

Reprint
as at 1 July 2019



**Financial Markets Conduct (NZX–NXT Market)
Exemption Notice 2014**
(LI 2014/357)

Financial Markets Conduct (NZX–NXT Market) Exemption Notice 2014: revoked, on the close of 30 June 2019, by clause 3.

Pursuant to section 556 of the Financial Markets Conduct Act 2013, the Financial Markets Authority, being satisfied of the matters set out in section 557 of that Act, gives the following notice.

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Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.
Note 4 at the end of this reprint provides a list of the amendments incorporated.

This notice is administered by the Financial Markets Authority.

Notice

1 Title

This notice is the Financial Markets Conduct (NZX–NXT Market) Exemption Notice 2014.

2 Commencement

This notice comes into force on 1 December 2014.

3 Revocation

This notice is revoked on the close of 30 June 2019.

Clause 3: amended, on 1 January 2019, by clause 4 of the Financial Markets Conduct (NZX–NXT Market) Exemption Amendment Notice 2018 (LI 2018/265).

4 Interpretation

(1) In this notice, unless the context otherwise requires,—

Act means the Financial Markets Conduct Act 2013

business update means a release required under rule 49 of the NXT market rules

interim update means a release required under rule 50 of the NXT market rules

key operating milestones or **KOMs** means, in respect of an NXT issuer or NXT issuing group, metrics for measuring and reporting on the performance of the NXT issuer's or NXT issuing group's business

loss-making means, in respect of an NXT issuing group, that the NXT issuing group made a net loss after tax as determined in accordance with GAAP for the most recent period or, if the most recent period ended more than 9 months before the date of the PDS, the most recent interim accounting period

NXT advisor means a person who is accredited as an NXT advisor under the NZX participant rules

NXT issuer means—

- (a) a company that is listed on the NXT market; or
- (b) a company that—
 - (i) has applied to NZX to be listed on the NXT market; and
 - (ii) has complied, at the time of the offer of NXT shares, with all the requirements of the NXT market rules relating to the listing application that it is required to comply with at that time; and
 - (iii) has not withdrawn its listing application or had that application refused

NXT issuing group means the NXT issuer and all subsidiaries of the NXT issuer at the date of the PDS

NXT market or **NXT** means the financial product market operated by NZX under that name that is a licensed market

NXT market rules means the market rules for the NXT market

NXT shares means shares in an NXT issuer

NXT standard means the NXT standard as provided for in the NXT market rules in respect of an NXT issuer's or NXT issuing group's KOMs (for the purpose of ensuring KOMs that taken together address the most significant factors by which the performance of the NXT issuer or the NXT issuing group's business should be assessed and monitored and will result in understandable reporting for investors)

NXT website means the Internet site operated by NZX for the NXT market

NZX means NZX Limited

NZX participant rules means the NZX Participant Rules made by NZX from time to time

Regulations means the Financial Markets Conduct Regulations 2014

Schedule 3 means Schedule 3 of the Regulations.

- (2) Any term or expression that is defined in the Act or Regulations and used, but not defined, in this notice has the same meaning as in the Act or Regulations.
- (3) A reference to a rule in the NXT market rules includes a reference to any modification of, or rule made in substitution for, that rule.

5 Application

This notice applies to the PDS for an offer of NXT shares and to the register entry for an offer of NXT shares.

6 Exemption in respect of information at start of PDS

Every NXT issuer is exempted from regulation 20(1) of the Regulations to the extent that that subclause requires the PDS to contain, at the start of the PDS, the information specified in regulation 20(1)(e).

7 Condition of exemption in clause 6

- (1) The exemption in clause 6 is subject to the condition that the PDS must contain, at the start of the PDS, the information set out in subclause (2).
- (2) The information that must be contained is—
 - (a) a warning and statement in the following form:

“Warning

The NXT Market (‘NXT’) is a licensed market operated by NZX Limited that is designed for smaller companies that are typically at an earlier stage of business development and accordingly, the risks of

investing in companies listed on NXT may be higher than the risks of investing in other companies.

Under the NXT market rules, NXT companies are required to immediately disclose information concerning specific events prescribed in the NXT market rules. However, it is possible that some price-sensitive information may not be required to be disclosed, and therefore you could trade on NXT without the benefit of all price-sensitive information in relation to an NXT company. The NXT market rules require NXT companies to have an insider trading policy and insider trading law applies to anyone trading on NXT.

NZX has appointed market makers and research providers for NXT. However, there is uncertainty as to the level of liquidity on NXT, which may affect your ability to sell shares when you want to.

