



NZX Regulation Decision

Vital Healthcare Property Trust (VHP)

Application for waivers and rulings from NZX Listing Rules 8.1, definition of Average Market Capitalisation and Average Market Price, 3.4, 7.4, 7.8, 4.6, 3.13.1, and 8.3

28 February 2020



Background

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

Application One - Approval under Listing Rule 8.1.6(b)

Decision

4. Subject to the conditions set out in paragraph 5 below, and on the basis that the information provided by Vital Healthcare Property Trust (**VHP**) is complete and accurate in all material respects, NZX Regulation (**NZXR**) grants VHP approval under NZX Listing Rule 8.1.6(b) (**Rule**), to enable VHP to incorporate provisions in its Governing Document restricting the transfer of Relevant Interests in the Financial Products of VHP as described in Appendix One as the Transfer Restrictions.
5. The approval in paragraph 4 above is provided on the conditions that:
 - a. Vital NZ and Vital Australia remain a Stapled Group;
 - b. Vital NZ and Vital Australia will each be given a non-standard designation (**NS Designation**) upon Vital NZ listing and the Quotation of the Stapled Securities;
 - c. The NS Designation is disclosed in the Notice of Meeting, any Offering Documents for the Stapled Group, and the Stapled Group's annual reports; and
 - d. The Notice of Meeting, any Offering Documents for the Stapled Group, and its annual reports will include the implications of investing in the Stapled Securities, or a link to where those implications can be found, and information on where this approval can be read.

Reasons

6. In coming to the decision to provide the approval set out in paragraph 4 above, NZXR has considered that:
 - a. the Transfer Restrictions are necessary to implement the stapled structure as proposed, including enabling the ability for the Stapled Securities to be treated by investors as a single economic unit;
 - b. Unitholders and the market generally will have clear notice of the changes to VHP's Governing Document by virtue of the disclosures in the Notice of Meeting;
 - c. the amendments to VHP's Governing Document are part of the Proposal and will be required to be approved by Unitholders; and
 - d. the NS Designation for Vital NZ and Vital Australia will provide an indication to potential investors that the Stapled Group will have a unique structure. Furthermore, the conditions in paragraph 5 above will help to make information available to investors of



the implications of investing in the Stapled Securities, these decisions, and the structure of the Stapled Group.

Application Two - Ruling on the definitions of “Average Market Capitalisation” and “Average Market Price”

Decision

7. NZXR rules that the definition of “Average Market Capitalisation” to be calculated on the basis of the market capitalisation of the Stapled Group, and “Average Market Price” to be determined on the basis of the Stapled Securities, for both Vital NZ and Vital Australia, and not on an individual basis.
8. The ruling in paragraph 7 above is provided on the conditions that:
 - a. Vital NZ and Vital Australia remain a Stapled Group;
 - b. Vital NZ and Vital Australia will each be given an NS Designation upon Vital NZ listing and the Quotation of the Stapled Securities;
 - c. The NS Designation is disclosed in the Notice of Meeting, any Offering Documents for the Stapled Group, and the Stapled Group’s annual reports; and
 - d. The Notice of Meeting, any Offering Documents for the Stapled Group, and its annual reports will include the implications of investing in the Stapled Securities, or a link to where those implications can be found, and information on where this ruling can be read.

Reasons

9. In coming to the decision to provide the ruling set out in paragraph 7 above, NZXR has considered that:
 - a. because the Stapled Securities will not be traded separately, they will not have their own “Average Market Price” and there will be no practical ability to apply the Average Market Price or Average Market Capitalisation definitions separately for Vital NZ or Vital Australia;
 - b. to treat Vital NZ and Vital Australia as separate entities for the calculation of Average Market Price or Average Market Capitalisation would ignore the reality of the legal structure of the Stapled Group. The Average Market Price and Average Market Capitalisation of the Stapled Securities would be determined on the basis of the value of the combined net assets of Vital NZ and Vital Australia and their combined financial performance;
 - c. VHP Unitholders will be asked to approve the Proposal, including the amendments to the VHP Governing Document to allow for the implementation of the proposed Restructuring. Accordingly, if the proposed Restructuring proceeds, Unitholders will have agreed to the implementation of the Stapled Security structure that necessitates Vital NZ and Vital Australia operating as if they were a single economic entity;
 - d. details of this Ruling will be clearly outlined in the Notice of Meeting; and
 - e. the NS Designation for Vital NZ and Vital Australia will provide an indication to potential investors that the Stapled Group will have a unique structure.



Application Three - Waiver from Listing Rule 3.4

Decision

10. Subject to the conditions set out in paragraph 11 below, and on the basis that the information provided by VHP is complete and accurate in all material respects, NZXR grants VHP a waiver from Rule 3.4, to the extent that Rule 3.4 would otherwise require Vital NZ and Vital Australia to disclose transactions undertaken within the Stapled Group.
11. The approval in paragraph 10 above is provided on the conditions that:
 - a. Vital NZ and Vital Australia remain a Stapled Group;
 - b. Vital NZ and Vital Australia will each be given an NS Designation upon Vital NZ listing and the Quotation of the Stapled Securities; and
 - c. The NS Designation is disclosed in the Notice of Meeting, any Offering Documents for the Stapled Group, and the Stapled Group's annual reports;
 - d. The Notice of Meeting, any Offering Documents for the Stapled Group, and its annual reports will include the implications of investing in the Stapled Securities, or a link to where those implications can be found, and information on where this waiver can be read.

