



Guidance Note

Listing as a NXT Company

February 2015

The purpose of this guidance note is to explain the requirements for listing on NXT and to provide guidance as to the process for becoming a NXT company. This guidance note also explains the process for issuers who are already listed on the NZAX or NZX Main Board who wish to apply to list on NXT.

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This guidance note relates to the requirements for listing on NXT. This guidance note is not intended to be a definitive statement of the application of the NXT Market Rules in every situation, and is only a guide to NZX's policy and practices. This guidance note does not limit NZX's discretion under the NXT Market Rules. This guidance note reflects the NXT Market Rules and law as at February 2015, which are subject to change. NZX takes no responsibility for any error contained in this guidance note. NZX may replace guidance notes at any time and you should ensure that you have the most recent version of this guidance note by checking the NXT website at nxt.co.nz



1. Introduction

NXT has been designed as a platform to provide small to mid-sized business with access to capital and to allow investors the ability to gain exposure to growing New Zealand companies. Consistent with that purpose, the NXT Market Rules (“rules”) set out eligibility criteria that applicants must meet in order to list on NXT and NZX will consider the purpose of the NXT Market when determining whether an applicant is suitable for listing on NXT, or whether an applicant may be more suitable for listing on the NZX Main Board.

The purpose of this guidance note is to explain the requirements for listing on NXT and to provide guidance as to the process for becoming a NXT company. The guidance note also explains the process for issuers who are already listed on the NZAX or NZX Main Board who wish to apply to list on NXT.

Schedule 1A and 1B of the rules are set out in Appendix One of this guidance note, which contains the eligibility criteria and information requirements for listing on NXT.

2. Who can list on NXT?

In order to apply to list on NXT, applicants must meet the eligibility requirements set out in Schedule 1A of the rules.

Key eligibility criteria relating to the size and structure of an applicant are set out in this section. Applicants should refer to Schedule 1A of the rules for the full list of eligibility criteria.

2.1 Market capitalisation

Small to mid-sized New Zealand businesses with an expected market capitalisation of more than \$10 million and less than \$100 million can apply to list on NXT, either in conjunction with a capital raising (in which case at least \$5 million must be raised) or as a compliance listing where no capital is raised (refer to paragraph 1 of Schedule 1A of the rules).

NZX will generally consider that an applicant who is eligible for listing on NXT with an anticipated market capitalisation of \$50 million or less is appropriate for listing on NXT and is not appropriate for listing on the NZX Main Board. NZX may, however, consider an application for Main Board listing from such an applicant, where NZX is satisfied that the applicant’s governance practices, systems, and processes are suitable to enable the applicant to comply with the NZX Main Board Rules.

2.2 Spread

An applicant must also have at least 50 shareholders who are members of the public who, together, hold at least 25% of the applicant’s shares (refer to paragraph 2 of Schedule 1A of the rules).

2.3 Operational business

An applicant must have an operational business to be eligible to list on NXT (refer to paragraph 3 of Schedule 1A), and must continue to have an operational business while listed on NXT. The rules allow NZX to suspend trading in the shares of a NXT company that ceases to have an operational business or disposes of its main undertaking (refer to rule 83(e)).

In addition, NZX will cancel the listing of a NXT company whose securities have been suspended from trading for a continuous period of six months (refer to rule 89). Therefore, a

NXT company who ceases to have an operational business, has a period of six months within which to identify a target operating business and obtain approval for the acquisition of the target.

2.4 Non-standard NXT companies

If an applicant has a defined or limited class of shareholder or imposes restrictions or limitations on the ability of some shareholders to vote (for example a co-operative company), NZX may approve listing of the applicant as a non-standard NXT company (see rule 76).

3. What is required to make an application for listing on NXT?

This section of the guidance note sets out some of the key considerations for applicants preparing an application to list on NXT, including guidance regarding the preparation of the listing document.

