

23 May 2024

### **SMARTSHARES LIMITED WAIVER FROM NZX LISTING RULE 3.13.1**

1. This is a decision of the Special Division of the NZ Markets Disciplinary Tribunal (*the Special Division*).
2. The Special Division exercises the powers and functions of NZ RegCo as they apply to NZX Limited (*NZX*) and any Related Entity. Smartshares Limited (*Smartshares*) is a wholly owned subsidiary of NZX and is accordingly a Related Entity.
3. Capitalised terms that are not defined in this decision have the meanings given to them in the NZX Listing Rules (*the Rules*) or the NZ Markets Disciplinary Tribunal Rules.

#### **Rule 3.13.1**

4. Under Rule 3.13.1 an Issuer who issues, acquires, or redeems a Quoted Financial Product must release through MAP, in the prescribed form (*the Prescribed Notice Form*)<sup>1</sup>, the details specified in that Rule (set out in Appendix 1), including the number of Financial Products issued, acquired or redeemed and the total number of Financial Products of the Class in existence after the issue, acquisition or redemption, within one Business Day.

#### **Background**

5. Smartshares is the manager of multiple Listed Managed Investment Schemes (*Smartshares ETFs*)<sup>2</sup>. Smartshares is a Continuous Issuer of Fund Securities for the purposes of the Rules.
6. Each Business Day, Smartshares releases an announcement through MAP advising the market of the Net Tangible Assets per unit (*NTA*)<sup>3</sup>, units on issue and change in units on issue for each of the Smartshares ETFs for the previous Business Day (*the Smartshares NTA and Allotment Notice*). Each daily Smartshares NTA and Allotment Notice covers all the Smartshares ETFs (so multiple separate notices are not required). The Smartshares NTA and Allotment Notice has been used by Smartshares since March 2019, when it transitioned to the 2019 Rules (which introduced a simplified regime for Issuers of Fund Securities in relation to Managed Investment Schemes, reducing the regulatory overlap between the Rules and the FMC Act).

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<sup>1</sup> The Prescribed Notice Form is the Capital Change Notice.

<sup>2</sup> As at the date of this decision, Smartshares is the manager of 40 Listed Managed Investment Schemes.

<sup>3</sup> The NTA is calculated by dividing the net asset value of the relevant fund by the number of units then on issue in that fund.

7. Issuers of Fund Securities, such as Smartshares, must comply with Rule 3.13.1. While Smartshares provides daily notice to the market of the units on issue and any change in units from the previous Business Day for each of the Smartshares ETFs (ensuring the market receives the pertinent information), the Smartshares NTA and Allotment Notice is not in the Prescribed Notice Form, nor does it include all of the information required under Rule 3.13.1.
8. The Rules recognise the reduced relevance and administrative burden of Rule 3.13.1 on Issuers of Fund Securities who are Continuous Issuers (such as Smartshares) by permitting them to announce issues, acquisitions or redemptions required under Rule 3.13.1 on a consistent monthly basis (Rule 3.13.2). Smartshares considers that in its circumstances, however, daily notification for the Smartshares ETFs is of greater value to the market because the market price for an ETF unit may diverge from its NTA. Smartshares notes that given the frequency with which it processes daily unit creations and redemptions in the Smartshares ETFs, the NTA plays an important role for investors and the market in understanding a Smartshares ETF's daily underlying value and whether units are trading at a premium or a discount.
9. Smartshares seeks a waiver from Rule 3.13.1, with retrospective and on-going effect, to allow the Smartshares ETFs to continue to use the Smartshares NTA and Allotment Notice instead of the Prescribed Notice Form.
10. A waiver with retrospective effect has been sought by Smartshares because its announcements have not been made using the Prescribed Notice Form since March 2019, in breach of Rule 3.13.1. The requirement to use the Prescribed Notice Form appears to have been overlooked, although Smartshares has not been able to identify the cause of this. The Special Division notes that it expects Smartshares to be aware of, and to comply with, its obligations under the Rules.

