Owned Enterprises Act 1986 or published in the Gazette under section 17(2A) of the State-Owned Enterprises Act 1986, whichever is the earlier."