In order to apply to list on NXT, an applicant must:

- meet the eligibility criteria set out in Schedule 1A of the rules;
- provide a full and complete application and all the information and documents set out in Schedule 1B of the rules to NZX at least 20 business days prior to the applicant's proposed listing date. Early engagement with NZXR is encouraged to ensure that NZX Regulation ("NZXR") has sufficient time to consider the application. The length of time required for NZXR to complete its review of an application will depend on the nature of the issues raised by an application and the speed with which an applicant responds to NZXR's concerns; and
- provide all the information and documents that demonstrate that the applicant meets the eligibility criteria and that have been requested by NZX at least 3 business days prior to listing. This is to ensure that NZX has sufficient time to lodge the applicant's information on the NXT website.

Further information about the eligibility criteria relating to the engagement of a NXT Advisor and the preparation of an offer document are set out below.

3.1. Engaging a NXT Advisor

Applicants will need to engage a NXT Advisor before applying to list as a NXT company.

NXT Advisors play an important role in supporting applicants as they prepare to list and in ensuring NXT companies can meet their ongoing obligations under the rules. In particular, NXT Advisors will have a role in assisting applicants in the development of their key operating milestones ("**KOMs**"), which must be included in an applicant's listing document. It is a requirement of the rules that KOMs meet the NXT standard.

The **NXT standard** in relation to a company's KOMs means that taken together, the KOMs address the most significant factors, by which the performance of the company's or the company's group's business should be assessed and monitored, and will result in understandable reporting for investors.

KOMs are explained in more detail in NZX's Guidance Note – Key Operating Milestones.

To be eligible for listing on NXT, an applicant must provide NZX with a completed NXT Advisor's declaration and must enter into an agreement with their NXT Advisor which meets the requirements of the NZX Participant Rules ("**Participant Rules**"). Further information about these requirements is set out below.

NXT Advisor agreement

1. An applicant must have an agreement with a NXT Advisor that meets the requirements of the Participant Rules for a minimum of three years or such shorter period approved by NZX (refer to paragraph 12 of Schedule 1A and rule 22). Under the Participant Rules, the agreement must:
 - a. include provisions relating to the provision by the NXT Advisor of advice to the applicant that relates to compliance with the rules;
 - b. permit the NXT Advisor to provide information to NZX relating to the independence of the NXT Advisor from the applicant; and
 - c. permit the NXT Advisor to provide details to NZX of any suspected breach of the rules by the applicant, of which the NXT Advisor becomes aware.

NZX may request a copy of the agreement between the applicant and their NXT Advisor in order to determine whether the agreement meets the requirements of the NZX Participant Rules.

An applicant who wishes to engage a NXT Advisor for a period of less than three years should engage with NZX and explain why a shorter period is appropriate. NZX will take into account an applicant's compliance history and other relevant information, when determining whether it is appropriate to reduce the term of the NXT Advisor's engagement. In addition, NZX may require a NXT company to re-engage a NXT Advisor as a condition of continued listing (refer to rule 23).

NXT Advisor's declaration

1. To be eligible for listing on NXT, an applicant must provide to NZX a completed NXT Advisor's declaration (refer to paragraph 4 of Schedule 1A). The form of the NXT Advisor's declaration is set out in Appendix 6C of the NZX Participant Rules and requires a NXT Advisor to declare to NZX that:
 - a. the applicant meets the requirements for listing as set out in the rules;
 - b. the applicant is appropriate for listing, by reference to guidelines published by NZX from time to time;
 - c. the directors of the applicant are fit and proper persons to govern the company;
 - d. the directors and senior management of the applicant are capable of managing a listed company;
 - e. all subscribers in the initial public offer (if a public offer is to be made immediately prior to listing) are eligible to trade on NXT;
 - f. the NXT Advisor (and its executives) are independent from the applicant; and
 - g. the applicant's KOMs meet the NXT standard.

NZX will need to receive a completed NXT Advisor's declaration prior to approving the listing of an applicant.

NZX's Guidance Note – NXT Advisors, provides further guidance as to NZX's expectations of the role that NXT Advisors will play, prior to and after listing.

3.2 Listing Document

NZX will require an applicant to enter into a pre-listing agreement, in the format prescribed by NZX, prior to NZX commencing its review of an application for listing. On receipt of the executed pre-listing agreement, NZX will notify the research provider that it has received an application in order to enable the research provider to commence the preparation of an initiation report in relation to the applicant.

