

Corporate Advisory Alert

23 March 2009

Proposed Changes to NZX's Listing Rules

On 26 February 2009, the NZX Limited ("NZX") submitted to the Minister of Commerce ("Minister") proposed amendments to the NZSX/NZDX and NZAX Listing Rules ("Rules") following a consultation process with stakeholders. The Minister may, within 40 working days of submission and following consultation with the Securities Commission, disallow all or part of the proposed amendments to the Rules in accordance with the Securities Markets Act 1988. This period for determination expires on 17 April 2009. NZX has advised us that the final form of the amendments submitted to the Minister is not available to the public until the expiry of this period. If the amendments are not disallowed by the Minister, NZX will notify stakeholders of the commencement date for the amended Rules in due course.

The changes to the Rules focus on increasing the speed and reducing the cost of capital raising for NZX Listed Issuers in response to the prevailing market conditions. The proposed amendments to the Rules, as outlined in the NZX Exposure Draft dated 15 December 2008, include:

Per-shareholder capital offering

- » increasing the upper financial limit of capital offerings to existing securityholders under the Securities Act (NZX- Share and Unit Purchase Plans) Exemption Notice 2005 ("Exemption Notice") from \$5,000 to \$25,000 per securityholder, permitting limited equity fundraising by Issuers without an investment statement or prospectus in any 12 month period. This will require an amendment to the Exemption Notice.
- » NZX noted that a regulatory change extending the Exemption Notice to allow the issue of debt securities or hybrid debt/equity securities should be considered.

Private placements

- » raising the current limit on the issue of securities by a private placement (without shareholder approval) from 15% to 20% of the class or number of equity securities of NZSX Issuers in any 12 month period (and from 20% to 25% for NZAX Issuers); and
- » allowing directors, associated persons of directors and employees to participate in private placements, subject to the board certifying that their participation is in the best interests of the Issuer and shareholders generally. This amendment requires a corresponding change to the related party transaction rules as detailed below.

Rights issue timetable

- » reducing the time frame within which an Issuer must complete a rights issue from 6 to 3 weeks. The notice period of the record date is reduced from 10 to 3 business days and the rights trading period is condensed from 18 to 12 business days.

Issue of equity securities carrying voting rights

- » requiring directors to certify to NZX that they have made reasonable endeavours to get the best price possible where the issue price is 15% less than the 5 day volume weighted average price ("VWAP"). This removes the requirement that Issuers obtain NZX approval for non-pro-rata offers, if the 90% VWAP test on the issue price of voting equity securities is not satisfied.

Remuneration of directors by stock

- » allowing directors (who elect) to be paid in stock, with shareholder approval. Stock can be issued at a price of 20 day VWAP without the need to obtain specific shareholder approval of the price.

Related party transactions - materiality

- » increasing the thresholds of materiality for related party transactions from 5% of average market capitalisation to 10% for transactions and from 0.5% to 1% for the provision of services; and
- » when deciding if a private placement is a material transaction or not, only the proportion of a placement that is issued to directors, associated persons and employees is taken into account.

Employee share schemes and stock issuance

- » removing the restriction on buyback of securities from employees.

Financial assistance

- » increasing the threshold of permitted financial assistance to employees from 5% to 10% of an Issuer's average market capitalisation.

As noted in our corporate alert dated 25 February 2009, the most significant change to the Rules initially proposed by NZX relating to the introduction of a Term Sheet offering document (together with a certificate from the directors that the Issuer is in full compliance with its continuous disclosure obligations) for pro-rata rights issues and debt issues to replace the requirement of a prospectus, has been postponed until the corresponding amendments to the Securities Act 1978 have been progressed. These legislative amendments are currently before Parliament in the Securities Disclosure and Financial Advisers Amendment Bill. NZX intends to redraft the Rules this year to provide a set of rules and procedures that allow for more flexible integration with legislative amendments.

NZX has deferred consideration of the proposals regarding independent directors and appraisal reports due to the high level of feedback from stakeholders and time constraints.

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