

11 August 2016

NZSA feedback on NZX consultation response paper Process for identification of price sensitive information and application of trading halts on release of price sensitive information

Relationship of Submitter

The New Zealand Shareholders Association (NZSA) is the only independent national group that represents the interests of retail investors in the equity and debt markets.

Background

NZX has released a Consultation Response Paper following earlier requests for feedback on the question of "price sensitive marking" and accompanying administrative trading halts. NZSA and seven other submitters made public written responses.

Of these only NZSA and SIA represent retail investors and understand the impact that proposed changes would have on them, and on participant employees dealing with them. In NZSA's view, this matter is less relevant to institutional investors and their advisors as they have the resources (both time and staff) to investigate the implications of every announcement on the NZX Notices portal, something that retail and even larger non institutional investors cannot.

NZX released a number of possible options and it is notable that both NZSA and SIA broadly supported a similar outcome. In the case of NZSA, this was backed up by a significant survey of active retail investors which were unequivocal in demonstrating what investors actually wanted. This can be seen as an addendum to our earlier submission.

As a result of the submissions process, NZX has proposed:

- to retain the use of Administrative Trading Halts but to adopt a different process for identifying and flagging information which will attract such halts, and
- the key test for determining whether an Administrative Trading Halt is applied will be the same as the test used to determine "Material Information" as defined by the market rules of the Relevant Markets (Listing Rules), as well as particular prescribed types of announcements.

The NZSA Position

NZSA welcomes the move away from the initial NZX proposal that would have removed price marking and administrative halts. In our view and the view of most market participants, this would result in an unacceptable change in the fairness and integrity of the market, and give an overwhelming advantage to professional and institutional investors, to the detriment of retail investors.

While the revised suggestions are a great improvement, NZSA remains of the belief that NZX has still failed to place sufficient weight on retail investor and participant feedback.

We are disappointed that NZX seems determined to walk away from its oversight role in regard to ensuring reasonable consistency in price sensitive marking. However, we think that if properly applied, a requirement for issuers to take on this task could be workable.

We note that we are not alone in recommending that NZX (perhaps in conjunction with issuers, institutions, NZSA and regulators) produce a prescribed list of actions or circumstances that will automatically require notices to be marked as price sensitive. The benefits of simplified compliance to smaller issuers are obvious. As we pointed out previously, the prescribed list concept aligns with the precedent established when simplified requirements around continuous disclosure were introduced on the NXT market. In addition, black letter rules already mandate a number of matters that must be considered material and disclosed, so there is a further precedent.

We accept that a list as proposed can never be exhaustive. Neither can it capture issues specific to one issuer that make a matter price sensitive, when it may not be for a different issuer. For that reason, we also suggest that notices submitted to NZX be marked as price sensitive if they include information on the proposed prescribed list or, if in the opinion of the issuer, they are material information as defined in NZX rules for other company specific reasons.

While our preference would be to make a list part of the rules (as per NXT), we are willing to accept a compromise that such a list could be included in accompanying "guidance notes." This would overcome objections that the ultimate test is "materiality" and that only this should be enshrined in a black letter rule, so as to highlight its importance.

We also support the change from the original position which means NZX will continue administrative trading halts as at present. Without this, price marking would be ineffective as there would be no time for any assessment. We note also that the other market participants saw few negative problems with administrative trading halts.

We note the submission of ASX, but take issue with the statement that NZX and ASX are out of step with other markets in applying price marking or trading halts. As our original submission demonstrated, the reverse is the case.

The question has been raised about whether notices can be accepted via email. NZSA is unaware of the practical difficulties that NZX claim accrue. However, we would comment generally that this proposal does seem to be swimming against the tide when it comes to modern communications.

NZSA is sceptical that the third party proposals will address situations such as the Lyttleton Port notice that triggered the initial concerns with the price sensitive marking service. As NZX points out, third parties will likely be unfamiliar with NZX rules and in any event are not contractually bound

by them. We have no real issue with SSH notices and the like, but consider NZX should provide a service for notices that fall outside this category. There will not be many, and any work load would be minor.

One matter that has not been previously addressed relates to sanctions if issuers fail to mark notices as price sensitive when they probably should have been. Without some incentives, it is not clear to us whether the proposed rules will be effective. If a matter is disclosed, but not marked it cannot be captured under continuous disclosure. Equally, if it is "material", but disclosed without marking, there could be some challenge in demonstrating that the matter was not adequately signalled as the disclosure itself indicates that the materiality was recognised. We would like to see greater clarity around this.

NZSA has no view on timing of changes providing the status quo is maintained in the interim.

Summary

NZSA considers that the proposals by NZX are greatly improved from the original. However, we believe that taking the extra step of producing a list of mandatory matters which must be marked as price sensitive remains compelling.

INZSA believes that NZX should further modify the proposals in the Consultation Response paper to incorporate the strongly held views of investors and market participants that fair practise and market integrity must take precedence above all else. therefore we recommend:

- A prescribed list of "price sensitive matters" to guide issuers.
- The list should be in the rules, but could be in the form of guidelines attached to the rules.
- An overriding "materiality" rule to capture all other matters..
- Retain administrative trading halts as at present.
- Further consider third party marking of notices.
- Consider the question of sanctions if relevant.

In our opinion, the further adjustments that we suggest would result a good outcome for all parties and would reinforce NZX's obligation to maintain a fair, orderly and transparent requirement as enshrined in legislation.

NZSA believes that all submissions received by NZX on this important matter should be made public on the NZX website. We will be posting this submission on our own website.

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