



## NZX Regulation Issuer Update: COVID-19 class relief

This update sets out details of class waivers that NZX Regulation has granted in relation to:

- periodic reporting requirements; and
- equity capital raising capacity,

under the NZX Listing Rules.

Please contact NZX Regulation if you have any questions in relation to the matters outlined in this update.

A handwritten signature in black ink, which appears to read 'Joost van Amelsfort'. The signature is written in a cursive, flowing style.

*Joost van Amelsfort*  
NZX Head of Market Supervision

### Financial reporting requirements

#### *Background*

Under the NZX Listing Rules, Issuers of quoted equity securities and debt securities are required to:

- release a results announcement, including preliminary financial statements, no later than 60 days after the end of each financial year and half year (Listing Rule 3.5.1); and
- release an annual report (including audited financial statements) within three months after the end of each financial year (Listing Rule 3.6.1).

In addition, Issuers of fund securities are required to release an annual report prepared in accordance with the Financial Markets Conduct Act 2013 and Financial Markets Conduct Regulations 2014, within three months of the balance date for the relevant scheme (Listing Rule 3.12.1)

### *Class relief for financial reporting requirements*

NZX Regulation acknowledges the unprecedented impacts arising from the COVID-19 virus, and the challenges being experienced by Issuers and other capital markets participants. Those challenges appear likely to continue in the intermediate future.

NZX Regulation understands the focus of Issuers and their accounting and assurance service providers in this environment, necessarily includes ensuring the wellbeing and safety of their staff. We are aware that the COVID-19 virus, and the measures being implemented by the New Zealand Government and overseas governments in response, are creating challenges for personnel, systems and infrastructure.

In recognition of these factors, and the potential for further disruption, NZX Regulation has granted a class waiver, under which the timing requirements for the release of results announcements and annual reports will be extended for Issuers with certain balance dates, if those Issuers consider they require that additional time to meet their periodic reporting requirements. NZX Regulation continues to encourage Issuers to complete and release their periodic results and reports as soon as they are able to, so as to ensure the market is able to access recent financial information.

Under the class waiver, Issuers will have (i) up to an additional 30 days to prepare and release results announcements (including preliminary interim and full year financial statements), and (ii) up to an additional two months to prepare and release annual reports (as applicable). The impacts of the class waiver for issuers with month end balance dates are summarised below. The below table reflects that if a due date falls on a weekend or another non NZX trading day, the relevant results or report should be provided to NZX by close of business on the immediately following Business Day.

### *Statutory relief*

NZX Regulation has coordinated this class waiver with the Financial Markets Authority (FMA). The FMA has also today announced comparable relief for Issuers as “FMC reporting entities” under the Financial Markets Conduct Act 2013, to extend the timeframe for preparation of financial statements or group financial statements under that Act from four months to six months to accommodate the class waiver. Issuers that are subject to another statutory obligation to prepare and deliver periodic results and reports who wish to rely upon the class waiver will need to consider whether any relief is available from those statutory provisions (such as state-owned enterprises (noting Rule 3.6.2), and registered banks).

<b>Balance date</b>	<b>Periodic reporting obligation (as applicable)</b>	<b>Current timing requirement</b>	<b>Revised due date under Class Waiver</b>
31 August 2019	Release half year Results Announcement (LR 3.5.1)	29 April 2020	29 May 2020

<b>Balance date</b>	<b>Periodic reporting obligation (as applicable)</b>	<b>Current timing requirement</b>	<b>Revised due date under Class Waiver</b>
30 September 2019	Release half year Results Announcement (LR 3.5.1)	1 June 2020	29 June 2020
31 October 2019	Release half year Results Announcement (LR 3.5.1)	29 June 2020	29 July 2020
30 November 2019	Release half year Results Announcement (LR 3.5.1)	30 July 2020	31 August 2020
31 December 2019	Release half year Results Announcement (LR 3.5.1)	31 August 2020	28 September 2020
31 January 2020	Release full year Results Announcement (LR 3.5.1)	31 March 2020	30 April 2020
	Release annual report (LR 3.6.1)	30 April 2020	30 June 2020
	Release annual report (LR 3.12.1)	30 April 2020	30 June 2020
29 February 2020	Release full year Results Announcement (LR 3.5.1)	29 April 2020	29 May 2020
	Release annual report (LR 3.6.1)	1 June 2020	31 July 2020

