



Guidance Note

Migration to NZX Main Board

February 2015



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This guidance note relates to the process for NXT companies migrating from the NXT Market to the NZX Main Board. This guidance note is not intended to be a definitive statement of the application of the NXT Market Rules and the NZX Main Board Listing Rules in every situation, and is only a guide to NZXR's policy and practices. This guidance note does not limit NZX's discretion under the NXT Market Rules or the NZX Main Board Listing Rules. This guidance note reflects the listing 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 issuers should ensure that they have the most recent version of this guidance note by checking the NXT Market website at www.nxt.co.nz.



1. Introduction

The NXT Market is designed for, and targeted at, small and mid-sized New Zealand enterprises with a market capitalisation of between \$10 million and \$100 million.

To ensure that NXT continues to consist of small and mid-sized enterprises within the target range, the NXT Market Rules contain a process for migrating NXT companies to NZX's main equity board - the NZX Main Board, once they reach a certain size. NXT companies may also apply to migrate once they meet the requirements of the NZX Main Board.

This guidance note sets out when NZX may require a NXT company to migrate to the NZX Main Board, the key differences between the NXT Market and the NZX Main Board, and the process for NXT companies migrating to the NZX Main Board.

2. When can an NXT company migrate to the NZX Main Board?

In order to migrate to the NZX Main Board, a NXT company must apply for listing on the NZX Main Board and show that they meet the requirements of the NZX Main Board Listing Rules.

NZX may, by giving 12 months' prior written notice, require a NXT company to migrate to the NZX Main Board if, in NZX's opinion, the NXT company is likely to meet the requirements of the NZX Main Board Listing Rules relating to spread and minimum market capitalisation (refer to NXT Market Rule 87). The market capitalisation and spread requirements of the NZX Main Board are explained in sub-section 3.2 below.

3. Key differences between NXT and the NZX Main Board

The table below sets out the key differences between the NXT Market and the NZX Main Board.

	NXT Market	NZX Main Board
Disclosure framework	Quarterly reporting with prescribed immediate disclosure list.	Continuous disclosure – all material information must be immediately released to the market.
Market capitalisation	\$10 to \$100 million.	At least \$50 million.
Spread	At least 50 shareholders who are members of the public who together hold at least 25% of issued shares.	At least 500 shareholders who are members of the public who together hold at least 25% of issued shares.
Transaction approval process	Must either obtain shareholder approval or release a transaction announcement in respect of specified transactions.	Must obtain shareholder approval in respect of specified transactions. The transaction announcement process is not permitted as a substitute for shareholder approval.

		May be required to obtain an independent appraisal report in respect of specified proposed transactions.
Constitution	Must not be inconsistent with the NXT Market Rules and must contain a provision that the company will comply with the NXT Market Rules while it is listed on NXT.	Must not be inconsistent with, and must incorporate specified, NZX Main Board Listing Rules.

3.1 Disclosure framework

The key difference between the NXT Market and the NZX Main Board is the applicable disclosure framework. The NXT Market operates within a prescribed disclosure framework, with quarterly reporting and prescribed immediate disclosure obligations. The NZX Main Board operates within a continuous disclosure framework where issuers are required to immediately release material information to the market.

What is continuous disclosure?

Continuous disclosure is a disclosure framework which seeks to ensure the timely release of material information by issuers. “Material information” means information in relation to an issuer that:

- a **reasonable person** would expect, if it were generally available to the market, to have a **material effect** on the price of the issuer’s quoted securities; and
- relates to particular securities, a particular issuer, or particular issuers, rather than to securities generally, or issuers generally.

In contrast to the prescribed list of disclosure events set out in Schedule 5A of the NXT Market Rules, there is no prescribed list specifying the type of information that constitutes “material information”. Instead, issuers listed on the NZX Main Board need to consider whether information is “material” and must therefore be released.

The continuous disclosure rules applicable to the NZX Main Board are set out in Section 10.1 of the NZX Main Board Listing Rules. NXT companies can also refer to NZX’s guidance note “Continuous Disclosure” for more information about continuous disclosure.

3.2 Market capitalisation and spread

To be eligible for listing on the NXT Market, an applicant must have an expected market capitalisation of more than \$10 million and less than \$100 million and have at least 50 shareholders who are members of the public that together hold at least 25% of the applicant’s shares.

In order to list on the NZX Main Board, an issuer must have a market capitalisation of at least \$50 million and have at least 500 shareholders who are members of the public who together hold at least 25% of the issuer’s securities.

