

29 August 2017

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Dear Hamish

The New Zealand Superannuation Fund submission to the class waiver for SME Listings – NZX Main Board Listing Rules 5.2.3; 7.3.1; 7.4; 9.1.1 and 9.2.1.

Thank you for the opportunity to make a submission to the proposed class waiver for Small and Medium Enterprise (SME) Listings to NZX Main Board Listing Rules.

The New Zealand Superannuation Fund (“Fund”) is committed to promoting good corporate governance internationally and in New Zealand companies. The Fund has significant long-term investments in NZX listed companies. We have a strong belief that good governance improves company performance, improves shareholder value and increases investor confidence in the capital market.

1. Our general key points of feedback are:
 - i. **Timing:** We believe the Main Board Listing Rule Review, due to begin in Q3 2017, should be completed before migrating SMEs to the Main board. The review will now include proposals for equity market consolidation. If this was the order of events there would be no need for a class waiver. In addition, providing such waivers appears to pre-determine the outcome of the consultation.

Given the implementation date has not been set, should NZX proceed with waivers, it is not clear how long this situation will persist. Shareholder protection should in any case be continually guaranteed and not be put at risk simply because a consultation and rule review is underway.
 - ii. **Main Board & Corporate Governance Standards:** The NZX must have a firm objective not to weaken the corporate governance standards of the Main Board. The NZX Listing Rules must not be weakened in order to consolidate NZX’s equity markets, or by extensive or broad use of class waivers.
 - iii. **Shareholder Protection:** Proceeding with the class waiver for SMEs entering the Main Board means minority shareholders will now have lower protection when investing in some constituents on the main board than others. The consultation documents do not explain how the NZX will clearly flag to shareholders which issuers will be subject to the waivers, and so investors may unknowingly invest in them with the expectation that they

meet the Main Board Rules. In particular, with the companies given the proposed waivers, shareholders have no voting rights over major or related party transactions, a greater risk of dilution and higher exposure to illiquid issuers.

- a. A waiver from Rule 5.2.3 increases the risk of exposure to illiquid issuers.
 - b. Of particular concern are waivers to Rule 9.1.1. We believe there is no room on the Main Board for shareholders not to have a vote on major transactions that will change the nature of the business.
 - c. Shareholders of companies subject to waivers for Rule 9.2.1, Rule 7.3.1 and 7.4 will be reliant on Directors certifying fair and reasonable terms of equity issuance. This is a lower level of protection than a majority vote by shareholders who could be affected, for example, by being materially diluted, or have value detracted through related party transactions. Such a waiver also highlights the necessity of having independent directors on the Board of SMEs regardless of the market rules to which they are subject.
 - d. NZX should ensure that no migrated issuers can be index constituents while waivers remain applicable to them.
2. **New Zealand Main Board Reputation:** Currently, local and international investors have an understanding of Main Board protections for shareholders. Class waivers could impact on investor confidence in the Main Board, either due to the presence of companies with these waivers, or by an assumption that such waivers are pre-determining changes to the Main Board or the SME markets. How does the NZX plan to i) ensure clarity around which issuers are subject to which rules or waivers, and ii) enable investors to choose between investing in stocks subject to market rules affording higher protection and SMEs with waivers? Investors in NZX Mainboard, NXT or NZAX can be expected to be aware of the risks and benefits of the respective market rules, but not of a blend of these rules.

Combining SMEs into the Main Board may impact volatility and liquidity, particularly if there is no separation of a SME cohort. For example, the S&P/NZX All Index automatically comprises all NZX Main Board constituents. The SME cohort will impact tracker funds and benchmarks using this index.

We do not have a final view on NZX consolidating its markets as we are awaiting the formal review into this. We have, however, highlighted some of the issues that will need to be considered, and set out why offering a class waiver seems premature.

In response to other specific questions:

3. *Are respondents comfortable that Migrating Issuers comply with the NZX Corporate Governance Code (Code) for reporting periods ending 31 December 2018?* The Rule Review should pre-empt migration. While reporting against the Code should not be onerous in and of itself, we are, however, supportive of giving SMEs time to report. Under a comply or explain regime, being small can be one of the explanations (where size is relevant).

4. *Are respondents comfortable with the waiver proposals that preserve aspects of the NZAX rules, including no requirement for independent directors? We do not consider the proposed relief appropriate. There should be no companies listed on the Main Board that do not have independent directors, as these are key for the protection of minority shareholder interests. Listing on the main exchange brings with it responsibilities to a wide range of shareholders who believe the Listing Rules provide certain protections not afforded by the NZAX.*

- 5 & 6. These questions presuppose the Class Waivers will be given, whereas we believe the Listing Rule Review process should be completed first.

Thank you for the opportunity to submit a response to your consultation. We would be happy to discuss our submission with you.

Yours sincerely



Matt Whineray
Chief Investment Officer