NZX's review of an applicant's listing document is a key aspect of NZX's consideration of a listing application. An applicant must provide NZX with a draft listing document at least 20 business days prior to the proposed listing date.

General form of listing document

1. Broadly, an applicant's listing document must be a document in the form of a product disclosure statement ("**PDS**") under the Financial Market Conduct Act 2013 ("**FMCA**"), except that the listing document will include KOMs, and targets for those KOMs, instead of prospective financial information ("**PFI**"). The rules require a listing document to be no more than 40 pages long and include:
 - a. the applicant's KOMs, and targets for those KOMs, for the remainder of its current financial year, and at a minimum the first financial year following its current financial year (refer to rule 3(a));
 - b. all other information required by any NXT Market Procedure ("**procedure**") unless otherwise agreed by NZX. Further information about the content requirements contained in procedure are set out in sub-section 3.3(b) 'Content requirements' below; and
 - c. any information or matter required by NZX to be included.

Applicants should ensure that the disclosures contained in the listing document are clear, concise and effective. In this regard, applicants should ensure that, where possible, the listing document:

- a. uses plain language (including when explaining complex information and jargon);
- b. is logically ordered and easy to navigate;
- c. highlights important information; and
- d. provides adequate and accurate information when viewed as a whole.

FMA has published guidance in relation to clear, concise and effective disclosure which is available on the FMA's website.

Content requirements

1. As noted above, a listing document will broadly be in the form of a PDS under the FMCA with certain exceptions – for example, the inclusion of KOMs and targets for those KOMs instead of PFI.

The listing document content requirements will vary depending on whether or not the applicant is making an offer of equity securities in conjunction with listing. The procedure for rules 2, 3 and 4, prescribes the following content requirements:

- a. A listing document in relation to an offer of financial products must comply with the requirements for a PDS under the FMCA as modified by any exemption granted by the FMA¹. Refer to sub-section 3(b)(i) below for further information about listing documents containing an offer of financial products.
- b. A listing document in relation to a compliance listing (where no offer of equity securities is being made by the applicant) must comply with the requirements for a PDS under the FMCA as modified by any exemption granted by the FMA, except where NZX determines that any of those requirements do not apply. Refer to sub-section 3(b)(ii) below for further information about listing documents for compliance listings.

The 'Financial Markets Conduct Act (NZX – NXT) Exemption Notice 2014 ("**FMCA Exemption**") amends the content requirements for a PDS for a NXT company. Listing documents must therefore comply with the requirements for a PDS under the FMCA as modified by the FMCA Exemption.

Listing documents containing an offer of financial products

As noted above, an offer of equity securities will need to be made in a PDS that complies with the FMCA Exemption. The FMCA Exemption contains certain exceptions from the standard PDS content requirements, including:

- a. that a prescribed warning statement is included at the front of the listing document;
- b. that if the applicant is currently loss making or has received a modified audit opinion, a statement to that effect is included at the front of the listing document;
- c. that instead of including key investment metrics for the offer, the listing document includes KOMs and targets for those KOMs for the current financial period and the next financial period;
- d. that the listing document includes a statement that after due enquiry, the directors of the applicant are of the opinion that the KOMs will meet the NXT standard and that the NXT Advisor has declared that the KOMs meet the NXT standard; and
- e. that the listing document identifies the NXT Advisor.

Applicants will also need to comply with other requirements of the FMCA Exemption, including that prescribed information is included on the register of financial products.

Prospective financial information

As noted above there is no requirement for prospective financial information to be included in a NXT company's PDS. NZX expects that KOMs will not necessarily or usually be prospective financial information. However, where a KOM that is PFI is included in a PDS, the Financial Markets Conduct Regulations 2014² ("**FMC Regulations**") will require the NXT company's annual report to include a table that restates the prospective financial information for the relevant period together with a comparison with the corresponding actual financial information for that period.

Non-GAAP profit measures

Where a PDS includes a non-GAAP profit measure (whether as a KOM or otherwise) the FMC Regulations³ require the PDS to:

- a. state that the measure is not determined in accordance with GAAP; and
- b. refer to where reconciliations to information prepared in accordance with GAAP can be obtained on the offer register.