This document gives you important information about this investment to help you decide whether you want to invest, but does not contain as much information as other PDSs prepared under the Financial Markets Conduct Act 2013. There is other useful information about this offer on [*specify Internet site address of offer register*]. [*Name of issuer*] has prepared this document in accordance with the Financial Markets Conduct Act 2013 and the Financial Markets Conduct (NZX–NXT Market) Exemption Notice 2014. You can also seek advice from a financial adviser to help you to make an investment decision.”; and

- (b) if the NXT issuing group is loss-making, a prominent statement in the following form:

“[*Name of NXT issuing group*] made a net loss after tax in the [*refer to the most recent period or interim accounting period as applicable*] to [*specify date*].”; and
- (c) if the NXT issuing group is loss-making, a brief statement that explains the background or reasons for the loss or refers to where that explanation can be found elsewhere in the PDS; and
- (d) the name of the NXT advisor; and
- (e) 1 or more brands or logos customarily used by the NXT advisor to the extent that the NXT issuer considers that that information is useful to investors.

8 Exemptions in respect of certain information in PDS

- (1) Every NXT issuer is exempted from clauses 11, 12, 34, and 38 of Schedule 3.
- (2) Every NXT issuer is exempted from clause 35 of Schedule 3 to the extent that it requires information for P_{+1} and P_{+2} .

9 Conditions of exemptions in clause 8

- (1) Each exemption in clause 8(1) is subject to the conditions that—

- (a) the PDS must contain the information that is set out in the Schedule of this notice under a number that corresponds with the number of the exempted clause of Schedule 3, in place of the information required by the exempted clause, to the extent that the information is applicable; and
 - (b) if the NXT issuer chooses to include prospective financial information in a table under clause 38 of Schedule 3, then the NXT issuer must comply with regulation 64 of the Regulations in respect of that prospective financial information as if it were included in table 1 (as defined in clause 1 of Schedule 3).
- (2) The exemptions in clause 8 are subject to the conditions that—
- (a) the contact details of the NXT advisor are stated under clause 51 of Schedule 3; and
 - (b) the NXT advisor has declared to NZX in accordance with the NXT market rules that the KOMs in the PDS meet the NXT standard; and
 - (c) NZX has approved the KOMs in writing.

10 Exemption in respect of rules relating to financial information

Every NXT issuer is exempted from regulation 23(1) of the Regulations to the extent that that subclause requires the information in section 7 of a PDS (financial information) for an offer of NXT shares to comply with the rules in clause 39 of Schedule 3.

11 Condition of exemption in clause 10

- (1) The exemption in clause 10 is subject to the condition that the information prepared under section 7 of the PDS (financial information) must comply with the rules specified in subclause (2).
- (2) The following rules apply:
 - (a) prospective financial information may be included in table 1 if the NXT issuer thinks fit, but is not required to be included:
 - (b) if the NXT issuer elects to include prospective financial information in table 1, then the PDS must—
 - (i) briefly summarise the principal assumptions on which the prospective financial information in the PDS is based; and
 - (ii) refer to where information about those assumptions can be obtained on the offer register:
 - (c) other financial measures and non-financial information may be added to a table if the NXT issuer reasonably considers that the added information is likely to be useful for investors:
 - (d) another GAAP financial measure or non-GAAP financial measure may be substituted for EBITDA or debt if the NXT issuer reasonably con-

siders that the other financial measure is likely to be more useful to investors than EBITDA or debt:

- (e) in the case of an offer of co-operative shares, other financial measures of earnings or distributions may be substituted for EBITDA, net profit, or dividends if the NXT issuer reasonably considers that the other financial measures are likely to be more useful to investors:
- (f) in the case of paragraph (d) or (e), the substituted information must be included in the same place in the table as the information that is replaced and any description and note in the table must be consequentially modified:
- (g) in the case of paragraphs (c) to (e), the PDS must—
 - (i) identify any information derived from financial statements or other information that has not been prepared in accordance with GAAP; and
 - (ii) refer to where reconciliations to information prepared in accordance with GAAP can be obtained on the offer register:
- (h) interim financial information using amounts determined in accordance with GAAP may be added to table 1:
- (i) if a relevant period is an interim accounting period, the table under clause 35 of Schedule 3 must also include the information under clause 35(1)(a) to (d) and (i) for a corresponding interim accounting period in the previous accounting period:
- (j) if there are any factors that would materially affect the comparability or usefulness of the information reflected in a table (for example, changes to accounting policies, business combinations, or dispositions),—
 - (i) pro forma financial information may be added to a table or substituted for financial information for a period; or
 - (ii) the PDS must include explanatory notes about those factors if those notes are necessary or desirable to explain the effect of the factors on that comparability or usefulness:
- (k) in the case of the PDS including pro forma information, the PDS must—
 - (i) identify any information derived from financial statements or other information that has not been prepared in accordance with GAAP; and
 - (ii) briefly describe the basis on which pro forma information has been prepared; and
 - (iii) refer to where information about the principal assumptions on which the pro forma financial information is based can be obtained on the offer register; and

- (iv) refer to where reconciliations to information prepared in accordance with GAAP can be obtained on the offer register.

