



Guidance Note

NXT Advisors

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This guidance note relates to obligations of NXT Advisors and the process for applying for accreditation as a NXT Advisor. NXT Advisors, and persons applying for accreditation as a NXT Advisor, should note that this guidance note is not intended to be a definitive statement of the application of the NZX Participant Rules relating to NXT Advisors in every situation, and is only a guide to NZX's policy and practice. This guidance note does not limit NZX's discretion under the NZX Participant Rules. NZX may replace guidance notes at any time and NXT Advisors 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 Rules require a NXT company to have an agreement with a NXT Advisor that meets the requirements of the NZX Participant Rules (“**Rules**”) for a minimum of 36 months after listing, or such shorter period approved by NZX.

The role of the NXT Advisor is to provide structured, standardised support, before and after listing, to companies applying to list on the NXT Market.

The role of the NXT Advisor involves:

- Assessing whether an applicant is suitable for listing on the NXT Market;
- Providing assistance to an applicant in respect of their listing application;
- Providing confirmation to NZX that an applicant’s key operating milestones meet the NXT standard;
- Completing a declaration confirming that the applicant is suitable for listing on the NXT Market; and
- Providing ongoing post listing support, coaching and mentoring to NXT companies.

To be accredited as a NXT Advisor, an applicant must:

- Make an application to NZX to be accredited as a NXT Advisor;
- Comply with the requirements of the Rules; and
- Once accredited, provide NZX with information in order for NZX to review their performance and consider whether they have demonstrated continued eligibility to be a NXT Advisor.

The purpose of this guidance note is to:

- Provide guidance to persons applying for accreditation as a NXT Advisor on the requirements for accreditation and the accreditation process; and
- Set out NZX’s expectations as to the role of a NXT Advisor.

2. Accreditation

2.1 Application for accreditation

In order to become a NXT Advisor, an application must be made to NZX for accreditation. The requirements to be a NXT Advisor are set out in Rule 3.1.3 of the Rules.

Existing Participants wishing to perform the role of a NXT Advisor will need to demonstrate their ability to meet the requirements of Rule 3.1.3, including the specific requirements for NXT Advisors under Rule 3.1.3(g).

In particular, an applicant must demonstrate to NZX that its management team is sufficiently experienced and capable to ensure that they will not place other NZX Participants or the investing public at unreasonable risk.

NXT Advisors seeking to distribute and/ or underwrite an offer are also required to obtain accreditation as a Distribution and Underwriting Sponsor.

The application form for a NXT Advisor is set out in Appendix 1, and applications should include all information and supporting documentation as set out in Schedule 8, of Appendix 1.

2.2 Accreditation process

Broadly, applicants must satisfy NZX that they meet the requirements set out in Rule 3.1.3, including the following requirements set out in Rule 3.1.3(g) which specifically apply to an applicant seeking accreditation as a NXT Advisor:

- The applicant has relevant experience to be able to assess the suitability of an applicant for listing and to assist an applicant for listing in readying itself for listing; and
- The applicant is able to provide ongoing support to NXT companies in relation to compliance with the NXT Market Rules.

There is no definitive list of factors that constitute 'relevant experience', however as a minimum, NZX will expect an applicant to be able to demonstrate that it is able to provide corporate advisory services. Applicants may wish to consider and provide evidence of any involvement in the following when making an application for accreditation as a NXT Advisor:

- The applicant has practiced corporate finance for at least the past two years;
- The applicant has had significant involvement during that time in at least three transactions involving fund raising from members of the public, or involving listing on a registered exchange;
- The applicant has a 'qualified executive', being a person who has acted as lead in a corporate finance role in transactions referred to above;
- The applicant has practiced corporate advisory law for at least the past two years; and
- The applicant has demonstrable experience in advising on Listing Rule compliance.

NZX may request further information from applicants during the accreditation process. NZX has complete discretion to accept or reject an application for accreditation as a NXT Advisor.

2.3 Ongoing accreditation

Once accredited, a NXT Advisor must ensure that it continues to meet the requirements for accreditation and remains in compliance with the Rules at all times under Rule 3.31.