Reasons

12. In coming to the decision to provide the waiver set out in paragraph 10 above, NZXR has considered that:
 - a. to treat Vital NZ and Vital Australia as separate entities for the purposes of this disclosure would ignore the reality of the structure of the Stapled Group;
 - b. VHP has submitted, and NZXR agrees, that having to disclose transactions within the Stapled Group would be inconsistent with the Stapled Security structure under which there should be economic indifference from Unitholders' perspective;
 - c. this waiver is necessary to allow for the efficient and economic running of the Stapled Group under the Stapled Security structure; and
 - d. the Notice of Meeting, and disclosure of this waiver in the annual reports of the Stapled Group, will make clear to Unitholders and investors that transactions within the Stapled Group will not be disclosed under Rule 3.4.

Application Four - Determination under Rule 7.4

Decision

13. Subject to the conditions set out in paragraph 14 below, and on the basis that the information provided by VHP is complete and accurate in all material respects, NZXR determines that neither Vital NZ nor NorthWest will be required to prepare and distribute a separate Profile document in respect of the application to list Vital NZ.
14. The determination in paragraph 13 above is provided on the conditions that:
 - a. VHP will include information regarding the listing of Vital NZ, Vital Australia, and the Stapled Group in the Notice of Meeting;



- b. VHP will provide NZXR with the opportunity to review and comment on the Notice of Meeting;
- c. following review of the Notice of Meeting, NZXR will have discretion to require VHP to release supplemental documentation as NZXR considers necessary with a view to ensuring that sufficient information is available to the market;
- d. Vital NZ and Vital Australia remain a Stapled Group;
- e. Vital NZ and Vital Australia will each be given an NS Designation upon Vital NZ listing and the Quotation of the Stapled Securities; and
- f. The NS Designation is disclosed in the Notice of Meeting, any Offering Documents for the Stapled Group, and the Stapled Group's annual reports; and
- g. The Notice of Meeting, any Offering Documents for the Stapled Group, and its annual reports will include the implications of investing in the Stapled Securities, or a link to where those implications can be found, and information on where this determination can be read.

Reasons

15. In coming to the decision to provide the determination set out in paragraph 13 above, NZXR has considered that:
- a. VHP has submitted, and NZXR agrees, that Unitholders would not be served by a separate Profile document because:
 - i. they will remain invested in a business that owns and manages the same assets – they will simply hold two different units (stapled together) and receive distributions from two different entities holding those same assets;
 - ii. NorthWest will provide Unitholders with a comprehensive Notice of Meeting for the purposes of the special meeting to consider the Proposal;
 - iii. NorthWest is already subject to continuous disclosure obligations under the Listing Rules and the Financial Markets Conduct Act 2013 (the **FMC Act**), and fair dealing obligations under the FMC Act;
 - iv. as Unitholders are already exposed to the management business being carried on by VHP, they bear no investment risk by being distributed the Vital NZ units; and
 - b. as the distribution of Vital NZ units will be made pursuant to an FMC Act exemption from full PDS disclosure, requiring NorthWest to prepare a full separate Profile would impose unnecessary costs; and
 - c. NZX will have the opportunity to review and formally provide non-objection to the Notice of Meeting.



Application Five- Ruling under Rule 7.8

Decision

16. Subject to the conditions set out in paragraph 17 below, and on the basis that the information provided by VHP is complete and accurate in all material respects, NZXR grants VHP a ruling under Rule 7.8 that, for the purposes of Rule 7.8, references to “Issuer” will be read as references to the Stapled Group (and not to either Vital NZ or Vital Australia as individual entities).
17. The ruling in paragraph 16 above is provided on the conditions that:
 - a. That the Stapled Group shall provide joint notices, reports, and any communications to holders of the Stapled Securities as a Stapled Group;
 - b. That the Stapled Group shall ensure that any notice, report, or communication will clearly explain which Issuer is the source of the notice, report, or communication where this is relevant;
 - c. Vital NZ and Vital Australia remain a Stapled Group;
 - d. Vital NZ and Vital Australia will each be given an NS Designation upon Vital NZ listing and the Quotation of the Stapled Securities;
 - e. The NS Designation is disclosed in the Notice of Meeting, any Offering Documents for the Stapled Group, and the Stapled Group’s annual reports; and
 - f. The Notice of Meeting, any Offering Documents for the Stapled Group, and its annual reports will include the implications of investing in the Stapled Securities, or a link to where those implications can be found, and information on where this ruling can be read.

Reasons

18. In coming to the decision to provide the ruling set out in paragraph 16 above, NZXR has considered that:
 - a. it is proposed that the Stapled Group coordinate all notices, reports, and financial statements and present them as an overall Stapled Group communication;
 - b. any required notices would still be set out at the level of detail required by Rules 7.8.2 and 7.8.6;
 - c. each notice required by Rule 7.8 would still comply with the terms of Rule 7.9 and would be sent to each unitholder of the Stapled Entities;
 - d. VHP has submitted, and NZXR agrees, that requiring both Vital NZ and Vital Australia to separately send the notices required under Rule 7.8 to unitholders is likely to cause confusion for Stapled Security holders, who would expect that administrative matters would be combined; and
 - e. VHP has submitted, and NZXR agrees, that requiring both Vital NZ and Vital Australia to separately send the notices required under Rule 7.8 would impose costs in excess of any benefits gained.