12 Exemptions in respect of register entry for offer of shares

- (1) Every NXT issuer is exempted from clause 53(1)(f) of Schedule 3 to the extent that that clause requires the register entry to contain a reconciliation for the purposes of clause 39(i)(ii) and (m)(iv) of Schedule 3.
- (2) Every NXT issuer is exempted from clause 53(1)(c) of Schedule 3.

13 Conditions of exemptions in clause 12

- (1) The exemption in clause 12(1) is subject to the condition that the register entry must contain a reconciliation for the purposes of clause 11(2)(g)(ii) and (k)(iv) of this notice.
- (2) The exemption in clause 12(2) is subject to the conditions in clause 9.

14 Other consequential matters

- (1) The exemptions in this notice are subject to the condition that the content of the PDS must be amended as a consequence of the information that is required to be contained in the PDS under this notice (for example, relevant cross-references and headings must be amended).
- (2) Every NXT issuer is exempted from regulation 23(1) of the Regulations to the extent necessary to make the consequential amendments to the PDS referred to in subclause (1).
- (3) The exemption in subclause (2) is subject to the condition that the NXT issuer must reasonably consider that the consequential amendments are not broader than is reasonably necessary to comply with subclause (1).
- (4) Regulations 9 to 12 and 33 of the Regulations apply to the information that is required to be contained in the PDS under this notice.

Schedule

Replacement information under corresponding number to exempted clause of Schedule 3

cl 9(1)(a)

11 Key operating milestones

The KIS must—

- (a) state, in a table, the KOMs for [*name of NXT issuer*] [*and the NXT issuing group (if applicable)*] and targets for those KOMs in respect of P₊₁ and P₊₂; and
- (b) include a statement in the following form:

“*[Name of NXT issuer]* considers that the key operating milestones in the above table taken together address the most significant factors by which the performance of the *[name of NXT issuer]* *[and the NXT issuing group (if applicable)]* should be assessed and monitored and will result in understandable reporting for investors.”; and

- (c) include a statement in the following form:

“You should also read *[refer to a PDS page(s) or provide another PDS cross-reference to where further information about the KOMs may be found]* for more information about the key operating milestones, including the reasons why *[name of NXT issuer]* selected the key operating milestones, *[name of NXT issuer]* *[and the NXT issuing group (if applicable)]*’s strategies and plans for achieving the targets included in the above table, and the key assumptions relating to those targets.”

12 Key risks affecting this investment

- (1) The KIS must include a statement in the following form:

“Investments in shares are risky and investing on the NXT market carries additional risks compared with investing in other securities markets operated by NZX (see the warning statement at the start of this PDS for further information). You should consider if the degree of uncertainty about *[name of NXT issuing group]*’s future performance and returns is suitable for you. The price of these *[name of shares]* should reflect the potential returns and the particular risks of these *[name of shares]*.

[Name of NXT issuer] considers that the most significant risk factors that could affect the value of the *[name of shares]* are: *[brief summary of the circumstances that must be disclosed under clause 42 (risks) that the NXT issuer considers most significantly increase the risk to the NXT issuing group’s financial position, financial performance, or stated plans]*.”

- (2) In the case of co-operative shares, the statement in subclause (1) may instead be in the following form:

“*[Name of NXT issuer]* considers that the most significant risk factors that could affect the returns received from holding these *[name of shares]* are: *[brief summary of the most significant risk factors that the NXT issuer considers may affect the returns]*.”

- (3) The brief summary under subclause (1) or (2) must include particulars that make it clear why each circumstance is of particular significance in relation to the particular NXT issuer or the particular shares (as compared with those of other issuers or shares).

- (4) The KIS must include a statement in the following form after the statement in subclause (1) or (2):

“This summary does not cover all of the risks of investing in *[name of shares]*. You should also read *[references to section 8 of the PDS (risks to [name of*

NXT issuing group]’s business and plans) and to other places in the PDS that describe risk factors (for example, risks arising for investors from the nature of the product) and to the information about the risks of investing in the NXT market at the start of this PDS].”

34 NXT issuing group’s financial information and key operating milestones

The PDS must include a statement in the following form:

“These tables provide key financial information about [*name of NXT issuing group*] and information about [*name of NXT issuing group*]’s key operating milestones. Full financial statements are available on the offer register at [*specify Internet site address*]. If you do not understand the financial information in this PDS, you can seek advice from a financial adviser or an accountant.”

