



# NZX Regulation Decision

Synlait Milk Limited (“SML”)

Application for a waiver from NZX Main Board Listing Rule  
9.2.1

13 February 2018



# Waiver from Rule 9.2.1

## Decision

1. Subject to the conditions set out in paragraph 2 below, and on the basis that the information provided by SML is complete and accurate in all material respects, NZX Regulation (**NZXR**) grants SML a waiver from NZX Main Board Listing Rule (**Rule**) 9.2.1 to allow SML to enter into the Supply Agreement with Bright YouYou, without seeking shareholder approval.
2. The waiver in paragraph 1 above is provided on the conditions that:
  - (a) the Directors of SML appointed by Bright Dairy (together, **the Interested Directors**) will not participate in any SML Board deliberations on, and will not vote to enter into, the Supply Agreement;
  - (b) the Directors of SML not appointed by Bright Dairy (together the **Non-interested Directors**) certify to NZXR that:
    - (i) the Supply Agreement has been entered into, and negotiated on, an arm's length commercial basis;
    - (ii) in their opinion, the entry into the Supply Agreement is fair and reasonable to, and in the best interests of SML and its shareholders who are not related to, or Associated Persons, of Bright Dairy;
    - (iii) the Interested Directors will not participate in any SML Board deliberations on, and will not vote to enter into, the Supply Agreement, and have had no influence on the decision of the Non-interested Directors to enter into the Supply Agreement; and
  - (c) this waiver, its conditions and implications are disclosed in SML's next annual report.
3. Certain information on which this decision is based is set out in Appendix One to this decision. This waiver will not apply if the information provided to NZXR by SML is not, or ceases to be, full and accurate in all material respects.
4. The Rules to which this decision relates are set out in Appendix Two.
5. Capitalised terms that are not defined in this decision have the meanings given to them in the Rules.

## Reasons

6. In coming to the decision to provide the waiver set out in paragraph 1 above, NZXR has taken into consideration that:
  - (a) Rule 9.2.1 seeks to regulate transactions where a Related Party to a Material Transaction may gain favourable consideration due to their relationship with the Issuer. NZXR may waive the requirement to obtain approval of a Material Transaction if it is satisfied that involvement of any Related Party has not unduly influenced the promotion of, or the decision to enter into, the transaction or its terms

and conditions. NZXR is satisfied that the granting of this waiver will not offend the policy behind Rule 9.2.1;

- (b) SML has submitted, and NZXR has no reason not to accept, that Bright Dairy will not receive favourable consideration by reason of the Related Party Relationship and that the Related Party Relationship has not influenced and will not unduly influence the decision to enter into, or the terms and conditions of, the Supply Agreement, as:
  - (i) entry into, and the terms of, the Supply Agreement have been and will be negotiated on an arm's length commercial basis; and
  - (ii) the decision to enter into the Supply Agreement by SML will be made by SML's non-interested Directors, and the directors of SML appointed by Bright Dairy will not vote to enter into the Supply Agreement or participate in the deliberations of the SML Board, and will have no influence on the decision made by the Non-interested Directors;
- (c) the Supply Agreement is effectively a revision and extension of the existing supply arrangements between the parties, and are within the scope of SML's ordinary course of business. Requiring SML to seek shareholder approval would therefore impose a disproportionate burden on SML, as this would delay entry into the Supply Agreement and require SML to disclose commercially sensitive information where there is negligible shareholder benefit;
- (d) condition 2(a) provides comfort that the Supply Agreement will be negotiated and entered into on an arm's length commercial basis, and its terms are fair and reasonable to, and in the best interests of SML and its shareholders that are not related to or associated with Bright Dairy; and
- (e) there is precedent for this decision.

## Confidentiality

7. SML has requested that this application and NZXR's decision be kept confidential until after the Supply Agreement is disclosed to the market by SML. SML further requests that the terms of and value of the Supply Agreement as provided to NZXR be kept confidential at all times thereafter due to their commercial sensitivity.
8. In accordance with Footnote 1 to Rule 1.11.2, NZXR grants SML's request.

## Appendix One

1. Synlait Milk Limited (**SML**) is a Listed Issuer with ordinary shares Quoted on the NZX Main Board and ASX.
2. SML is proposing to enter into an Infant Formula Product Manufacturing and Supply Agreement (**Supply Agreement**) with Heilongjiang Bright YouYou Nutritional Foods Company Limited (**Bright YouYou**) in place of the existing supply arrangements between the parties. This is a consequence of regulatory reform in China which requires long term manufacturing and supply arrangements in respect of infant formula.
3. The Supply Agreement consists of the following key terms:
  - (a) **Term:** The minimum term of the Supply Agreement is 5 years which is currently expected to commence immediately following the date of this decision; and
  - (b) **Minimum Supply Amount:** Bright YouYou will commit to a binding level of volume of products on a take or pay basis or “reserved capacity”. The Supply Agreement sets out the minimum annual volumes Bright YouYou is obliged to take in each year of the 5 year period from 2018 to 2022.
4. Approximately 39% of the shares of SML are held by Bright Dairy Holding Limited (**Bright Dairy**) which is a wholly owned subsidiary of Bright Dairy & Food Co., Limited (**Bright Parent**). Bright YouYou is an approximately 90% owned subsidiary of Bright Parent.
5. Bright YouYou is therefore a Related Party of SML for the purposes of Listing Rule 9.2.3(c) as:
  - (a) Under Rule 1.8.3 (a) (ii), Bright Dairy and Bright YouYou are Associated Persons by virtue of being Related Companies, and
  - (b) Under Rule 1.8.3 (c), Bright Dairy holds more than 10% of the voting shares of SML.