Application Six - Waiver from Rule 4.6

Decision

19. Subject to the conditions set out in paragraph 20 below, and on the basis that the information provided by VHP is complete and accurate in all material respects, NZXR grants VHP a waiver from Rule 4.6, to the extent required so that Employees of both NorthWest and of the responsible entity and investment manager of Vital Australia will be treated as Employees of the Stapled Group for the purposes of Rule 4.6.
20. The waiver in paragraph 19 above is provided on the conditions that:
- a. Vital NZ and Vital Australia remain a Stapled Group;
 - b. Vital NZ and Vital Australia will each be given an NS Designation upon Vital NZ listing and the Quotation of the Stapled Securities;
 - c. The NS Designation is disclosed in the Notice of Meeting, any Offering Documents for the Stapled Group, and the Stapled Group's annual reports; and
 - d. The Notice of Meeting, any Offering Documents for the Stapled Group, and its annual reports will include the implications of investing in the Stapled Securities, or a link to where those implications can be found, and information on where this waiver can be read.

Reasons

21. In coming to the decision to provide the waiver set out in paragraph 19 above, NZXR has considered that:
- a. the restrictions in Rule 4.6 will still apply, but will in effect be determined on a Stapled Group basis. That is, Employees could be issued in aggregate up to 3% of the total number of the Stapled Securities;
 - b. the Proposed Restructure, including the stapling which would require that there be equal numbers of Vital NZ units and Vital Australia units on issue at all times, will be approved by unitholders;
 - c. ensuring that there is an equal number of Vital NZ and Vital Australia units on issue at all times is an essential feature of stapling; and
 - d. the effect and conditions of stapling will be clearly set out and explained in the Notice of Meeting.

Application Seven - Waiver from Rule 3.13.1

Decision

22. Subject to the conditions set out in paragraph 23 below, and on the basis that the information provided by VHP is complete and accurate in all material respects, NZXR grants VHP a waiver from Rule 3.13.1, to the extent that Rule 3.13.1 would otherwise require both Vital NZ and Vital Australia to release separate announcements relating to issues, acquisitions, or redemptions of their Quoted Financial Products. This waiver enables the Stapled Group to provide consolidated announcements to unitholders.
23. The waiver in paragraph 22 above is provided on the conditions that:



- a. Vital NZ and Vital Australia remain a Stapled Group;
- b. Vital NZ and Vital Australia will each be given an NS Designation upon Vital NZ listing and the Quotation of the Stapled Securities;
- c. The NS Designation is disclosed in the Notice of Meeting, any Offering Documents for the Stapled Group, and the Stapled Group's annual reports; and
- d. The Notice of Meeting, any Offering Documents for the Stapled Group, and its annual reports will include the implications of investing in the Stapled Securities, or a link to where those implications can be found, and information on where this waiver can be read.

Reasons

24. In coming to the decision to provide the waiver set out in paragraph 22 above, NZXR has considered that:
 - a. VHP has submitted, and NZXR agrees, that Stapled Security holders would expect that announcements relating to the issue, redemption, or acquisition of Stapled Securities would be made in a single announcement given that the announcement would in effect relate to Stapled Securities;
 - b. VHP has submitted, and NZXR agrees, that providing two announcements to the market under the same ticker code would be confusing for investors;
 - c. providing consolidated announcements is consistent with the quotation of the Stapled Securities under a single ticker code;
 - d. providing consolidated announcements to the market is consistent with the treatment of the Stapled Securities as a single investment; and
 - e. each Stapled Entity will comply with the requirement in Rule 3.14.1 to report on its compliance with its own distribution policy, and would make its own announcement of any distribution being paid by it. These announcements will be released in the same way as all other announcements relating to the Stapled Group, but will reflect the reality that the units of Vital NZ and Vital Australia will be treated differently for tax purposes according to their country of origin, and the domicile of each of the relevant unitholders.

Application Eight - Ruling under Rule 8.3

Decision

25. Subject to the conditions set out in paragraph 26 below, and on the basis that the information provided by VHP is complete and accurate in all material respects, NZXR grants VHP a ruling under Rule 8.3 that, for the purposes of Rule 8.3, references to "Issuer" will be read as references to the Stapled Group (and not to either Vital NZ or Vital Australia as individual entities).
26. The ruling in paragraph 25 above is provided on the conditions that:
 - a. Vital NZ and Vital Australia remain a Stapled Group;
 - b. Vital NZ and Vital Australia will each be given an NS Designation upon Vital NZ listing and the Quotation of the Stapled Securities;



- c. The NS Designation is disclosed in the Notice of Meeting, any Offering Documents for the Stapled Group, and the Stapled Group's annual reports; and
- d. The Notice of Meeting, any Offering Documents for the Stapled Group, and its annual reports will include the implications of investing in the Stapled Securities, or a link to where those implications can be found, and information on where this ruling can be read.

Reasons

27. In coming to the decision to provide the ruling set out in paragraph 25 above, NZXR has considered that:
- a. VHP has submitted, and NZXR has no reason not to accept, that as the Stapled Securities will be trading as a single economic unit, the Stapled Security holders will primarily be interested in their holding of the Stapled Securities rather than their separate holdings in Vital NZ or Vital Australia;
 - b. the Stapled Security structure will be approved by unitholders;
 - c. the provision of consolidated statements under Rule 8.3 is consistent with the view that the Stapled Securities will be acting and trading as a single economic entity; and
 - d. VHP has submitted, and NZXR agrees, that there would be no benefit to Stapled Security holders by requiring the provision of separate statements.