NZX will review each NXT Advisor's performance and consider whether they have demonstrated continued eligibility to be a NXT Advisor.

In order to satisfy itself that NXT Advisors are meeting the requirements of the Rules, they may be subject to a regular review by NZX. As part of this review, a NXT Advisor may be expected to provide NZX with details of the following:

- Confirmation that the NXT Advisor has fully discharged their responsibilities under the Rules;
- Confirmation that the NXT Advisor has demonstrated their ability to meet the requirements of Rule 3.1.3 at all times;
- Confirmation that the NXT Advisor continues to meet the eligibility requirements in Rule 3.1.3;
- A summary of the NXT Advisor's activities relating to new listings on the NZX markets;
- A list of NXT companies advised by the NXT Advisor and a brief summary of the services provided;
- A summary of all NXT Market Rule breaches identified and reported to NZX; and
- Any changes to a NXT Advisor's executive structure.

NZX will also take into account information available relating to any NXT companies the NXT Advisor has been involved with.

2.4 Revoking a NXT Advisor's accreditation

Rule 3.31.1 states that NZX may suspend or revoke a NXT Advisor's accreditation if NZX finds that a NXT Advisor no longer fulfils the requirements of Rules 3.1.3.

Under Rule 21.12.3, a person who has had its accreditation revoked may apply in writing to NZX for that decision to be reversed. If NZX decides not to reverse the decision, the person may then ask NZX to refer that decision to the NZ Markets Disciplinary Tribunal.

3. Obligations in respect of new listings

A NXT Advisor is a Primary Market Participant for the purpose of the Rules and so must comply with the obligations applying to all Primary Market Participants contained in Section 7 of the Rules. In addition, the Rules set out obligations applying specifically to NXT Advisors. An explanation of pre-listing obligations a NXT Advisor has in respect of a company applying to list on the NXT Market is set out below.

3.1 Pre-listing obligations applying to all Primary Market Participants

1. Seeking authority to act

As a Primary Market Participant, a NXT Advisor must comply with Section 7 of the Rules and must seek authority to act in respect of an initial public offering (“IPO”) of securities to be quoted on NXT Market.

A NXT Advisor seeking authority to act must also complete Appendix 6A or Appendix 6B (if they wish to act as a distribution and underwriting NXT Advisor) and submit the completed Appendix to NZX.

When seeking authority to act, a NXT Advisor must demonstrate to NZX that it and its executives are independent from the company it proposes to act for and that its independence is not compromised by any actual or potential conflict of interest. Information regarding a NXT Advisor’s independence must be provided to NZX together with the application for authority to act.

NZX will consider the following factors when determining whether a NXT Advisor is independent:

- Details of the NXT Advisor’s proposed, current and past relationship (professional or otherwise) with the applicant for listing or any other relationship between the applicant for listing and a Principal in the firm of the NXT Advisor;
- Details of how the NXT Advisor was introduced to the applicant for listing;
- Details of the nature of any fee or benefit that is payable contingent on the success or implementation of the initial public offering; and
- A description of the NXT Advisor’s involvement in any transaction or series of transactions that is relevant to the listing up until the date of the application.

Note that the fact that a fee comprises equity in the NXT company is likely not to compromise a NXT Advisor’s independence.

2. Other general pre-listing obligations

In addition to seeking authority to act in respect of an IPO, NZX expects that NXT Advisors will provide the support typically provided by NZX Firms to companies undergoing the IPO process. For example, a NXT Advisor should undertake appropriate due diligence processes and provide other corporate advisory support as required. NZX expects that this role is similar to that of a NZX Firm in relation to the NZX Main Board IPO process, although there will be particular additional services required as set out below.

3.2 Additional pre-listing obligations applying to NXT Advisors

In addition to the general obligations applying to all Primary Market Participants (as set out in sub-section 3.1 above), the Rules set out the following obligations applying specifically to NXT Advisors:

- A NXT Advisor must ensure that an applicant for listing on NXT Market is suitable for listing on NXT Market (refer to Rule 7.8.1); and
- A NXT Advisor must submit a NXT Advisor's declaration to accompany an application for listing on NXT Market (refer to Rule 7.8.2).

These obligations are explained in further detail below.

