

7 September 2016

**APPLICATION FOR WAIVERS FROM NZX MAIN BOARD LISTING RULES
SMARTSHARES LIMITED – NZ TOP 10 FUND, NZ MID CAP FUND, NZ TOP 50 FUND,
AUSTRALIAN MID CAP FUND AND AUSTRALIAN TOP 20 FUND**

1. This is a decision of the Special Division of the NZ Markets Disciplinary Tribunal (*Special Division*).
2. Capitalised terms that are not defined in this decision have the meanings given to them in the NZX Main Board Listing Rules (*the Rules*).

Background

3. Smartshares Limited (*Smartshares*) is the manager of several exchange traded funds (*ETFs*) with securities Quoted on the NZX Main Board. Smartshares is a wholly owned subsidiary of NZX Limited (*NZX*) and accordingly, its listing is regulated by the Special Division.
4. Smartshares intends to resettle five of the EFTs which are currently constituted as group investment funds (*the GIFs*) as unit trusts (*the Trusts*): the NZX 10 Fund will be resettled as the NZ Top 10 Fund, the NZX MidCap Index Fund will be resettled as the NZ Mid Cap Fund, the NZX 50 Portfolio Index Fund will be resettled as the NZ Top 50 Fund, the NZX Australian MidCap Index Fund will be resettled as the Australian Mid Cap Fund and the NZX Australian 20 Leaders Index Fund will be resettled as the Australian Top 20 Fund. Units in the Trusts are intended to be Quoted on the NZX Main Board.
5. The resettlement of the GIFs as unit trusts (*the Resettlement*) is intended to enable Smartshares to streamline the manner in which it offers ETFs and is not intended to result in substantial differences for GIF unitholders. GIF unitholder approval must be obtained for the Resettlement of each GIF as a unit trust by special resolution.
6. As with Smartshares other EFTs, the Trusts will be unit trusts established under a master trust deed and each with an establishment deed (*the Trust Deeds*). The beneficial interest in each Trust is divided into units with each unit representing an equal interest in the assets of the Trust, but not conferring any interest in any specific asset of the Trust. The assets of each Trust are held by a custodian on behalf of the Trust's trustee.

Application 1 - On-going Waivers and Approval

7. Smartshares has applied, as manager of the Trusts, for waivers from Rules 3.1.1(a), 3.1.1(b), 3.3.5 to 3.3.15, 3.4, 3.5, Section 4, 7.1.11, 7.3, 7.4, 7.5, 7.6.1 to 7.6.3, 7.11.1, 9.2.1, 10.3.2, 10.4.1(d), 10.4.2 and 10.6.1(a) and for approval under Rule 11.1.5.
8. Smartshares submitted that because the Rules treat units in a unit trust as Equity Securities, a number of the Rules to which a waiver is sought are either inapplicable or unnecessary.
9. Smartshares also noted that the Special Division has previously granted waivers from these Rules and approval under Rule 11.1.5 in respect of the existing GIFs and in respect of the other unit trusts managed by Smartshares.

Application 1 - Decision

10. On the basis that the information provided to the Special Division is full and accurate in all material respects, the Special Division grants Smartshares as manager of the Trusts:
 - a. waivers from the Rules noted in Appendix 1 subject to the conditions set out in Appendix 2; and
 - b. approval under Rule 11.1.5 for the inclusion in the Trust Deeds of provisions that restrict the issue, acquisition or transfer of units to allow each Trust to comply with the Portfolio Investment Entity (*PIE*) regime.

Application 1 – Reasons

11. In coming to the decision to grant Smartshares waivers from the Rules noted in Appendix 1, the Special Division considered:
 - a. that the Rules were drafted with company structures in mind and some of the Rules are either not applicable to the Trusts as managed funds or do not provide the protections to investors that they are intended to provide;
 - b. the provisions of the Trust Deeds and the responsibilities of the trustee, as disclosed in the product disclosure statement, which protect the interests of each Trust's unitholders;
 - c. that the conditions set out in Appendix 2 would ensure that where the provisions of a Rule are not applicable to a Trust, the Rule's intent may still be achieved; and
 - d. that it has previously granted waivers from the Rules in respect of the current GIFs and other ETFs managed by Smartshares.
12. In coming to the decision to grant Smartshares approval under Rule 11.1.5, the Special Division considered:
 - a. the submission from Smartshares that the majority of investors in the Trusts would benefit from investing in a PIE compliant entity;
 - b. the PIE thresholds will be clearly disclosed on the Disclosure Register for the offer of units in the Trusts;
 - c. given the nature of the Trusts as managed funds, the PIE thresholds are unlikely to be triggered (and have not been for the GIFs which currently have approval for these provisions in their trust deeds); and
 - d. that it has previously granted approval under this Rule in respect of the current GIFs and other ETFs managed by Smartshares.