Confidentiality

28. VHP has requested this decision be kept confidential until the Notice of Meeting has been released.
29. In accordance with Rules 9.6.2 and 9.6.7, NZXR grants VHP's request.



Appendix One

Background

1. VHP is a managed investment scheme regulated by Part 4 of the Financial Markets Conduct Act 2013 (the **FMC Act**), and is an Issuer of Fund Securities under the Rules listed on the NZX Main Board.
2. VHP is managed by Northwest Healthcare Properties Management Limited (**NorthWest**), and is supervised by Trustees Executors Limited (**TEL**).
3. NorthWest is a wholly-owned subsidiary of NorthWest Healthcare Properties REIT (**NW REIT**), a Canadian listed real estate investment trust.
4. Originally established in 1994, VHP invests in healthcare real estate assets, and owns a portfolio of private healthcare facilities in New Zealand and Australia. In June 2019 VHP's portfolio was valued at \$1.84 billion, with that being split between NZ assets (~24%) and Australian assets (~76%).
5. NorthWest considers that aspects of VHP's current structure make it less attractive as an investment proposition for international investors than it otherwise could be, and the majority of its unitholders are NZ based (apart from NW REIT which holds 24.9% of VHP's units).
6. Accordingly, NorthWest proposes to restructure VHP, with an overall objective to ensure that VHP has access to the broadest possible capital sources and enjoys a lower cost of capital. NorthWest is seeking to remove aspects of VHP's current structure that discourage international investors.
7. NorthWest intends to hold a vote of VHP unitholders to allow for this restructuring by way of special resolution. This will involve unitholders approving changes to VHP's Governing Document.

The proposed Restructuring

8. A summary of the proposed **Restructuring** is set out below, but it will result in VHP being split into two separate trusts: an NZ trust (registered under the FMC Act) holding the NZ assets and an Australian trust (registered under the Corporations Act 2001 (Australia)) holding the Australian assets. The units in the two trusts would be stapled together, so that they are traded together and unitholders have an equivalent number of units in each trust.
9. Importantly, the proposed Restructuring:
 - (a) will not involve a change of the unitholders' proportionate ownership of VHP or any of the underlying assets; and
 - (b) does not involve a change in the underlying assets held by the trusts.
10. The proposed Restructuring would be implemented as follows (and in the following order):
 - (a) A new managed investment scheme would be established (**Vital NZ**). Vital NZ will be a managed investment scheme registered under the FMC Act, with a licensed manager and supervisor (being NorthWest and TEL, the current VHP manager and supervisor).



- New units in Vital NZ will be issued initially to VHP (and held by TEL in its capacity as trustee/custodian for VHP). This means that Vital NZ will be a wholly owned and controlled entity within the VHP group when it is established;
- (b) VHP's New Zealand properties would be transferred to Vital NZ, with the Australian properties retained by VHP in consideration for arm's length consideration;
 - (c) Vital NZ will be "demerged" by VHP distributing the units in Vital NZ to its unitholders "in specie" on a pro rata basis (the **In Specie Distribution**). Vital NZ units will immediately be "stapled" to the existing VHP units;
 - (d) VHP will be re-domiciled to Australia. This will be achieved through VHP's trust deed being amended, an Australian "responsible entity" appointed to manage and supervise VHP and VHP being de-registered with the Financial Markets Authority (**FMA**) and registered with the Australian Securities and Investments Commission (**ASIC**) under the Australian Corporations Act 2001 as a managed investment trust. NorthWest and TEL will resign as manager and supervisor of VHP. From here, VHP will be referred to as Vital Australia. The responsible entity of Vital Australia will be wholly-owned by NW REIT, in the same way that NorthWest is. Management powers in respect of Vital Australia will be contracted out by the responsible entity of Vital Australia to a separate Australian management entity, which will also be a wholly-owned subsidiary of NorthWest, pursuant to an Investment Management Agreement;
 - (e) It is proposed that Vital NZ and Vital Australia will both have an NZX primary listing. Vital NZ and Vital Australia will seek an ASX Foreign Exempt listing. Each of Vital NZ and Vital Australia will be "Issuers of Fund Securities" for the purposes of the NZX Listing Rules (as VHP currently is).
11. Units in Vital NZ and Vital Australia will be "stapled" and will form a single tradable financial product on NZX and ASX, with a single ticker code and unit price (the **Stapled Securities**, each of Vital NZ and Vital Australia a **Stapled Entity** and together, the **Stapled Group**). Stapling will be achieved by:
- (a) the Governing Documents of each of Vital NZ and Vital Australia including provisions that require that units in each of them need to be bought and sold together, so the proportionate ownership of unitholders of Vital NZ and Vital Australia will always be the same; and
 - (b) a Stapling Deed being entered into between NorthWest (as Manager of Vital NZ) and the Responsible Entity of Vital Australia.
12. The management of the Vital NZ and Vital Australia trusts will be undertaken by the same management team, and be subject to the overall control and direction of the same board of directors. The effect of this structure is that investors will continue to view the stapled group as a single investment proposition, rather than focussing on the legal reality of there being two separate trusts.
13. There will be a number of other corporate requirements to effect the proposed Restructuring. In particular, the amendments to the Governing Document of VHP must be approved by unitholders of VHP by way of special resolution at a unitholder meeting. Full details of the proposed Restructuring, the changes required to the Governing Document of VHP, and the stapling mechanics are being included in a comprehensive notice of meeting for that unitholder meeting (the **Notice of Meeting**).