38 Key operating milestones

- (1) The PDS must, in a table, include KOMs for [*name of NXT issuer*] [*and the NXT issuing group (if applicable)*] and targets for those KOMs, in respect of P_{+1} and P_{+2} .
- (2) Immediately under the table required by subclause (1), the PDS must include—
 - (a) the key assumptions relating to the targets included in that table; and
 - (b) a statement of [*name of NXT issuer*] [*and the NXT issuing group (if applicable)*]’s key strategies and plans for achieving the targets in that table and generating further returns for shareholders; and
 - (c) the reasons why the NXT issuer has selected the KOMs in the table by reference to how those KOMs are relevant to the key strategies and plans referred to in paragraph (b).
- (3) The PDS must include the following statement:

“Under the NXT market rules, [*name of NXT issuer*] will be required to immediately disclose information concerning specific events prescribed in the NXT market rules. However, it is possible that some price-sensitive information may not be required to be disclosed, and therefore you could trade on the NXT market without the benefit of all price-sensitive information in relation to [*name of NXT issuer*].”
- (4) The PDS must—
 - (a) describe what a business update is and when the first business update following the date of the PDS is due, and state that thereafter the NXT issuer will provide business updates on a quarterly basis; and
 - (b) describe what an interim update is and the circumstances in which the NXT issuer will provide an interim update; and
 - (c) explain how the NXT issuer’s business updates and interim updates can be obtained on the NXT website.
- (5) The PDS must include the following statement:

“After due enquiry, the directors of [*name of NXT issuer*] are of the opinion that the key operating milestones, taken together, address the most significant factors by which the performance of the NXT issuing group’s business should be assessed and monitored and that, by reporting against the key operating milestones in this PDS, as required by the NXT market rules, [*name of NXT issuer*] will provide understandable reporting for investors. The directors confirm that the NXT advisor has declared to NZX that the key operating milestones in this PDS meet the NXT standard under the NXT market rules.”

(6) The PDS must include the following statement:

“The key operating milestones and targets for the NXT issuing group may change over time. [*Name of NXT issuer*] will review the key operating milestones annually. Any restatement of the key operating milestones and any resetting of the annual targets will be disclosed in a business update in accordance with the NXT market rules.”

Dated at Wellington this 21st day of November 2014.

Liam Mason,
General Counsel
Financial Markets Authority.

Statement of reasons

Note: The following statement of reasons should be read in conjunction with the statement(s) of reasons appended to the:

- **Financial Markets Conduct (NZX–NXT Market) Exemption Amendment Notice 2018**

This notice, which comes into force on 1 December 2014 and is revoked on the close of 30 November 2019, exempts issuers on NZX’s NXT market from various product disclosure statement (**PDS**) and register entry requirements in the Financial Markets Conduct Regulations 2014. The principal changes in respect of the PDS for an offer of shares by an NXT issuer are as follows:

- a new warning statement about the risks of investing on the NXT market will be contained at the start of the PDS:
- prospective financial information will not have to be disclosed (but may be):
- instead, key operating milestones (**KOMs**) will have to be disclosed.

The principal change in respect of the register entry for an offer of shares by an NXT issuer is that prospective financial information will also not have to be included in the register entry.

The Financial Markets Authority (the **FMA**), after satisfying itself as to the matters set out in section 557 of the Financial Markets Conduct Act 2013, considers it appropriate to grant the exemptions because—

- substituting KOMs for prospective financial information in the PDS for NXT issuers is desirable and will provide for timely, accurate, and understandable information for investors to assist them to make decisions about whether to invest, or about their investment, in an NXT issuer. The exemption will facilitate disclosure aligned to the NXT market’s alternative continuous disclosure regime by allowing disclosure of KOMs rather than prospective financial information. It is also submitted by NZX that removing the requirement to disclose prospective financial information will remove a key barrier to listing for many issuers contemplating listing for the first time. In this regard, the exemption is necessary to promote innovation and flexibility in the financial markets and to remove the unnecessary compliance costs of prospective financial information; and
- in the context of the NXT market, and its alternative disclosure regime, the FMA is satisfied that the exemptions are no broader than is reasonably necessary to achieve a simplified and consistent disclosure regime for the NXT market after 1 December 2014, and so are not broader than is reasonably necessary to address the matters that gave rise to the exemptions.

Note: The preceding statement of reasons should be read in conjunction with the statement(s) of reasons appended to the:

- **Financial Markets Conduct (NZX–NXT Market) Exemption Amendment Notice 2018**

Issued under the authority of the Legislation Act 2012.
Date of notification in *Gazette*: 27 November 2014.

Reprints notes

1 *General*

This is a reprint of the Financial Markets Conduct (NZX–NXT Market) Exemption Notice 2014 that incorporates all the amendments to that notice as at the date of the last amendment to it.

2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

4 *Amendments incorporated in this reprint*

Financial Markets Conduct (NZX–NXT Market) Exemption Amendment Notice 2018 (LI 2018/265)

Financial Markets Conduct (NZX–NXT Market) Exemption Notice 2014 (LI 2014/357): clause 3