A non-GAAP profit measure is defined in the FMC Regulations a non-GAAP financial measure that is used as an alternative to, or to supplement, net profit after tax⁴.

Listing documents for compliance listings

A listing document for a compliance listing will broadly contain the same content as a listing document containing an offer of equity securities (as set out in sub-section 3.3(b)(i) above), except that NZX may determine that information that relates to an offer being made may be excluded. NZX will require information, similar to that which is required to be lodged on the Register of Financial Products for an offer of equity securities, to be made available on the NXT website.

4. Engaging with NZX in relation to an application for listing

As noted in section 3.1 of this guidance note, the rules specify the time within which information relevant to an application for listing on NXT must be provided to NZX.

The focus of NZX's review of a listing application will be the review of the listing document. An applicant should expect to receive NZX's initial comments and questions in relation to the listing document within 10 business days of providing the listing document to NZX.

In its review of the listing document, NZX will focus on KOMs and targets, and whether KOMs meet the NXT standard. NZX will review other disclosures contained in the listing document and seek underlying documents for review, where necessary.

An applicant must provide NZX with its constitution to support its application for listing, however NZX will not formally approve an applicant's constitution. An applicant must ensure that its constitution is not inconsistent with the rules. The constitution must contain a provision to the effect that, for so long as the applicant is listed on the NXT Market, the applicant will comply

² Regulation 64 of the Financial Markets Conduct Regulations 2014

³ Clause 2(1) of Schedule 3 of the Financial Markets Conduct Regulations 2014.

⁴ Regulation 39(6) of the Financial Markets Conduct Regulations 2014.

with the rules (see rule 24). Applicants should also consider whether their constitution permits them to utilise the transaction announcement process set out in the rules.

Applicants can learn more about engaging with NZX by reading NZX's Guidance Note – Issuer Engagement with NZX which is available at: <https://www.nzx.com/regulation/listing-rule-guidance>

5. Migration from the NZAX to NXT

NZX has designed NXT to meet the needs of small and mid-sized New Zealand businesses in finding sources of capital. NZX is aware that many such businesses are currently listed on the NZAX. NZX no longer accepts applications for listing on the NZAX and intends to phase out the NZAX over the medium term. There are particular considerations for issuers who wish to migrate from the NZAX to NXT, as discussed below.

5.1 Differences between listing on the NZAX and NXT

Governance requirements

Board composition requirements

The rules for NXT differ from the NZAX Listing Rules (“**NZAX rules**”), in that they require a NXT company to have a minimum of two independent directors or, if there are more than eight directors, the greater of three or one-third (rounded down to the nearest whole number of directors) of the total number of directors. An independent director is a director who does not have a “disqualifying relationship” under the rules. The NZAX rules do not require a company to have independent directors.

A “**disqualifying relationship**”, in relation to a director of a NXT company, is any direct or indirect interest or relationship that could reasonably influence, in a material way, that director's decisions relating to that NXT company; and without limitation, a director has a disqualifying relationship if the director is likely to receive, or has received in any of the past three years received, more than 10% of his or her annual remuneration or revenue (excluding dividends or distributions payable to holders of shares generally) by virtue of any of the following relationships:

- the director is a substantial security holder in the NXT company or an associated person of a substantial security holder in the NXT company; and
- the director has a relationship (other than as a director of the NXT company) with the NXT company or a substantial security holder in the NXT company.

The requirement for independent directors is a pre-requisite for listing on NXT. NZAX issuers will therefore need to consider the composition of their board to determine whether any changes to board composition are necessary before applying to migrate to NXT.

Audit committee requirements

NZAX issuers who wish to migrate to NXT will also need to ensure that the audit committee has three members, a majority of whom must be independent directors. In addition, one member of the audit committee must have relevant accounting experience. A member of an audit committee will be deemed to have relevant accounting experience if he or she:

- a. is a member of the Institute of Chartered Accountants of New Zealand, or has held a Chief Financial Officer position at a company listed in New Zealand for longer than 24 months; or
- b. has successfully completed a course approved by NZX for audit committee membership; or
- c. has the experience and /or qualifications deemed satisfactory by the company's board.