Balance date	Periodic reporting obligation (as applicable)	Current timing requirement	Revised due date under Class Waiver
	Release annual report (LR 3.12.1)	1 June 2020	31 July 2020
31 March 2020	Release full year Results Announcement (LR 3.5.1)	1 June 2020	29 June 2020
	Release annual report (LR 3.6.1)	30 June 2020	31 August 2020
	Release annual report (LR 3.12.1)	30 June 2020	31 August 2020
30 April 2020	Release full year Results Announcement (LR 3.5.1)	29 June 2020	29 July 2020
	Release annual report (LR 3.6.1)	31 July 2020	30 September 2020
	Release annual report (LR 3.12.1)	31 July 2020	30 September 2020
31 May 2020	Release full year Results Announcement (LR 3.5.1)	30 July 2020	31 August 2020
	Release annual report (LR 3.6.1)	31 August 2020	31 October 2020

Balance date	Periodic reporting obligation (as applicable)	Current timing requirement	Revised due date under Class Waiver
	Release annual report (LR 3.12.1)	31 August 2020	31 October 2020

#### *Conditions of relying on class waiver*

The class waiver will be subject to certain conditions, including that any Issuer relying on the timing extensions, publish a statement to be released through the NZX Market Announcement Platform, in advance of the relevant current deadline under LR 3.5.1 and/or LR 3.6.1:

- stating that the Issuer is relying on the class waiver, and the extent of that reliance (i.e. for release of the preliminary financial statements, the annual report, or both); and
- stating, to the extent possible, when the Issuer expects to release its preliminary financial statements and/or the annual report (as applicable).

The Issuer must then keep the market informed of the expected publication dates should there be any change.

#### *Effect of the Class Waiver on Suspension of Trading*

If an Issuer has not released its results announcement or annual report within 5 business days of the due date, NZX Regulation practice has ordinarily been to exercise its discretion under Listing Rule 9.9.3 and suspend trading in that Issuer's securities until the Issuer has released the relevant announcement or report. NZX Regulation confirms that it will not suspend trading in the securities of any Issuer as a result of reliance upon the class waiver. If an Issuer does not release the relevant announcement or report within 5 business days of the adjusted due dates under the class waiver then, unless that Issuer has a specific waiver, NZX Regulation will exercise its discretion under Listing Rule 9.9.3 to suspend trading in the relevant Issuer's securities.

#### *Further extensions of reporting deadlines*

NZX Regulation notes that the class waiver will not, currently, adjust the timing requirements for debt and equity security Issuers with balance dates of 30 June 2020 or any subsequent dates. NZX Regulation will continue to closely monitor the evolving COVID-19 situation, and may extend the scope of the class waiver if that is appropriate.

NZX Regulation acknowledges that certain Issuers may seek to engage on possible further extension of the reporting deadlines, notwithstanding the class relief. NZX Regulation will consider such requests on a case-by-case basis, subject to application. Any application for further extension should include details of:

- the reasons why the Issuer considers a further extension to be necessary; and
- the proposed timing by when the Issuer plans to release its results announcement (and accompanying preliminary financial statements) and/or its annual report (as applicable), and the details of the plans to inform the market and quoted financial product holders of the delay.

#### *Additional requirements*

NZX Regulation notes that Issuers relying on the class waiver will continue to be subject to all other relevant Listing Rules obligations. That includes Issuer's continuous disclosure obligations. If the evolving COVID-19 situation gives rise to operating and financial impacts that comprise "material information" – even if preliminary financial statements or an annual report are yet to be finalised - that information must be disclosed promptly and without delay, unless an exception from disclosure applies.

NZX Regulation also notes that Issuers who wish to rely upon the class waiver should consider any contractual obligations they may have to deliver preliminary financial statements or annual reports by specific deadlines. Early engagement with contractual counterparts, including banks and other credit providers, to vary or waive those timeframes to align with the class waiver may be required.

### **Equity capital raising**

#### *Background*

Under the NZX Listing Rules, Issuers of quoted equity securities may:

- issue new equity securities in a rolling 12 month period via placements, effectively subject to a 15% cap in that relevant period (Listing Rule 4.5.1); and
- issue new equity securities to existing shareholders under a Share Purchase Plan, subject to a cap of \$15,000 per registered holder and a total cap of 5% of equity securities of that class at the time of offer (Listing Rule 4.3.1);
- issue new equity securities pro rata to existing shareholders (without any limit on the number to be issued) by way of a rights offer, which requires:
  - notice to be given at least 5 Business Days before the Ex Date for the Rights issue (Listing Rules 4.17.6 and 4.17.7); and
  - the closing date to be at least 7 Business Days after the last letter of entitlement is sent where holders of Rights are able to accept the offer using electronic means (Listing Rule 4.17.2(b)).