Application 2 - Waivers for Quotation

13. Smartshares has applied, as manager of the Trusts, for a waiver from Rule 5.2.1 in relation to the initial Quotation of the units in the Trusts.
14. Rule 5.2.1 requires an Issuer applying for Quotation of a new class of security to apply through an Organising Participant, except where the application relates to rights in respect of securities that are already Quoted.
15. Smartshares has submitted that the requirement for an Organising Participant is aimed at:
 - a. ensuring a new Issuer has received appropriate advice and guidance from a regulated capital markets practitioner before offering securities for the first time to the public; and
 - b. encouraging adequate liquidity post listing via distribution to the institutional and retail network of the Organising Participant.

16. In support of its application for a waiver from Rule 5.2.1, Smartshares submitted that it has the requisite expertise and does not require the advice of an Organising Participant to develop and launch the Trusts, which are designed to replicate the GIFs. An Organising Participant is also not required to assist with the distribution of the units in the Trusts given that unitholders in each of the GIFs will become unitholders in the relevant replacement Trusts.

Application 2 - Decision

17. On the basis that the information provided to the Special Division is full and accurate in all material respects, the Special Division grants Smartshares as manager of the Trusts a waiver from Rule 5.2.1.

Application 2 – Reasons

18. In coming to the decision to grant Smartshares a waiver from Rule 5.2.1, the Special Division considered:
- a. given the GIFs are simply being resettled in the Trusts, the expertise and distribution capability of an Organising Participant is not necessary; and
 - b. that it has previously granted a waiver from these Rules for other ETFs managed by Smartshares.

Publication

19. This decision is confidential until the Resettlement is Announced, after which time this decision will be published in accordance with Rule 1.11.2.

DATED 7 SEPTEMBER 2016



Andrew Beck, Chairman, Special Division

APPENDIX 1

Rules 3.1.1(a), 3.1.1(b), 3.3.5 to 3.3.15, 3.4 and 3.5

Section 4: Takeovers

Rules 7.1.11, 7.3, 7.4, 7.5 and 7.6.1 to 7.6.3 and 7.11.1

Rule 9.2.1

Rules 10.3.2, 10.4.1(d), 10.4.2 and 10.6.1(a)

APPENDIX 2

The conditions of the waivers granted from the Rules noted in Appendix 1 of this decision are:

1. The nature of each Trust's business and operations do not materially change.
2. The waivers granted in this decision and these conditions are noted in each Trust's half-year and annual reports.

Issue of baskets of Units

3. The waiver from Rule 7.3 only applies to the issue of baskets of units in each Trust undertaken in accordance with the provisions of the Trusts and terms of the Trust Deeds.

Material Transactions with Related Party

4. The waiver from Rule 9.2.1 only applies to:
 - a. the withdrawal of baskets undertaken in accordance with the provisions of each Trust and terms of the Trust Deeds; and
 - b. the payment of Smartshares' management fee in accordance with the provisions of each Trust and terms of the Trust Deeds.

Information provided to unitholders

5. Smartshares must provide unitholders with, as a minimum weekly, the current net asset value of each Trust.
6. Smartshares must provide unitholders with, as a minimum quarterly, the extent to which each Trust has outperformed the relevant benchmark index (and if not, by how much).
7. The waiver from Rule 10.4.2 only applies with respect to the requirement to include the information prescribed in Appendix 1 in each Trust's half-year report.
8. Smartshares must include the following information in each Trust's half-year report:
 - a. the extent to which each Trust has outperformed the relevant benchmark index (and if not, by how much);
 - b. the current net asset value of the Trust;
 - c. a statement of financial performance;
 - d. a statement of cash flows;
 - e. statements of movement in unitholder funds;
 - f. a statement of financial position;
 - g. a statement of accounting policies adopted in the reporting period; and
 - h. any major changes in value of assets, as per Listing Rule 10.4.1(d).