## Decision

11. Subject to the conditions below and on the basis that the information provided by Smartshares is complete and accurate in all material respects, the Special Division grants a waiver, with retrospective and on-going effect, from Rule 3.13.1 to the extent that Smartshares would otherwise be required to provide notice of any issue, acquisition or redemption of units in the Smartshares ETFs using the Prescribed Notice Form ("*the Waiver*").
12. The Waiver is provided subject to the following conditions:
  - (a) Smartshares continues to release through MAP notice of the units on issue and the change in units for each of the Smartshares ETFs within one Business Day using the Smartshares NTA and Allotment Notice or such other form as approved by the Special Division;
  - (b) Smartshares releases through MAP a Capital Change Notice (*Master Capital Change Notice*) which includes all the information required under Rule 3.13.1 not currently covered in the Smartshares NTA and Allotment Notice within one Business Day of the date of this Waiver decision; and
  - (c) If any of the information changes in the Master Capital Change Notice, Smartshares must release through MAP an updated Master Capital Change Notice within one Business Day of the date of the information changing.

13. The Waiver will apply to any future Smartshares Listed Managed Investment Scheme the Special Division approves for Listing, unless otherwise determined by the Special Division.
14. The Waiver will not apply if (a) the information provided to the Special Division is not, or ceases to be, full and accurate in all material respects; or (b) any of the conditions are not complied with.

## **Reasons**

15. In coming to the decision to grant the Waiver, the Special Division has considered that:
  - (a) investors and the market will continue to receive the relevant information - NTA, units on issue and change in units for each of the Smartshares ETFs - in a more accessible format;
  - (b) the Waiver does not offend the general purpose of Rule 3.13.1 which is to ensure that Financial Product holders are aware of any dilutionary effect on their Quoted Financial Products when an Issuer issues, acquires, or redeems its Financial Products. Given the nature of the Smartshares ETFs, dilution cannot occur. As a Continuous Issuer of Fund Securities, the daily creation and redemption of units is a normal function of the Smartshares ETFs which occurs in accordance with the ETFs' Master Trust Deed;
  - (c) requiring the Smartshares ETFs to use the Prescribed Notice Form would result in unnecessary regulatory burden with no corresponding benefit to investors or the market. The Smartshares ETFs process up to 25 separate daily unit creations and redemptions which would require Smartshares to release multiple separate Capital Change Notices, in addition to the NTA announcements. If Smartshares opted to release this information monthly, as permitted under Rule 3.13.2, investors and the market would receive less timely information. The continued use of the Smartshares NTA and Allotment Notice, together with the release of a Master Capital Change Notice, provides investors and the market with the necessary information in a timelier and more accessible format;
  - (d) Smartshares has not identified any adverse effect on investors or the market from the use of the Smartshares NTA and Allotment Notice. Unitholders and Market Participants have been receiving the daily Smartshares NTA and Allotment Notice since early 2019 and Smartshares has had no indication from those groups that the practice should cease; and
  - (e) NZ RegCo has previously granted waivers in respect of Rule 3.13.1. While there are no precedent waivers from Rule 3.13.1 allowing MAP announcements other than in the Prescribed Notice Form, the Special Division considers that the circumstances distinguish this matter, in particular that Smartshares is a Continuous Issuer of Fund Securities with multiple Listed Managed Investment Schemes.

## Appendix One

### 3.13 Issues, acquisitions and redemption of capital

#### 3.13.1 If an Issuer issues, acquires or redeems:

- (a) Quoted Financial Products,
- (b) Financial Products Convertible into Quoted Equity Securities or Options to acquire Quoted Equity Securities,
- (c) Wholesale Debt Securities which form part of the same Class as existing Wholesale Debt Securities;

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

- (d) the Class of Financial Product and ISIN,
- (e) the number of Financial Products issued, acquired or redeemed,
- (f) the nominal value (if any) and the issue, acquisition, or redemption price,
- (g) whether payment was in cash,
- (h) any amount paid up (if not in full),
- (i) 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),
- (j) 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),
- (k) the reason for the issue, acquisition or redemption,
- (l) the specific authority for the issue, acquisition or redemption (if any),
- (m) any terms or details of the issue, acquisition or redemption (such as an escrow provision),
- (n) 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,
- (o) 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
- (p) 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.

3.13.2 If an Issuer of Fund Securities is a Continuous Issuer, such Issuer may announce issues, acquisitions or redemptions of Fund Securities under Rule 3.13.1 on a consistent monthly basis (for example, by announcing the issues on the first Business Day, or second Friday, of each month).