**(Related Party Relationship).**
6. As at the date of this waiver decision, SML’s Average Market Capitalisation is approximately NZ\$1.18 billion.
7. The Supply Agreement constitutes a Material Transaction for the purposes of Rule 9.2.2(a) as it has the potential to require SML to supply products to Bright YouYou over the 5 year term with a market value in excess of 10% of SML’s Average Market Capitalisation.
8. SML Senior Management have negotiated the Supply Agreement on SML’s behalf. SML advises that the Directors of SML appointed by Bright Dairy have not voted to enter into the Supply Agreement or participated in the deliberations of the SML board, and that Bright Dairy has not had any influence on SML’s decision to enter into the Supply Agreement.
9. SML have submitted that the pricing under the Supply Agreement will be completely on an arms’ length basis.

# Appendix Two

## Rule 1.6.1 Interpretation

**Average Market Capitalisation** means, in relation to any transaction, the volume weighted average market capitalisation of an Issuer’s Equity Securities carrying Votes calculated from trades on the NZSX over the 20 Business Days before the earlier of the day the transaction is entered into or is announced to the market.

## Rule 1.8 Associated Persons

1.8.1 In the Rules, a person is an Associated Person of another person if the first person is associated with the other in terms of Rule 1.8.2 to Rule 1.8.7

1.8.2 A person (the “first person”) is associated with another person (the “second person”) if, in making a decision or exercising a power affecting an issuer, the first person could be influenced as a consequence of an Arrangement or relationship existing between, or involving, the first person and the second person.

1.8.3 Without limiting Rule 1.8.2, the first person is associated with the second person if:

- (a) the first person is a company, and the second person is:
  - (i) Director of that company; or
  - (ii) Related Company of that company; or
  - (iii) Director of a Related Company of that company; or

.....

(d) the first person and the second person are acting jointly or in concert;

1.8.7 For the purposes of this Rule 1.8, “Arrangement” means an agreement, arrangement, or understanding, whether express or implied and whether or not legally enforceable.

## Rule 9.2 New Supply Arrangements with Related Parties

Rule 9.2.1 An Issuer shall not enter into a Material Transaction if a Related Party is, or is likely to become a direct or indirect party to the Material Transaction, or to at least one of a related series of New Supply Arrangements of which the Material Transaction forms part unless the Material Transaction is approved by an Ordinary Resolution of the Issuer.

Rule 9.2.2 For the purposes of Rule 9.2.1, “Material Transaction” means a transaction or a related series of New Supply Arrangements whereby an Issuer:

- (a) purchases or otherwise acquires, gains, leases (as lessor or lessee) or sells or otherwise disposes of, assets having an Aggregate Net Value in excess of 10% of the Average Market Capitalisation of the Issuer;

- .....
- (g) For the purposes of Rule 9.2.2(a), “Aggregate Net Value” means the net value of those assets calculated as the greater of the net tangible asset backing value (from the most recently published financial statements) or market value.

Rule 9.2.3 For the purposes of Rule 9.2.1, “Related Party” means a person who is at the time of a Material Transaction, or was at any time within six months before a Material Transaction:

- (a) a Director or executive officer of the Issuer or any of its Subsidiaries; or
- (b) the holder of a Relevant Interest in 10% or more of a Class of Equity Securities of the Issuer carrying Votes; or
- (c) an Associated Person of the Issuer or any of the persons referred to in (a) or (b), other than a person who becomes an Associated Person as a consequence of the Material Transaction itself (or an intention or proposal to enter into the Material Transaction itself); or
- (d) a person in respect of whom there are arrangements other than the Material Transaction itself, intended to result in that person becoming a person described in (a), (b) or (c), or of whom the attainment of such a status may reasonably be expected, other than as a consequence of the Material Transaction itself;

but a person is not a Related Party of an Issuer if:

- (e) the only reason why that person would otherwise be a Related Party of the Issuer is that a Director or executive officer of the Issuer is also a Director of that person, so long as:
  - (i) not more than one third of the Directors of the Issuer are also Directors of that person; and
  - (ii) no Director or executive officer of the Issuer has a material direct or indirect economic interest in that person, other than by reason of receipt of reasonable Directors’ fees or executive remuneration.