

COMMENTARY ON LISTING RULE CHANGES WHICH COMMENCE ON 1 DECEMBER 2002

Background

- 1 In March 2002 the Exchange sought submissions on proposed listing rules changes to:
 - ? Introduce continuous disclosure and director relevant interest disclosure obligations, reduce the time periods for making preliminary announcements, amend aspects of the New Capital Market Rules, and correct matters of a more minor nature.
 - ? Provide for the possible listing of the Exchange, and in particular creation of a Special Division of the Market Surveillance Panel to monitor and administer the NZSE as an issuer, if a restructuring proposal proceeds under the New Zealand Stock Exchange Restructuring Act 2002.

(the "March Proposals").
- 2 The Exchange has carefully considered the submissions received by subscribers to the Listing Rules and Issuers on the March Proposals, and has also taken into account significant changes in the area of continuous disclosure in the Securities Markets and Institutions Bill (as reported back to Parliament by the Finance and Expenditure Select Committee on 4 June 2002) ("SMIB").
- 3 As a consequence of the consideration undertaken by the Exchange as above, the Exchange's review of the Securities Commission's paper which included comment on the March proposals and separate initiatives the Exchange is undertaking, the Exchange has determined to make additional rule changes to:
 - ? the proposed continuous disclosure regime and related procedural requirements in section 10 of the Rules. In addition to addressing the submissions received on the March Proposals these changes also take into account the significant changes in the revised SMIB.
 - ? Reduce the time periods for submitting annual and half yearly reports (as well as the reduction in time periods for preliminary announcements of half year and full year financial results in the March Proposals).
 - ? Allow Issuers to apply for a trading halt for a limited period, to facilitate compliance with the continuous disclosure regime.
 - ? Enhance the participation of Exchange officers in Market Surveillance Panel proceedings and increasing the transparency of the decisions taken by the Panel by requiring publication of Market Surveillance Panel decisions in certain circumstances.
 - ? Adjust the fee structure to more closely reflect the actual costs incurred by the Market Surveillance Panel, the Exchange and Surveillance Executives and to recover the administration costs of delisting an Issuer.
- 4 Final rule changes in all the areas described above have now been developed and are attached. The changes will commence on 1 December 2002 except that changes to Rules 10.4.1, 10.5.1, 10.5.2 will not apply to Issuers with a Balance Date of 30 December until 3 months and one day after the commencement date of Rules 10.4.1, 10.5.1, 10.5.2.
- 5 The balance of this commentary highlights the significant changes from the March Proposals, as well as the additional changes to be made. It should be assumed that, to the extent that the commentary does not describe some of the changes made, the position has not changed from commentary on the March Proposals (which should be read together with this commentary), or that the Exchange considers that the change is immaterial.

Changes to continuous disclosure & other disclosure obligations (Section 10)

Introduction

- 6 As indicated in the commentary which accompanied the March Proposals, continuous disclosure and director relevant interest obligations are recognised by the NZSE as an integral tool in maintaining transparency, efficiency and investor confidence in the market. The obligations imposed by the revision of Section 10 described below are intended to complement the provisions of the revised SMIB.
- 7 The NZSE sought comment in the March Proposals on whether or not it would be appropriate to reduce the time period for preparation of a Half Yearly Report and/or the Annual Report required by Rule 10.5, from four months to three months. In recognition of the extended period that is created by the proposed change to Rule 10.4.1 (and the intent of the Exchange to further reduce the timeframe for preliminary announcements in the future), the NZSE proposes to reduce the timeframe for Half Yearly and Annual Reports to three months.

Continuous Disclosure: (Rule 10.1.1)

- 8 Existing Rule 10.1.1 and the proposed Rule 10.1.1, sent for public comment by the NZSE in March, used definitions of "Relevant Information". Broadly, Relevant Information as used in the existing Rules means information that is not reasonably available to the market, but which would be likely, upon disclosure, to affect materially the price of any Issuer's Quoted Securities. To maintain consistency with SMIB, the final changes adopt the definition of "Material Information" and "generally available to the market" as they appear in SMIB in place of the definition of "Relevant Information" (and also supersede the definition in the March Proposals).
- 9 The definition of Material Information involves an assessment as to whether a reasonable person would expect the information, if "generally available to the market", to have a material effect on the price or value of the Issuer's Quoted Securities. A reasonable person will however be taken to expect information to have a material effect on the price or value of the Quoted Securities where such information would, or would be likely to, influence a person who commonly invests to buy or sell those securities. Broadly, information that is generally available to the market includes information that has been made known in a manner which would be likely to bring it to the attention of persons who commonly invest, provided that a reasonable period of time has elapsed since it was made known, or it is likely to be readily obtainable by persons who commonly invest.
- 10 Existing Rules 10.1.1 (a) and (b) require Issuers to treat Relevant Information as valuable property, and to safeguard its use and disclosure. Existing Listing Rule 10.1.1(c) obligates Issuers to disclose information immediately that maintenance of confidentiality ceases to have greater value to the Issuer. The new Listing Rule 10.1.1 (a) requires Issuers to disclose all Material Information concerning itself immediately after the Issuer becomes aware of such information. The proposed Footnote 1 of 10.1.1 provides some guidance as to matters that could be considered as Material Information.
- 11 Unlike the existing Rules, the proposed amendments specifically define when Issuers are exempt from disclosing information. The exceptions allow Issuers to maintain confidentiality of information in appropriate circumstances, which should not compromise the philosophy of continuous disclosure.
- 12 Footnote 4 provides guidance as to what may constitute "confidential information" for the purposes of the exception relating to information of that nature.
- 13 Listing Rule 10.1.1(b) requires that Issuers disclose Material Information to the NZSE prior to its release to the public, other registered exchanges or any other party. Footnote 7 relates to dual listed companies, which are required to release information to the NZSE before or at the same time as its release to another registered exchange.