14. As at the date of this decision, Vital NZ is not in existence and VHP remains a New Zealand registered Managed Investment Scheme managed by NorthWest. However, NorthWest has applied for these waivers, rulings and determinations in respect of Vital NZ and Vital Australia in anticipation of the proposed Restructuring being implemented.

Approval under Rule 8.1 – Further Background

15. Rule 8.1.6(b) provides that an Issuer may, with the prior approval of NZX, incorporate provisions in its Governing Document that restrict the transfer of Relevant Interests in Financial Products. The approval that NZXR provides above, enables the stapled structure by ensuring that:
- (a) No Vital NZ units may be issued without a corresponding issue of Vital Australia units;
 - (b) No transfer of Vital NZ units would be accepted for registration without a corresponding transfer of Vital Australia units (and vice versa);
 - (c) Each Stapled Entity must not divide, consolidate, cancel, buy-back or redeem a Vital NZ unit or a Vital Australia unit (as applicable) without a corresponding and simultaneous corporate action being made in respect of the other Stapled Security; and
 - (d) The Governing Documents can contain a mechanism for unstapling the Stapled Securities (in the event of unwinding) or the stapling of additional financial products, with unitholder approval by way of a special resolution.

(the Transfer Restrictions)

16. If any of the above provisions are breached, the board at NorthWest or the responsible entity (as applicable) will be permitted to issue/repurchase Vital NZ units or Vital Australia units in order to ensure that each Stapled Entity has the same number of units on issue, or refuse to register a transfer until a corresponding transfer is received by the other Stapled Entity.

Confirmation of the interpretation of “Material Information” – Further Background

17. VHP has sought confirmation from NZXR that “Material Information” will be assessed in relation to the Stapled Group rather than either of the Stapled Entities individually. NZX considers that this interpretation is appropriate as:
- (a) Given the structure of the Stapled Group, reasonable investors will expect that information will be provided for the Stapled Group as a whole rather than for Vital NZ or Vital Australia individually; and
 - (b) There will only be one quoted price (for the Stapled Securities) so it would be artificial to attempt to unwind the two Stapled Entities for an assessment of materiality.



Ruling on the definitions of “Average Market Capitalisation” and “Average Market Price” – Further Background

18. The definitions of Average Market Capitalisation and Average Market Price under the Rules contemplate a single Issuer. VHP has sought a ruling to enable the definitions of AMC and AMP to be calculated with reference to the Stapled Group and the price of the Stapled Securities.
19. VHP has submitted, and NZXR has no reason not to agree, that this ruling reflects the reality that the Stapled Group will be operating as a single economic entity, and that there will be no practical ability to apply either of these definitions separately for Vital NZ and Vital Australia because the units will not be traded separately.
20. Accordingly, this ruling is appropriate to ensure proper treatment of the Stapled Group.

Waiver from Rule 3.4 – Further Background

21. Rule 3.4 requires Issuers to release through MAP details of certain transactions with Related Parties. Vital NZ and Vital Australia will be Related Parties as each will be an Associated Person of the other due to the proposed common directorships of the two entities, and as they will be acting in concert.
22. Due to the nature of the two funds, NorthWest anticipates that there may be transactions where between the Stapled Entities (or their respective subsidiaries) that may have a value that exceeds the threshold of Rule 3.4 (i.e. being greater than 5% of the Issuer’s Average Market Capitalisation). However, any such transactions are similar in nature to an intra-group transaction and would be inconsequential from a unitholders perspective, given they have the same proportionate ownership of both of the Stapled Entities. As a result, they would not normally be announced to the market.
23. NZXR considers that it is appropriate to grant this waiver to avoid the Stapled Entities being caught by the requirement to make announcements that it would otherwise not be required to make, but for the Stapled structure.

Determination under Rule 7.4 – Further Background

24. Rules 7.3 and 7.4 provide that an applicant for listing must prepare and issue a Profile, unless NZX determines otherwise.
25. VHP has requested that NZX permit it to provide information to unitholders about the Stapled Entities (that would otherwise be contained in a Profile) in the Notice of Meeting.



26. NZXR considers that providing information in this way will not prejudice unitholders, and is comforted by the fact that it will review the Notice of Meeting before it is provided to unitholders.
27. NZXR considers that requiring VHP to prepare a separate Profile document would add unnecessary cost to VHP, particularly where the distribution of the Vital NZ units will be made pursuant to an exemption from the requirement to prepare full PDS disclosure under the FMC Act.

Ruling under Rule 7.8 – Further Background

28. Rule 7.8 prescribes the information contained in an Issuer's notices of meeting, and refers to each "Issuer". Given that the Stapled Group will be acting as a single entity regarding announcements and actions, VHP has sought a ruling that "Issuer", for the purposes of Rule 7.8, is interpreted as referring to the Stapled Group.
29. NZXR considers that it is appropriate to grant this ruling to reflect the reality of the Stapled Group being traded as a single economic unit, and to avoid confusion by unitholders or investors.

