

MARKET CONSULTATION - AMENDMENTS TO THE NEX EXCHANGE GROWTH MARKET RULES FOR ISSUERS

1. INTRODUCTION

NEX Exchange would like to invite feedback on proposed changes to the NEX Exchange Growth Market Rules for Issuers (the “Rules”).

The primary reason for the changes is to update the Rules to reflect the forthcoming EU Growth Market Prospectus regime for SME companies.

NEX Exchange has also taken the opportunity to conduct a general review of the Rules to address a number of areas where NEX Exchange considers further clarity, guidance or amendment is required.

A summary of the key amendments is set out below. The amended rules are available for review at: <https://www.nexexchange.com/regulations/consultations/>

2. REVISION OF RULES

From July 2019, new EU legislation will implement, among other matters, a more proportionate EU Growth Prospectus regime with reduced requirements for SMEs. The content requirements for EU Growth prospectuses were adopted by the European Commission in March 2019.

In light of the new regime, NEX Exchange has undertaken a review of the content requirement for a NEX Exchange Admission Document as set out in Appendix 1 of the Rules. In undertaking the review, NEX Exchange has drawn on the new content requirements set out in the new EU Growth Prospectus regulation and, in the most part, proposes to adopt similar standards.

While most of the revised content requirements are not in substance materially different from the current requirements, NEX Exchange would like to draw attention to its proposed approach on the working capital statement requirement.

The existing Rules require an Admission Document to include a working capital statement stating that, in the opinion of the directors of the issuer, having made due and careful enquiry, the working capital available to the issuer and its group will be sufficient for a period of at least twelve months following admission.

NEX Exchange notes that under an EU Growth Market Prospectus, an issuer is required to state in its prospectus that, in its opinion, the working capital available to the issuer is sufficient for its present requirements or, if not, how it proposes to provide additional working capital. Further, the statement only applies to issuers with market capitalisation above EUR200,000,000.

NEX Exchange proposes to remove the requirement for a working capital statement from the admission document content requirements given the NEX Exchange Growth Market is intended to cater for growth companies with a proposed market capitalisation below the EU threshold.

Questions:

- Q1** Do you agree that a working capital statement should no longer be required for a NEX Exchange admission document?
- Q2** Alternatively, do you believe a working capital statement should be required in certain circumstances and if so, what criteria might apply?

A mark-up of the proposed admission document requirements against the EU Growth Market Prospectus Annexures is available at: <https://www.nexexchange.com/regulations/consultations/>

Eligibility criteria (Rules 2 to 4)

The amendments to this section are largely to improve clarity. The requirement for an issuer to have comparable obligations to a public limited company has been broadened to include all incorporated entities seeking admission, not simply those incorporated in a jurisdiction outside the UK.

Free Float (Rule 5)

The amendments to this section are largely to improve clarity and to emphasize the necessity to ensure there is an adequate market in the securities admitted to trading (including RIET and investment vehicles).

Trading History

The requirement that an issuer has published audited financials covering a 12-month period has been removed to accommodate the admission of early stage companies with strong prospects.

Debt and Convertible (Rules 7 and 8)

New rules further clarify the admission criteria for the admission of debt. A market capital eligibility threshold of £200,000 for debt has been introduced for debt instruments.

Admission criteria have been introduced to apply to convertible securities. The new rule sets out the requirement that the only convertible securities eligible for admission are those that convert into securities admitted to trading on the NEX Exchange Growth Market or another market which NEX Exchange has specified as a “qualifying market”.

Requirement for Admission Document (Rule 10-16)

The amendments to this section are largely to improve clarity (particularly in respect of debt and debt programmes) and to simplify guidance.

Application Documents (Rule 22-25)

The amendments to this section are largely to improve clarity. A new rule 25 has been introduced that requires an issuer that has securities already admitted to the market to advise NEX Exchange at least two business days in advance of the admission date of additional securities.

Price Sensitive information (Rule 34)

To avoid duplication or inconsistency with an issuers’ obligations to disclose inside information in accordance with the Market Abuse Regulation (“MAR”), the NEX Exchange definition of price-sensitive information and the obligation to make announcements has been replaced with a requirement that an issuer comply with their obligations under MAR.

Financial reporting (Rule 43)

The deadline for the announcement of issuers' annual accounts has been amended from five to six months after its year-end.

Transactions (Rule 51)

To accommodate issuers that may fast-track from a qualifying market, the period within which a cash shell must complete a transaction before it is suspended has been extended from 6 to 8 months.

Related party transactions (Rule 53)

A materiality threshold is to be applied such that issuers are not required to announce related party transactions that do not exceed 5% of the issuer's turnover or gross assets.

Corporate governance (Rule 66)

The reference to the FRC's UK Corporate Governance Code has been replaced with a requirement that issuers have regard to a "Recognised Corporate Governance Code". For issuers incorporated in the UK, a recognised code is defined to include either the FRC UK Corporate Governance Code or the QCA Corporate Governance Code. Issuers incorporated in a jurisdiction outside the UK may have regard to a governance code applicable in its jurisdiction of incorporation that is recognised and held in good standing.

Notwithstanding the corporate governance code an issuer may have regard for, NEX Exchange requires an issuer to have at least one independent non-executive director.

Question:

Q3: Do you believe NEX Exchange should consider a further revision to Rule 66 to mandate an increase in the minimum number of independent non-executive directors an issuer must appoint to two (or more) to support adequate constructive challenge and management oversight?

Withdrawal (Rule 76-79)

The revisions propose that, where an issuer intends to withdraw its securities from the Growth Market:

- in respect of shares, the issuer must obtain approval from 75% of the shareholders and, in circumstances where there is a controlling shareholder, a majority of the independent shareholders;
- in respect of debt securities, the issuer must obtain such consent as required under the terms of the securities; and
- in respect of an issuer's insolvency, the issuer is exempt from the requirement to obtain shareholder consent.

These changes are intended to tailor the rules to the different scenarios in which withdrawal might occur and maintain the balance between issuers' interests and their investors' interests in all such scenarios.

3. RESPONDING TO THE CONSULTATION

NEX Exchange invites comments from market participants on the revision to the Rules and to the specific questions set out above.

Please send any responses or comments to regulation@nexexchange.com by no later than **31 May 2019**. NEX Exchange will aim to respond to feedback as soon as possible thereafter.