- 14 The Exchange has determined to delete the existing Rule 10.1.1(d) and the existing footnote 7 on the basis that the new exceptions in Rule 10.1.1(a) already prevent selective disclosure. As a consequence "due diligence" waivers will not longer be required as long as information is kept confidential during the course of due diligence. However the Exchange is likely to publish further guidance for Issuers on the form of confidentiality deed and other procedures required to fall within the confidentiality exception, in due course.
- 15 Listing Rule 10.1.1 (e) is retained in the proposed Listing Rule 10.1.1 (c), which requires disclosure to correct false or misleading information which nevertheless has a credible source.
- 16 The NZSE will be required, once SMIB is passed, to consult with the Securities Commission with respect to any waiver of the continuous disclosure provisions. On the basis that the continuous disclosure regime is a fundamental component of market transparency waiver applications will not be readily entertained by the NZSE. Issuers should be guided by the principle that if it is in doubt it should disclose the information at issue.

Manner of Disclosure: 10.2.3

- 17 The amended rule amends the hours during which the NZSE will receive announcements for public release by providing that releases may be sent half an hour before market trading hours. The new rule 10.2.3 (d) requires Issuers to release announcements to the NZSE at least 10 minutes prior to the information's public release.

Annual and Half Yearly Reports: 10.5

- 18 The new rule requires Issuers to submit an annual report to the NZSE and security holders within three months after the end of the Issuer's financial year, rather than the present four months. The proposal also requires Issuers to issue a half yearly report to the NZSE and security holders within three months after the end of the first six months of each financial year, rather than the present four months.

Trading Halts

- 19 Rule 5.4.1 has been amended by inserting new paragraphs (a) and (c) to allow the NZSE to halt trading in an Issuer's securities, at the Issuer's request, for a period not exceeding two business days.
- 20 The introduction into the Rules of an Issuer-requested trading halt regime is to accommodate the continuous disclosure amendments being made in Rule 10.1.1.

Changes to Panel processes (additional changes to Appendix 3)

- 21 The existing Appendix 3 provides that the Panel must be comprised of a majority of Independent Members. The proposed changes to paragraphs 13 and 14 recognise the value of having employees of the Exchange sitting on all Divisions (except the Special Division) in order to enhance the continuity of Panel decisions and to ensure that the Exchange is informed as to the policy being formulated by the Panel.
- 22 Paragraph 6 has also been amended to permit an increased number of Managing Director delegates to attend proceedings of the Panel. This reflects the value that the Exchange can bring to Panel matters as the Exchange may have employees who have been closely involved in a Panel matter and allowing their presence to speak on an issue ensures that the Panel has all relevant information before them. This expansion enhances the Panel's decision-making process by permitting Exchange personnel to share their knowledge and expertise with the Panel. The proposed language also more clearly specifies the circumstances in which the Chairman may prohibit the attendance of the Managing Director or his delegates by linking the demand for expediency of the specific proceeding to the benefit that may be derived by their attendance.
- 23 Both of the proposed changes discussed above should improve the Exchange's role in enforcement procedures, without comprising the independence of the Panel.

- 24 Finally, the changes require the Panel to provide a summary of reasons for making a ruling or waiver which the Exchange will, unless there is a compelling reason to do otherwise, publish. This is intended to ensure there is transparency in the Panel's exercise of its powers and so that Issuers may be guided by the rationale applied by the Panel for a particular waiver or ruling.

Listing Fees (Appendix 4)

- 25 Appendix 4 has been deleted and Issuers are required to pay the fees prescribed by the Exchange from time to time. The fee changes proposed in the 16 August changes remain however fees will no longer be included in the Listing Rules and the Exchange will publish applicable fees to Issuers.
- 26 In summary the changes to the fees found in the current Appendix are as follows:
- 26.1 the hourly rate of Exchange and Surveillance Executives' will increase from \$150 to \$200.
 - 26.2 the Exchange will attach a 10% surcharge to Panel members fees.
 - 26.3 the Exchange will charge a 15% administration fee to a final invoice.
- 27 Amendments have also been made to the charge out rate for Exchange and Panel employees' time in relation to NCM.
- 28 A delisting fee (enable the Exchange to recover the administration cost associated with the delisting of an Issuer) has also been introduced. The fee is 25% or \$5,000 (whichever is the lesser) of the bond paid or deposited on Listing.