Waiver from Rule 4.6 – Further Background

30. Rule 4.6 provides that an Issuer may issue Equity Securities of a class already on issue to Employees and Executive Directors, provided that the total number of Equity Securities issued does not exceed 3% of the aggregate number on issue at the beginning of that 12-month period. Rule 4.18 confirms that Rule 4.6 applies as if Fund Securities were Equity Securities carrying votes.
31. VHP has sought a waiver from Rule 4.6 so as to enable Employees of NorthWest and the Responsible Entity and Investment Manager of Vital Australia to be treated as Employees of the Stapled Group with the result being that they can be issued Stapled Securities under the terms of an employee unit scheme.
32. VHP has submitted, and NZXR has no reason not to accept that, the waiver is appropriate as:
 - (a) Each of NorthWest (in respect of Vital NZ) and the responsible entity and investment manager (in respect of Vital Australia) will have separate pools of employees; and
 - (b) In order to implement the Stapled Security structure, the number of units must be the same between the Stapled Entities at all times. To the extent that either NorthWest or the relevant responsible entity offers an employee units scheme to its Employees, it will need to be an offer of Stapled Securities.

Waiver from Rule 3.13.1 – Further Background



33. Rules 3.13.1 and 3.14.1 require an Issuer to release announcements relating to certain corporate actions, and provide for the form of these announcements. This Rule does not contemplate consolidated announcements being provided to Financial Product holders.
34. As the Stapled Securities will be treated differently for tax purposes according to their country of origin, and the domicile of the relevant unitholder, each Stapled Entity will need to provide its own disclosure in relation to compliance with its distribution policy under Rule 3.14.1. However, to ensure that unitholders can receive distribution notices in the same way as all other announcements relating to the Stapled Group (i.e. as a single announcement relating to the distributions by each Stapled Entity), VHP requires a waiver from this Rule to enable it to provide consolidated announcements under Rule 3.13.1 for the Stapled Group rather than individual announcements for each Stapled Entity.
35. NZXR considers that it is appropriate to grant this waiver to reflect the treatment of the Stapled Group as a single investments, and to avoid possible confusion for unitholders.

Ruling under Rule 8.3 – Further Background

36. Rule 8.3 provides that Issuers are required to provide statements, on request, to holders of their Quoted Financial Products. Given that the Stapled Securities will be traded as a single economic unit, the Stapled Security holders will primarily be interested in their holding of the combined Stapled Securities rather than the separate Stapled Entities.
37. Rule 8.3 contemplates the statements as being provided by each Issuer. Accordingly VHP has sought a ruling to enable the Stapled Group to provide consolidated holding statements. This would be that for the purposes of this Rule “Issuer” refers to the Stapled Group.
38. NZXR considers that it is appropriate to grant this ruling to reflect the treatment of the Stapled Group as a single investments, and to avoid possible confusion for unitholders.



Appendix Two

Glossary

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| Average Market Capitalisation | means, in relation to an Issuer, the Average Market Price multiplied by the number of Quoted Equity Securities carrying Votes on Day A. |
| Average Market Price | means, on Day A , the lesser of the volume weighted average price of an Issuer's Quoted Equity Securities (or, when calculating a Minimum Holding, the relevant Financial Product) calculated from trades through the Main Board over the following two periods: (a) 20 Business Days before Day A, or (b) 5 Business Days before Day A. |
| Material Information | has the meaning given in section 231(1) of the FMC Act (read together with additional terms defined in section 232 of that Act). |

NZX Listing Rules

3.4 Related Party Transactions

3.4.1 Every Issuer must promptly and without delay release through MAP sufficient details to inform the market upon entering into a transaction or related series of transactions with a Related Party under which the Issuer:

- (a) purchases, acquires, gains, leases (as lessor or lessee), sells or otherwise disposes of, assets having an Aggregate Net Value above 5% of the Issuer's Average Market Capitalisation,
- (b) issues its own Financial Products or acquires its own Equity Securities, having a market value above 5% of the Issuer's Average Market Capitalisation (except where Rule 4.5 applies or for an issue of Debt Securities, in which case only the market value of Financial Products being issued to any Related Party or to any Employees of the Issuer are to be taken into account),
- (c) borrows, lends, pays or receives money, or incurs an obligation, of an amount above 5% of the Issuer's Average Market Capitalisation (except for an issue of Debt Securities, in which case only the nominal amount of Debt Securities being issued to any Related Party or to any Employees of the Issuer are to be taken into account), or
- (d) enters into any guarantee, indemnity, underwriting or similar obligation, or gives any security, which could expose the Issuer to liability above 5% of the Issuer's Average Market Capitalisation.



3.4.2 Rule 3.4.1 does not apply to a transaction to which Rule 5.2.1 applies.

3.13 **Issues, acquisitions and redemption of capital**

3.13.1 If an Issuer issues, acquires or redeems:

- (a) Quoted Financial Products, or
- (b) Financial Products Convertible into Quoted Equity Securities or Options to acquire Quoted Equity Securities,

the Issuer must, subject to Rule 3.13.3, provide for release through MAP in prescribed form (as applicable) details of:

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



Subject to Rule 3.13.2, notices required by this Rule must be released through MAP within one Business Day after the issue, acquisition or redemption. For the purposes of this Rule, the sale or transfer of Treasury Stock by an Issuer is deemed to be an issue of Financial Products.

