



NZX Regulation Decision

Synlait Milk Limited (“SML”)

Application for a waiver from NZX Main Board Listing Rule
9.2.1

14 August 2017



Waiver from NZX Main Board Listing 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 New Supply Arrangements with NHN, without seeking shareholder approval.
2. The waiver in paragraph 1 above is provided on the conditions that:
 - (a) the Directors of SML, excluding John Penno and any other Director interested in the New Supply Arrangements (together the **Non-interested Directors**) certify to NZXR that:
 - (i) the New Supply Arrangements have been entered into, and negotiated on, an arm's length commercial basis;
 - (ii) in their opinion, the entry into the New Supply Arrangements is fair and reasonable to, and in the best interests of SML and its shareholders who are not related to, or Associated Persons of, NHN;
 - (iii) John Penno has not exercised any undue influence over the SML Board in its decisions in respect of the New Supply Arrangements; and
 - (iv) John Penno did not vote and will not vote on any decisions of the SML Board in relation to entry into the New Supply Arrangements.
 - (b) this waiver, its conditions and the implications of this waiver 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 considered 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 the Related Party has not unduly influenced the promotion of, or the decision to enter into, the transaction. 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 NHN will not receive favourable consideration due to the Related Party Relationships, and that the Related Party Relationships have not unduly influenced the decision to enter into, or the terms and conditions of, the New Supply Arrangements, as:
- (i) John Penno has had limited involvement in the discussions regarding the New Supply Arrangements, and has abstained from voting on any decisions relating to the entry into the New Supply Arrangements;
 - (ii) SML is already party to the Existing Supply Arrangements with NHN and would be inclined to enter into the New Supply Arrangements with NHN, irrespective of its 25% holding in NHN; and
 - (iii) there is no financial incentive for SML to provide favourable consideration to NHN under the New Supply Arrangements, given that SML only holds a 25% holding in NHN;
- (c) The New Supply Arrangements are 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 arrangements and require SML to disclose commercially sensitive information where there is negligible shareholder benefit; and
- (d) condition 2(a) provides comfort that the New Supply Arrangements have been negotiated and entered into on an arm's length commercial basis, and are fair and reasonable to, and in the best interests of SML and its shareholders that are not related to or associated with NHN.

Confidentiality

7. SML has requested that its application, and any decision made in relation to it, remain confidential until after the New Supply Arrangements are disclosed to the market by SML. SML further requests that the terms of and value of the New Supply Arrangements as provided to NZXR be kept confidential at all times thereafter as they are commercially sensitive.
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. In 2014, SML and members of the New Hope Dairy Group (**Parent Co**) established a joint venture company, Sichuan New Hope Nutritional Foods Co., Ltd (**NHN**). SML and NHN entered into an agreement relating to the supply of infant formula products, under which NHN would import infant formula from SML (**Existing Supply Arrangements**).
3. As a consequence of regulatory reform in China, SML, Parent Co and NHN are now seeking to enter into new long-term manufacture and supply arrangements which would supersede the Existing Supply Arrangements (**New Supply Arrangements**).
4. The New Supply Arrangements consist of the following key terms:
 - (a) **Term:** the minimum term of the New Supply Arrangements is five years which is currently expected to commence on 1 January 2018; and
 - (b) **Minimum Supply Amount:** NHN will commit to a binding level of volume of products on a take or pay basis or “reserved capacity”. The New Supply Arrangements set out the reserve capacity volumes for the five-year period from 2018 to 2022. If the reserve capacity volumes are not ordered by NHN in any year, then SML will charge a fee per metric tonne by way of compensation to reflect the fixed overheads and margins lost through NHN not ordering to the reserved capacity levels.
5. SML owns 25% of the voting shares of NHN and John Penno is a Director of both SML and NHN (**Related Party Relationships**).
6. NHN is therefore a Related Party of SML for the purposes of Rule 9.2.3(c) as:
 - (a) under Rule 1.8.2, NHN is an Associated Person of SML, as SML’s decision to enter into the New Supply Arrangements could be influenced due to the Related Party Relationships; and
 - (b) under Rule 1.8.3(d), as SML and NHN could be considered to be acting jointly or in concert.
7. As at the date of this waiver decision, SML’s Average Market Capitalisation is approximately NZ\$825 million.
8. The New Supply Arrangements constitute a Material Transaction for the purposes of Rule 9.2.2(a), as the arrangements have the potential to require SML to supply product to NHN over the five-year term, with a market value in excess of 10% of SML’s Average Market Capitalisation.
9. SML Senior Management have negotiated the New Supply Arrangements on SML’s behalf. John Penno has been party to certain discussions regarding the arrangements, however SML submit that his involvement has been limited and that he has not had any undue influence on SML’s decision to enter into the New Supply Arrangements, or their terms and conditions.

Appendix Two

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;

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- (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.

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.