#### *Class relief for equity capital raising*

As noted in this update, NZX Regulation acknowledges the unprecedented impacts arising from the COVID-19 virus, and the challenges being experienced by Issuers and other capital markets participants. Those potential challenges also include capacity constraints on Issuers' working capital positions.

In recognition of these factors, NZX Regulation seeks to ensure that Issuers are able to access sufficient equity capital urgently should the need arise, in addition to any existing debt facilities. NZX Regulation considers that a temporary expansion of those abilities is an appropriate response in the current circumstances, and appropriately balances regulatory protections. NZX Regulation also notes that the protections for shareholders under the Companies Act and Part 2 of the Financial Markets Conduct Act 2013 will still have full effect during this time. NZX Regulation notes the heightened market volatility currently being experienced, as well as the increased risk to Issuers' operating and financial performance. Both Issuers and investors are encouraged to obtain independent advice if participating in equity capital raisings during this period, to ensure they are adequately informed before making any decisions.

To facilitate this, NZX Regulation will be granting a class waiver and ruling under which, until 31 October 2020:

- the placement cap under Listing Rule 4.5.1 will be increased to 25%;
- the cap per registered holder for issues under a Share Purchase Plan will be increased to \$50,000 and the total cap to 30% of equity securities of that class at the time of offer; and
- the timing requirements for Rights issues will be shortened:
  - to allow the Rights issues to be announced on the Ex Date (in the same manner as currently permitted for Accelerated Offers); and
  - so that the closing date is at least 3 Business Days after the last letter of entitlement is sent where holders of Rights are **only** able to accept the offer using electronic means.

Under the class waiver, Issuers will be able to undertake additional equity security issuance without shareholder approval up to the revised limits, until 31 October 2020. Under the class ruling, NZX Regulation will rule that issues of equity securities undertaken in reliance on the class waiver will be deemed to have been validly issued under the relevant Listing Rules, following the end of the waiver period on 31 October 2020. NZX Regulation will continue to closely monitor the evolving COVID-19 situation, and may extend the scope of the class waiver if that is appropriate.

#### *Effects on retail shareholders*

Consistent with the policy and principles underpinning Recommendation 8.4 of the NZX Corporate Governance Code, NZX Regulation encourages and recommends that Issuers utilising the class waiver:

- be cognisant of the interests of all existing financial product holders when assessing possible capital raising options;
- seek to provide wider existing equity security holders with an opportunity to avoid dilution by participating in the offer where possible; and
- be mindful of the number of existing financial product holders that would likely be able to participate in an electronic only Rights issue.

NZX Regulation notes that increasing the headroom capacity for both placements and Share Purchase Plans should facilitate broad shareholder participation, if an Issuer elects not to undertake a pro rata offer. The adjusted timing requirements for Rights issues may also enable wider participation where equity capital is urgently required.

#### *Compliance with the QFP exemption*

Issuers undertaking any offer of securities in reliance on the “quoted financial product” exemption under clause 19 of Schedule 1 of the Financial Markets Conduct Act 2013, are reminded that that exemption requires publication of a cleansing notice. Under the cleansing notice, the Issuer will need to confirm whether it is in compliance with its ongoing continuous disclosure obligations and financial reporting obligations. The Issuer providing the notice must also provide any material information that would otherwise be subject to an exception from disclosure under the Listing Rules.

#### *Example*

By way of an illustrative example of the relief outlined above: Issuer ABC Limited has 100 million fully paid ordinary shares on issue and wishes to raise equity capital. Under the class waiver, Issuer ABC Limited could:

- Undertake a placement of up to 25 million shares, subject to adjustment to reflect any placements or other issuances with the 12 months prior to the placement.
- Undertake a Share Purchase Plan, under which each shareholder could subscribe for up to \$50,000 of shares, to an aggregate total of 30 million shares. The offer period could also be shortened to close on the day which is 3 Business Days after the last letter of entitlement is sent where shareholders are **only** able to accept the offer using electronic means.
- Undertake a Rights issue, under which the total amount of shares that can be offered under the Rights issue remains unchanged, as there is no limit under the Rules. However, Issuer ABC Limited will be able to benefit from the shortened timing requirements outlined above.