3.14 **Distributions, conversions and calls**

3.14.1 An Issuer must release through MAP, at least 5 Business Days before the Record Date, the details of a proposal to:

- (a) pay or distribute a benefit on Quoted Financial Products,
- (b) proceed with a Conversion of Quoted Financial Products, or a Conversion of any Financial Products into Quoted Financial Products, or
- (c) make a call on a Quoted Financial Product,

in the form prescribed by NZX from time to time.

4.6 **3% Issues to Employees and Executive Directors**

4.6.1 An Issuer may issue Equity Securities if:

- (a) the issue is made to, or to a trustee to hold for the benefit of, Employees and may include Employees that are Directors or Associated Persons of Directors only if their participation satisfies the allocation criteria applying to Employees generally,
- (b) the issue is of a Class of Equity Securities already on issue, and
- (c) the number to be issued, together with all other Equity Securities of the same Class issued under this Rule 4.6.1 over the shorter of the previous 12 months or the period since the Issuer was Listed, will not exceed 3% of the aggregate of:
 - i. the total number of Equity Securities of that Class on issue at the commencement of that period, and
 - ii. the total number of Equity Securities of that Class issued during that period under Rules 4.2.1, 4.3, 4.5.1, 4.8 and 4.9,

provided that for the purposes of this Rule 4.6.1:

- (d) Financial Products which may Convert to Quoted Equity Securities are deemed to correspond in number to, and be deemed to be of the same Class as, the Quoted Equity Securities into which they may Convert, and
- (e) if the conversion ratio is fixed by reference to the market price of the underlying Equity Securities, unless otherwise specified in the issue terms, this is the Average Market Price.



- 4.6.2 For the purposes of Rule 4.6.1, an issue to a Director or an Associated Person of a Director made in that person's capacity as a trustee of a bona fide employee share or superannuation scheme or suchlike, where that person has no beneficial interest, is deemed not to be an issue in which Directors or their Associated Persons participate.

Issuers of Fund Securities

4.18 Issues, buy backs and redemptions of Fund Securities

- 4.18.1 An Issuer of Fund Securities that is not a Continuous Issuer must issue, acquire and redeem further Fund Securities in accordance with Rule 4.1 to 4.17 as if the Fund Securities were Equity Securities carrying Votes.
- 4.18.2 A Continuous Issuer must issue, acquire and redeem Fund Securities in accordance with the Governing Document.

Preparing documents

7.3 Preparing Offer Document or Profile

- 7.3.1 An Issuer or applicant for Listing must prepare and issue:
- (a) an Offer Document, where required by law, in respect of Financial Products Quoted or to be Quoted on the Main Board or the Debt Market.
 - (b) a Profile, if required to do so by NZX, when:
 - i. seeking initial Quotation of a Class or Financial Products,
 - ii. Rule 1.11 applies, or
 - iii. Rule 5.1.1(a) applies to a transaction undertaken by an Issuer.

Content of documents

7.4 Content of Offer Document and Profile

- 7.4.1 Every Profile must:
- (a) contain the information required in a PDS as if the offer was regulated under the FMC Act, unless NZX determines otherwise,
 - (b) contain all information required by the Rules, unless NZX determines otherwise, and
 - (c) contain, or incorporate by reference, all other information NZX, in its sole discretion, might require.



- 7.4.2 Every Offer Document or Profile must contain:
- (a) a statement of the principal terms of:
 - i. the Financial Products being offered by, or referred to in, that Offer Document or Profile, and
 - ii. the offer of those Financial Products (if applicable),
 - (b) if applicable, a timetable of all relevant dates for:
 - i. opening and closing the offer,
 - ii. allotment of the Financial Products and/or Rights to those Financial Products,
 - iii. quotation and commencement of trading of the Financial Products,
 - iv. the payment of initial dividends, interest or other benefits (as applicable),
 - (c) in the subscription application (if applicable), a field for subscribers to insert their CSN (if any), and
 - (d) a description of the arrangements that a Financial Product holder would need to have in place in order to trade the Financial Product on the Main Board or the Debt Market.
- 7.4.3 NZX May require an Offer Document to state:
- (a) the number and percentage of Financial Products of the Class being offered which are not available to Non-Affiliated Holders, together with the names or description of any class of persons to whom preference in allotment is to be given, whether the Financial Products in question are part of the issue or not,
 - (b) the method of dealing with oversubscriptions and the amount of oversubscriptions which will be accepted,
 - (c) the period within which subscription refunds will be paid, and
 - (d) if interest will be paid on the amounts refunded under paragraph (c) and, if so, the basis upon which the interest will be calculated.
- 7.4.4 Every Offer Document or Profile made in contemplation of Quotation of Equity Securities must specify the Directors' intentions as to the Issuer's future dividend policy. Every other Offer Document from an Issuer with existing Quoted Equity Securities may specify the dividend policy or refer readers to the Issuer's website where such information may be obtained.
- 7.4.5 If Vendor Securities are issued at or about the time as an offer of Equity Securities, the Offer Document or Profile must state any restrictions to be imposed on the disposal by the holders or beneficial owners of effective ownership and control of the Vendor Securities, or that there are none.



7.4.6 A Profile must be distributed to such persons, and in such manner, as NZX may determine and must be released through MAP.

7.8 Notices of Meeting

7.8.1 The text of any resolution to be put to a meeting of an Issuer required by the Rules must be set out in the notice of the relevant meeting.