3.3 Transaction announcement process

The NXT Market Rules permit a NXT company to use the transaction announcement process instead of holding a meeting to seek shareholder approval if a NXT company proposes to

issue shares of the same class as quoted shares or enter into a material transaction or a related party transaction.

The transaction announcement process requires a NXT company to release a transaction announcement that has been approved by NZX and contains the information set out in Schedule 6B of the NXT Market Rules at least 10 business days prior to the issue of shares or entry into the material or related party transaction. So long as no meeting is requested by shareholders holding at least 5% of the NXT company's shares within the 10 business day period, the NXT company may proceed with the issue of shares or enter into the material or related party transaction.

The NZX Main Board Listing Rules do not permit issuers to use the transaction announcement process as a substitute for obtaining shareholder approval.

Practically, this means that a NZX Main Board issuer may need to seek shareholder approval in order to issue shares of the same class as quoted shares or enter into a material or related party transaction at a shareholders' meeting instead of using the transaction announcement process.

In addition, the NZX Main Board Listing Rules may require an issuer to commission an independent appraisal report to accompany a notice of meeting. An independent appraisal report must be provided by an appropriately qualified person previously approved by NZX, and must comply with the requirements set out in the NZX Main Board Listing Rules. The main purpose of an independent appraisal report is to assist security holders in considering a resolution to approve a proposed transaction, by providing an independent opinion as to the fairness of the consideration and the terms and conditions of the proposed transaction.

3.4 Constitutions

A NXT company's constitution must not be inconsistent with the NXT Market Rules and must include a provision to the effect that, for so long as the company is listed on the NXT Market, the company must comply with the NXT Market Rules (refer to NXT Market Rule 24).

NZX Main Board issuers must also have a constitution which contains provisions consistent with, or incorporates by reference, specific requirements of the NZX Main Board Listing Rules (as set out in Appendix 6 of the NZX Main Board Listing Rules). In addition, an NZX Main Board issuer must include certain general provisions that relate to the interface between the NZX Main Board Listing Rules and the constitution. The requirements for the contents of constitutions are set out in NZX Main Board Listing Rule 3.1.

A NXT company migrating from the NXT Market to the NZX Main Board will need to consider whether it needs to amend its constitution in order to meet the requirements set out in the NZX Main Board Listing Rules.

4. Migration process

NZX may require a NXT company to migrate to the NZX Main Board if NZX considers that the NXT company is likely to meet the requirements of the NZX Main Board Listing Rules relating to spread and minimum market capitalisation. Alternatively, a NXT company may voluntarily apply to migrate from NXT to the NZX Main Board. This section sets out the process for companies migrating to the NZX Main Board.

4.1 Applying to delist from NXT

A NXT company who wishes to migrate to the NZX Main Board will need to apply to NZX for cancellation of listing under NXT Market Rule 88, at least one month prior to the proposed cancellation date. This application is not required where NZX exercises its discretion to require a NXT company to migrate to the NZX Main Board.

4.2 Shareholder approval

As noted above, the NZX Main Board Listing Rules require issuers to incorporate certain listing rules in their constitutions. Therefore, as a result of migrating to the NZX Main Board, NXT companies will likely need to hold a meeting to seek shareholder approval for the changes required to incorporate those rules into the constitution. NXT companies may wish to consider doing this at their annual general meeting.

The notice of meeting should also set out:

- the NXT company's intention to delist from NXT and to relist on the NZX Main Board; and
- the key differences between NXT and the NZX Main Board, and the consequences of those differences for investors.

The notice of meeting must be provided to NZXR for review and approval. NZXR will review the notice to ensure that the explanatory notes to the resolution explain the costs and benefits of migrating to the NZX Main Board, an explanation of the difference in the regulatory framework (particularly disclosure) and a summary of the NZX Main Board fees.

4.3 Listing on the NZX Main Board

NZX will determine whether a NXT company migrating to the NZX Main Board needs to prepare a listing document on a case-by-case basis.

As a general rule, NZX is likely to require a NXT company to prepare a cleansing statement that:

- contains any material information that has not been disclosed to the market;
- a link to where all announcements released by the NXT company on NXT can be accessed; and
- is signed by the NXT company's directors and confirms that the cleansing statement, together with the information contained in the announcements referred to above, contains all material information.

The NXT company will not be delisted from NXT until NZX has approved the NXT company's application to be listed on the NZX Main Board.