1. Suitability for listing on NXT Market

NZX will expect a NXT Advisor to undertake a comprehensive review to ensure that an applicant is suitable for listing on NXT Market. The review should include consideration of the factors set out in the NXT Advisors' declaration required by Rule 7.8.2 (refer to Appendix 6C).

NZX would expect a NXT Advisor to consider the following factors and take the following actions to ensure that an applicant is suitable for listing on NXT Market:

(a) Whether the applicant meets the requirements for listing as set out in the NXT Market Rules and is otherwise appropriate for listing

A NXT Advisor should check that the applicant meets the pre-requisites for listing required by Schedule 1A of the NXT Market Rules.

NZX would also expect a NXT Advisor to assist an applicant in preparing and submitting to NZX the information and documents required by Schedule 1B of the NXT Market Rules.

NXT companies must comply with the NXT Market Rules at all times while listed and NZX would expect a NXT Advisor to have a role in developing processes to ensure an applicant for listing's ongoing compliance with the NXT Market Rules. For example, the NXT Market Rules require a NXT company to have an insider trading policy and to notify breaches of the policy to NZX Regulation. NZX would expect a NXT Advisor to ensure that an applicant is aware of the law relating to insider trading and to assist an applicant to develop an adequate insider trading policy as part of preparing the applicant for listing on NXT. A NXT Advisor may also assist an applicant to develop a system or process to manage compliance with its disclosure obligations.

A NXT Advisor should also consider more generally whether the applicant is the type of enterprise for which the NXT Market is designed, by reference to the introductory section of the NXT Market Rules and any relevant guidance that is published by NZX from time to time.

Consideration of the above factors should support a NXT Advisor providing the statements required by clause (a) and (c) of the NXT Advisors' declaration. However, a NXT Advisor will also need to consider any other matters arising from the NXT Advisor's due diligence, which are likely to vary from applicant to applicant.

(b) Whether the applicant's directors and senior management are fit and proper persons and are otherwise capable of managing a listed company

In determining whether the directors of the applicant are fit and proper persons to govern the company, NXT Advisors should consider the following factors:

- Whether any of the directors have been the subject of disciplinary action by any legal, financial or regulatory authority or whether any of the applicant's directors are facing such disciplinary action;
- The directors' and senior managers' qualifications and experience in a listed company environment;
- Insofar as relevant, the commercial and regulatory performance of companies which the directors and senior managers of the applicant have been involved with. The role played by the directors and senior managers must also be considered;
- The directors' general reputations - for example, by conducting press checks and contacting referees;
- Whether any of the directors have been prohibited from being a director, promoter or taking part in the management of an entity; and
- Whether the management team and board of directors as a whole are appropriate in relation to the applicant's needs.

Consideration of factors such as those listed above should support a NXT Advisor providing the statements required by clause (b) and (e) of the NXT Advisors' declaration. However, the above guidance is not intended to be exhaustive and NXT Advisors may need to consider other factors to satisfy themselves so that the statements in the declaration can be given.

(c) Whether the applicant's key operating milestones meet the NXT standard

NZX expects that an applicant for listing will consult with its NXT Advisor when setting its key operating milestones ("KOMs") and the target for each KOM.

In order to provide the statement required by clause (g) of the NXT Advisors' declaration, a NXT Advisor must be satisfied that an applicant's KOMs meet the "NXT standard" (as defined in the NXT Market Rules). This requires a NXT Advisor to be satisfied that the applicant's KOMs, taken together, 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.

NXT Advisors will also have a role to play in relation to KOMs if a NXT company decides to restate its KOMs post-listing (refer to sub-section 4.2 below).

Further guidance on KOMs is also set out in NZX's guidance note 'Key operating milestones'.

2. NXT Advisors' Declaration

As noted above, a NXT Advisor must submit a NXT Advisor's declaration to accompany an application for listing on NXT Market. The form of the NXT Advisors' declaration is set out in Appendix 6C of the Rules and must be given on behalf of a firm by the Managing Principal (where the NXT Advisor is required to have a Managing Principal under the Rules) or the Responsible Executive.