7.8.2 Each notice of meeting must contain or be accompanied by sufficient explanation, reports, valuations, and other information, as to enable a reasonable person entitled to Vote to understand the effect of each resolution proposed, including:

- (a) the consequences if the resolution in question is not passed (unless such resolution concerns a matter listed in Rule 7.1.2(a)(i) to (vii)), and
- (b) a statement outlining who is subject to voting restrictions in relation to such resolution.

7.8.3 Each notice of meeting to consider a resolution to appoint, elect or re-elect a Director must include the following information on each candidate:

- (a) the Board's view on whether or not the candidate would qualify as an Independent Director (or, if the Board is unable to make such an assessment due to a lack of information regarding a candidate nominated by an Equity Security holder, a statement to that effect).
- (b) an outline of the candidate's experience (including specific details of relevant roles and organisations) and, if relevant, the qualifications of the candidate, to the extent such information is available to the Issuer after making due inquiries, and
- (c) any other information that the Board considers may be useful to provide to a Financial Product holder.

7.8.4 As a minimum, the notice of meeting for a resolution to approve an issue, acquisition or redemption of Financial Products, or provision of financial assistance, must state or contain so much of the following information as is applicable and known to the Issuer:

- (a) the number of any Financial Products to be issued, acquired, or redeemed or, if the number is not known, the formula to be applied to determine the number, and the maximum number which may be issued, acquired or redeemed,
- (b) the purpose of the transaction,
- (c) any issue, acquisition or redemption price or, if the price is not known, the formula to be applied to determine the price, and the time or times for payment with sufficient detail to enable Financial Product holders to ascertain the terms to or from any party,



- (d) the party or parties to whom any Financial Products are to be issued, or from whom they are to be acquired or redeemed, where that is known, and identifying by name any such parties who are Directors or Associated Persons of the Issuer or any Director,
- (e) in the case of an issue, the consideration for the issue and, where that is cash, the specific purpose for raising the cash,
- (f) the period of time within which any issue, acquisition or redemption will be made,
- (g) in the case of an issue, the ranking of the Financial Products to be issued for any future benefit, and
- (h) in the case of a resolution under Rule 4.16.1, the amount and full terms of the financial assistance to be given and the party or parties who will receive it, identifying by name any such parties who are Directors or Associated Persons of the Issuer or any Director.

7.8.5 A notice of meeting to consider a resolution of the nature referred to in Rule 7.8.4 (other than a resolution to permit an issue under Rule 4.7.1) must be accompanied by an Appraisal Report if:

- (a) the resolution is required by Rule 4.13,
- (b) more than 50% of the Financial Products to be issued are intended or likely to be acquired by Directors or Associated Persons of Directors, or
- (c) more than 50% of the Financial Products to be acquired or redeemed or the financial assistance to be given is intended or likely to go to Directors or Associated Persons of Directors.

7.8.6 Without limiting Rule 7.8.2, notices in respect of proposed changes to a Governing Document must explain the effect of such changes so that they can be understood without reference to the existing or proposed Governing Document.

7.8.7 Where the Issuer is incorporated under the Companies Act 1993 and the effect of the resolution, if passed, is that shareholders will have the right to require the Issuer to buy their shares under section 110 or 118 of that Act, the resolution must contain a prominent statement referring to that right.

7.8.8 A notice of meeting for the purposes of Rule 5.2.1 must:

- (a) be reviewed by NZX in accordance with Rule 7.1,
- (b) be accompanied by an Appraisal Report, and
- (c) contain such other material as is necessary to enable the holders of Financial Products entitled to Vote to decide whether the transaction price and terms are fair.

Transfers



- 8.1.6 The Governing Document of an Issuer may:
- (a) restrict the transfer of Debt Securities by requiring that holders must hold those Debt Securities in a specified minimum nominal amount (of no more than \$10,000, or such higher amount as NZX may specify from time to time) and/or in integral multiples of a specified nominal amount (of no more than \$1,000, or such higher amount as NZX may specify from time to time),
 - (b) with the prior approval of NZX, incorporate any other provision restricting the transfer of Relevant Interests in Financial Products, or
 - (c) prescribe procedures entitling the Issuer to sell Quoted Financial Products held in less than Minimum Holdings and to account to the holders for the proceeds of sale after deduction of reasonable sale expenses. At least three months' prior notice must be given to the affected holders before such an action.

Statements

8.3 Statements

- 8.3.1 Every Issuer must issue to each holder of Quoted Financial Products on request a Statement that sets out:
- (a) the Class and number of Financial Products held by that holder and the total number of Financial Products of that Class issued by the Issuer,
 - (b) the register on which the holder's Financial Products are held, if other than the principal register, and
 - (c) the holder's number, CSN and address.
- 8.3.2 An Issuer is not obliged to provide a holder with the Statement required by Rule 8.3.1 if:
- (a) such a Statement has been provided within the previous six months, and
 - (b) the holder has not acquired or disposed of Financial Products of the relevant Class since a previous Statement required by Rule 8.3.1 or Rule 8.3.3 was provided.
- 8.3.3 Every Issuer must issue a Statement to each holder who obtains or disposes of Quoted Financial Products upon an issue or a transfer within 5 Business Days after the date of allotment or the date of registration of that transfer.
- 8.3.4 Where the Statement required by Rule 8.3.3 is issued following a transfer, the Statement must include:
- (a) all the information specified in Rule 8.3.1, except that the total number of Financial Products of that Class issued by the Issuer need not be shown, and



- (b) the number of Financial Products transferred (to or from the holder) in each transfer since the last Statement.