Nature and scale of issuer

As set out in section 2 of this guidance note, Schedule 1A of the rules specifies eligibility requirements that applicants must meet in order to list on NXT. The eligibility requirements include requirements that relate to an applicant's size and structure – for example requirements relating to spread and minimum market capitalisation. Applicants should refer to Schedule 1A (which is included at Appendix 1 of this guidance note) for a full list of the eligibility requirements.

Constitution

The rules for NXT and the NZAX rules contain different requirements in relation to constitutions. Therefore, a NZAX issuer will need to amend its constitution so that it complies with the requirements of the NXT rules. NZXR may consider granting a waiver from the constitutional requirements contained in the NXT rules to provide NZAX issuers seeking to migrate to NXT with a period of 12 months to amend their constitutions to comply with the NXT Market Rules.

5.2 Process for migrating from the NZAX to NXT

The first step is for an NZAX issuer to apply to NZXR to delist from the NZAX Market and list on NXT. Information relevant to the delisting part of the process is set out in sub-section 5.2(a) below. General information about the process for applying to list on NXT is set out in sections 3 and 4 of this guidance note and additional information specifically relevant to NZAX issuers applying to list on NXT is set out in sub-section 5.2(b) below.

Delisting from the NZAX

Apply to NZX Regulation

An NZAX issuer must apply to NZXR for approval of delisting under NZAX rule 5.4.1. NZXR will review the application and is likely to approve an application on the condition that the NZAX issuer either:

- a. Releases a pre-break announcement notifying its intention to delist from NZAX, if the NZAX issuer's constitution permits them to use this process; or
- b. Obtains shareholder approval to delist from the NZAX market and to list on NXT.

Further information about each of these conditions is set out below.

Obtaining shareholder approval

1. Pre-break announcement

If an NZAX issuer chooses to use the pre-break announcement process, it must submit the pre-break announcement to NZXR for approval prior to release. NZXR would expect a pre-break announcement to include the following information:

- a. State that the NZAX issuer intends to delist from NZAX and list on NXT and that the delisting will be conditional upon NZX approving the NZAX issuer's application to list on NXT;
- b. Explain the key differences between the NZAX and the NXT Market, and the consequences of those differences for investors; and
- c. The information required by NZAX rule 10.2.3, including confirmation that if shareholders together carrying not less than 5% of the voting rights entitled to be exercised submit a written request, the board must call a special meeting of shareholders.

2. Shareholder meeting

An NZAX issuer may choose to seek shareholder approval to delist from NZAX and list on NXT. Alternatively, an NZAX issuer may be required to hold a shareholder meeting if shareholders convene a meeting to vote on the proposal following the release of a pre-break announcement.

In that instance, the NZAX issuer must prepare a notice of meeting for review and approval by NZX, which must be provided to NZX at least 10 business days prior to being sent to shareholders. NZX will review the notice to ensure that the explanatory notes to the resolution explain the costs and benefits of migrating to NXT, including an explanation of the difference in the regulatory framework (disclosure and governance) and a summary of NXT fees compared to NZAX fees.

NZXR would expect the notice of meeting to:

- a. Seek shareholder approval to delist from NZAX and list on NXT, subject to NZXR approving the NZAX issuer's application to list on NXT;
- b. Explain the key differences between the NZAX and NXT Market, and the consequences of those differences for investors; and
- c. Include any other information needed to enable a reasonable person to understand the resolutions proposed in the notice of meeting.

If an NZAX issuer holds a shareholder meeting, they may also wish to seek shareholder approval at that meeting to any constitutional amendments required to meet the requirements of the NXT Market Rules.

Applying to list on NXT

As noted above, general information about the process for applying to list on NXT is set out in sections 3 and 4 of this guidance note. Further information specific to NZAX issuers seeking to migrate to NXT is set out below.