In addition to the statements regarding the suitability of the applicant and its directors and senior managers (as referred to above), the declaration must include statements in relation to the independence of the NXT Advisor and the eligibility of IPO subscribers to trade on the NXT Market. Further detail in respect of these statements is set out below.

(a) Independence of NXT Advisor

The NXT Advisors' declaration must include a statement that the NXT Advisor and its executives are independent from the applicant for listing.

Sub-section 3.1 above sets out examples of the types of factors NZX will consider when determining the independence of a NXT Advisor seeking authority to act. Consideration of those same factors should support a NXT Advisor providing the statement as to independence required by clause (f) of the NXT Advisors' declaration.

NXT Advisors also have an ongoing obligation to ensure that at all times it and its executives are independent from any NXT company to which it provides services to (refer to Rule 7.9.3).

(b) All subscribers in the initial public offer (if a public offer is to be made immediately prior to listing) are eligible to trade on the NXT Market

The NXT Advisors' declaration must include a statement that all subscribers in the IPO (if a public offer is to be made immediately prior to listing) are eligible to trade on the NXT Market. If the applicant is not undertaking an IPO in conjunction with listing on NXT, this statement is not required to be provided.

Under the Rules, evidence of retail client eligibility to trade on NXT is confirmation from the client that the client has received a copy of the NXT Warning and understands the NXT Warning, or a record of the client's NZX Reference Number (refer to Rule 23.1.2).

One way by which a NXT Advisor may satisfy itself that all subscribers in an IPO are eligible to trade on the NXT Market is by including the NXT Warning (as defined in the Rules) in the subscription application form and requiring subscribers to tick a box confirming that they have read and understood the NXT Warning. Subscription where the box is not ticked would be refused.

Subscribers who are not retail clients under the Rules are automatically considered eligible to trade on NXT and NXT Advisors are not required to procure any evidence of eligibility in respect of those subscribers.

Further details on the pre-trade process are set out in NZX's 'Investor Eligibility' guidance note.

4. Post-listing obligations

4.1 Agreement meeting requirements of the Rules

NXT companies are required to have an agreement with a NXT Advisor that meets the requirements of the Rules for a period of 36 months following the date of listing, or such shorter period approved by NZX. NZX is likely to agree to a lesser period where a NXT company demonstrates a good compliance history.

The agreement between a NXT Advisor and a NXT company must:

- include provision for the NXT Advisor to provide advice relating to compliance with the NXT Market Rules to the NXT company (Rule 7.9.1(a));
- permit the NXT Advisor to provide information to NZX in order to demonstrate at all times to NZX's satisfaction that it and its executives are independent from the NXT company (Rule 7.9.1(b)); and
- permit the NXT Advisor to provide details to NZX of any suspected breach of the NXT Market Rules, of which the NXT Advisor becomes aware.

4.2 Coaching and mentoring

The NXT Advisor's key post-listing role is to coach and mentor NXT companies in the period after listing, to assist the NXT company in meeting its obligations to shareholders and the requirements of the NXT Market Rules.

NZX expects that NXT Advisors will provide particular assistance to NXT companies in relation to compliance with the interim update requirements of the NXT Market Rules. NXT Advisors will also play an important role in relation to any restatement of a NXT company's KOMs, because the NXT Market Rules require a NXT company to consult with its NXT Advisor if it decides to restate its KOMs.

In order to assist the NXT company to fulfil its obligations in a listed company environment, NZX would expect a NXT Advisor to as a minimum:

- Meet with Senior Management on a regular basis, at least quarterly, to review KOMs / Business Plan;
- Respond to questions raised by the NXT company; and
- Review business and interim updates to ensure the NXT company is complying with the NXT Market Rules.

4.3 Breach of the NXT Market Rules

If a NXT Advisor becomes aware of any suspected breach of the NXT Market Rules by a NXT company with which the NXT Advisor has an agreement, the NXT Advisor must report the suspected breach, and the details of the suspected breach, to NZX promptly and without delay (refer to Rule 7.9.2).

This notification should only occur after due and careful enquiry. A NXT Advisor should keep an appropriate record of this process.

NZX will consider any identified breach of the NXT Market Rules in accordance with the NZX Enforcement Policy.