

**NZX Market Supervision Decision
Infratil Limited
Application for Waiver from NZSX Listing Rule 7.3.2(b).**

Background

1. Infratil Limited (“IFT”) is a Listed Issuer with ordinary shares and warrants Quoted on the NZSX Market and bonds Quoted on the NZDX Market.
2. IFT has in place a programme whereby it raises finance on an ongoing basis through the issue of bonds (“Bond Programme”).
3. Under the Bond Programme, IFT issues both Dated Infrastructure Bonds (bonds that have a maturity date) and Perpetual Infrastructure Bonds (bonds that have no maturity date) (together referred to as the “Bonds”).
4. Among other things, the terms of the Bonds include the ability for IFT to elect to redeem the Bonds in consideration for the issue of IFT ordinary shares. As such, the Bonds are treated as both Debt and Equity Securities for the purposes of the NZSX Listing Rules (“Rules”).
5. Rule 7.3.1 prevents an Issuer, except in certain qualified situations, from issuing Equity Securities unless the precise terms and conditions of the proposed issue has first been approved by each Class of Quoted Equity Securities of the Issuer whose rights or entitlements could be affected by that issue, and that issue is completed within the time specified in Rule 7.3.2.
6. Accordingly, IFT has annually sought approval, pursuant to Rule 7.3.1, for the issue of Bonds pursuant to the Bond Programme at its annual meeting of shareholders (“AGM”), and intends to do so again in 2011.
7. Rule 7.3.2(b) however requires that any issue authorised by resolutions passed pursuant to Rule 7.3.1, that is not to be made solely to Employees (as that term is defined in Rule 7.3.6), to be completed within twelve months after the passing of that resolution.
8. IFT does not always hold its AGM in which it seeks shareholder approval pursuant to Rule 7.3.1 for a new issue of Bonds, on a date that is within 12 months of the approval previously obtained at the immediately preceding AGM. IFT wishes to rely on approval obtained at its AGM for the issue of any Bonds pursuant to the Bond Programme up until the date of the following AGM, irrespective of whether the date of the subsequent AGM falls within 12 months of the date on which approval was obtained, or not.

Application

9. IFT has approached NZX Market Supervision (“NZXMS”) seeking a waiver from Rule 7.3.2(b) so as to allow it to issue Bonds pursuant to the Bond Programme from the date approval is obtained pursuant to Rule 7.3.1 until the date of the following AGM.

10. In support of its application, IFT submits that:
- (a) Before being changed on 1 May 2004, Rule 7.3.2(b) required the issue of Equity Securities to be completed within six months of the passing of the authorising resolution. The period is now 12 months. When it was six months, IFT sought, and was granted, waivers that permitted it to issue the Equity Securities “until 30 days after the Annual Meeting in (the following year)”;
 - (b) For each AGM from 2005 to 2010 a waiver has been sought and granted by NZX to allow the Bonds (which are treated as both Equity Securities and Debt Securities under the Rules) to be issued until 30 August the following year - that is approximately 12 months and two-three weeks from the date of the relevant AGM. This allows IFT to hold its AGM on any day in August in the following year without causing a short period during which it cannot issue Bonds. IFT remains of the view that the policy of Rule 7.3.2(b) (particularly after its change) is to permit issuers to obtain shareholder approval under Rule 7.3.1(a) that lasts from one AGM to the next;
 - (c) The granting of a waiver would be consistent with the policy of Rule 7.3.2(b) on the basis that:
 - (i) After the change to Rule 7.3.2(b) in 2004, the intention of the Rule is to permit Issuers to obtain shareholder approval that lasts from one AGM to the next;
 - (ii) A key purpose of Rule 7.3.2(b) is to prevent an Issuer from having shareholders approve an issue of Equity Securities and then the issue being delayed by the Issuer until a favourable point in time, or until circumstances arise that shareholders may not have been cognisant of when the approval was issued. IFT is seeking shareholder approval to issue the Bonds, is clearly detailing this time period in the notice of meeting, and has undertaken a continuous programme of offering (or retaining the capacity to offer) Bonds for a long period of time now, of which IFT believes its shareholders are highly cognisant; and
 - (iii) An additional two or three weeks from the timeframe contained in Rule 7.3.2(b) is not considered a material period of time for the continuation of the offer of Bonds.

Rule

11. Rule 7.3.1 provides that:

No Issuer shall issue any Equity Securities (including issue on Conversion of any other Security) unless:

- (a) *the precise terms and conditions of the specific proposal to issue those Equity Securities have been approved (subject to Rule 7.3.3) by separate resolutions (passed by a simple majority of Votes) of holders of each Class of Quoted Equity Securities of the Issuer whose rights or entitlements could be affected by that issue, and that issue is completed within the time specified in Rule 7.3.2; or*
- (b) *the issue is made in accordance with any of Rules 7.3.4 to 7.3.11.*

12. Rule 7.3.2(b) provides that:

An Issuer authorised by resolutions passed pursuant to Rule 7.3.1(a) shall be completed:

- (a) if that issue is made solely to Employees (as defined in Rule 7.3.6) within 36 months after the passing of those resolutions; or*
- (b) in all other circumstances, within twelve months after the passing of those resolutions.*

Decision

13. On the basis that the information provided to NZXMS is full and accurate in all material respects, NZXMS grants IFT a waiver from Rule 7.3.2(b), so that any Bonds to be issued pursuant to the Bond Programme may be issued from the day in August on which authorisation is obtained (“Authorisation Date”) pursuant to Rule 7.3.1, until the earlier of 6.00pm on the date of the following AGM, or 31 August of the year following that Authorisation Date, on the condition that this waiver and its implications are clearly disclosed in:

- (a) Each relevant notice of meeting in which IFT seeks approval, pursuant to Rule 7.3.1(a), of a Bond issue under the Bond Programme; and
- (b) IFT’s annual report.

Reasons

14. In granting a waiver from Rule 7.3.2(b), NZXMS has considered the following:

- (a) Rule 7.3.2(b) prevents Issuers from obtaining approval to issue Equity Securities too far in advance of the issue of those Securities. The policy considerations behind this restriction include:
 - (i) ensuring that the holders of Quoted Equity Securities who are affected by the issue of new Equity Securities are the same Security holders who voted on the resolution to authorise the issue; and
 - (ii) seeking to ensure that the issue of Equity Securities occurs within such a timeframe as to, as far as possible, increase the likelihood that the circumstances of the Issuer have not materially changed from those which existed at the time approval was considered and obtained;
- (b) IFT’s Bond Programme is firmly established and understood by holders of IFT’s Securities. As IFT is required to obtain approval, pursuant to Rule 7.3.1, of the proposed issue of Bonds, the existence and mechanics of the Bond Programme will be published annually (where it is in operation) and potential investors in IFT will have an opportunity to, and should be familiar with, the terms and implications of the Bond Programme prior to investing in IFT. Accordingly, NZXMS is satisfied that the policy of Rule 7.3.2 will not be breached by the granting of a waiver in this case;
- (c) IFT will be required to disclose this waiver and its implications in each relevant notice of

meeting and annual report. NZXMS will also have the opportunity to review the notice of meeting to ensure that such disclosure is adequate; and

- (d) As noted above, NZXMS has granted IFT a waiver from Rule 7.3.2(b) in respect of the Bond Programme in previous years.

Confidentiality

- 15. IFT has requested that NZX keep this waiver confidential until IFT has released the notice of meeting in which approval of the Bond Programme is sought, to the market.
- 16. In accordance with Footnote 1 to Rule 1.11.2, NZXMS grants IFT's request.

ENDS