



# **Financial Markets Conduct (NZX–NXT Market) Regulations 2014**

Jerry Mateparae, Governor-General

## **Order in Council**

At Wellington this 3rd day of November 2014

Present:

His Excellency the Governor-General in Council

Pursuant to section 351(1) of the Financial Markets Conduct Act 2013, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council and on the recommendation of the Minister of Commerce and Consumer Affairs made in accordance with section 351(3) of that Act, makes the following regulations.

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## Regulations

- 1 Title**  
 These regulations are the Financial Markets Conduct (NZX–NXT Market) Regulations 2014.
- 2 Commencement**  
 These regulations come into force on 1 December 2014.
- 3 Interpretation**  
 In these regulations, unless the context otherwise requires,—  
**Act** means the Financial Markets Conduct Act 2013  
**alternative disclosure obligation** means an obligation under regulation 7 and any alternative disclosure provision with which that regulation requires compliance  
**alternative disclosure provisions** means the provisions contained in the market rules of the NXT market as approved by the FMA either under section 36L of the Securities Markets Act 1988 or under section 331 of the Act as giving effect to the alternative disclosure regime  
**alternative disclosure regime** means the regime described in the Schedule of the Securities Markets Act (NZX—New Market) Exemption Notice 2014 granted by the Acting Minister of Commerce (as set out in the Schedule of these regulations)  
**NXT issuer** means a person that is a party to a listing agreement with NZX in relation to the NXT market

**NXT market** means the financial product market—

- (a) that is or will be operated by NZX under that name and that is targeted at small and medium-sized enterprises; and
- (b) that is subject to licence conditions under Part 5 of the Act that have the effect of requiring that there are adequate arrangements for ensuring—
  - (i) that the market be clearly distinguished from other financial product markets operated by NZX; and
  - (ii) that NZX, before entering into a listing agreement in relation to the NXT market with an applicant that has previously entered into a listing agreement in relation to another financial product market operated by NZX, have regard to whether or not the applicant is an enterprise for which the market is designed; and
  - (iii) that investors in the market receive an adequate risk warning regarding the nature of the NXT market, the fact that there are more limited rules for disclosure of price-sensitive information on the NXT market than on the NZX Main Board, and the consequences that may have for investors

**NZX** means NZX Limited.

#### **4 Application**

These regulations apply to the NXT market.

#### **5 Purpose**

The purpose of these regulations is to enable NZX to operate a market with market rules that contain disclosure requirements, as alternative disclosure obligations to the continuous disclosure provisions of the market rules for the NZX Main Board, that—

- (a) take account of the needs of small and medium-sized enterprises for predictable and lower cost disclosure requirements; and

- (b) take account of the needs of investors for regular and understandable information that assists them to effectively monitor the performance of issuers; and
- (c) do not give rise to unacceptable risks of—
  - (i) losses to investors from market inefficiency or market misconduct; or
  - (ii) loss of confidence in the market.

**6 Modified application of subpart 4 of Part 5 of Act to NXT market**

Subpart 4 of Part 5 of the Act is modified in respect of the NXT market so that the subpart applies to information referred to in section 270(1)(b) of the Act whether or not the information required to be notified by those continuous disclosure provisions is material information not generally available to the market.

**7 Alternative disclosure provisions apply to NXT market**

- (1) The purpose of this regulation is to provide for the enforcement of the alternative disclosure provisions to the extent that they are not continuous disclosure provisions.
- (2) An NXT issuer must set and notify key operating milestones in accordance with the alternative disclosure provisions.
- (3) An NXT issuer must notify information in accordance with the alternative disclosure provisions if it has information that those alternative disclosure provisions require it to notify.

**8 Other provisions based on sections 270(2) and 272 of Act**

- (1) Regulation 7 does not affect or limit the situations in which action can be taken for a failure to comply with provisions of the market rules for the NXT market.
- (2) A person (A) does not, in relation to the contravention by an NXT issuer of an alternative disclosure obligation, contravene, or become involved in the contravention of, that obligation if—
  - (a) A took all steps (if any) that were reasonable in the circumstances to ensure that the NXT issuer complied with the obligation; and

- (b) after doing so, A believed on reasonable grounds that the NXT issuer was complying with the obligation.

