

## **CONFIRMATION OF CHANGES AND FEEDBACK ON CONSULTATION ON PROPOSED AMENDMENTS TO THE NEX EXCHANGE GROWTH MARKET RULES FOR ISSUERS**

### **INTRODUCTION**

On 30 April 2019 NEX Exchange consulted on proposed changes to the Growth Market Rules for Issuers (the **Rules**) to reflect the forthcoming EU Growth Market Prospectus regime for SME companies.

NEX Exchange received a number of responses to the consultation and would like to thank all for their feedback and efforts.

A summary of the responses and the view of NEX Exchange is set out below. A marked copy of the rules setting out the amendments to the rules taking into account the consultation feedback is available [here](#).

### **Eligibility Criteria**

Overall respondents were supportive of the proposed changes to the eligibility criteria.

A number of respondents raised concerns regarding the amended Rule 5 definition of **securities in public hands**. There was a concern that excluding shareholders with a holding of 10% or more from the definition of securities in public hands shares (up from the existing threshold of 5%) may allow applicants to satisfy the free float requirement with only two shareholders.

NEX Exchange agrees with the feedback and the definition of **securities in public hands** is amended to exclude any person or persons in the same group, or persons acting in concert, who have an interest of 5% or more of the shares of the relevant class.

### **Information requirements in the Admission Document**

Overall, respondents were supportive of the changes to the admission document information requirements.

Several respondents did not agree with the proposal to remove the requirement for a working capital statement. Respondents were generally of the view that the working capital statement is of fundamental importance when determining if a company has sufficient working capital to cover at least 12 months following admission.

One respondent suggested that the working capital statement ensures the directors carefully consider cash flow and provides corporate advisers with valuable insights as part of their due diligence. Another respondent noted that the working capital statement is also important to investors when they come to scrutinise a company's business model.

In light of the feedback, NEX Exchange has revised the proposed admission document information requirements to reinstate the requirement for a working capital statement.

Another respondent suggested that NEX Exchange introduce additional eligibility criteria for debt instruments, such as a minimum debt to asset ratio. NEX Exchange believes setting minimum ratios may not sufficiently accommodate all scenarios, rather the NEX Exchange corporate adviser is best placed to undertake the necessary analysis on a case-by-case basis for its clients as part of its assessment of suitability for admission.

NEX Exchange appreciates that additional disclosure on the capitalisation and indebtedness of an issuer will assist investors in their evaluation of the instrument; accordingly, NEX Exchange has revised the content requirements for debt instruments to include additional disclosures on the capitalisation and indebtedness of an issuer following the issue of the debt instrument.

### **Corporate Governance**

Overall respondents were supportive of the proposed changes.

Respondents did not agree that NEX Exchange should mandate an increase in the minimum number of independent non-executive directors.

One respondent did not think NEX Exchange had set out the case for why it might be a good idea to increase the minimum number of independent non-executive directors. The respondent was of the view that requiring additional independent non-executive directors would be particularly onerous for early stage companies.

Another respondent thought companies should aspire to appoint two, or more, independent non-executive directors to support adequate constructive challenge and management oversight; however, the respondent did not believe it should be mandatory. It was suggested that the rules should require a company to explain why the composition of the board is appropriate and suitable for the company in line with the requirements of a governance code. It was suggested that this will enable investors to gather information and form their opinions about the suitability of the board.

NEX Exchange agrees with the responses and shall not mandate an increase in the number of non-executive directors required of a company; however, it will require companies to explain on their website why the composition of the board is considered appropriate and suitable for the company.

### **Withdrawal of securities**

Respondents had several comments on the additional measures proposed for the withdrawal of securities from trading.

Respondents generally felt that controlling shareholders should not be disenfranchised from voting on a shareholder resolution to withdraw the securities from trading. Investors should

have an understanding of the implications of acquiring shares in a company with a controlling shareholder or may have already “whitewashed” the controlling interest under the rules of the Takeover Code.

One respondent suggested the revised rules do not take into consideration the cost implications of preparing a circular to shareholders, which is particularly relevant if the issuer has limited funds and is seeking to withdraw admission due to solvency issues.

NEX Exchange agrees with the respondents and has amended the rules to allow for a derogation for those companies in financial difficulty and removed the rule disenfranchising a controlling shareholder from voting on the withdrawal resolution.

### **IMPLEMENTATIONS OF NEW RULES**

The revised Rules will have immediate effect and are now available for download on the NEX Exchange website.

NEX Exchange will allow issuers and corporate advisers a reasonable implementation period to comply with the new rules.