1. NXT Advisor

An NZAX issuer will need to engage a NXT Advisor and provide NZX with the declaration specified by Appendix 6C of the Participant Rules. As noted in section 3.1 of this guidance note, an applicant must have an agreement with a NXT Advisor that meets the requirements of the Participant Rules for a minimum of three years or such shorter period approved by NZX. NZAX issuers may approach NZXR seeking NZX's approval to engage a NXT Advisor for a period shorter than three years. NZX will take into account whether the NZAX issuer has demonstrated a good compliance history, in determining whether to

approve a shorter engagement period. The NXT Advisor will assist the NZAX issuer in developing KOMs.

2. KOMs

An NZAX issuer who is migrating to NXT will need to set KOMs and targets for those KOMs in consultation with its NXT Advisor. Further information relating to KOMs is set out in sections 3.2 and 3.3 of this guidance note, and also in NZX's Guidance Note – Key Operating Milestones.

3. Listing document

An NZAX issuer will need to prepare a listing document and submit it to NZXR for approval. As noted in sub-section 3.2(b)(ii), a listing document for a compliance listing will broadly be required to contain the same content as a listing document containing an offer of equity securities on NXT. However, because an NZAX issuer migrating to NXT has already been listed on a public market, NZXR would generally expect that a simpler listing document can be prepared which includes the following information:

- a. the applicant's KOMs, and targets for those KOMs, for the remainder of its current financial year, and at a minimum the first financial year following its current financial year (refer to rule 3(a));
- b. information about the applicant – for example, a brief summary of what they do etc;
- c. a link to where all the applicant's financial statements can be accessed;
- d. a copy of the applicant's latest annual report and a link to where all the applicant's previous annual reports can be accessed;
- e. a link to where all announcements released by the applicant on the NZAX market can be accessed; and
- f. any further information required by NZX Regulation.

An NZAX issuer making an offer in conjunction with listing on NXT will need to include the information listed above and must ensure that its listing document otherwise complies with applicable legislative requirements in relation to offers of financial products.

6. Migration from NZX Main Board to NXT

NXT is targeted at small to mid-sized New Zealand businesses to provide them with greater access to capital. NZX considers that NZX Main Board companies are therefore unlikely to meet the eligibility criteria for listing on NXT. NZX Main Board companies wishing to migrate to NXT should contact NZX to discuss the eligibility requirements for listing on NXT.

7. Further Information

If you require further information in relation to the process for applying to list on NXT, please contact the regulation team at NZX: regulation@nzx.com.

Appendix One - Pre-requisites for Listing and Information for an Application to List

Schedule 1A Requirements

To be eligible for **listing** an **applicant** must fulfil all the following requirements before **listing**:

1. Have an expected **market capitalisation** on **listing** of more than \$10m and less than \$100m, and if making a public offer prior to **listing**, raise at least \$5m in that public offer;
2. Have at least 50 shareholders holding separate parcels of **shares** of at least a **minimum holding**, that together represent 25% of the **shares**;
3. Have an operational business;
4. Have provided to **NZX** a completed **NXT Advisor's declaration**;
5. Meet all the requirements of rule 5, rule 17, rule 18, rule 19, rule 20, rule 22 and rule 24;
6. Have provided to **NZX** acknowledgements by all persons who will be **directors** of **NXT company** on **listing** in the form set out in **template**;
7. Be party to a **listing** agreement with **NZX**;
8. Have entered into an **electronic reporting systems agreement** with **NZX**;
9. Have provided a bond or deposit to **NZX** that meets the requirements of rule 109;
10. Have issued or arranged the transfer of such number of shares to a **market maker** as required by **NZX**;
11. Have paid all **fees** payable at the time of listing;
12. Have provided **NZX** with all other information requested by **NZX**.

Schedule 1B Requirements

An **applicant** must provide **NZX** with the following under rule 1:

1. Copy of its certificate of incorporation;
2. Brief description of its business and the main geographic areas of its operation;
3. The constitution to apply from **listing**;
4. Details of all classes and numbers of **equity securities** on issue and/or intended to be issued prior to **listing**;
5. Details of any restrictions on transfers of **shares**;
6. Details of any offer of **shares** to be made prior to **listing**;
7. Draft of the **listing document** proposed to be issued prior to **listing**.