**9 Alternative disclosure obligations are Part 5 market provisions and contravention may give rise to civil liability**

- (1) Regulation 7 is a Part 5 market provision.
- (2) A contravention of regulation 7 may give rise to civil liability under section 385(3) of the Act.

**10 Alternative disclosure obligations for purpose of section 314 of Act**

Regulation 7 is an alternative disclosure obligation for the purpose of section 314 of the Act.

**11 Changes to alternative disclosure provisions**

- (1) The test in subclause (2) applies in place of the test in section 331(1)(b) of the Act for the purpose of a rule change provided to the FMA under section 330 of the Act that relates to disclosure in respect of the NXT market.
  - (2) The test is that the rules as changed for the NXT market will not provide adequate disclosure by NXT issuers, after having regard to—
    - (a) the requirements for the alternative disclosure regime; and
    - (b) the purpose of these regulations; and
    - (c) the purposes of Part 5 of the Act (and the main and additional purposes of the Act stated in sections 3 and 4 of the Act); and
    - (d) any other matters that the FMA considers relevant.
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**Schedule**

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**Text of Schedule of Securities Markets  
Act (NZX—New Market) Exemption  
Notice 2014**

The alternative disclosure provisions must contain requirements for—

- (a) the setting and disclosure to the market by a new market issuer of metrics for measuring and reporting on the performance of its business and targets for those metrics:
- (b) ensuring that directors of the issuer confirm to the market that they are satisfied that those metrics will result in understandable reporting for investors that covers the most significant factors by which the performance of the business should be assessed and monitored:
- (c) the new market advisor to confirm to NZX that the metrics selected are suitable before the new market issuer lists and for the new market issuer to continue to consult the new market advisor on the selection and continued suitability of those metrics while the new market advisor is appointed:
- (d) the new market issuer to continue to set, and review at least annually, its metrics and targets for those metrics:
- (e) NZX to review and approve—
  - (i) the metrics before approving the new market issuer for listing; and
  - (ii) any subsequent change to the metrics by the new market issuer:
- (f) quarterly disclosures about changes and developments for the business of the new market issuer and of its performance against the targets for the metrics:
- (g) immediate disclosure of specified events relating to the following matters as they arise:
  - (i) a variance, or likely variance, of more than 10% from a target for a metric:
  - (ii) decisions affecting the number or terms of equity securities on issue:
  - (iii) decisions on changing the constitution:
  - (iv) decisions on dividends and distributions:

- (v) changes to directors, officers, or auditor of the new market issuer:
- (vi) proposals to enter into (or change or complete) significant transactions (including an essential change to the nature of the business) and related party transactions:
- (vii) changes to the new market issuer's name or share registry details:
- (viii) communications to a class of investors and results of investor votes:
- (ix) significant legal or disciplinary proceedings being brought by or against the new market issuer:
- (x) events or matters that indicate a significant change in the creditworthiness of the new market issuer:
- (xi) changes to the new market issuer's balance dates or other period for reporting:
- (xii) material adjustments to the new market issuer's or its group's financial statements or a previous disclosure on those financial statements, or any qualification of an auditor's report or reference to a fundamental uncertainty.

Michael Webster,  
Clerk of the Executive Council.

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### Explanatory note

*This note is not part of the regulations, but is intended to indicate their general effect.*

These regulations, which come into force on 1 December 2014, provide for modified disclosure provisions to apply in respect of NZX's new NXT market for small and medium sized-sized enterprises.

The main effect of these regulations is as follows:

- subpart 4 of Part 5 of the Financial Markets Conduct Act 2013 (the **Act**) is modified in respect of the NXT market so that the subpart applies to information that the continuous disclosure provisions of the market rules of the NXT market require a

listed issuer to notify regardless of whether that information is material information that is not generally available to the market; and

- NXT issuers must comply with alternative disclosure provisions in NXT’s market rules; and
- NZX must have adequate arrangements for notifying disclosures made to it under those provisions (*see* section 314(b) of the Act); and
- a breach of those obligations must be treated in the same way as if it were a breach of the continuous disclosure rules; and
- future rule changes to the alternative disclosure obligations in NXT’s market rules must be considered by the Financial Markets Authority in accordance with the test in these regulations instead of the test in section 331(1)(b) of the Act.

These regulations follow the exemption granted pursuant to section 36E of the Securities Markets Act 1988.

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Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*: 4 November 2014.

These regulations are administered by the Ministry of Business, Innovation, and Employment.

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